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John R. Connery

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After four years of research and reflection, Daniel Callahan has produced an important study of the problem of abortion. Father John R. Connery, S.J. reviews Callahan's book (*Abortion: Law, Choice, and Morality*, MacMillan, 524 pages, \$14.95 in this issue. Father Connery is Professor of Moral Theology at the Bellarmine School of Theology, a division of Loyola University, Chicago. A former (1960-67) provincial of the Chicago province of the Jesuit Order, Father Connery has been a corresponding editor of *AMERICA* and has conducted the authoritative "Notes on Moral Theology" section of *THEOLOGICAL STUDIES*, besides contributing to other theological journals and law reviews.

## Book Review . . .

### Callahan On Meaning Of Abortion\*

John R. Connery, S.J.

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THE LITERATURE on abortion is becoming just about as abundant today as the literature on contraception was a few years back. This should probably not be surprising, since the two problems are not unrelated. In fact, some earlier theologians identified contraception as a species of abortion, distinguishing three different kinds of abortion according to their degree of gravity: The prevention of conception, the expulsion of the fetus before anima-

tion and the expulsion of the fetus after animation. With the more sophisticated knowledge of biological facts available today I do not think that any modern theologian would classify contraception as a species of abortion, but it is true that the same problems that gave rise to the spread of contraception are being presented today to justify abortion. It is also true that most abortions today are performed as a primary or secondary method of birth control.

The present book by Daniel Callahan is a quite thorough factual and theoretical treatment of abortion, aimed at developing both a moral and a legal policy in this area. This review will be concerned largely with the theoretical side of the book and the suggested moral and legal policy. Since in this part of the book the author wants to insure as wide a hearing as possible for himself, he believes that he must begin from a point on which there exists some consensus. He finds this in what he calls the principle of the sanctity of life (understanding, of course, human life).

This principle is accepted in Western (and most of Eastern) culture by both Christians and non-Christians, although for different reasons. In discussing the principle he tells us that both in the Catholic and Protestant traditions it is founded on the truth that God is the Lord of Life and Death. I do not think that anyone would doubt that this truth is quite pertinent to the whole question, but I think that more must be said before it can offer any special protection to human life. God is after all the Lord of all creation, but this does not prevent man from taking vegetable or animal life. Why should it prevent man from taking human life? It is not precisely, or at least not solely, God's dominion that protects human life, but the fact that man is the crown of creation. The rest of creation fulfills its purpose in the service of man, a service that may even call for destruction. But there is no higher form of creation to which man is subordinated. It is because of the privileged position of human life that it must be respected, and any subordination of man would be inconsistent with this position. There is no reason to believe, therefore, that

man shares any general dominion over human life, as he does over the other forms of life on earth.

Callahan admits that the principle of the sanctity of life, however acceptable and valuable, is somewhat vague as it stands. If it is to be useful, it must be translated into rules. He divides the rules stemming from the principle into five different categories, covering respectively: the protection of species life; the protection of family lineage life; the protection of person-life; the protection of bodily life; and the protection of physical integrity. What becomes very important, of course, is the relationship between these different rule systems, and of particular concern is the problem of conflict. What is one to do when one rule conflicts with another?

Some have tried to solve this problem by establishing a hierarchical order among the rules. Callahan himself is not very enthusiastic about such a grading, since he feels that no fixed ordering of rules could be worked out for all times, e.g., in times of overpopulation rules governing species life might take precedence over rules governing individual life. Or, to put the problem more pertinently, a situation of overpopulation might call for an abortion decision.

In discussing this problem Callahan makes an observation which I think is key to his whole approach. The basis for his resolution of conflict between rule systems is not so much a comparative evaluation of the rules themselves as it is their relation to the principle of the sanctity of life. He observes that the principle *implies*

rather than *entails* the various rules it gives rise to. The meaning of this distinction is not too obvious from the words themselves, but what Callahan wants to communicate, I believe, is that no categorical rule flows from this principle. No rule is ironclad, therefore, and as a result any one can give way to another. This is true even of the right to individual life.

What the principle does is establish a strong bias in favor of rules protecting life. It certainly implies a rule about the right to individual life, but calls for no more than a bias in favor of such a rule. Similarly, it would seem to call for a bias in favor of rules protecting person-life, species-life, etc. But if one is to be biased in the direction of all these rule systems, a question arises as to how to solve conflicts between them.

MY IMPRESSION is that Callahan is presenting here a situational or contextual approach to moral problems. While admitting a right to life and a rule against taking physical life, he will not give these any absolute priority, but feels that they must be balanced against other rule systems implied by the sanctity of life. This is obviously not an antinomian, or even a nominalistic, type of situationism, but resolves conflicts between rules by an appeal to situations or circumstances. The traditional Catholic position has been that there are no real conflicts between rules, since it is impossible for a person to be obliged to do and not to do something at the same time. It would also maintain that there are limits to what one can do to solve such problems as overpopulation, and that if one goes beyond these limits he will create a more serious problem than he solves.

Callahan is opposed to a moral code that makes the prohibition of abortion absolute. He feels that in this approach no room is left for the demands of the principle of the sanctity of life. He is thus opposed to the traditional Roman Catholic position on abortion, which calls for a one-dimensional approach in contrast to his own pluri-dimensional approach. In this one-dimensional approach, as he tells us, the welfare of the fetus takes full precedence, allowing little more than sympathy for the mother, a sympathy which cannot be translated into action, e.g., by an induced abortion, under any circumstances.

I suspect that Callahan has a better understanding of the Catholic stance than the above statement would lead one to believe. At least I think this statement is open to serious misinterpretation. The Catholic position is not one-dimensional in the sense that it gives precedence to the welfare of the child. It does not give precedence either to the welfare of the child or the welfare of the mother. At other times (and perhaps even now in some parts of the world) when a cesarean section was tantamount to a lethal surgery, it was the welfare of the mother that took precedence. (Paul Comitulus, S.J., an early 17th century moralist, calls those doctors who say that it is permissible to do a section on a mother to save the life of the child (or provide for its baptism) "butchers," and charges them with killing an innocent person.)

The Catholic position is one-dimensional (if one wishes to use this kind of terminology) in the sense that it opposes without compromise the killing of either the mother or the child. A pluri-dimensional approach is not

committed to this same degree of respect (at least for the life of the child).

AN IMPORTANT question connected with the abortion issue concerns the beginning of human life. Callahan finds three different schools of thought on this subject. The genetic school dates the beginning of human life from the time of conception, since the whole genetic package is present in the original conceptus; the rest is merely a process of development. A variation position would date human life from the time of the "primitive streak" or the moment after twinning could occur, or from the moment of implantation.

The "developmental" school demands a certain degree of development before allowing one to speak of an individual human being. Within this school there are differences of opinion, and these cover a wide range, regarding the amount of development required. One author, distinguishing between human life and a human person, calls for the existence of a living human brain before speaking of a human person; others would demand even more than this. This school would include, of course, those who still hold the old scholastic opinion regarding delayed animation.

The third school puts the stress on the social consequences. According to this school the decision to call a conceptus a human being is not a matter of genetics or morphology but depends entirely on the social consequences of such a decision.

Callahan has, and should have, serious objections to this school (at least as he

understands it), since it ignores both biological date and the existence of genuine potentialities in the human fetus. Also, if one can define prenatal human life -any way he wishes according to social consequences, why cannot he do the same for postnatal life? If the social consequences called for it, it would seem that one could define human life in such a way as to allow for infanticide.

Callahan himself opts for the position of the developmental school. His ultimate reason for doing so is that this school is sufficiently sensitive to the biological date to ascribe human life even to the zygote, but at the same time open to a wide range of values that would allow for a choice between the zygote or fetus up to a certain stage of development and other life-values.

What is not clear in Callahan's position is just where he would draw the line when there is question of taking human life. He speaks of even a *very late* abortion in a case where opposing life values are very important. This would seem to imply (since he uses the term abortion) that he would draw the line at least at viability. Yet in another section of the book he speaks (and with seeming approval) even of a craniotomy to save the life of the mother, a problem that would not arise until delivery time. My impression is that he would want to draw the line at least at birth, but even there I am not sure why he would or how he could. If the principle of the sanctity of life involves respect for life in all its forms, but does not entail any absolute prohibitions, how does one resolve conflicts between rules after birth? Or are we to assume that such conflicts will not arise after birth?

We have already mentioned that Callahan is opposed to the traditional Catholic position. He devotes at this point an entire chapter to an analysis and a criticism of this position. The first part of the chapter offers a brief summary of Roman Catholic teaching on abortion, but by his own admission he is largely dependent on others, and particularly on John T. Noonan, in this summary. In reading the summary there are times when one would like a more careful statement or interpretation of the Catholic position, but it does serve to date the uncompromising attitude toward abortion from Apostolic times.

There is one statement made by Callahan toward the end of the summary that does call for comment. Following Noonan, he states that there are two exceptions to the Catholic stand on abortion: abortion in the case of a cancerous uterus and in the case of ectopic pregnancy. I do not think any Catholic theologian would speak in these terms. Current Catholic teaching does not allow any exceptions in the area of direct abortion. The two so-called exceptions are cases of indirect abortion, and there is no reason to limit the number to two. I do not doubt that Callahan understands the theology here, but the terminology is somewhat misleading. We are not dealing here with a type of casuistry but with a distinction based on a principle. The question is not when is abortion right and when is it wrong, but rather what is an act of abortion and what is not. It is the Catholic position that one is not responsible for an abortion that is incidental to an act with is otherwise good, if the good results are at least of equal value.

IN BRIEFING the Catholic position Callahan tells us that it can be summed up in four principles: 1) God is the Lord of life. 2) Human beings do not have the right to take other human beings. 3) Human life begins at the moment of conception. 4) Abortion, at whatever stage of development of the conceptus, is the taking of human life. Some attention has already been given to the first principle set down by Callahan, but the other three also call for some comment. First of all, a caution is in order regarding the second principle; that human beings do not have the right to take the lives of other innocent human beings. The principle is correct as it stands but it would be a mistake to reduce this whole matter merely to the question of the rights of others. It is wrong for man even to take his own life, an obligation which has nothing to do with commutative justice. What is forbidden is direct killing either of self or of other innocent human beings, and the basis for this, as already pointed out, is the privileged position of human life.

I think I would have to take issue with the statement that the opinion that human life begins at the moment of conception is of the substance of the Catholic position. It should be clear from the history presented by Callahan that the theory of delayed animation dominated Catholic thinking about abortion for many centuries. In fact, the distinction between the formed and unformed fetus has its origin in the Septuagint version of Exodus (21, 22-25). Yet all abortion was condemned right down from Apostolic times. It is difficult to see then how the Catholic position can be

dependent on the principle that human life begins at the moment of conception.

The traditional argument used against the abortion of the unformed fetus was twofold. Some authors considered it *homicidium anticipatum*, often quoting Tertullian in this regard ("*Home est qui futurus est*"—He is a man who will be a man). Others used an *a fortiori* argument based on the evil of contraception. If it was wrong to abort *semen simplex*, it was even more wrong to abort *semen conceptum*, which was closer to life. No argument drawn from the presence of the soul from the moment of conception was used. Actually, the church has never made a statement identifying the time of animation with the moment of conception. The most one can find is the condemnation of Innocent XI (1679) of the opinion that the fetus is not animated until it is born. This, of course, is a long way from teaching that animation takes place at the moment of conception.

To say, then, as stated in the fourth principle, that according to the Catholic position abortion, at whatever stage of development of the conceptus, is the taking of innocent human life, may reflect the present thought of many Catholic theologians, but it does not represent accurately traditional opinion. I suppose most Catholic theologians today no longer think in terms of delayed animation, but it should not be forgotten that the traditional absolute condemnation of abortion coexisted for many centuries with this theory. One may wish to take issue with the Catholic position, as Callahan does, but one should do so from a clear understanding.

Callahan also criticizes Catholic moral theology because it countenances the death of both the fetus and the mother rather than directly take the life of the fetus. He is speaking here of a case where a craniotomy would save the life of the mother. He admits that this would be a rare case (in fact, practically unheard of today), but what he objects to is the principle. Certainly, this is a very difficult application of the principle involved, and one might well not want to disturb the good faith of a mother or doctor in a case of this kind; but the position that would allow the taking of one life rather than let two people die seems to come close to a kind of act-utilitarianism. The dilemma involved here reminds one of the case with which one author challenged the extreme utilitarians. It is the case of a sheriff in the South faced with the choice either of framing a Negro suspected of rape (but whom he knew to be innocent) and thus preventing serious anti-Negro riots which would lead to the loss of several lives . . . or of hunting for the guilty party, thereby allowing the riots to take place and the subsequent loss of life (including in all probability the Negro suspect). An act-utilitarian would seem committed to framing the Negro and executing him.

I do not know how Callahan would handle a case like this, but it is not without some likeness to the craniotomy case. At least I am afraid that it is a little simplistic to say that "a theology that would countenance the death of both fetus and mother rather than directly take the life of the fetus is one geared to a preoccupation with preserving individuals from sin or crime."

Callahan takes a stand not only against the Catholic position but also against the position that opts for abortion on request. The basis for this position is that a woman has a right not to have children and that this right is not prejudiced by the fact that she is pregnant. Callahan finds this position as one-dimensional as the Catholic position. Whereas the Catholic position makes the rights of the fetus decisive, this one makes the rights of the woman decisive, and considers no other values. But he makes clear that he is criticizing this position only as a moral stance. Later he will maintain that allowing women abortion on request represents good public and legal policy, but here he argues very effectively against the supremacy of women's rights in abortion decisions.

**CALLAHAN CONCLUDES** his treatment of abortion with a consideration of what the legal and moral policy should be in this area. As the result of his very thorough study of laws on abortion all over the world, he concludes that the most permissive laws, allowing abortion practically on request, are the best ones, although he would not want abortion completely unregulated by law. He is opposed to restrictive legislation because, among other reasons, it is unenforceable, discriminatory and leads to a large number of illegal abortions. He is in favor of permissive laws because the death and injury rate from induced abortions is very low in countries which have such laws. He also thinks that such laws put the abortion decision in the hands of the woman where it should be. He would not be opposed to limiting the freedom of the woman where the common good calls for it, but he does not think that permissive laws of this kind are a threat to the common good.

I suppose it should be said initially that the Catholic moral theologian can live with legalized abortion if it can be shown that it is at least a lesser evil. After all, they lived with legalized prostitution for centuries and tolerated it to prevent greater evils. Certainly, there is a difference between legalized prostitution and legalized abortion. In prostitution there is no necessary involvement of the rights of others. But abortion involves the rights of the fetus, and one of the main functions of civil law is to protect human rights, especially the rights of those who cannot defend themselves. Callahan would have liked to find in Callahan's more discussion of this problem. His chief concern in the discussion of legal policy seemed to be with the rights of the woman.

It should be mentioned, however, and I believe to his credit, that he is opposed to removing all regulation from abortion, although even here he seems more concerned with the rights of the woman. He believes that in a completely unregulated situation she would be under all kinds of pressures to undergo abortion and would not enjoy a real freedom in the decision.

To be honest, I would have to admit that I was not greatly impressed by the strength of the case Callahan has made for permissive laws. He himself admits that although there would be a reduction in the number of *illegal* abortions there would be a rise in the *total* number, and particularly a rise in the number of young, unmarried women, and married women with no children, seeking abortion. He also acknowledges that, for many, abortion would become a primary method of contraception, for others a secondary method. Finally, he agrees that a habit

abortion might develop more readily in underdeveloped countries.

In my opinion these are very substantial evils, and I am not sure that they are offset by the advantages which Callahan maintains derive from such laws, even presuming that these are above challenge. Callahan would hope that the above evils could be corrected by an extensive educational program, although he admits that efforts in this direction have not succeeded thus far. Also, even if he had made a strong case for permissive laws, I should think that the legal policy of a country would have to vary according to the local situation. I would find it hard to believe, for instance, that highly permissive laws would be best for a country like Ireland.

**IN HIS FINAL** consideration Callahan takes up the moral decision regarding abortion. As previously mentioned, he does not advocate the same freedom on the moral level he would like to see in legal policy. He accepts the fact that many women in making an abortion decision will turn to their own religious tradition, although I would assume from his discussion of the subject that he would not be enthusiastic about turning to the Roman Catholic tradition. For those who have no tradition to turn to, he makes suggestions toward what he calls an ethic of personal responsibility. Such an ethic will not provide any ready-made decisions but will have to take into account most of the things considered in the book. A person

making an abortion decision will have to face two issues: the beginning of human life and the sanctity of human life. In dealing with the first problem Callahan would recommend the approach of the developmental school, although it is his thinking that abortion even in the earliest stages presents a moral problem. Genetic evidence prevents one from considering even a very early conceptus as a mere piece of tissue. A respect for the sanctity of life should bias a woman against abortion even in the very early stages, but her other duties toward life could overcome this bias and constitute sufficient reason for taking the life of even a very late fetus. In these cases abortion itself would be serving the principle of the sanctity of life. Since I have already expressed serious misgivings about this approach, I do not think there is need for further comment here.

Although I have taken issue with the author on many things and would have to disagree with his moral approach to the problem of abortion, I would not be speaking the whole truth if I did not say that I have great respect for the work he has done. It is the most comprehensive treatment of this difficult problem yet published and gives clear evidence of much careful research. There is also a commendable honesty and integrity about the book which promotes confidence. I think the author faced all the pertinent issues and faced them courageously. The book is written well and in a very easy style that makes for enjoyable reading.