THE RESUSCITATION OF ST. THOMAS AQUINAS:
CATHOLIC BIOETHICS AND ABORTION IN THE UNITED STATES

By

EMILY WESTON

A Thesis Submitted to the Graduate Faculty of
WAKE FOREST UNIVERSITY
in Partial Fulfillment of the Requirements
for the Degree of
MASTER OF ARTS
in the Department of Religion
May 2009
Winston-Salem, North Carolina

Approved By:

Simeon Ilesanmi, Ph.D., Advisor ______________________________

Examining Committee:

Kevin Jung, Ph.D. ______________________________

Christian B. Miller, Ph.D. ______________________________

Mary Foskett, Ph.D. ______________________________
# TABLE OF CONTENTS

## INTRODUCTION

HISTORY OF ABORTION IN CHRISTIANITY ................................................................. 6

- INTRODUCTION ........................................................................................................ 6
- EARLY WRITINGS ...................................................................................................... 6
- OFFICIAL CHURCH TEACHINGS .............................................................................. 10

CONTEMPORARY CATHOLIC PERSPECTIVES ON ABORTION ............................... 17

- INTRODUCTION ....................................................................................................... 17
- THEOLOGICAL CONSIDERATIONS ......................................................................... 17
- CATHOLICISM AND PUBLIC POLICY IN THE UNITED STATES ......................... 28
- CONCLUSION ........................................................................................................... 31

ABORTION IN THE UNITED STATES ........................................................................... 33

- INTRODUCTION ....................................................................................................... 33
- ROE V. WADE (1973) ............................................................................................... 35
- DOE V. BOLTON (1973) ........................................................................................... 39
- WEBSTER V. REPRODUCTIVE HEALTH SERVICES (1989) .................................... 43
- PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA V. ROBERT P. CASEY (1992) .............................................................................................................. 45
- HUMAN LIFE AMENDMENTS ................................................................................ 48
- THE MEXICO CITY POLICY (1985-2009) ............................................................. 49
- PARTIAL BIRTH ABORTION (2003) ....................................................................... 50
- UNITED STATES’ ABORTION DATA ....................................................................... 51
- CONCLUSION ........................................................................................................... 54

THOMAS AQUINAS ...................................................................................................... 56

- INTRODUCTION ....................................................................................................... 56
- HISTORICAL SHIFT .................................................................................................. 56
- GENDER DISTINCTIONS .......................................................................................... 58
- BODY/SOUL .............................................................................................................. 62
- NATURAL LAW AND THE COMMON GOOD ......................................................... 66
- INTERPRETATIONS .................................................................................................. 70
- CONCLUSION ........................................................................................................... 71

A RENEWED INTERPRETATION ............................................................................... 73

- VALUE OF THE EARLY EMBRYO .......................................................................... 76
- THE COMMON GOOD .............................................................................................. 78

BIBLIOGRAPHY .......................................................................................................... 92
ACKNOWLEDGEMENTS

I would like to thank my thesis committee, Dr. Simeon Ilesanmi, Dr. Kevin Jung, Dr. Christian Miller, and Dr. Mary Foskett for their time and input while writing this thesis. I am especially indebted to my advisor, Dr. Simeon Ilesanmi, whose instruction helped me realize my passion for ethics. Thank you for your countless hours of help guiding this project, as well as my other academic endeavors during my time at Wake Forest.

I am also grateful to my parents, for their endless support that has enabled me to make it thus far and motivates me to move forward in my career. Finally, I want to thank Jesse for being my best friend, my sanity, my heart, and my personal chef. Your visits were always my silver lining during this project.
INTRODUCTION

A recent Gallup Poll taken in September of 2008 recorded that 51% of those polled identified as pro-life and 43% identified as pro-choice. Abortion has remained a polarizing issue in American politics since the controversial 1973 United States Supreme Court decision of Roe v. Wade which declared the practice legal and protected by the Due Process Clause of the Fourteenth Amendment. Religion must be considered in an examination of American abortion law because the Supreme Court and the American people have chosen to involve religious beliefs in the debate of the subject. In Roe, the Supreme Court opinion cited religious traditions when considering the definition of a “person.” The Court states,

There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. It appears to be the predominant, though not unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained…. The Aristotelian theory of mediate animation, that held sway throughout the middle ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the nineteenth century, despite opposition to this ensoulment theory from those in the Church who would recognize the existence of life from the moment of conception. The latter is now, of course, the official belief of the Catholic Church.¹

The Court acknowledges that different religious traditions have addressed the beginning of human life in different ways throughout history. This project will focus primarily, though not exclusively, on the Catholic tradition because, as the opinion of the Supreme Court underscored, American Catholicism offers a unique cultural environment in which to examine abortion. This does not presuppose that other faith traditions have

been silent on this issue, but this work is not intended to be a comparative or cross-cultural survey of theological approaches to the abortion debate. I focus on Catholicism not only because it provides a rich history of opinions on the subject, but because the tradition also supplies a seemingly paradoxical contemporary climate in which statistically 27% of abortions in the U.S. are procured by women who identify as Catholic despite the Church’s official opposition to the practice. Additionally, as further detailed in chapter three, Catholicism has also proven to be influential in state abortion policy as seen in the correlation between states with high Catholic populations and greater numbers of abortion policy restrictions. The more restrictive influence of Catholicism on state policy poses an inconsistency with Catholic public opinion that tends to favor pro-choice positions. In the following I investigate the apparent disconnect between official Catholic teachings on abortion and the practice and opinion of American Catholics. I begin with an account of the development of the Catholic position on abortion, survey current Catholic theological perspectives concerning abortion and assess the political and legal controversy surrounding the practice in the United States. Subsequently, I analyze the theology of St. Thomas Aquinas that specifically pertains to the moral evaluation of abortion. My goals are to highlight the ethical significance of state regulations on the human body and suggest that Thomistic theology provides a valuable persuasive device for realigning official Catholic teachings on abortion with American Catholic sentiment and practice. I believe that Aquinas’ theology, particularly his concept of the common

---


4 Ibid., 84.
good, emphasizes social justice as a foundation for Catholic bioethics which is necessary in an era of increasing globalization.

Because my study focuses on conception and the subsequent development of human life, I must clarify the stages of human development and the correlating terminology. The first stage in which the fertilized ovum remains in the fallopian tubes for three days while beginning cell division is called the zygote.\textsuperscript{5} The subsequent blastocyst stage begins at implantation in the wall of the uterus and continues with cell differentiation.\textsuperscript{6} Two weeks after conception is the embryo stage, during which there is substantial organ differentiation and by the end of six weeks there are early forms of all the organs.\textsuperscript{7} The final stage of development is called the fetus and occurs from eight weeks until birth during which there is further development but nothing new is added.\textsuperscript{8} Other important developments are “quickening” which refers to movement that occurs by 16-18 weeks and “viability” which is the point which the fetus can survive apart from the mother. Viability is usually determined by the size of the fetus and generally occurs at about 500 grams.\textsuperscript{9} It should also be noted that “hominization” refers to the point in development in which the entity is human, “animation” is another term for fetal movement and “ensoulment” is the point at which the fetus contains a soul and for some specifically a rational soul which I will explain in subsequent chapters. For positions that do not highlight a specific point of development I use the phrase early embryo. I use the term fetus when it is specifically used by the source in reference, as is frequent in early

\textsuperscript{5} Paul D. Simmons, "The "Human" as a Problem in Bioethics." Review & Expositor 78 no. 1 (1981): 98.
\textsuperscript{6} Ibid.
\textsuperscript{7} Ibid.
\textsuperscript{8} Ibid.
\textsuperscript{9} Ibid.
embryology, and when addressing late-term abortions. For clarity I also use the term fetus generally as every stage prior to birth.

In order to provide an adequate context for Church teachings about and debates over abortion, chapter one details the history of views about abortion in Christianity. The chapter includes early writings starting from the 2nd century, as well as official Church teachings that begin from the 4th century. Chapter two explores contemporary Catholic perspectives on abortion in order to focus on the current state of the debate within the Catholic community, as well as illustrate the influence of Catholicism in abortion debates and American politics. The chapter explains the positions of prominent theologians and describes important intersections between Catholicism and public policy in the United States. The third chapter details the history of the abortion debate in the United States in order to provide the American context of the issue and show how religion has intersected the legal discussion. Included are significant Supreme Court decisions, proposed Constitutional amendments and policies concerning abortion rights. Chapter three concludes with the United States’ abortion data in order to remove the issue from the abstract and show the reality of abortion as a human phenomenon. Chapter four is a critical analysis of Thomas Aquinas’ theology concerning embryology and other teachings that are pertinent to the abortion debate. Chapter four is the foundation for the fifth chapter of the project in which I provide my contribution to the moral debate about abortion. In chapter five argue that the theology of Aquinas can inform a revision of Church teachings about abortion that do not condemn the procedure in all contexts.

The significance of this work is its contribution to the ongoing debate over the ethics of abortion, specifically how and to what degree Catholicism influences the ethical
leanings of its parishioners. Additionally, this work seeks to provide an interpretation of historical Catholic theology that would facilitate a position on abortion that American Catholics might find more relevant. The project holds significance for Catholic teachings which are at risk of losing their authoritative power if parishioners continue to ignore mandates that the Church holds as essential to Catholic belief. My method for approaching this project is textual analysis of selected writings of Aquinas, historical analysis of Catholic teachings on abortion and abortion laws in the U.S. and social criticism of the existing official Catholic position on the morality of abortion. I employ a revisionist Catholic approach, which emphasizes Richard McCormick’s theory of proportionalism\(^{10}\) in dealing with the morality of abortion. In addition, I include statistical data and analysis to relate the correlations between American Catholic ideology and official Catholic teachings.

\(^{10}\) Proportionalism is a type of analysis for determining the objective moral rightness and wrongness of actions in conflict situations and a procedure for establishing exceptions to behavioral norms. Proportionalists argue that no judgement of moral rightness and wrongness of acts can be made without considering all circumstances of the action. Consideration of the agent’s intention, all foreseeable consequences, institutional obligations, and a proportion between the premoral values and disvalues are necessary before making a judgment. [See: James J. Walter, “Proportionalism,” The HarperCollins Encyclopedia of Catholicism, ed. Richard Mc Brien (San Francisco: Harper, 1995) 1058.]
CHAPTER ONE

HISTORY OF ABORTION IN CHRISTIANITY

Introduction

Since many official Church teachings rely on precedents and historical documents to direct or support decisions concerning contemporary moral problems, it is important to examine the history of thinking about abortion in the Christian tradition. I begin with the earliest opinions related to abortion that start in the 2nd century and subsequently follow with official Church teachings beginning in the 4th century. When mentioning specific texts background information is provided in footnotes. This chapter presents the context and progression of Christian discourse about embryology and abortion.

Early Writings

Although Christianity addresses many social issues in its canonical texts, abortion is not addressed in the New Testament. However, the first known consideration of the practice is found in an early Christian treatise called the Didache, which scholars date to the early second century. The Didache is a manual for Christian converts that specifically condemns abortion and infanticide saying, “you shall not kill the fetus by abortion, or destroy the infant already born.” The Epistle of Barnabas is another text

---

11 The Didache or “The Teaching of the Twelve Apostles” is often regarded as the oldest existing manual of church order. Its section on the “two ways” is often related to the Epistle of Barnabas and there is agreement that the works share a common or similar source. The origin of the Didache is uncertain but both Syria and Egypt have been suggested. [See: New Catholic Encyclopedia, 2nd ed., s.v. “Didache.”]
13 Ibid., 36.
14 The Epistle of Barnabas is an anonymous Christian work dated from the late 1st or early 2nd century. The author and audience are not identified and the work is often not considered an epistle, but a theological treatise or a homily. The closing chapters of Barnabas address the “two ways” and are closely
of a similar time period that contains a condemnation of abortion written in almost indistinguishable language from the Didache.\textsuperscript{15} It is probable that the sudden appearance of two different Christian documents condemning abortion is due to their audiences; both documents were directed to gentiles whose cultures frequently accepted and practiced abortion and infanticide.\textsuperscript{16} Abortion is addressed again in Embassy for Christians,\textsuperscript{17} a late second century document written by the Greek philosopher Athenagoras. In the Embassy, Athenagoras defends Christians against accusations of cannibalism by claiming it would be inconsistent for those who value even the fetus in the womb as God’s creation to condone murder in any form.\textsuperscript{18} Athenagoras’ defense places value on the fetus based on its existence as a creation of God and insists on respect for life from the earliest stages. The Embassy also equates abortion and infanticide with murder. The abortion issue focuses on women in the Paedagogue\textsuperscript{19}. Written by early Church Father Clement of Alexandria, the Paedagogue accuses women who poison their fetus with drugs to hide fornication of destroying “not only the fetus within them but their own humanity.”\textsuperscript{20}

\textsuperscript{15} Connery, Abortion, 36.
\textsuperscript{16} Ibid.
\textsuperscript{17} Embassy for Christians was written by Greek philosopher Athenagoras for presentation to Marcus Aurelius between 176 and 180. Athenagoras was a Platonist before conversion to Christianity and his writing uses Plato’s criticism of the ancient poets to attack paganism. The Embassy is a defense of Christianity against claims of atheism, cannibalism and promiscuity. [See: New Catholic Encyclopedia, 2\textsuperscript{nd} ed., s.v. “Athenagoras.”]
\textsuperscript{18} Connery, Abortion, 37.
\textsuperscript{19} The Paedagogue was written by Clement of Alexandria in the late 2\textsuperscript{nd} century and is addressed to the baptized. The work illustrates Christ the Educator who instructs the Christian moral life. The treatise is concerned with practical morality for daily life. [See: New Catholic Encyclopedia, 2\textsuperscript{nd} ed., s.v. “Clement of Alexandria.”]
\textsuperscript{20} Connery, Abortion, 37.
Dated in the first half of the second century, *Philosophoumena* \(^{21}\) or the *Refutation of All Heresies* refers to the morality of abortion within the Christian community. \(^{22}\) The text is attributed to Hippolytus and is a criticism of the Roman pontiff Callistus for allowing women to marry men of inferior status. Hippolytus believes that these marriages are the reason for Christian women using “drugs to cause sterility and to bind themselves tightly to cause abortion.” \(^{23}\) Hippolytus’ main criticism is the lack of punishment women receive for abortions that he considers to be both adulterous and homicidal. \(^{24}\) Hippolytus’ concern is the maintenance of an ordered community which he believes is at risk due to relaxation of laws and an increase in converts. Church Father Tertullian not only condemns abortion but explicates the reason *why* the practice should be denounced in his *Apologetics*. \(^{25}\) Tertullian writes in defense of Christians who face accusations of sacrificing children claiming that it is not even acceptable for Christians to destroy the living fetus in the womb, much less kill a child. \(^{26}\) Tertullian expounds that the destruction of a fetus is anticipated homicide because it prevents the seed from becoming man. \(^{27}\) In *De anima* \(^{28}\) Tertullian explains his embryology while arguing

---

\(^{21}\) The *Philosophoumena* or the *Refutation of All Heresies* was written in the first half of the 2\(^{nd}\) century and is generally attributed to Hippolytus. The work consists of ten books that describe Greek philosophy, religion and Gnosticism. Book ten outlines orthodox Christian faith and condemns the mitigation of the penitential system resulting from an increase in pagan converts. [See: *New Catholic Encyclopedia*, 2\(^{nd}\) ed., s.v. “Hippolytus.”]


\(^{23}\) Ibid., 38.

\(^{24}\) Ibid.

\(^{25}\) *Apologetics* was written by Tertullian in 197 in defense of Christianity. The work was addressed to the provincial governors of the Roman Empire to illuminate the unjust persecutions against Christians that Tertullian claimed were a result of ignorance, misrepresentation and fear. *Apologetics* asserts that Christianity is good for the state because it endorses the observance of law, while paganism does not. [See: *New Catholic Encyclopedia*, 2\(^{nd}\) ed., s.v. “Tertullian.”]

\(^{26}\) Connery, *Abortion*, 40.

\(^{27}\) Ibid.

\(^{28}\) *De anima* is one of Tertullian’s apologetic treaties that defends Christianity against pagan attacks and unfaithfulness. The work is one of Tertullian’s many polemics. [See: *New Catholic Encyclopedia*, 2\(^{nd}\) ed., s.v. “Tertullian.”]
against pagan conceptions of the soul by claiming that the fetus is alive and possesses a soul before it is born. For Tertullian, the soul is material substance that begins in the semen and forms concurrently with the body. Another early Church Father, Minucius Felix, addresses abortion in Octavius. Felix defends Christians against charges that they murder infants by highlighting the hypocrisy of the accusers whose women “were taking drugs to destroy nascent life within their wombs, committing parricide even before birth.” Felix equates killing the fetus to infanticide, even charging women who kill the fetus with parricide to distinguish the practice as more severe than homicide. Felix’s defense not only points to the hypocrisy of the criticism, but also declares abortion to be morally equivalent to infanticide.

The early Christian writings about the morality of abortion often focus on those outside of the tradition. Many of the texts are in response to accusations made against early Christians or as guidelines for new converts to the tradition whose prior cultural environment did not inform the same values. In both cases, abortion discourse revolves around the social context of the time period. The writers’ emphasis on the protection of the fetus is frequently used to stress the importance of life and the condemnation of homicide in the Christian tradition. Although there is an absence of teachings about the abortion in the New Testament, the writers obviously see the condemnation of the practice as inherent in the Christian tradition.

---

29 Connery, Abortion, 41.
30 Ibid., 40.
31 Octavius was written by Minucius Felix in the form of Ciceronian dialogue between Octavius, Caecilius and Minucius and is addressed to educated pagans. The dialogue takes place on a walk from Rome to Ostia in which Octavius defends Christianity, Caecilius defends paganism and Minucius arbitrates the discourse. The work concludes with Caecilius’ conversion to Christianity. [See: New Catholic Encyclopedia, 2nd ed., s.v. “Minucius Felix.”]
32 Connery, Abortion, 43.
Official Church Teachings

Despite the numerous opinions expressed above, there is no official Church teaching on abortion until the fourth century. The first legislation on abortion occurs at the Council of Elvira in 305 that created canons that excommunicate women who destroy a child conceived in adultery.\textsuperscript{33} The harsh penalties of Elvira only lasted until 314 when the Council of Ancyra changed the penalty for adulterous abortions to ten years of penance.\textsuperscript{34} Both Councils were local legislations but Ancyra was widely accepted as a Church norm. In addition to abortion legislation, the fourth century marks an increase in theologians’ consideration of embryology as an important moral aspect of abortion. Early Christian discussions of embryology focused on when the fetus should be considered alive, when and how the fetus contains a soul, and the ethical differences between aborting the formed and unformed fetus. Writings on embryology ranged from equating abortion to homicide \textit{only} in the case of a formed fetus, to regarding any form of sterilization punishable as homicide. The animation controversy is temporarily resolved between 1139 and 1150 with Gratian’s compilation of canon law decrees into the \textit{Concordia canonum discordantium}.\textsuperscript{35} The \textit{Concordia} is not a complete compilation and neglects much of the abortion legislation of the time, but the writings included restrict ensoulment to the formed fetus and regard abortion after formation as equivalent to homicide.\textsuperscript{36}

\textsuperscript{34} Ibid.
\textsuperscript{35} Connery, \textit{Abortion}, 89.
\textsuperscript{36} Dillon, \textit{Catholic Identity}, 44.
Abortion regains public attention at the end of sixteenth century with Pope Sixtus V’s mandate of excommunication as the universal Catholic penalty for abortion. The stringent mandate did not differentiate between the animated and unanimated fetus and was a reaction to the rise of abortions and growing disregard for official Catholic teachings during the Renaissance period. However, three years later Pope Gregory XIV restricted excommunication to punishment for abortions performed only after animation and the restriction remained the official Catholic teaching until 1869. In 1869, Pope Pius IX kept the punishment for abortion unchanged but did not distinguish between the animated and unanimated fetus. Pius’ legislation remained unchanged and was included in the code of Canon Law in 1917. Church legislation on abortion still does not distinguish between an animated and unanimated fetus. In 1930, Pope Pius XI contributed to abortion teachings in his encyclical Casti Connubii. In the document, Pius XI asserts that there is never a sufficient reason to excuse the direct murder of the innocent. Pius adds:

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.

Pius also believed that abortion cannot be justified by the claim that it must be performed in order to save the mother, whether arguing for self-defense or extreme

37 Ibid.
38 Ibid.
39 Ibid.
40 Connery, Abortion, 212.
41 Ibid.
43 Ibid.
need. He asserted that one cannot claim self-defense against an unjust aggressor because the fetus is innocent and explained that it is the duty of the doctor to save both the mother and the child. Pius XI not only declares abortion immoral for the woman procuring it, but also condemns the practice for the doctors who perform it. Abortion was addressed again in 1965 by Pope Paul VI at the Vatican II Council as seen in the *Gaudium et Spes* or the *Pastoral Constitution on the Church in the Modern World*. In no. 51, Paul VI stipulates that “from the moment of its conception life must be guarded with the greatest care while abortion and infanticide are unspeakable crimes.”

In 1974, the Congregation for the Doctrine of the Faith issued a specific document entitled, the *Declaration on Procured Abortion*. The document proclaims that human beings have an inviolable right to life that must be recognized from fertilization to natural death. The declaration also claims that modern genetic science “confirms the belief that all the characteristics of the person are fixed at conception.” However, the statement asserting the confirmation of modern science includes an endnote which states:

This declaration expressly leaves aside the question of the moment when the spiritual soul is infused. There is not a unanimous tradition on this point and authors are as yet in disagreement. For some it dates from the first instant; for others it could not at least precede implantation. It is not within the competence of science to decide between these views, because the existence of an immortal soul is not a question in its field. It is a philosophical problem from which our moral affirmation remains independent for two reasons: (1) supposing a belated animation, there is still nothing less than a human life, preparing for and calling for a soul in which the nature received from parents is completed, (2) on the other hand, it suffices that this presence of the soul be probable (and one can never

---

45 Ibid.
48 Ibid.
prove the contrary) in order that the taking of life involve accepting the risk of killing a man, not only waiting for, but already in possession of his soul.49

The above endnote concisely summarizes the Church teaching concerning the morality of abortion. The Church claims that even if the soul is not immediately present, the zygote should be treated as a human life that is preparing for a soul and it is probable that the zygote does in fact possess a soul, so the risk of taking a life is too severe to condone abortion. The document initially utilizes modern science in defense of the protection of life from conception, but follows the statement with a footnote clarifying that science is not sufficient to determine ensoulment. The Church also recognizes the disagreement in philosophy concerning the human soul and in response seems to retreat back to probabilism to defend its position. The Declaration also asserts that personhood stems from humans’ rational nature and capacity to know the truth and make free choices and although humans are only subordinate to God, their individual interests must be subordinate to the common good of society.50 The notion of the “common good” according to Thomas Aquinas will be explored further in Chapter Four.

The next major Church document concerning abortion is the Congregation for the Doctrine of the Faith’s Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation (Donum Vitae) which was released in 1987. While the document reiterates the scientific support for protecting human life from conception found in the Declaration on Procured Abortion, it adds that:

Human procreation requires on the part of the spouses responsible collaboration with the fruitful love of God; the gift of human life must be actualized in marriage

50 May, Catholic Bioethics and the Gift of Human Life, 41.
through the specific and exclusive acts of husband and wife, in accordance with the laws inscribed in their persons and in their union.\textsuperscript{51}

In the above, the Church stresses the importance of the parental and marital relationships needed for procreation. The document emphasizes that procreation is intended for a man and a woman in a responsible marital union, but does not address procreation that occurs in the absence of such a union. Is procreation outside of marriage not in collaboration with the fruitful love of God? The \textit{Instruction} also includes a section that addresses moral and civil law which details that,

\begin{quote}
The new technological possibilities which have opened up in the field of biomedicine require the intervention of the political authorities and of the legislator, since an uncontrolled application of such techniques could lead to unforeseeable and damaging consequences for civil society. Recourse to the conscience of each individual and to the self-regulation of researchers cannot be sufficient for ensuring respect for personal rights and public order.\textsuperscript{52}
\end{quote}

The Church holds politicians and legislators responsible for upholding civil and moral law in society because it is not sufficient to let the people and the researchers make decisions in accordance with their conscience. It is the duty of civil law to “ensure the common good of people through the recognition of and defense of fundamental rights and through the promotion of peace and of public morality.”\textsuperscript{53} The section on moral and civil law shows that the Catholic Church chooses to be involved in politics. The Church demands that politicians and legislators use their influence to advance the Catholic agenda. The Church’s appeal for politicians and legislators to supersede the conscience


\textsuperscript{52} Ibid., III. Moral and Civil Law.

\textsuperscript{53} Ibid.
of individuals in bioethical matters presents a possible conflict of interests between the Catholic agenda and the people whom elected officials are supposed to represent.

The most recent Church teaching on the morality of abortion is Pope John Paul II’s 1995 encyclical, *Evangelium Vitae* or *The Gospel of Life*. *The Gospel of Life* addresses the philosophical and scientific discourse about abortion declaring,

over and above all scientific debates and those philosophical affirmations to which the Magisterium has not expressly committed itself, the Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in his or her totality and unity as body and spirit: 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.\(^54\)

John Paul II recognizes the dispute over the beginning of human life and does not claim to hold one position as the essential truth of the situation. After declaring abortion as a moral disorder, John Paul II defends the statement saying, “this doctrine is based upon the natural law and the written Word of God, is transmitted by the Church’s tradition and taught by the ordinary and universal Magisterium.”\(^55\) He uses examples of Catholic teachings to support his affirmation of the existence of life from conception, including the *Didache*, Athenagoras, Tertullian, and the *Casti Connubii*.\(^56\) Later in the encyclical, John Paul II charges all people with the responsibility to condemn abortion and asserts that “to

---


\(^{55}\) Ibid., Chapter III no. 62.

\(^{56}\) Ibid., Chapter III no. 61-62.
be actively pro-life is to contribute to the renewal of society through the promotion of the common good.”

As Enda McDonagh points out in “Ethical Problems of Abortion,” the historical defense of the fetus within Christianity has focused on whether it is ensouled and human or not and whether the circumstances of the commandment “thou shall not kill” can modify its applicability. While much of the early writings about embryology and abortion focus on the soul of the fetus, the more contemporary literature departs from the ensoulment discourse to concentrate on the protection of life, be it potential or actualized. The most interesting contemporary addition to the abortion debate is the Church’s use of modern science to support the protection of life from conception. While the documents merely suggest scientific support and do not claim it as official justification for the protection of life, the Church has allowed science into abortion discourse. However, the Church’s use of science in abortion documents is inconsistent. The Church claims that modern genetic science “confirms the belief that all the characteristics of the person are fixed at conception,” but adds that “it is not within the competence of science to decide between these views, because the existence of an immortal soul is not a question in its field.” The condemnation of abortion that once rested on the protection of the human soul has shifted and is almost at the point of replacing the soul with biological evidence in abortion discourse. Although the Church has yet to officially claim biological evidence in condemning abortion, the most recent teachings seem to be moving in that direction.

57 Ibid., Chapter IV no. 101.
CHAPTER TWO

CONTEMPORARY CATHOLIC PERSPECTIVES ON ABORTION

Introduction

The ethical considerations of abortion do not end in the thirteenth century but remain controversial for contemporary Catholic theologians. In this chapter I examine various stances in the abortion debate represented by some prominent twentieth century Catholic theologians and ethicists. I begin with those who defend the Church’s condemnation of abortion and then present some within the Catholic community who believe it should be revised. I also look at some relevant data about the influence of Catholicism on public policy. This chapter highlights the diversity of opinions despite a unified official Church teaching and provides a framework of existing scholarship.

Theological Considerations

The stance that abortion is morally reprehensible in all situations because of its violation of life, which begins at conception, can be loosely referred to as the “traditional” Catholic view. Thomas O’Donnell defends the position in his aptly titled *A Traditional Catholic’s View*. O’Donnell defends the traditional Catholic position on abortion against those who are speculative because they claim that Catholicism has not held a single position on the practice throughout history. O’Donnell claims that the position of the Catholic Church has remained consistent and variation can only be found in deficient theological speculation that is recognized as such and never accepted as

61 Ibid., 44.
Catholic doctrine. Other variation in the Catholic moral history of thinking about abortion is found in the canonical discipline, which is distinct from moral doctrine because the canonical discipline imposes ecclesiastical penalties for certain public crimes and is not intended to be a moral code. O’Donnell explains that the canonical discipline is concerned with penalties for specific crimes and any absence or variance of penalties for abortion does not relate to change in moral doctrine. He maintains that the Catholic position on abortion clearly and consistently affirms that the practice is the murder of the innocent.

While O’Donnell argues against abortion based on the consistency of Catholic history and tradition, Richard Berquist defends the traditional Catholic position as protection of the fetus’ rights. Berquist claims that the embryo possesses rights prior to becoming a “person”. For Berquist, the developmental moment in which the fetus should be considered a person is irrelevant because “persons who do not yet exist would seem to have some rights.” Berquist uses the example of the fetus’ right to health and bodily integrity that is violated when a mother takes drugs while pregnant to show that rights can be possessed prior to actual “existence.” He also argues that prior to existence the fetus has a right to life because from the moment of fertilization, life is “naturally intended for and therefore naturally due to the new person.” Berquist’s argument is an attempt to dispel abortion discourse that focuses on the personhood of the

---

62 Ibid., 46.
63 Ibid.
64 Ibid.
66 Ibid., 127.
67 Ibid.
68 Ibid., 129.
fetus, by claiming that the fetus deserves respect as an emerging person, even if it is not an actual person.

Sidney Callahan is among numerous theologians who approach abortion discourse with feminist concerns. As she outlines in “Abortion and the Sexual Agenda: A Case for Prolife Feminism,” feminists do not always agree on the morality of abortion. Callahan explains her pro-life feminist position with four central moral claims that are in opposition to four claims made by pro-choice feminists. The first principle Callahan refutes is the moral right to control one’s body, which she argues is in opposition to the more inclusive ideal of justice. For Callahan, it is unjust to harm bodies, “however immature, dependent, different looking, or powerless” they may be, and women should be acutely aware of the need to protect the fetus because they have been similarly dehumanized in recent history. The second principle in contention is the necessity of autonomy and choice in personal responsibility, which requires that women must control reproduction in order to make responsible life decisions. Callahan argues that moral reasoning is not dependent on choice and is often exercised in response to unexpected circumstances which are not individualistic and involve obligations to an interdependent human community. Callahan explains the third ideal that pro-life feminism rests on is the intrinsic value of human life, as opposed to pro-choice claims of the contingent value of fetal life. Human rights cannot be dependent on the will of

---

70 Ibid., 131.
71 Ibid.
72 Ibid., 134.
73 Ibid.
another; and biological life, or membership in the human species, is sufficient for possessing human rights.

The moral right of women to full social equality is Callahan’s most developed ideal and is held by both pro-life and pro-choice feminists, but is approached in two very different ways. While pro-choice feminists believe the availability of abortions grants women social equality and reproductive freedom, Callahan contends that fetal rights are integral to advancing women’s rights.\textsuperscript{74} In order to attain social equality, women need “more social support and changes in the structure of society” and abortions relieve the community of moral responsibility by positioning reproduction as an individual and exclusively female choice.\textsuperscript{75} Callahan also argues that abortions do not help women attain social equality in a male-oriented society, but actually contribute to the existing structure by ignoring the unique biological capacity of women and contributing to the “disease model of pregnancy” which views pregnancy as a handicap.\textsuperscript{76} Callahan believes that “for women to get what they need in order to combine childbearing, education, and careers, society has to recognize that female bodies come with wombs.”\textsuperscript{77} Pregnancy cannot be considered a problem or weakness to abort, but an aspect of women’s experiences that requires a social restructuring towards care for the human race.

Callahan’s essay shifts pro-life abortion discourse from concern for the unborn, to concern for women. Callahan’s argument situates the pro-life position as the advancement of women’s rights, a claim typically made by pro-choice feminists.

\textsuperscript{74} Ibid., 135.
\textsuperscript{75} Ibid.
\textsuperscript{76} Ibid., 136-137.
\textsuperscript{77} Ibid., 140.
Lisa Cahill argues from a feminist pro-life position that is similar to Callahan’s, but emphasizes social responsibility and the “common good” for society. While Cahill endorses the protection of life from the point of conception, she believes that the pro-life abortion debate needs to include an emphasis on the care for the children and the mothers involved in unplanned pregnancies. Although she recognizes that the pro-choice position positively affirms women as legitimate and autonomous moral agents, Cahill believes that the pro-choice foundation in political and moral liberalism has detrimental consequences for women and society. Cahill explains that when the community is subordinate to the individual, “moral and social dilemmas are regarded as the business and the burden of the individuals, to be resolved or borne alone.” She positions liberalism in direct opposition to preferable theories that rest on the “common good” and insist that everyone has an obligation, based on interdependence and common humanity, to help others when it requires “relatively little self-sacrifice and a proportionate gain for the other.” The common good is important in abortion discourse because, for Cahill, the fetus holds value as a member of the human species from conception. Although she stipulates that the value of the fetus increases throughout development and can never override the mother’s right to life, Cahill asserts that its

---


79 Cahill explains that liberalism is the view that persons are essentially free and autonomous agents who come into society to protect self-interest by a series of mutually advantageous agreements [See: Cahill, “Abortion, Autonomy, and Community,” 88.]

80 Cahill, “Abortion, Autonomy, and Community,” 89.

81 Cahill explains that the Thomistic notion of the “common good” rests on the premise that persons are by definition interrelated in a social whole whose fabric of reciprocal rights and duties constitutes the very condition of their individual and communal fulfillment. [See: Cahill, “Abortion, Autonomy, and Community,” 88.]

82 Ibid., 88.

83 Cahill clarifies that the fetus is a member of the human species from conception because it has an identifiably human genotype and originates from human parentage. [See: Cahill, “Abortion, Autonomy, and Community,” 86.]
membership in the human community demands that the fetus be respected and protected. In response to abortion debates, Cahill advocates a rejuvenated sense of community and care. She believes that this approach could help alleviate unplanned pregnancies while encouraging women who experience them by providing support that would discourage abortions by providing real help for those in difficult situations.

Mary Hayden provides an additional feminist condemnation of abortion that utilizes Thomas Aquinas’ natural law in “The ‘Feminism’ of Aquinas’ Natural Law: Relationships, Love and New Life.” Like Callahan and Cahill, Hayden’s argument rests on the importance of the social dimension of abortion discourse, explaining that the duties related to relationships are similarly fundamental to both Aquinas’ natural law and the “feminist” ethic of care. Based on what she defines as the “‘Feminism’ of Aquinas’ natural law,” Hayden argues that abortion is immoral because it violates the relationship between the fetus and the mother which entails ethical obligations for the mother to seek good and avoid harm for the child. Hayden believes that because the relationship between parent and child is unidirectional, it begins “at the moment when physiological changes indicate that the self-changing entity is human… the point of conception.” In addition to violating the relational obligations between parent and child, Hayden argues that abortion also defies Aquinas’ adherence to the moral imperative to love thy neighbor as thyself. The author maintains that the “feminism” of Aquinas’ natural law

---

84 Ibid., 86, 94.  
86 Ibid., 239-240.  
87 Ibid., 139.  
88 Ibid., 241.
emphasizes relationships and love in a way that demands the protection and respect of the fetus.

The Reverend Joseph J. Farraher defends the Church’s position on abortion against those who claim the Catholic notion of probabilism informs that some early abortions are permissible.\textsuperscript{89} While probabilism is often a point of contention in Catholic abortion discourse, Farraher believes it has been misused for pro-choice purposes. Farraher explains that probabilism’s fundamental principle is that “a truly doubtful law does not oblige; or, that a doubtful obligation is no obligation.”\textsuperscript{90} According to Farraher, one can follow a firmly probable opinion if “no higher law obliges one to follow the safer course of action,” and “the supreme Magisterium of the Church has not settled the question.”\textsuperscript{91} One can also attain \textit{extrinsic} probability through the application of the testimony of an expert theologian who is recognized as such by the Magisterium or most experts in the field.\textsuperscript{92} While Farraher recognizes Thomas Aquinas as a sufficient theologian to draw extrinsic probability from, he stipulates that even Thomas “may not be considered to prevail over subsequent declarations of the Magisterium.”\textsuperscript{93} Farraher asserts that probabilism cannot be used by defenders of early abortions, who claim it is probable that there is no rational soul in early human development, because there is no proof that the human soul \textit{could not} exist at conception.\textsuperscript{94} The mere possibility that abortion is an attack on human life excludes the use of probabilism to defend early abortions. Farraher also believes that probabilism is not applicable in defense of abortion

\textsuperscript{90} Ibid.
\textsuperscript{91} Ibid., 152.
\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid.
\textsuperscript{94} Ibid., 153.
because the Congregation for the Doctrine of the Faith\textsuperscript{95} has unequivocally taught that life should be protected from conception.\textsuperscript{96} Similarly to O’Donnell, Farraher condemns abortion based on tradition, claiming that the Church has clearly and consistently denounced the practice throughout history, as well as in contemporary documents.

While some Catholic theologians use history to defend the Church’s position on abortion, others highlight Catholic history in support of a more lenient view of the practice. Joseph Donceel argues that Church teachings on abortion are incompatible with Thomas Aquinas’ moral theology. Donceel believes that the current claims of Catholic teachings that life begins at conception, or immediate animation, are not compatible with the hylomorphic\textsuperscript{97} conception of man that was adopted by the Church at the Council of Vienne\textsuperscript{98} in 1312.\textsuperscript{99} Donceel explains that if the soul exists in the fetus from conception, it is possible for the soul to exist without the body because the zygote cannot be considered any form of a body.\textsuperscript{100} Further, the independence of the body and soul found in the immediate animation theory contributes to Cartesian dualism which is rejected by much of contemporary philosophy and is in direct opposition to the doctrine approved at

\footnotesize{
\textsuperscript{95} “From the moment of conception, the life of every human being is to be respected in an absolute way because man is the only creature on earth that God has "wished for himself " and the spiritual soul of each man is "immediately created" by God.” [See: Sacred Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation Introduction sec. 5 (1987), The Holy See Doctrinal Documents; available from http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html; Internet; accessed 4 February 2009.]

\textsuperscript{96} Farraher, “Abortion and Probabilism,” 154.

\textsuperscript{97} According to hylomorphism, the human soul is the substantial form of man and the human body is the result of the union of the soul with materiality. Hylomorphism asserts that the human soul can exist only in a real human body. [See: Joseph F. Donceel, “A Liberal Catholic’s View.” in Abortion & Catholicism: The American Debate, ed. Patricia Beattie Jung and Thomas A. Shannon (New York: The Crossroad Publishing Company, 1988) 48-49.]

\textsuperscript{98} “everyone who makes bold to assert, defend, or stubbornly hold that the rational or intellectual soul is not by itself and essentially the form of the human body must be considered a heretic.” [See: Council of Vienne DS 902 (481), in Joseph F. Donceel, "Immediate Animation and Delayed Hominization," in Theological Studies 31, no. 1 (March 1970): 86.]

\textsuperscript{99} Donceel, “A Liberal Catholic’s View,” 49.

\textsuperscript{100} Ibid., 50.
}
Carol Tauer also argues against the Church’s position on abortion by using principles from within the Catholic moral tradition. Tauer contends that the Church’s position on abortion and ensoulement is inconsistent with the Catholic moral tradition on resolving doubt, which would inform a more lenient view of abortion. Tauer is concerned with the Sacred Congregation for the Doctrine of the Faith’s *Declaration on Abortion*, particularly the document’s treatment of the time at which the embryo is ensouled. The *Declaration* states that “it is not up to the biological sciences to make a definitive judgment on questions which are properly philosophical…, such as the moment when a human person is constituted…” The document also adds that the time of ensoulement is undeterminable, saying: “It suffices that this presence of the soul be probable (and one can never prove the contrary).” Tauer believes that the Congregation’s argument is inconsistent with the Catholic moral tradition because it treats the time of ensoulement as a doubt of fact, when the matter is a theoretical doubt.

---

101 Ibid., 51.
102 Ibid., 52.
105 Ibid.
106 Tauer explains that in Catholic moral theology a doubt of fact is concerned with the performance or nonperformance of some particular act relating to the fulfillment or nonfulfillment of the law, while a doubt of law is concerned with the existence or scope of a certain law. Probabilism may be
that should be treated as a doubt of law. Tauer argues that assessments of the time of ensoulment must be considered theoretical instead of factual because such propositions are not empirically verifiable and follow from “particular value commitments or assumptions.”107 Further, in this case the theoretical doubt should be treated as a doubt of law because “the question of ensoulment is morally relevant only because it is part of an attempt to specify the scope of the law.”108 Tauer contests that if the Congregation correctly treated the time of ensoulment as a doubt of law, and in turn allowed probabilistic109 methods to resolve doubt, some early abortions would be permitted because there are solid reasons “for not including early human embryos under the full weight of the law against killing.”110 Tauer’s argument exploits the Church’s professed uncertainty about the time of ensoulment and uses its own moral tradition to suggest that the issue of abortion is not as clearly defined as the traditional teachings claim it to be.

Other Catholic theologians do not base their evaluation on the consistency or history of the Church’s position on abortion, but include biological concerns. James Diamond evaluates the biological validity of claiming that human life begins at conception.111 There is no scientific evaluation to determine the time a fetus is ensouled, but Diamond combines biological facts with theological assertions in analyzing the possibility of immediate animation. Diamond claims that when considering the time cells

---

107 Ibid., 70.
108 Ibid., 74.
109 Probabilism provides indirect certainty to resolve doubts when they cannot be directly resolved. Probabilism rests of the principle that a doubtful law does not bind and holds the position that it is wrong to act on an opinion which favors liberty, unless the opinion is more probable than that which is in favor of the obligation. [See: Tauer, “The Tradition of Probabilism,” 64.]
110 Ibid., 79.
divide to form twins, the large portion of embryos lost before or during implantation, and
the initial physical lack of human form, the organism should not be treated as a person
before two to three weeks after fertilization.\textsuperscript{112}

Marjorie Maguire provides an additional defense of the pro-choice position
through a feminist investigation of personhood, which claims that the value of the fetus is
relational.\textsuperscript{113} Maguire believes that life is sacred, but it is the “covenant love calling
people into community which makes life sacred.”\textsuperscript{114} For Maguire, the value of the fetus
is not intrinsic and is directly related to the mother because the fetus cannot enter the
world without the mother. Because the value of the fetus is relational, Maguire
determines that personhood begins when the mother accepts the pregnancy and makes a
covenant of love with the fetus.\textsuperscript{115} If the mother has not created a covenant with the fetus,
it is acceptable for her to have an abortion because the fetus does not hold the value of a
person. Maguire claims that a woman is only obligated to:

Bring to birth only those fetuses for whom she is physically, emotionally,
psychologically, and economically prepared either to carry out the demands of
covenant after birth, or to give the child to someone who can.\textsuperscript{116}

Maguire believes that the physical dependency of the fetus on the mother allows
the mother to confer or not confer value onto the fetus. Like Callahan, Maguire makes
the abortion issue about the woman instead of the unborn.

It is evident that within the Catholic tradition, there is a diversity of positions
concerning the morality of abortion. The internal debate among Catholic theologians

\begin{flushleft}
\textsuperscript{112} Ibid., 319.  \\
\textsuperscript{114} Ibid., 117.  \\
\textsuperscript{115} Ibid., 109.  \\
\textsuperscript{116} Ibid., 117.
\end{flushleft}
highlights the numerous issues at stake and the severity in which the implications are held. The existing abortion discourse substantiates the internal Catholic disagreement about abortion despite the singular position taught by Church authorities.

Catholicism and Public Policy in the United States

In *Abortion Rates in the United States: The Influence of Opinion and Policy*, Matthew Wetstein explores how various public opinions influence policy in America. What is pertinent for this study is the finding that “religious variables like Catholic, Protestant, or Mormon adherence have proven to be powerful predictors of legislators’ votes on abortion bills.”

The connection between religious beliefs and personal political leanings is obvious, but the findings concerning Catholics and abortion policy are particularly interesting. Wetstein explains that if other variables are controlled, states with large Catholic populations favor pro-choice positions. However, the data presents a complex relationship between Catholic populations, Catholic legislators, and public policy. While states with a higher concentration of Catholics tend to be pro-choice in public opinion, the same states are shown to have more restrictions on abortion. In other words, Catholicism seems to result in a pro-choice opinion and pro-life policy. Wetstein suggests that the discrepancy between opinion and policy in states with high concentrations of Catholics results from “an ambivalent mass public that does not follow church teaching on abortion and reproductive issues on the one hand and an influential Catholic presence in state legislatures on the other hand.” While Wetstein’s statement is a broad generalization, it presents a plausible conclusion given his data. It also seems

---

118 Ibid., 84.
119 Ibid., 121.
120 Ibid., 125.
possible that the Catholic Church’s positions on reproductive issues, likely enflamed by the conservative restriction on contraception, are viewed as archaic and unrealistic by parishioners. However, Catholic legislators face added pressure to uphold the official position of the Church because of their location in the public realm and the risk of excommunication. Even on a less severe level, Catholic legislators who depart from the official Church teachings in the political realm are often ostracized by the more traditional Catholic community.

The pressures experienced by Catholic legislators was evident in the 2004 presidential election in which Catholic Senator John Kerry created controversy for holding a pro-choice position on abortion policy and was threatened by some American Bishops with being denied communion. Supposedly in response to the controversy, Cardinal Joseph Ratzinger wrote a memo in 2004, a year before being elected Pope, which instructed American bishops to refuse Communion to all legislators who maintain a pro-choice position on abortion.121 The debate over Catholic pro-choice politicians reignited in the fall of 2008 when Scranton, Pennsylvania Bishop Joseph Martino banned Vice President Joe Biden and other pro-choice supporters from receiving communion in the Scranton Diocese.122 Most recently, after Pope Benedict XVI met with Speaker of the House Nancy Pelosi, who vocally affirms her Catholic faith and pro-choice political position, the Vatican released a statement saying,

His Holiness took the opportunity to speak of the requirements of the natural moral law and the Church’s consistent teaching on the dignity of human life from conception to natural death which enjoin all Catholics, and especially legislators, jurists and those responsible for the common good of society, to work in

---

cooperation with all men and women of good will in creating a just system of laws capable of protecting human life at all stages of its development.\textsuperscript{123}

In 1984 the Catholics for Free Choice printed an advertisement in the \textit{New York Times} in response to controversy concerning Catholic vice-presidential candidate Geraldine Ferraro’s pro-choice position on abortion.\textsuperscript{124} The advertisement stated that there are multiple legitimate perspectives on abortion in the Catholic tradition and argued that:

Catholics—especially priests, religious, theologians and legislators, who publicly dissent from hierarchical statements and explore areas of moral and legal freedom on the abortion question—should not be penalized by their religious superiors, church employers or bishops.\textsuperscript{125}

In response to the \textit{New York Times} advertisement, the head of the Vatican’s Sacred Congregation for Religious and Secular Institutes sent letters to the religious superiors of the priests and nuns who signed the statement saying that it was “in contradiction to the teachings of the Church.”\textsuperscript{126} The letter instructed the superiors to order the signers to publicly retract the statements made in the advertisement.\textsuperscript{127} The lay signers, who were mostly scholars and theologians, also received negative attention in the form of numerous cancellations of jobs and speaking engagements.\textsuperscript{128}

It is clear that Catholics who are in the public eye face unique pressures to align their political positions with those of the Catholic Church. However, even if institutional


\textsuperscript{125} Ibid.

\textsuperscript{126} Ibid., 321.

\textsuperscript{127} Ibid.

\textsuperscript{128} Ibid., 322.
pressure from the Church produced a united public stance on the morality of abortion, the internal inconsistency between Catholic teaching against abortion and the number of Catholic parishioners procuring abortion is still neglected. Regardless of who is instructing the moral conscience of Catholics, they are having abortions. The Guttmacher Institute\textsuperscript{129} has recorded that twenty-seven percent of women obtaining abortions in the U.S. identify themselves as Catholic.\textsuperscript{130} The Church’s top-down approach to thwarting abortions does not seem to be effective.

Conclusion

This chapter describes the contemporary context of Catholic abortion discourse in the United States. Catholic theologians have argued in support of and in dissent from the official position of the Church. The key issues that both sides of the debate contest are: the consistency of Catholic moral tradition, personhood, ensoulment, the rights of the mother v. the rights of the unborn, and the social or common good. My forthcoming conclusions do not deviate from these persistent themes and address the Catholic moral tradition expressed by Thomas Aquinas, the ensoulment of the fetus, and the common good of society.

\textsuperscript{129} “The Guttmacher Institute provides reliable, balanced, nonpartisan information on sexual activity, contraception, abortion and childbearing. The Institute's overall program is guided by a diverse, 42-member Board of Directors, who are knowledgeable in the fields of law, medicine, research, public education, government, finance and program administration. Numerous issue- and project-oriented advisory groups help the Guttmacher Institute to identify and address public policy questions that need to be answered and to ensure that its research meets the highest scientific standards and its findings and reports are relevant and useful. Articles in the Institute's domestic and international journals undergo blinded peer review. The Guttmacher Institute neither accepts direct project support from profit-making organizations that might benefit from its findings nor allows specific funding agencies to influence its agenda.”

The second section of this chapter shows the intersection of Catholicism in American public life and policy. It is important to understand that Catholic abortion discourse is not insulated from American politics and extends beyond theological rhetoric into the public realm. The abortion issue is especially relevant because the Church has often positioned it as essential to the Catholic faith and insisted that Catholic politicians and legislators align their politics with their faith. In the following chapter, I examine the history of discussions of abortion in the United States in order to highlight the legal issues involved in the practice. Abortion policy and laws must be scrutinized because the Catholic Church extends its position beyond the decisions of its parishioners, to advance a political agenda of ending legalized abortion.
CHAPTER THREE

ABORTION IN THE UNITED STATES

Introduction

The history of theorizing about abortion in the United States begins with a shift from nearly non-existent abortion legislation in 1800 to every state including an anti-abortion law in 1900.\textsuperscript{131} James Mohr attributes the rise in abortion legislation to several factors, the first being an effort to protect women from dangerous abortifacients.\textsuperscript{132} He adds that the shift also coincides with an increasing nativist fear that the high rate of abortions in first-generation American white Anglo Saxon Protestant women would cause “immigrants” to outnumber first-generation Americans.\textsuperscript{133} In addition to protecting the power of white Anglo Saxon Protestants, abortion laws were supported by physicians who were attempting to enforce more stringent standards and increase their professional legitimacy. Physicians emphasized the moral and physical severity of abortion and argued that the procedure should only be procured for serious medical reasons that only a doctor could discern.\textsuperscript{134} According to Mohr, the motivations for abortion legislation in 1900 stem from concern for the women procuring abortions, retaining the power of first-generation Americans, and increasing the status of the medical profession.\textsuperscript{135}

Historically, earlier abortion laws did not focus on the fetus, but on the physical danger.

\textsuperscript{132} Ibid., 21.
\textsuperscript{133} Ibid., 207.
\textsuperscript{134} Mary Boyle, \textit{Re-Thinking Abortion: Psychology, Gender, Power and the Law} (New York: Routledge, 1997), 20.
\textsuperscript{135} Mohr, \textit{Abortion in America}, 244.
the procedure may cause the woman.\textsuperscript{136} The idea of fetal personhood did not emerge until the second half of the twentieth century and corresponded with the technological advancement of the sonogram.\textsuperscript{137} So what was the inspiration for the reevaluation of abortion laws that led to \textit{Roe v. Wade}? Mohr explains that an increasing fear of overpopulation and concern for the quality of life for the fetus, along with medical developments resulting in safer abortions, were some of the social pressures that led to the \textit{Roe v. Wade} decision.\textsuperscript{138} These pressures, in combination with the development of the women’s rights movement and the fact that women were procuring abortions in spite of anti-abortion laws, set the stage for the Supreme Court proceedings.

In the following I will outline several legal documents and decisions that are integral to the abortion debate in the United States and investigate how religion has been involved in the discussion about abortion. Subsequently, I will provide current data about the occurrence of abortion in America. The abortion data provides current abortion rates, including information about the characteristics of women procuring abortions, and shows the consistent and high rate of abortions in the United States. The data is intended to orient the relevance of abortion discourse in the reality of the practice and as more than simply a theoretical issue. Additionally, the facts relate the occurrence of abortion in the Catholic community to stress the real implications of the issue for American Catholic women. This chapter is intended to provide the American legal and cultural landscape for abortion discourse.

\textsuperscript{137} Ibid.
\textsuperscript{138} Mohr, \textit{Abortion in America}, 250-253.
Roe v. Wade (1973)

In *Roe v. Wade*, Jane Roe claims the Texas statutes that prevent her from procuring an abortion, because her life is not endangered by her pregnancy, unconstitutionally invade the right of a pregnant woman to terminate her pregnancy. Roe asserts that a woman’s right to terminate her pregnancy is included in the concept of personal liberty in the Due Process Clause\(^{139}\) of the Fourteenth Amendment.\(^{140}\) Because it is the foundation for the Court’s decision, Justice Stewart discusses the scope of personal liberty saying,

"In a Constitution for a free people, there can be no doubt that the meaning of ‘liberty’ must be broad indeed." *Board of Regents v. Roth*, 408 U.S. 564, 572. The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the "liberty" protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights.\(^{141}\)

Stewart further explains the meaning of liberty, quoting former Justice Harlan:

[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive

\(^{139}\) “Due Process is the exercise of government power under the rule of law with due regard for the essential and fundamental fairness rights of individuals. Due process first appears in the 5th Amendment to the U.S. Constitution, ratified December 15, 1791. Because the amendment refers specifically to federal and not state actions, another amendment was necessary to include the states. This was accomplished by the 14th Amendment, ratified July 9, 1868. Thus was established at both federal and state levels that no person “shall be deprived of life, liberty, or property without due process of law.” As determined by custom and law, due process has become a guarantee of civil as well as criminal rights." [See: Microsoft® Encarta® Online Encyclopedia 2009, s.v. “Due Process of Law,” http://encarta.msn.com © 1997-2009 Microsoft Corporation. All Rights Reserved.]


\(^{141}\) Ibid., Concurring Opinion.
judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.\footnote{142 Ibid.}

Stewart relates the right to have an abortion to prior cases concerning marriage and family which emphasized the right of the individual to be free from government interference in matters that so fundamentally affect a person, “as the decision whether to bear or beget a child.”\footnote{143 Ibid.} In \textit{Roe}, the Supreme Court decided that a state criminal abortion statute of the current Texas type, that excepts from criminality only a \textit{life-saving} procedure on behalf of the mother, without regard to pregnancy state and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.\footnote{144 Ibid., Opinion of the Court Sec. XI.}

To justify its decision, the Court explains that the constitution does not define what is essential to personhood, and that most uses of “person” are only applicable postnatally.\footnote{145 Ibid., Opinion of the Court Sec. IX, A.} However, it grants that states do have legitimate interest in potential life after the point of viability (after the first trimester) because it is the point when it is possible for the fetus to be capable of “meaningful life outside the mother’s womb.”\footnote{146 Ibid., Opinion of the Court Sec. X.} After viability, the State may, “if it chooses, regulate, and even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”\footnote{147 Ibid.} \textit{Roe v. Wade} recognizes that while the unborn possesses some legal rights in specific situations, these rights are contingent on live birth and the unborn have never been legally recognized as a person in the whole sense.\footnote{148 Ibid., Opinion of the Court Sec. IX, B.}
In addition to recognizing religious traditions as part of the diverse history of thinking about abortion, the Supreme Court decision also recognized the role of religion in the formation of the common law. In the section detailing the history of abortion in common law, Justice Blackmun explains:

It is undisputed that, at common law, abortion performed before "quickening" -- the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy-- was not an indictable offense. The absence of a common law crime for pre-quickening abortion appears to have developed from a confluence of earlier philosophical, theological, and civil and canon law concepts of when life begins. These disciplines variously approached the question in terms of the point at which the embryo or fetus became "formed" or recognizably human, or in terms of when a "person" came into being, that is, infused with a "soul" or "animated." A loose consensus evolved in early English law that these events occurred at some point between conception and live birth. This was "mediate animation." Although Christian theology and the canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century, there was otherwise little agreement about the precise time of formation or animation. There was agreement, however, that, prior to this point, the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide. Due to continued uncertainty about the precise time when animation occurred, to the lack of any empirical basis for the 40-80-day view, and perhaps to Aquinas' definition of movement as one of the two first principles of life, Bracton focused upon quickening as the critical point. The significance of quickening was echoed by later common law scholars, and found its way into the received common law in this country. (all emphasis mine)

The above section also includes a footnote which explains the early philosophies that informed the “loose consensus in early English law,” saying

Aristotle's thinking derived from his three-stage theory of life: vegetable, animal, rational. The vegetable stage was reached at conception, the animal at

---

149 As previously cited in the Introduction: “There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. It appears to be the predominant, though not unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained… The Aristotelian theory of mediate animation, that held sway throughout the middle ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the nineteenth century, despite opposition to this ensoulment theory from those in the Church who would recognize the existence of life from the moment of conception. The latter is now, of course, the official belief of the Catholic Church.” [See: Roe v. Wade 410 U.S. 113, IX, B.]

150 Ibid., Opinion of the Court Sec. VI, 3.
"animation," and the rational soon after live birth. This theory, together with the 40/80 day view, came to be accepted by early Christian thinkers.

The Supreme Court clearly recognizes the influence of Christianity in the formation of common law about abortion, which did not consider the practice criminal until after a point of “animation,” or infusion with a soul. In Roe, the common law is included to support the opinion of the Court that restrictive criminal abortion laws are relatively recent statutory changes that do not stem from ancient or common law. Because the investigation of abortion lacks prior precedent within the United States Supreme Court, the Court cites the history of the practice and in doing so grants legitimacy to the common law and, as a result, to the theology that influenced it. Justice Blackmun reinforces the legitimacy of theology in discourse about abortion again when addressing the beginning of human life. He says,

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.\(^{151}\)

Justice Blackmun recognizes that the Supreme Court cannot propose a definite answer to when life begins, but later asserts that there are “substantial problems” for those claims that life begins at conception caused by new embryological data indicating “that conception is a process over time, rather than an event, and by new medical techniques such as menstrual extraction, the morning-after pill, implantation of embryos, artificial insemination, and even artificial wombs.”\(^{152}\) The opinion of the Court indicates that ancient and common law, as well as new embryological data and medical techniques, inform that life does not exist immediately at conception. The acknowledgement of and

\(^{151}\) Ibid., Opinion of the Court Sec. IX, B.

\(^{152}\) Ibid.
reference to the treatment of abortion in religious traditions, shows that religion is an important part of American legal history and remains integral in the legal consideration of abortion.

**Doe v. Bolton (1973)**

The Supreme Court decision in *Doe v. Bolton* overturned Georgia abortion laws and was released on the same day as the *Roe v. Wade* decision. In this case, the Court found that the procedural conditions required by Georgia violate the Fourteenth Amendment. The Georgia Criminal Code in question required proof of residency in order to obtain an abortion and made it obligatory:

1. that the abortions be performed in a hospital accredited by the JCAH (Joint Commission on Accreditation of Hospitals);
2. that the procedure be approved by the hospital staff abortion committee; and
3. that the performing physician’s judgment be confirmed by independent examinations of the patient by two other licensed physicians.¹⁵³

In addition to ruling the above conditions unconstitutional, the Court stated that a woman can procure an abortion after viability if necessary to protect her health and further defined “health” as:

\[
\text{the medical judgment may be exercised in the light of all factors – physical, emotional, psychological, familial, and the woman’s age - relevant to the well-being of the patient. All these factors may relate to health.} \quad ¹⁵⁴
\]

The *Doe v. Bolton* decision asserted that women have a right “to receive medical care in accordance with her licensed physician's best judgment,” without substantial restriction from the government.¹⁵⁵


¹⁵⁴ Ibid., Opinion of the Court Sec. IV, C.

¹⁵⁵ Ibid., Opinion of the Court Sec. IV, D no. 2.
considerations to legitimate abortion after viability and broadened the issue from the strictly biological realm. *Doe v. Bolton* also considers the intersection between religious and abortion. In the dicta, the Court includes an exception that states:

A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which an abortion has been authorized, who shall state in writing an objection to such abortion on moral or religious grounds shall not be required to participate in the medical procedures which will result in the abortion, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.156

While abortion is deemed a legal practice prior to the viability of the fetus, no hospital employee who has a moral or religious objection to the procedure is required to participate in the process. The Court recognizes that the woman’s right to choose to abort cannot supersede an employee’s right to religious liberty. Religion is considered again in the concurring opinion of Justice Douglass, which cites religious practice to deny claims that life begins at the moment of conception. Douglass says,

To say that life is present at conception is to give recognition to the potential, rather than the actual… the law deals in reality, not obscurity -- the known, rather than the unknown. When sperm meets egg, life may eventually form, but quite often it does not. The law does not deal in speculation. The phenomenon of life takes time to develop, and, until it is actually present, it cannot be destroyed. Its interruption prior to formation would hardly be homicide, and as we have seen, society does not regard it as such. The rites of Baptism are not performed and death certificates are not required when a miscarriage occurs. No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life.157

Justice Douglass claims that abortion is not considered homicide by society, including religious traditions and the legal community. He infers that although some religious traditions may claim that life begins at conception, the sentiment is not reflected in

156 Ibid., Appendix A to Opinion of the Court, 26-1202 Exception, (e).
157 Ibid., Douglass, J., Concurring Opinion Sec. II.
religious rituals because “the rites of Baptism are not performed and death certificates are not required.”

The Hyde Amendment (1977)/ Harris v. McRae (1980)

Recognizing the difficulty of passing an amendment to undue Roe, abortion opponents focused on limiting the availability of abortions. In 1977 Congressman Henry J. Hyde sponsored the Hyde Amendment limiting the use of Medicaid to abortions in which the mother’s life would be at risk if the fetus is carried to term. The restriction was upheld as constitutional by the Supreme Court in Harris v. McRae (1980) and most recently amended in 1997, as part of a Health and Human Services Bill, with the additional requirement that state governments fund abortions for low-income women in cases of rape or incest. The Harris court held that although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.

In a dissenting opinion, Justice Marshall wrote:

The Court's opinion studiously avoids recognizing the undeniable fact that, for women eligible for Medicaid -- poor women -- denial of a Medicaid-funded

---

158 Ibid.
abortion is equivalent to denial of legal abortion altogether. By definition, these women do not have the money to pay for an abortion themselves.\textsuperscript{163}

The appellees in \textit{Harris} also claimed that the Hyde Amendment violated the Establishment Clause of the First Amendment because “it incorporates into law the doctrines of the Roman Catholic Church concerning the sinfulness of abortion and the time at which life commences,” and violated the freedom of religion guaranteed by the Free Exercise Clause because “a woman’s decision to seek a medically necessary abortion may be a product of her religious beliefs under certain Protestant and Jewish tenets.”\textsuperscript{164}

In reference to the Establishment Clause claim, the court asserted that

\begin{quote}
 a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive governmental entanglement with religion.\textsuperscript{165}
\end{quote}

The Supreme Court decided that “the fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.”\textsuperscript{166} The Court did not address the appellees’ arguments concerning the Free Exercise Clause because it decided that they lacked the appropriate standing to raise a free exercise challenge to the Hyde Amendment.

\textit{Harris v. McRae} established that while abortion restrictions may coincide with religious tenets, such restrictions cannot be said to be advancing the beliefs of a particular religion because the purpose and principle effect are of secular concern. The Court’s distinction between unconstitutional laws “which aid one religion, aid all religions, or

\textsuperscript{163} Ibid., Marshall, Dissent.
\textsuperscript{164} Ibid., Opinion of the Court Sec. III, B.
\textsuperscript{165} Ibid.
\textsuperscript{166} Ibid.
prefer one religion over another,” and permissible laws that “happen to coincide or harmonize with the tenets of some or all religions,” is a difficult division to maintain.\textsuperscript{167}

When values are involved in laws, there is not always a clear difference between humanistic ideals and religious ideals. There is a danger in the moral majority considering their values, which may be founded in religious beliefs, to be universal or humanistic.

**Webster v. Reproductive Health Services (1989)**

In *Webster v. Reproductive Health Services*, the United States Supreme Court reversed a decision of the United States Court of Appeals for the Eighth Circuit. The decision established that a Missouri statute regulating abortions violated *Roe v. Wade*. The pertinent Missouri statute regulations prohibited,

> the use of public employees and facilities to perform abortions not necessary to save the life of the mother,” and specified, “that the physician, when having reason to believe that the woman is carrying a fetus of at least twenty weeks of gestational age, must adopt procedures necessary to determine the viability of the unborn child.\textsuperscript{168}

In reference to the regulation on public employees and facilities, the Supreme Court recognized that the Due Process Clauses do not confer a right to governmental aid, even when aid is necessary to secure liberty and the State’s denial of public employees and facilities only leaves the woman in the same situation as if the State did not provide public hospitals.\textsuperscript{169} Therefore, the Missouri statute does not violate *Roe v. Wade*. The Court also found the viability testing of the Missouri statute to be constitutional on the

\textsuperscript{167} Ibid.
\textsuperscript{169} Ibid., Opinion of the Court Sec. II, B.
grounds that the tests supported the State’s interest in protecting potential human life by
determining the viability of the fetus.\textsuperscript{170} The \textit{Webster} decision was seen as a set back by
many supporters of abortion rights. The Court explained that \textit{Roe} never affirmed the use
of state aid for nontherapeutic abortions and states may allocate resources towards birth
or abortion in whatever way they see fit.

The decision of the Supreme Court did not address the Missouri statute’s
preamble that declared that human life begins at conception, because it found that the
statement was not used to justify the state’s abortion regulations.\textsuperscript{171} However, in an
opinion concurring in part and dissenting in part, Justice Stevens asserted that he was
persuaded that the absence of any secular purpose for the legislative
declarations that life begins at conception and that conception occurs at
fertilization makes the relevant portion of the preamble invalid under the
Establishment Clause of the First Amendment to the Federal Constitution.\textsuperscript{172}

Referencing \textit{Harris v. McRae}, Stevens clarified that his findings do not result from the
fact that the preamble coincides with the tenets of certain religions, but “on the fact that
the preamble, an unequivocal endorsement of a religious tenet of some, but by no means
all, Christian faiths, serves no identifiable secular purpose.”\textsuperscript{173} Stevens continued his
opinion by citing the theology of St. Thomas Aquinas, which held that there is
approximately 40 to 80 days between conception and the infusion of the soul, to illustrate
that if Aquinas’ views were as popular today as they were in the Middle Ages and the
preamble included his position about the beginning of life, the Court would undoubtedly

\begin{footnotes}
\item[170] Ibid., Opinion of the Court Sec. II, D.
\item[171] Ibid., Opinion of the Court Sec. II, A.
\item[172] Ibid., Stevens, J., Concurring and Dissenting Opinion Sec. II.
\item[173] Ibid.
\end{footnotes}
conclude that the statement violated the Establishment Clause. Stevens added that the secular interest of the state in protecting the viable fetus is justifiably different from protecting the fertilized egg “from physical pain or mental anguish, because the capacity for such suffering does not yet exist.” Justice Stevens also acknowledged the role of religion in debates about abortion:

Bolstering my conclusion that the preamble violates the First Amendment is the fact that the intensely divisive character of much of the national debate over the abortion issue reflects the deeply held religious convictions of many participants in the debate.

While the decision of the Supreme Court held that states have the right to make value judgments that favor childbirth over abortion, Justice Stevens took issue with the lack of secular purpose in the statute’s statement that life begins at conception. Differing from the opinion of *Harris v. McRae*, Stevens believes that although legislative declarations may coincide with religious tenets, it is the burden of the state to prove that they serve some secular purpose.


In *Planned Parenthood v. Casey*, five provisions of the Pennsylvania Abortion Control Act of 1982 are at issue. The Abortion Control Act requires women to give informed consent with specific information given at least 24 hours prior to the abortion procedure, minors must have informed parental consent from at least one parent unless utilizing a judicial bypass, married women must sign a statement that they informed their husband of the abortion, and facilities that provide abortions must adhere to reporting

---

174 Ibid.
175 Ibid.
176 Ibid.
requirements.\textsuperscript{177} The Court examined each of the requirements to determine whether it posed an “undue burden” on the woman seeking an abortion. Justice O’Connor explains that,

A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends.\textsuperscript{178}

Using the “undue burden” test to evaluate the above provisions, the Court determined that all were valid or did not impose undue burden on those seeking an abortion except the requirement for married women to inform their husbands about the procedure. Spousal notification presents an undue burden because the risk of domestic abuse makes it likely to prevent a significant number of women from obtaining an abortion. It does not merely make abortions a little more difficult or expensive to obtain; for many women, it will impose a substantial obstacle. We must not blind ourselves to the fact that the significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases.\textsuperscript{179}

The Court also specified that the provisions are not applicable in emergency situations and reiterated the opinion of \textit{Roe v. Wade} that women have a right to choose abortion prior to fetal viability and obtain it without undue interference from the State, but the


\textsuperscript{178} Ibid., Opinion of the Court.

\textsuperscript{179} Ibid.
State has the power to restrict abortions after fetal viability and has legitimate interest in protecting the health of the mother and life of the fetus.\textsuperscript{180}

In articulating the opinion of the Court, Justice O’Connor addresses the involvement of religious beliefs in the abortion debate saying,

\begin{quote}
mom and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage… These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State… The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.\textsuperscript{181}
\end{quote}

For O’Connor, the issue at stake is the definition of liberty and because the State cannot definitively resolve the philosophical questions involved in abortion debates, the woman’s right to define her own spiritual meaning of the universe must be upheld. In an opinion dissenting in part and concurring in part, Justice Stevens agrees with O’Connor on the role of the government in religious belief, asserting that “in order to be legitimate, the State's interest must be secular; consistent with the First Amendment the State may not promote a theological or sectarian interest.”\textsuperscript{182} For Stevens, it follows that state interest in the viable fetus is in its potential for human life, not its actual personhood.\textsuperscript{183}

Alternatively, Justice Scalia argues that because there is no legal way to determine the

\begin{footnotes}
\item [180] Ibid.
\item [181] Ibid.
\item [182] Ibid., Stevens, J., Concurring and Dissenting Opinion.
\item [183] Ibid.
\end{footnotes}
status of the fetus, the Court’s treatment of the fetus as potential life, as opposed to actual human life, is in fact a “value judgement.” \(^{184}\)

The Planned Parenthood case largely advances women’s interests in abortion regulation by recognizing the unique experiences of women in marriage and how the threat of domestic violence makes spousal notification an “undue burden.” The case also supports the position of Roe, which determined that the Court cannot support a definitive point at which the fetus is a human life until after live birth. The opinions of Justice Stevens and Scalia highlight an important debate about the religious neutrality of the Supreme Court. While Stevens claims that a secular position treats the fetus a potential life, Scalia believes that any judgment that establishes the status of the fetus is a value judgment because there is no objective legal way to make that determination. At issue is whether it is possible for the Court to make an impartial decision about a matter that rests on information outside of the legal realm, as does the beginning of human life.

**Human Life Amendments**

In efforts towards overturning the decisions of *Roe v. Wade*, 330 Human Life Amendments have been proposed by abortion opponents in the United States Congress since 1973. \(^{185}\) The proposed amendments have aimed at making abortion unconstitutional by legally defining human life or “personhood” to include the fetus, granting it the due process protection of the Fourteenth Amendment. \(^{186}\) Although no Congressional action has been take on any Human Life Amendment, the most successful

\(^{184}\) Ibid., Scalia, J., Concurring and Dissenting Opinion.


attempt occurred in 1983 with the Hatch-Eagleton Human Life Federalism Amendment. The Hatch-Eagleton Amendment’s relative success stems from its simplicity in stating that, “a right to abortion is not secured by this Constitution,” and is the only Human Life Amendment that has been voted on by the Senate.\(^\text{187}\) The Amendment failed to achieve the two-thirds support required for passage by the Senate by a margin of eighteen votes. If a Human Life Amendment were passed, it would effectively reverse \textit{Roe v. Wade}. Advocates of a Human Life Amendment are often directly affiliated with religious institutions. One of the central activist groups for a Human Life Amendment, the National Committee for a Human Life Amendment (NCHLA), asserts that

\begin{quote}
   in a special way, NCHLA assists dioceses, state Catholic conferences, and Catholic lay groups. The Committee also works closely with the Secretariat for Pro-Life Activities of the United States Conference of Catholic Bishops.\(^\text{188}\)
\end{quote}

\textbf{The Mexico City Policy (1985-2009)}

The Mexico City Policy, first announced at a population conference in Mexico City in 1984, was enacted by President Ronald Regan in 1985 and prohibits non-U.S., nongovernmental organizations receiving USAID [United States Agency for International Development] family planning assistance funding (either directly or through sub-awards) from using their own or other non-USAID funds to provide or promote abortion as a family planning method.\(^\text{189}\)

The Mexico City Policy remained through George Bush’s presidency, was rescinded by President Clinton in 1993, reinstated by President George W. Bush in 2001, and recently rescinded again by President Obama in 2009. In reaction to President’s repeal of the

\begin{footnotes}
\end{footnotes}
policy, Archbishop Rino Fisichella, head of the Pontifical Academy for Life, said in an interview that the action was done with "the arrogance of those who, having power, think they can decide between life and death." Fisichella also dismissed Obama’s promise to try to reduce the number of abortions while maintaining the availability of the procedure, saying “on ethical questions, you can't play with words…hiding behind sophisms isn't worthy of he who has a responsibility towards citizens. People want clarity.”

The Mexico City Policy indicates the role of presidential authority in abortion policy and shows how the issue has been clearly divided by party lines. The policy also illustrates that American abortion policy extends beyond the country’s borders to affect foreign agencies and elicit international reaction.


In 2003, the Partial-Birth Abortion Ban Act was passed by the House and Senate and signed into law by President Bush. The Act was previously vetoed by President Clinton in 1996 and 1997, who claimed that the bills’ overboard criminalization of a rare procedure posed high risks to women’s health. In the legislation, partial-birth abortion is defined as an abortion in which the person performing the abortion,

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breach presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and (B)

---

191 Ibid.
193 Ibid., 219.
194 Ibid.
performs the overt act, other than completion of delivery, that kills the partially 
delivered living fetus.\textsuperscript{195}

Several states have challenged the constitutionality of the law because its lack of 
provisions that would allow the practice in order to save the life of the mother causes 
undue burden\textsuperscript{196} on those seeking abortion. When charges were reviewed by the 
Supreme Court in \textit{Gonzales v. Carhart}\textsuperscript{197} in 2007, the Supreme Court upheld the Partial-
Birth Abortion Ban Act because it did not find the Act imposed undue burden.\textsuperscript{198}

\textbf{United States’ Abortion Data}

Abortion discourse is not only relevant for legislators and medical practitioners, 
but has real implications for American women. This section illustrates that while 
abortion has been politicized in public debate, it is a reality for a large portion of the 
population. The data highlights the concerns of women who are actually having 
abortions and how factors such as poverty and religion may affect the decision to abort.

\textsuperscript{195} U.S. Code Collection, “§ 1531. Partial-birth abortions prohibited.” Cornell University Law 

\textsuperscript{196} The undue burden test is found in \textit{Planned Parenthood v. Casey}, which defined undue burden as “a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends.”

\textsuperscript{197} The decision of \textit{Gonzales v. Carhart} and the dissent expressed by Justice Ginsburg are based on the principles of \textit{stare decisis} (“let the decision stand”), which say that prior applicable precedents usually must be followed to encourage the stability and consistency of the law. The invocation of \textit{stare decisis} shows the organic nature of American abortion jurisprudence. [See: Legal Information Institute, Cornell University Law School, Wex, stare decisis; available from http://topics.law.cornell.edu/wex/Stare_decisis; Internet; accessed 24 February 2009.]

All of the following results are from research conducted by the Guttmacher Institute and/or published in its peer-reviewed journals. An additional source is the Centers for Disease Control and Prevention.\textsuperscript{199}

ABORTION RATES:

- Nearly half of pregnancies among American women are unintended, and four in 10 of these are terminated by abortion.\textsuperscript{200} Twenty-two percent of all pregnancies (excluding miscarriages) end in abortion.\textsuperscript{201}
- In 2005, 1.21 million abortions were performed, down from 1.31 million in 2000. From 1973 through 2005, more than 45 million legal abortions occurred.\textsuperscript{202}
- Each year, about two percent of women aged 15-44 have an abortion; 47% of them have had at least one previous abortion.\textsuperscript{203}

CHARACTERISTICS OF WOMEN PROCURING ABORTIONS:

- Fifty percent of U.S. women obtaining abortions are younger than 25: Women aged 20–24 obtain 33% of all abortions, and teenagers obtain 17%.\textsuperscript{204}
- The abortion rate among women living below the federal poverty level is more than four times that of women above 300% of the poverty level. This is partly because the rate of unintended pregnancies among poor women (below 100% of poverty) is nearly four times that of women above 200% of poverty.\textsuperscript{205}
- The reasons women give for having an abortion underscore their understanding of the responsibilities of parenthood and family life. Three-fourths of women cite concern for or responsibility to other individuals; three-fourths say they cannot afford a child; three-fourths say that having a baby would interfere with work, school or the ability to care for dependents; and


\textsuperscript{202} Ibid.


\textsuperscript{205} Jones, Darroch and Henshaw, “Patterns in Socioeconomic Characteristics,” 226-235.
half say they do not want to be a single parent or are having problems with their husband or partner.  

CATHOLIC WOMEN

- Forty-three percent of women obtaining abortions identify themselves as Protestant, and 27% as Catholic.  
- A U.S. study showed that the abortion rate was lower for Protestants (17 per 1,000) than for Catholics (24 per 1,000) in 1994-1995.  
- When asked why they were having abortions, Catholics were 8% more likely than those of different religious beliefs to say they did not want others to find out about their sexual activity or pregnancy.

SAFETY OF ABORTION:

- The risk of abortion complications is minimal: Fewer than 0.3% of abortion patients experience a complication that requires hospitalization.  
- Abortions performed in the first trimester pose virtually no long-term risk of such problems as infertility, ectopic pregnancy, spontaneous abortion (miscarriage) or birth defect, and little or no risk of preterm or low-birth-weight deliveries.  
- In repeated studies since the early 1980s, leading experts have concluded that abortion does not pose a hazard to women’s mental health.

Number of abortions per 1,000 women aged 15-44 by year

---

Conclusion

Webster v. Reproductive Health Services in 1989 marked a noticeable shift in abortion rhetoric for both pro-choice and pro-life advocates. Anti-abortion groups that formerly emphasized fetal rights began to focus on “parental rights and family cohesion, taxpayers’ rights, the prevention of fetal pain, informed consent and the banning of ‘birth control’ abortions—that is, all abortions not involving threats to the woman’s life, gross fetal abnormality, rape or incest.”214 Additionally, groups supporting the right to abortion, who formally used language highlighting ‘women’s rights’, shifted their focus to individual choice.215 The shift in advocate groups did not change the polarization of the issue which has situated the legal debate over abortion in an “all or nothing” atmosphere. Unfortunately, the polarization surrounding abortion makes compromise and dialogue between the two camps difficult and neglects other issues that are involved in or contribute to the practice. As defined by the Hyde Amendment and reiterated in Webster, federal funds are limited to covering abortions that result from rape, incest, or life endangerment. At issue is the disproportionate burden that poor women may bear

214 Boyle, Re-Thinking Abortion, 21.
215 Ibid.
when Medicaid provides prenatal and postpartum care, but restricts abortion funding to limited circumstances. Economic and procedural issues are neglected when abortion discourse is restricted to extremes that deny compromise.

The history of abortion in American legislation shows how religion has been a persistent part of the legal debate. Religion has been acknowledged as a legitimate source of insight about the beginning of life, as well as disputed as an illegitimate foundation for the restriction of abortion. Specifically in *Roe v. Wade*, the Court recognizes the influence of theology, including Aquinas, in the formation of the common law, which was one consideration in determining the constitutionality of abortion. Catholic teachings on abortion have also been a point of contention when determining if abortion restrictions violate the Establishment Clause. The abortion data provided in this chapter is intended to show the relevance of the issue through the frequent incidence of abortion in the United States. Additionally, the data highlights the prevalence of abortion within the Catholic community and Catholic attitudes about abortion.

The next chapter shifts from contextual information to an analysis of Catholic theology found in Thomas Aquinas’ writings on embryology and the human body. The analysis is intended to investigate possible historical and theological foundations for the Church’s position on abortion. Chapter Four is the basis for later conclusions concerning Catholic theology and the morality of abortion.
CHAPTER FOUR

THOMAS AQUINAS

Introduction

The writings of Thomas Aquinas require more attention when considering the ethics of abortion because his theology has been declared as definitive for Catholic doctrine and is taught as fundamental in Catholic education. However, despite his recognition as a great Catholic teacher, Aquinas’ writings are generally neglected in abortion discourse. In the following I examine excerpts from the *Summa Theologica*, *Quaestiones Disputatae De Potentia Dei* and the *Summa Contra Gentiles* that specifically address embryology, the construction of the body, and ethics in a way that is relevant to the abortion debate. I begin by briefly documenting the historical context of Aquinas’ construction of the body. Subsequently, I investigate how Aquinas formulates gender distinctions, the relationship between the body/soul, and his conception of natural law and the common good.

Historical Shift

The 13th century marked an increasing tension between the Platonic distinction of the sacred mind, profane body and the rise of Aristotelian philosophy and Arab

---

216 The esteem in which he was held during his life has not been diminished, but rather increased, in the course of the six centuries that have elapsed since his death. The position which he occupies in the Church is well explained by that great scholar Leo XIII, in the Encyclical "Aeterni Patris", recommending the study of Scholastic philosophy: "It is known that nearly all the founders and framers of laws of religious orders commanded their societies to study and religiously adhere to the teachings of St. Thomas. [See: Catholic Encyclopedia, s.v. “St. Thomas Aquinas.”]
Science. Thomas Aquinas, whose writings have been official Catholic theology since 1879, viewed humanity more optimistically than the popular Augustinian notion of the inherent corruptibility and sinful nature of the massa damnata. According to Aquinas, the image of God exists in natural law and human reason. Aquinas integrates revelation and reason, primarily using the writings of Augustine and Aristotle, in forming an anthropology that insists the body is integral to human existence and the pursuit of good. In order to form such an integration, Aquinas includes the body and the senses as “natural” and valuable creations of God.

Aquinas’ holistic philosophy of personhood was not without controversy and was censured in the 13th century. Eventually the discrepancies were overlooked and his work was canonized in 1323, but his notion of holistic personhood never gained widespread acceptance. In the Summa Theologica Aquinas explains that man is “neither pure spirit nor pure body, but has a nature compounded of both.” The relationship between the soul and body is inseparable and neither part is considered inherently damaged because both are created by God. The soul and body are mutually dependent because, “the soul is essentially the form of a human body, and its sociability with the body is both natural and normal.” For Aquinas, the human person

---

219 Ibid.
221 Ibid.
experiences an embodied reality that is part of the “natural order” intended by God.224 By asserting that both the soul and the body are creations of God and as such are sacred, Aquinas formed a more optimistic ideology about the body than his predecessors.

**Gender Distinctions**

Although Aquinas’ conception of the body is historically progressive, analysis of his body theory must acknowledge the aspects of his theology that contribute to oppressive gender distinctions, keeping in mind the cultural limitations of the 13th century. Aquinas’ construction of the body and gender finds an obvious starting point in his consideration of the creation stories of Genesis in the *Summa Theologiae*. Aquinas uses scripture as justification for differentiations of the sexes as ordained by God. By using scripture and deferring the authority of his statements to God, Aquinas conceals the capital he and other males gain from theological assertions about gender. He first defines woman through her relationship to man as evidenced in God’s creation of Eve as a helper for Adam.225 Aquinas asserts, “It was necessary for woman to be made, as the Scripture says, as a "helper" to man; not, indeed, as a helpmate in other works, as some say, since man can be more efficiently helped by another man in other works; but as a helper in the work of generation.”226 Here Aquinas defines woman as supplemental to man and unable to assist man with work, establishing female inferiority in work and by association physical weakness. Aquinas argues that God intends “helper” to mean that woman is

---

225 McDermott, *Summa Theologica*, 143. "Gen 2:18 (New Revised Standard Version) “It is not good for man to be alone; let us make him a help that is like himself”
created to produce children. By stipulating that Eve cannot help with work but is meant to help with procreation, Aquinas negates any assistance woman can provide outside reproductive functions. Woman is reduced to her bodily function— which is not active or strong in work, but a passive vessel for procreation. Aquinas also legitimates subordination in households, differing from subordination of slaves, claiming it is not a result of sin but was created by God when he created Eve.\footnote{Aquinas, ST I.92.1 ad 2.} He views women as naturally subordinate and unequal to men “because in man the discretion of reason predominates,”\footnote{Ibid.} and believes female inferiority is justified by her biology that requires guidance from a more intellectually sophisticated man.

The second aspect of Aquinas’ gender distinction is his treatment of reproduction. As evidenced in the preceding paragraph, Aquinas asserts woman was created to reproduce, thus objectifying women as a mechanism for human propagation. However, even the generative function of woman is inferior to males because her body is passive and receptive while the male acts as the active force.\footnote{Eleanor Commo McLaughlin, “Equality of Souls, Inequality of Sexes: Woman in Medieval Theology,” in Religion and Sexism, ed. Rosemary Radford Ruether (New York: Simon and Schuster, 1974) 218.} Aquinas articulates gender roles in reproduction saying, “the active principle of generation is from the father, while the mother provides the matter.”\footnote{Aquinas, ST I-II.81.5.} In book two of the Summa Contra Gentiles, Aquinas explains that the semen forms the body “by virtue of the father’s soul, to whom generation is attributed as the principal agent.”\footnote{James F. Anderson, trans., Summa Contra Gentiles Book Two: Creation (Notre Dame: University of Notre Dame Press, 1975), 302.} The submissive role of women in procreation is also maintained when Aquinas ascribes sexual sin to intercourse that is not aimed at reproduction, claiming the act is offensive because it prevents the procreative
intention of the sperm. The insistence on the father as the generative force in reproduction cannot be attributed to scientific naiveté. Anthropologists believe it is likely that early human societies did not understand or address the relationship between male semen and female ovum and when considered, females were the primary procreators.

“The lowering of regard for female potency in procreation corresponds with increasing subjugation of women to male domination.”

Aquinas extends gender distinctions to parental roles saying, “now it is evident that the upbringing of a human child requires not only the mother's care for his nourishment, but much more the care of his father as guide and guardian, and under whom he progresses in goods both internal and external.” He explains that the female parent is necessary because of the function of her body, while the male intellect is the value he provides as a parent. Under the guise of valuing both genders’ distinct parental roles Aquinas further embeds the inferiority of the female. Another aspect of reproduction for Aquinas is the production of the female person. Relying on the logic that the normative success of male sperm would be the production of another male, Aquinas believes that if a female is conceived it is due to a “defect in the active force or from some material indisposition, or even from some external influence.” The female is constructed as the “other” from the point of her atypical conception and can never represent God’s intention for human nature as fully as her male counterpart.

---

234 Ibid.
235 Aquinas, ST II-II.154.2.
236 Aquinas, ST I.92.1 ad 1.
In his consideration of marriage (the instance in which copulation is allowable), Aquinas insists that sexual intercourse is not sinful by nature, intended by God and instituted before the Fall. However, sexual intercourse as intended would hypothetically be without passion, so rationality can be preserved, and the woman would retain her virginity because copulation would not destroy the hymen. Aquinas infers that intercourse as it exists in reality, necessarily entails the corruption of the female body in the destruction of the hymen. Further, if intercourse corrupts the female body and reproduction is essential to the female identity, Aquinas has proposed a body whose inferiority and distortion is inescapable. The difference between heavenly and worldly intercourse for the male body is not addressed outside of the involvement of passion.

In reference to the image of God instilled in humans, Aquinas believes that the intellect is evidence of God’s image in both males and females as a result of both being creations of God. However, the male possesses an additional aspect of God’s image because just as God is origin of creation, man is the origin of woman. Aquinas’ construction of the female gender positions the body as the fundamental source of inferiority. Even when he attributes the image of God to both sexes, he insists that the male image is different from the female because her weaker body hinders her capacity for intellect in a way that the strong male body does not. Despite Aquinas’ obvious cultural limitations evidenced in his gender construction, “what is most important to a feminist and intercultural retrieval of Aquinas is his openness to an inductive objectivity

---

238 Aquinas, ST I.98.2 ad 4.
239 Anderson, Summa Contra Gentiles, 144.
240 Ibid.
242 Ibid.
and realism, perhaps better phrased today in terms of shared framing experiences and moral common ground, than moral ‘universals’.”

When using Thomas Aquinas’s moral theology to make determinations about women’s bodies and functions, it would be a grave oversight to neglect his passages that are overtly misogynistic. However, Aquinas must be engaged in investigating the morality of abortion because he is a central source for Catholic teachings about the practice and continues to be an authoritative voice within the tradition. I believe that in addition to providing a theological embryology that should be accepted by the Church, Aquinas’ emphasis on the common good can reorient the discussion of abortion to recognize the context in which it occurs.

**Body/Soul**

In applying Aquinas’ theology to the moral debate concerning abortion, one must begin with his conception of the soul and its relationship to human creation. As he explains,

> Since living things are physical realities, they are composed of matter and form. Now, they are composed of a body and a soul, which makes them actually living. Therefore, one of these two must be the form and the other matter. But the body cannot be the form, because the body is not present in another thing as its matter and subject. The soul, then, is the form, and consequently is not a body, since no body is a form.

Aquinas believes that the body and soul both require the presence of the other in order to constitute a living human being. The soul is the essence of the body and the body contains the necessary structure to allow the soul to function. In his *Commentary on*

---


Aristotle’s *De Anima*, Aquinas describes “the soul as a substance, which is a form; and this means that it presents to us the idea of the essence of something.” It is this hylomorphic conception of human beings that the Council of Vienne decreed as the position of the Church in 1312. The Church decree states,

> We condemn as erroneous and opposed to the Catholic truth every doctrine which makes bold to deny or to question that the substance of the rational or intellectual soul is truly and by itself the form of the human body... everyone who makes bold to assert, defend, or stubbornly hold that the rational or intellectual soul is not by itself and essentially the form of the human body must be considered a heretic.

It is this hylomorphic conception of human beings that the Council of Vienne decreed as the position of the Church in 1312. The Church decree states,

> We condemn as erroneous and opposed to the Catholic truth every doctrine which makes bold to deny or to question that the substance of the rational or intellectual soul is truly and by itself the form of the human body... everyone who makes bold to assert, defend, or stubbornly hold that the rational or intellectual soul is not by itself and essentially the form of the human body must be considered a heretic.

According to Aquinas and his formulation of natural law, all living things possess souls which define their essence. The types of souls, vegetative, sensitive and rational, are not mutually exclusive, but are developmental. The vegetative soul provides basic functions that maintain life, the sensitive soul maintains life and allows for sensory experience, and the rational soul performs all the prior functions and makes the being capable of knowing God’s natural law. For plants and animals, the soul is limited by their physical capacities. Plants possess a vegetative soul which takes nourishment, decays and grows and animals embody the sensitive soul which functions in the same way as the vegetative soul with the added abilities of the use of senses, most distinctively the sense of touch. Aquinas’ conception of the human soul is distinct from plants and animals because the rational human soul is divinely created. He explains that because the

---

rational soul “is an immaterial substance it cannot be caused through generation, but only through creation by God.”

Aquinas refutes the position that the soul is present at fertilization because it is contained in the male semen. He explains that the rational soul cannot be transmitted through the male semen because “the body cannot receive the soul before it is in any way whatever provided with organs.” In this instance, Aquinas does not attempt to specify the exact time of ensoulment, but asserts that it could not possibly be at the time of conception because the body has not yet been formed. Aquinas believes that the early embryo is in formation of an end product that will be a body worthy of a rational soul. He explains that,

the vegetative soul therefore, which is first in the embryo, while it lives the life of a plant, is destroyed, and there succeeds a more perfect soul, which is at one nutrient and sentient, and for that time the embryo lives the life of an animal: upon the destruction of this, there succeeds the rational soul, infused from without, whereas the preceding two owed their existence to the virtue of the male semen.

Aquinas believes that the embryo is not capable of the rational soul in the early stages of development because its body limits its capabilities in the same way that plants and animals are restricted. This is not to say that he believes that the body is formed prior to the integration of the soul. Because the soul is the form of the body, as soon as the body is capable of receiving a rational soul it is at that exact moment unified with the soul. The possession of the rational soul does not entail the exclusion of the vegetative and sensitive functions, but integrates all three aspects within the singular rational soul.

---

248 Aquinas, ST I.118.2.
Aquinas further clarifies the development of life by comparing the bodily formation of Christ with the processes by which the human body is formed:

[it] is true in the generation of other men, because the body is successively formed and disposed for the soul: whence, first, as being imperfectly disposed, it receives an imperfect soul; and afterwards, when it is perfectly disposed, it receives a perfect soul. But Christ’s body, on account of the infinite power of the agent, was perfectly disposed instantaneously. Wherefore, at once and in the first instant it received a perfect form, that is, the rational soul.251

The above explains that Christ is the only being who received a rational soul at the moment of conception. It is also integral to Aquinas’ embryology that the rational soul is induced by God and does not develop in the same way as the body. For Aquinas, God must be the progenitor of the rational soul because God is the creator of all things and God is necessary for the soul to be capable of continuing after bodily death. If the soul were generated by man in the same way as the body, it would perish with the body. Aquinas explains that,

to hold that the intellectual soul is caused by the begetter, is nothing else than to hold the soul to be non-subsistent and consequently to perish with the body. It is therefore heretical to say that the intellectual soul is transmitted with the semen.252

God’s role as the creator and inducer of the rational soul further supports Aquinas’ mediate animation because the rational soul is not created by the act of fertilization, but must be caused by God at the appropriate time. Assuming that his embryology would be controversial, Aquinas assures,

nor need we be uneasy in admitting the generation of an intermediate product, the existence of which is presently after broken off, because such transitional links are not complete in their species, but are on the way to a perfect species; and

251 Aquinas, ST III.33.2 ad 3.
252 Aquinas, ST I.118.2.
therefore *they are not engendered to endure*, but as stages of being, leading up to finality in the order of generation. ²⁵³ (emphasis mine)

Aquinas describes early embryos as temporary and even refers to them as transitional links, intermediate products, and incomplete species. He clearly does not consider the embryo to hold the value of a rational person in its early stages. Although Aquinas treats the early embryo as transitional and temporary, he highly values the fetus following the infusion of the rational soul. This is clear in Aquinas’ discourse on accidental murder, in which he writes,

> He that strikes a woman with child does something unlawful: wherefore if there results the death either of the woman or of the animated fetus, he will not be excused from homicide, especially seeing that death is the natural result of such a blow. ²⁵⁴

Aquinas explains that the death of the fetus is homicide, but specifies that the fetus is *animated*. The fetus is animated after it receives a rational soul and Aquinas’ specification of such leads one to believe that the death of a fetus prior to animation would not be treated as homicide.

**Natural Law and the Common Good**

Other aspects of Aquinas’ theology that are relevant to the discussion of the morality of abortion are his concepts of natural law and the common good. Aquinas formulates eternal law as the highest order of law, which is the governance of divine reason over the universe and everything in it. ²⁵⁵ Because humans are rational beings created by God, their capacity to discern divine reason is part of human nature. ²⁵⁶

²⁵⁴ Aquinas, ST II-II.64.8 ad 2.
²⁵⁵ Aquinas, ST I-I.91.1.
Natural law consists of principles derived from the essential human characteristics and values, which communicate the eternal law of God. The most fundamental principle is that good is to be done and evil is to be avoided. Other primary principles are developed from the natural inclinations to preserve one’s own life, procreate, live in community, and seek knowledge of God. For Aquinas, there are also secondary principles, which are derived from the primary principles and “contribute to public and private moral good but are not absolutely necessary and depend on circumstances, conditions, and consequences.” These secondary principles of natural law are not always obligatory and can have exceptions in particular circumstances.

The natural law is not fully sufficient for directing all human action because sin makes human reason deficient and requires divine law, or law divinely revealed (e.g., the biblical revelation of God’s directives), in order to pursue communion with God. I will now specifically investigate the treatment of natural law and the common good in the words of Aquinas.

Aquinas’ teleological worldview relates that all organisms have natural purposes and capacities and the perfection of each thing is the full development and engagement of those capacities. Humans have the capacity for reason and free will and as such must

---

261 Aquinas, ST I-II.94.4.
use reason to understand their good and freely exercise and develop that good.\textsuperscript{264}

Aquinas further explains “the good” saying,

the essence of goodness consists in this, that it is in some way desirable. Hence the Philosopher\textsuperscript{265} says: "Goodness is what all desire." Now it is clear that a thing is desirable only in so far as it is perfect; for all desire their own perfection. But everything is perfect so far as it is actual.\textsuperscript{266}

The perfection, and subsequently the good, of all things must be understood as a relative or analogous perfection because only God is completely perfect and an organism’s perfection is judged by how closely it relates to God. Aquinas clarifies that only God is fully perfect and good because:

To be good belongs pre-eminently to God. For a thing is good according to its desirableness. Now everything seeks after its own perfection; and the perfection and form of an effect consist in a certain likeness to the agent, since every agent makes its like; and hence the agent itself is desirable and has the nature of good. For the very thing which is desirable in it is the participation of its likeness. Therefore, since God is the first effective cause of all things, it is manifest that the aspect of good and of desirableness belong to Him.\textsuperscript{267}

God is the perfection of all things and perfects all things, so humans can only know and achieve the good analogously in the material realm.\textsuperscript{268} As for human action, Aquinas believes that natural inclinations inform the fundamental purposes for human life. He further believes a human shares a purpose with all organisms, to seek

the preservation of its own being, according to its nature; and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.\textsuperscript{269}

\textsuperscript{264} Ibid., 69.

\textsuperscript{265} The “Philosopher” is a reference to Aristotle.

\textsuperscript{266} Aquinas, ST I.5.1.

\textsuperscript{267} Aquinas, ST I.6.1.

\textsuperscript{268} DeCrane, 50.

\textsuperscript{269} Aquinas, ST I-II.94.2.
Related to the fundamental purpose to preserve life, humans and non-human animals alike are also intended to procreate. Aquinas’ final set of ends pertains only to rational beings and says that,

there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

It is a fundamental purpose for humans to use reason to gain knowledge and to live in community with others. For Aquinas, the natural sociality of humans leads to the notion of the “common good.” He explains,

man is naturally a social being, and so in the state of innocence he would have led a social life. Now a social life cannot exist among a number of people unless under the presidency of one to look after the common good; for many, as such, seek many things, whereas one attends only to one.

God is the director or “president” of the common good because “God has no one higher than Himself, for He is the sovereign and the common good of the whole universe.”

Because Aquinas equates God with the common good, the common good supersedes the good of the individual, in the same way that the good of any part is subordinated to the good of the whole;

Private good is subordinated to the end of the common good: for the being of a part is for the sake of the being of the whole: hence the good of the race is more godlike than the good of the individual man. But the sovereign good, which is God, is the common good, since the good of the whole community depends on Him: while the goodness which marks any given thing is its own private good,
and also the good of other things which depend upon it. All things therefore are subordinate to the end of one good, which is God.274

For Aquinas, morality is defined by rational reflection on human purpose and fulfillment within the experience of community.275 Community is important since human beings are intrinsically social and because of this, “one man naturally owes another whatever is necessary for the preservation of human society.” 276

Interpretations

There are two oppositional models of natural law interpretation that need to be clarified: neoscholastic and revisionist. The neoscholastic tradition holds that the scholastic works, especial those of Aristotle and Aquinas, represent essential truths that are embodied in the magisterial teachings of the Church.277 While neoscholastics believe the significance and implications of scholastic truths can be debated, their authority and legitimacy are indisputable. Although neoscholasticism’s popularity has steadily declined since Vatican II, the model reflects the norms taught by magisterium and defends natural law as universal, immutable, and absolute.278

Revisionist moral theology challenges some of the principles of pre-Vatican II moral theology that are also found in current magisterial teachings.279 Revisionists reject the classicist worldview, the absolutized physical aspect of human action, and the

276 Aquinas, ST II-II.109.3 ad 1.
278 Curran, Catholic Moral Theology, 186.
279 Ibid.
emphasis of the nature and finality of the faculty found in the tradition natural law approach of Church teachings.\textsuperscript{280} The revisionist model of interpretation advocates a historically conscious worldview, a more personalist or relational anthropology and the abandonment of the identification of a moral act with its physical or biological aspects.\textsuperscript{281} Revisionists justify their approach by claiming that while the primary principles of natural law are universal and obligatory, the secondary principles can contain circumstances that require exceptions to the norm.\textsuperscript{282}

In my subsequent argument about the morality of abortion, I use a revisionist model of interpretation because it most successfully integrates the social and contextual considerations that are necessary in understanding women’s experiences with abortion. Within the revisionist model, I employ proportionate reasoning, as explained by Richard McCormick, as the foundation of my argument that Aquinas’ embryology supports the possibility that abortion may be justifiable in \textit{some} circumstances.

Conclusion

This chapter has highlighted several principles in Thomas Aquinas’ theology that are integral to my contention of the official Catholic instructions regarding abortion. Aquinas’ hylomorphic formulation of the human body/soul and his treatment of the early embryo are the foundation for my subsequent arguments in which I maintain that his teachings do not grant the early embryo the moral status of a fully rational human being. Additionally, Aquinas’ conception of the common good supports my emphasis on the social aspect of morality in considering abortion. In the following chapter, I integrate the

\textsuperscript{280} Ibid., 103.
\textsuperscript{281} Ibid., 103-105.
\textsuperscript{282} Ibid., 186.
previous chapters to argue that the current teachings of the Catholic Church should be altered in light of Aquinas’ theology.
CHAPTER FIVE

A RENEWED INTERPRETATION

This study has covered a range of material and information concerning Catholicism and abortion in the United States. It has in particular brought to the fore a clear intersection between religion and public policy in America. Whether one embraces or rejects it, religious discourse cannot be separated from the U.S. abortion laws and regulations. I have tried to show in the project that the ubiquitous presence of religion in public policy and public deliberations not only signifies the irrepressible character of the Sacred, but perhaps also suggests the epistemic limits of the so-called positivistic disciplines. As one scholar notes, correctly it seems, “Science can tell us a lot of things, but it cannot tell us what ends we ought to seek with the tools it gives us or how to use those tools without morally violating the human material on which they work.” The problem lies in the inability of scientific facts to provide objective answers about the soul and a definition of personhood. For ontological questions, such as those posed in abortion debates, there are no easy answers and public policy must be determined in light of these difficult debates. While religion should not pretend to have all the answers to the problems that a pluralistic society faces, perspectives deriving from religious beliefs must be considered in order to produce the most just policies possible. According to Paul Simmons, the scientist-physician reminds us that, “without heart function there can be no living human being,” and it is “the task of the theologian to remind the scientist-physician

that the being of the person cannot be captured in the heartbeat." In other words, religious discourse is unavoidable in the politics of abortion.

Another issue addressed in the project is the weight of public policy that regulates the treatment of the body. Abortion policy makes a determination about how a woman relates to her body and reproductive capabilities. The gendered body is integral to institutional analysis because it acts as “both the instrument of power and the site of struggles over power.” As Scheper-Hughes and Lock explain in “The Mindful Body,” the body must be analyzed as individual, social, and political. The body is understood as individual because what is done to our body is experienced as done to our selves, social because cultural concepts of and about the body sustain social relations, and political because bodies are involved in relationships of power and control. All public policy that asserts control over and truths about the body and its functions, like abortion legislation, must engender serious contemplation.

While the Catholic Church agrees that abortion policy holds serious consequences, its official teachings suggest that the protection of life is of greater importance than the regulation of the body. At the foundation for the Church’s position on abortion are principles that are found in Thomas Aquinas’ theology. The Declaration on Procured Abortion recognizes that individual interests must be subordinated to the common good, but holds that bodily life is a fundamental good which cannot be violated because it is a

---

284 Paul D. Simmons, The "Human" as a Problem in Bioethics, 105.
natural law engraved in men's hearts by the Creator as a norm which reason clarifies and strives to formulate properly, and which one must always struggle to understand better, but which it is always wrong to contradict. 288

Another principle found in Aquinas’ theology and used to condemn abortion is articulated in the *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation*, which says, “human life is sacred because from its beginning it involves the creative action of God and it remains forever in a special relationship with the Creator, who is its sole end.” 289 *The Gospel of Life* asserts a principle found in Aquinas’ moral theology, that all human beings have reason and are able to know the value of human life that must be defended. 290

In the following, I argue that the error of the Catholic Church is not in its insistence on the protection of life or the use of Thomistic principles, but in the teaching that life from the moment of conception is equal in value to the life of a formed human adult. As Paul Simmons explains, the debate concerns *what is a person* because rights can only be attributed to persons, while *human* only refers to the species of the fetus. 291 Attributing the rights of a person to the early embryo from conception is contradictory to aspects of Thomas Aquinas’ theology, whose concept of delayed hominization has been neglected without justified explanation. Although Aquinas did not specifically write about abortion per se, his embryology and moral theory are important in analyzing the morality of abortion in Catholic theology because they have been used to defend the Church’s position on abortion, which I argue is too stringent. Additionally, Aquinas has not only been cited in regards to abortion within the Catholic tradition, but has also been

---

291 Paul D. Simmons, The "Human" as a Problem in Bioethics, 100.
referred to by the United States Supreme Court when debating the constitutionality of abortion.

Value of the Early Embryo

As detailed in the previous chapter, Aquinas did not believe that the early embryo possessed a rational soul at conception because “the body cannot receive the soul before it is in any way whatever provided with organs.” The soul must be united with a body that does not restrict its capabilities and because the early embryo does not have rational capabilities, it cannot contain a rational soul. Aquinas explains development beginning with the vegetative soul, succeeded by a sentient soul, and finalized with a rational soul. The rational soul is what distinguishes humans from animals and makes it possible to understand and seek knowledge about God. The early embryo is not capable of seeking God and is equated to a plant and an animal during its developmental stages. Additionally, as the embryo develops, it is destroyed and replaced by a subsequent entity which Aquinas does not believe is problematic because,

nor need we be uneasy in admitting the generation of an intermediate product, the existence of which is presently after broken off, because such transitional links are not complete in their species… and not engendered to endure.

Aquinas’ treatment of the early embryo as an intermediate product that is not meant to endure suggests that the value of such an entity could not be equivalent to a fully developed, rational human being. This is not to suggest that Aquinas regards the unborn as valueless, but insists the rational soul is necessary for the fetus to possess the full moral value of a person. While the relatively lesser value of the early embryo does

---

292 Aquinas, *Quaestiones Disputatae De Potentia Dei*, q. III, art. XII
294 Ibid.
not necessarily justify its termination, in situations of moral conflict it is a relevant consideration for proportionate reasoning. Proportionalism argues that one must consider all the circumstances of an action when determining its moral rightness or wrongness. Proportionate reason is used to discern if the premoral disvalue contained in, or caused by, the means stands in due proportion to the premoral value in the act.” When applied to the developmental value of the early embryo, a sliding rule can be employed which would require a proportionately more serious justification for abortion as the embryo develops.

For Aquinas, once the fetus develops to the point of a rational soul, it is unlikely that abortion could be justified. Aquinas articulates the value of the fetus following animation when addressing accidental murder saying,

He that strikes a woman with child does something unlawful: wherefore if there results the death either of the woman or of the animated fetus, he will not be excused from homicide, especially seeing that death is the natural result of such a blow. (emphasis mine)

Aquinas stipulates that the death of the animated fetus, the fetus consisting of a rational soul, is equivalent to homicide. It is presumptuous to assume that the above specification suggests that the death of the fetus prior to animation is acceptable, but it does suggest that the death would not be equivalent to homicide in the same way the death of the mother and the animated fetus is treated. Anti-abortion critics often argue that attributing value in accordance with rationality could lead to the detriment of society. “Liberalizing
abortion becomes the equivalent of signing a death warrant for unwanted infants, the physically handicapped, the mentally handicapped, comatose patients, and senile senior citizens.” 300 However, Daniel Callahan highlights that the abortion debate is a distinctive moral issue because the subject is potential human life and there is no evidence that attitudes toward fetal life extend to actualized, existing human life. 301

Aquinas’ treatment of the fetus should not be disregarded because of his inaccurate medieval understanding of biology. Aquinas’ embryology does not rest on a complex investigation of biological development, but stems from his hylomorphic conception of the mind/body and his understanding that the early embryo is not a highly organized human body. On a theological level, the Catholic Church accepted hylomorphism in 1312 302 and on a biological level modern developments do not negate the simplicity of the zygote. However, for the sake of this argument it is only important that Aquinas does not believe the early embryo possesses a rational soul and in turn does not hold equal value to a fully rational human person.

The Common Good

Contemporary liberal feminist theorists have critiqued the view of the self that portrays society as made up of individuals “who are unsituated, unencumbered, and unrelated.” 303 These feminists reject atomistic individualism because it is an incomplete depiction of the self that “encourages people to think of themselves first, fostering egoism

302 The Council of Vienne stipulated that, “we condemn as erroneous and opposed to the Catholic truth every doctrine which makes bold to deny or to question that the substance of the rational or intellectual soul is truly and by itself the form of the human body” (DS 902).
and rewarding selfishness.”\textsuperscript{304} Aquinas’ emphasis on the common good provides a valuable avenue to develop social ethics based on the fundamental relationality of the human person, that more adequately reflects feminist concerns. Specifically, the common good emphasizes the context of choice—the orientation of human experience as individually unique but not isolated from society.\textsuperscript{305}

Keeping in mind that Aquinas does not grant the early embryo equal value to the fully developed and rational human being, we now must consider how the early embryo fits into Aquinas’ conception of natural law and the common good of society. As previously noted, Aquinas establishes that “since one man is part of the community, each man in all that he is and has, belongs to the community; just as a part, in all that is, belongs to the whole.”\textsuperscript{306} Within the human community, “private good is subordinated to the end of the common good: for the being of a part is for the sake of the being of the whole: hence the good of the race is more godlike than the good of the individual man.”\textsuperscript{307} The common good is a fundamental notion of the Catholic social tradition, which relates that inherent human sociality “demands their interdependence, communication, solidarity, and co-responsibility.”\textsuperscript{308} The significance of the common good in the abortion debate is the need to approach the problem with the good of the community as a priority. This much is clear in the theological view of the Catholic Church on the moral problems of abortion. The Church contends that

The Gospel of life is for the whole of human society. To be actively pro-life is to contribute to the renewal of society through the promotion of the common good.

\textsuperscript{304} Ibid., 247.
\textsuperscript{305} DeCrane, 99.
\textsuperscript{306} Aquinas, ST I-II.96.4.
\textsuperscript{307} Aquinas, SCG III.17.5.
It is impossible to further the common good without acknowledging and defending the right to life, upon which all the other inalienable rights of individuals are founded and from which they develop.\(^{309}\)

The Church condemns abortion as directly opposed to the common good because it violates the right to life. In the *Catechism of the Catholic Church*, the common good is defined as “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.”\(^{310}\) The *Catechism* specifies three essential elements of the common good as:

First, the common good presupposes respect for the person as such... In particular, the common good resides in the conditions for the exercise of the natural freedoms indispensable for the development of the human vocation, such as the right to act according to a sound norm of conscience and to safeguard... privacy, and rightful freedom also in matters of religion. Second, the common good requires the social well-being and development of the group itself. Development is the epitome of all social duties. Certainly, it is the proper function of authority to arbitrate, in the name of the common good, between various particular interests; but it should make accessible to each what is needed to lead a truly human life: food, clothing, health, work, education and culture, suitable information, the right to establish a family, and so on. Finally, the common good requires peace, that is, the stability and security of a just order.\(^{311}\)

For Aquinas, the common good is both the context in which humans relate and respect each other and a necessity because of human finitude and limitations that require the help of others to flourish.\(^{312}\) While community helps the individual grow through moral and intellectual education, it is also necessary to help provide a person with material goods. Material goods are basic requirements for humans to be able to live and allow them to seek God, the ultimate good. As Aquinas explains,


\(^{311}\) Ibid.

the final happiness of man consists in the contemplation of truth...to this act all other human activities seem to be directed as to their end. For to the perfection of contemplation there is requisite health of body; and all artificial necessaries of life are means to health.\textsuperscript{313}

Humans must maintain bodily health as a necessity for the ability to pursue the ultimate end. Aquinas further explains that the community is intended to help individuals maintain bodily health when he says,

man is naturally a political animal, or a social one. This is apparent, indeed, from the fact that one man is not sufficient unto himself if he lives alone, because nature provides but few things that are sufficient for man. Instead, it gives him reason whereby he may make ready all the things needed for life, such as food, clothing, and the like; one man is not sufficient to do all these things. So, to live in society is naturally implanted in man.\textsuperscript{314}

Aquinas' common good functions as an ethical norm for the relationship between the individual good and the good of society.\textsuperscript{315} The human community should work to provide conditions that will help people live with dignity and further the perfection of their humanity. As it exists, many societies do not ensure the basic material goods that, according to Aquinas, are necessary for the individual to seek the ultimate good. While the common good cannot be reduced to a single element, material good is one essential component of it. One common consequence of a lack of material goods is abortion. The abortion rate among women living below the federal poverty level is more than four times that of women above 300\% of the poverty level and the rate of unintended pregnancies among poor women (below 100\% of poverty) is nearly four times that of women above 200\% of poverty.\textsuperscript{316} Additionally, of the reasons women give for having

\begin{flushright}
\textsuperscript{313} Aquinas, \textit{Summa Contra Gentiles}, III.37.
\textsuperscript{314} Ibid., III.85.11.
\textsuperscript{315} DeCrane, \textit{Aquinas, Feminism, and the Common Good}, 83.
\textsuperscript{316} Jones, Darroch and Henshaw, “Patterns in Socioeconomic Characteristics,” 226-235.
\end{flushright}
an abortion, three-fourths say that they cannot afford a child. An unintended pregnancy can impose a financial burden on a woman that results in a severe lack of material goods and hinders her ability to seek the ultimate good—communion with God. Some abortion opponents alternatively claim that abortion is directly related to the secularization of society and is detrimental to the common good of society. As Charles Rice explains, “abortion is a symptom of deeper problems for which the only solution is a reconversion of the American people to love God and respect for His law.” However, it is clear that conversion would not stop abortions, because many women who have abortions identify themselves as religious. Additionally, it is unreasonable to generalize that abortion is always detrimental to the common good of society because it does not follow that if every fertilized egg were carried to term, it would increase the common good of society. While some argue that abortion contributes to a greater culture of death and degradation of human dignity, I argue that the cultural negligence of women, especially poor women who experience hardship without the support of the community, is the real degradation of human dignity.

The historical and contemporary conditions of humanity hinder the intention of human life: to pursue communion with God. The common good of humanity cannot ignore the realities of the human experience which for some are a context of poverty and lack of basic human necessities for living. While it is the duty of the individual to serve the common good of society, it is also the purpose of the community to provide its

members with basic necessities. These individual goods, as explained by Aquinas, are part of what the common good is intended to preserve. The good of the individual is not only secured by material goods, but requires additional basic moral goods. The values articulated by Justice O’ Connor in Planned Parenthood, such as the dignity of choice, should also be ensured by a community in an effort to preserve the common good. The equal dignity of all people as rational beings created by God cannot be reduced to how we treat the unborn, but also how we treat those already living and struggling. It is not always the abortion that is detrimental to human dignity, but may be the conditions that lead to difficult circumstances and contribute to rate of abortion. It is because of the imperfection of human society that we face moral conflicts that are not always easily resolvable. In situations of conflicting goods, we must use “proportionate reason” in determining right and wrong action, especially when considering abortion.

Proportionalism originated as a revision of the principle of double-effect, which proponents link to Aquinas’ treatment of killing in self-defense. The principle of double effect says an action with both a good and bad effect is permissible if:

1. the act is morally good or indifferent,
2. the bad effect is not willed, but merely permitted,
3. the good effect must flow from the action at least as immediately as the bad effect (in the order of causality, not necessarily in the order of time) and the good cannot be produced by the means of an evil effect,
4. the good effect must be sufficiently desirable to compensate for allowing the bad effect.

---

320 Proportionalism is a type of analysis for determining the objective moral rightness and wrongness of actions in conflict situations and a procedure for establishing exceptions to behavioral norms. Proportionalists argue that no judgement of moral rightness and wrongness of acts can be made without considering all circumstances of the action. Consideration of the agent’s intention, all foreseeable consequences, institutional obligations, and a proportion between the premoral values and disvalues are necessary before making a judgment. [See: Walter, “Proportionalism,” 1058.]

321 ST II-II.64.7 addresses killing in self-defense and applies the principles found elsewhere in the Summa that: the remote end or intention must not be evil (I-II.18.4 ad 3), the proximate end intended, the object, must not be evil (I-II.18.2), and the circumstances must be fitting (I-II.18.3 &10, and I-II.6.3).

The third principle of double effect, which says the good cannot be produced by the means of an evil effect, led to revisionist critiques of the principle, some of which resulted in the development of proportionalist reasoning. Specifically when distinguishing the moral difference between direct and indirect abortion, critics of the double effect principle claim that there is a problem with identifying the morality of an act with its physical aspects or structures. Some revisionists have reformulated the principle of double effect into a theory of proportionate reasoning that held a more contextual understanding of agency. Proportionate reasoning intends to maximize “premoral good” and minimize “premoral evil” using specific secondary conditions of proportionate reason. The secondary conditions require that the premoral evil means must be necessary to the premoral good sought, the premoral good is not a future good but simultaneous to the act, and the act cannot cause superfluous evil. As conceived by McCormick, proportionalism is directed towards “the good of avoiding some greater evil, the good of justice as allowing self-preservation as the agent’s priority, and the gospel identity as prioritizing love and self-sacrifice for another.” Proportionalists understand that the common good as it exists is distorted and must be approached with a “hermeneutic of structural sin.” Although critics claim proportionalist reasoning results in consequentialism, McCormick claims that because the theory emphasizes

---

323 Curran, Catholic Moral Theology, 106.
324 Ibid.
325 Cahill, Bioethics and the Common Good, 21.
326 “Premoral goods” refer to those conditioned goods that we pursue for human well-being, e.g., life, health, etc. “Premoral evils” refer to the harms, lacks, deprivations, etc., that occur in, or as a result of, human agency. [See: Christopher Kaczor, Proportionalism and the Natural Law Tradition (Washington, D.C.: The Catholic University of America Press, 2002) 2.]
328 Ibid., 468.
329 Cahill, Bioethics and the Common Good, 18.
330 Ibid., 26.
premoral values, moral meaning does not only result from consequences.  

Charles Curran argues that proportionalism holds a middle position between strict consequentialism and strict teleology by maintaining three principles:

(1) moral obligations arise from elements other than consequences, e.g., promises, previous acts of gratitude, or evil; (2) the good is not separate from the right; (3) the way in which the good or evil is obtained by the agent and not just the end result is moral consideration.

Additionally, most proportionalists object to the category of “intrinsically evil acts,” while working to define morality “in terms of characteristics intrinsic to certain specific types of action.”

Although Veratatis splendor dispelled proportionalism, saying,

these theories cannot claim to be grounded in the Catholic moral tradition… One must therefore reject the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species — its "object" — the deliberate choice of certain kinds of behaviour or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.

Richard McCormick argues that “proportionate reason is the criterion used even in the manuals themselves and in the Catholic hierarchical teaching in most areas.”

I believe that a proportionalist reading of Aquinas provides a guide for moral action that emphasizes particularity and moral agency and is consistent with aspects of Thomistic moral theology.

When applied to abortion, the termination of the early embryo must be evaluated in the context of a society which sustains unequal distributions of material goods and in

---

331 Curran, Catholic Moral Theology, 108.
333 Cahill, Bioethics and the Common Good, 22.
335 Curran, Catholic Moral Theology, 108.
some cases inflicts oppression. Aquinas asserts that basic material goods are needed to maintain bodily health—a pre-requisite to the ultimate end of humans to seek the knowledge of God. When pregnancy prevents a person from striving after her ultimate good, it causes a premoral evil that may be prevented by an abortion of the early embryo. Abortion is not an intrinsic good, but can possibly be the best option in circumstances where remaining pregnant will be detrimental to an individual’s ability to seek the ultimate good. It cannot be said that abortion always causes “superfluous evil” because, as previously established, early embryos do not hold the full value of a human person and their termination may be acceptable if for the purpose of a greater good.

Because Aquinas argues that the early embryo begins with a vegetative soul, which “while it lives the life of a plant, is destroyed, and there succeeds a more perfect soul… for that time the embryo lives the life of an animal,” it follows that the embryo holds the value of that organism relative to the soul it possess. According to Aquinas, abortion

There is no sin in using a thing for the purpose for which it is. Now the order of things is such that the imperfect are for the perfect, even as in the process of generation nature proceeds from imperfection to perfection. Hence it is that just as in the generation of a man there is first a living thing, then an animal, and lastly a man, so too things, like the plants, which merely have life, are all alike for animals, and all animals are for man. Wherefore it is not unlawful if man use plants for the good of animals, and animals for the good of man, as the Philosopher states. Accordingly, Aquinas explains:

While the early embryo holds greater value than the plant and the animal because of its human potentiality, it is still an imperfect organism that is lower in the “order of things” and must be treated as such when weighing the pertinent conditions for the most moral

---

336 Aquinas, Quaestiones Disputatae De Potentia Dei, q. III, art. XII.
337 Reference to Aristotle (Polit. i, 3).
338 Aquinas, ST II-II.64.1.
action. Aquinas responds to the claim that it is unlawful to take the life of any living thing saying,

Dumb animals and plants are devoid of the life of reason whereby to set themselves in motion; they are moved, as it were by another, by a kind of natural impulse, a sign of which is that they are naturally enslaved and accommodated to the uses of others.\textsuperscript{339}

Although it would be rash to assume that Aquinas denigrates the fetus to its uses for others, he supports the subordination of animals and plants for humans as a natural result of their lack of reason. It follows that because the early embryo also lacks the capability for reason, it is naturally enslaved to its mother. The interests of the fetus, lacking reason and existing as a less-perfect organism, would be subordinate to the good of the mother. This line of reasoning cannot be extended to denigrate the value of a person who is mentally or physically handicapped or comatose because the early embryo is distinctively not yet human and in possession of a rational soul. While a person who is mentally handicapped or comatose may not be able to access her rational capacity, God has already instilled her with a rational soul which should be treated with human dignity.

When Aquinas establishes that “since man is a social animal, one man naturally owes another whatever is necessary for the preservation of human society,” he does not only intend “the sheer existence of the group, but of its flourishing as a necessary, life-promoting reality for all members of society.”\textsuperscript{340} Aquinas’ emphasis on the preservation of human life should not be imposed as the ultimate principle by which to guide moral action, prohibiting abortion in all circumstances. In light of his embryology and theory of natural law one must conclude that it is not just the individual life, but the flourishing of human society which Aquinas seeks to preserve. As recorded by the Guttmacher Institute,

\textsuperscript{339} Ibid., II-II.64.1 ad 2.
\textsuperscript{340} DeCrane, \textit{Aquinas, Feminism, and the Common Good}, 60.
the reasons women give for procuring abortions are often attempts to preserve the social
structure of the family and prevent irresponsible parenthood;

Three-fourths of women cite concern for or responsibility to other individuals; three-fourths say they cannot afford a child; three-fourths say that having a baby would interfere with work, school or the ability to care for dependents; and half say they do not want to be a single parent or are having problems with their husband or partner. 341

A large portion of the women who have an abortion believe that it is a more successful way of avoiding the detriment of others, be it the potential child, husband, family, workplace, or other dependents. The majority of women believe that the abortion is for the greater good of others in light of certain circumstances. Whether knowingly or not, many women are acknowledging that

individual rights are paired with duties, both in the sense that persons have duties to ensure that the civil and material rights of all are met and in the sense that rights exist as the conditions necessary for all to fulfill their duties to the common good. 342

While the preservation of human life is one of the fundamental principles of natural law that is accessible to all rational beings, Aquinas explains that not all moral principles are inherently knowable. In reference to how a person can discern moral precepts he asserts that,

there belong to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from first principles. As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion. 343

343 Aquinas, ST I-II.94.6.
Aquinas states that while all people possess the knowledge of fundamental principles of natural law, particular applications of the principles require contextual considerations.\textsuperscript{344} Situations of moral conflict are “by their very nature, very complex, and it is hard to imagine that one proposed solution can claim absolute certitude.”\textsuperscript{345} It is the complexity of the problem of abortion that insists humans consider all information accessible through human reason in making moral determinations. If reason provides legitimate contributions to moral practice, biological factors would also support Aquinas’ theory of ensoulment. During the blastocyst stage of development, “twenty to twenty-five percent never implant satisfactorily and pass unnoticed through the mensus.”\textsuperscript{346} There are serious implications for the Church if every blastocyst that does not properly implant in the uterus is to be considered a person with a soul. Should the monthly mensus be baptized in order to save the soul of the baby that might have been lost? Further, as Joan Callahan argues in “The Fetus and Fundamental Rights,” if the fetus is treated as a person, abortions procured after an incidence of incest or rape should also be morally unacceptable and those women who abort should be treated as criminals or murderers.\textsuperscript{347}

If the Catholic Church considers Aquinas’ specifications about the nature of the soul and its relationship to the fetus, abortion can not be considered morally reprehensible in all situations. I am not suggesting that Aquinas would favor abortion, but I propose that Aquinas would find abortion acceptable in specific situations. Aquinas would insist that in order to consider the circumstantial acceptability of abortion, it must be procured

\textsuperscript{344} Ibid., I.79.13.
\textsuperscript{345} Curran, \textit{Catholic Moral Theology}, 276.
\textsuperscript{346} Paul Simmons, “The “Human” as a Problem in Bioethics,” 98.
prior to the development of the rational soul in the fetus. Aquinas’ inaccurate medieval biological understanding does not discount the application of his embryology which insists that the body must be able to accommodate the capabilities of the rational soul in order to contain a human rational soul. Aquinas’ reliance on reason and belief in the understanding of natural law through rational investigation suggest that he would be open to contemporary embryology when deciding the point at which the embryo is developed to accommodate a rational soul. It is in accordance with the principles of Thomas Aquinas that prior to the development of a rational soul the early embryo holds a similar personhood to a plant or animal with respect to its development.

The status of person is reserved for fully rational human beings and, to a lesser extent, the fetus as potential persons. With the understanding that the early embryo cannot contain the rational soul of a human person, the “rights” of the early embryo cannot supersede the heath and well-being of the woman, who is an actual person as opposed to merely a potential person. The health of the woman, including all relevant physical, emotional, psychological, familial, and age factors, must be prioritized as a basic requirement for the pursuit of the ultimate human end, according to Aquinas, communion with God. 348 The traditional Catholic position on abortion seems unrealistic and unyielding in light of the reality of social life. The church may need to revise its teachings on abortion, which would be consistent with the position its own theological leader, and recognize that “sometimes the best solution possible in a given situation, seen

in its extenuating social conditions and ramifications and the pressures they place on
decision-makers, is only a solution “analogous” to the good we truly desire.”

349 Cahill, *Bioethics and the Common Good*, 66.
BIBLIOGRAPHY


