

Metaphysical Personhood And The IUD

By W. H. MARSHNER

PART I

This paper attempts a correlation between biological data and philosophical terminology with respect to the earliest stages of human embryonic development. The purpose is to assist people active in the right-to-life (RTL) movement to meet certain philosophical objections, ancient and modern, to their position. It is not claimed that RTL should incorporate this or any other philosophical correlation into its public argumentation (which is necessarily scientific in character); it is merely argued that the present correlation will protect the movement's public argumentation from ambush by other philosophical positions, such as those of Dr. James Diamond or Fr. Joseph Donceel.

The starting point is a body of data conceded by all sides: the IUD, insofar as it is an abortifacient, conditions the uterine wall against the implantation of a zygote and hence, in the event fertilization has occurred, causes the elimination of an organism which is alive, independent of the mother, and genotypically human.

Is it therefore correct to say that the IUD, as abortifacient, is homicidal?

An affirmative answer (to which most pro-life activists are committed) can rest upon either of two things: it can rest upon a prior philosophical understanding of what "human life" means and hence of what "homicide" means, or it can rest upon a purely common sense understanding of these terms, in the light of which the biological data themselves are seen to present a *prima facie* case.

A negative answer, on the other hand, can only be the result of philosophical commitments. I prescind, of course, from all legal-practical questions, such as whether statutory protection of human offspring prior to implantation is here and now attainable, either federally or locally. I am dealing solely with the question whether in fact it is correct to say that an IUD-induced failure to implant is homicide in substantially the same sense that later, surgical abortions are homicide. And I argue that a negative answer to that question cannot rest on biological data alone as *prima facie* indicators but must rest upon a philosophical definition of "human life" and/or of "human personhood," according to which such life and personhood cannot be attributed to a fertilized ovum or zygote.

(Continued on Page 6)

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(Ephesians 1:10)

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(Continued from Page 1)

In other words, if I am correct, the RTL movement cannot adopt the negative answer without incorporating a set of controversial, philosophical definitions into its public argumentation. Label that sentence as General Thesis No. 1.

The truth of this is well illustrated by a recent blast at the NRLC issued by Dr. James Diamond in the August 10th, issue of America ("The Troubled Anti-Abortion Camp," pp. 52-54). Diamond contends that those people within NRLC who are demanding a human life amendment (HLA) which protects from fertilization are doing an unwarranted thing. For the Catholic Church, he says, "does not define the initial stage of abortion, nor has it defined the prevention of implantation as homicidal." Moreover, the Church "does not excommunicate users of the IUD under Canon 2350 whereby it excommunicates those culpable of abortion." Whence Diamond concludes that "the Church's position is based upon an inability to define the 'moment of animation.'" (The reader should understand that "animation" is a technical term in Catholic theology for the point at which the human soul enters the body.) Next Diamond notes that the Vatican II theological commission which worked on *Gaudium et Spes* decided wisely to "guard life from the moment of its conception" but also decided "that it would not touch upon the 'moment of animation' but would leave it to biological science to give evidence of the beginning of life." From this fact, Diamond oddly concludes that the commission "used 'conception' as an open term, the precise biological content of which was open to scientific substantiation."

A MATTER OF DESTRUCTION

To this argument I raise five objections immediately.

1.) It is true that the Church has not defined the initial stage of abortion, but the reason is that "abortion" is a medical term, not a theological one. Its usage in any case has nothing to do with the animation question, since the destruction of a not-yet-animated fetus (assuming there is such a

thing) is also called "abortion" (cf. D-S. 2134).

2.) It is true that the Church has not defined the point of animation. For at least a hundred years, the great majority of theologians have held to immediate animation (ensoulment at fertilization), but there have been eminent exceptions. However — and this is the crucial point — the moral theology of abortion does not depend upon resolution of the animation question. For example, Marcellinus Zalba, S.J., writes in his famous *Theologiae Moralis Compendium* (para. 1599) as follows: "The distinction between animate and inanimate fetus scarcely concerns moral theology, because the things that are said about the animate fetus also hold good for the not-yet-animated one, if there is such a thing." Zalba concludes (loc.cit.) that direct destruction of an inanimate fetus is condemned "as anticipated homicide or as an act injurious to the good of the species, like abuse of human seed, and the more so because such a fetus approaches closer to being man."

3.) The present extension of Canon 2350 proves nothing, because (a.) the discovery that the IUD is abortifacient is too recent to be reflected in Canon law, and (b.) the entire code is in process of revision.

4.) There is absolutely no evidence that the Vatican II theological commission ever considered "conception" an open term in Diamond's sense, as though it might refer to fertilization but also might not. It is true, of course, that "conception" is a prescientific term which lacked a precise biological definition until modern times. But there is no reason whatever to suppose that the Fathers and theologians of Vatican II had in mind any other definition than the commonplace one, fertilization. The semantic machinations of the contraceptive industry, seeking to redefine conception as implantation, are of very recent, and certainly post-Conciliar, origin. In the view of Vatican II, therefore, it is "animation" which remains the "open term," not conception. Indeed, the very fact that conception is not equated with animation means that the duty to "guard life" (by legal steps, if necessary) begins to bind before

that life can be certified as indubitably human (that is, ensouled). In this respect, the Council's position is identical to Zalba's.

5.) In summary, by juxtaposing unrelated matters and reading his own definitions into conciliar texts, Diamond seems to erect a novel semantic structure wherein "abortion" comes to mean destruction of an animated fetus, and "conception" comes to mean the beginning of human (in the sense of "animated") life. In this way, Diamond can merge the doubt about animation into doubt about conception, so that a shift in the biological definition of the latter will entail a shift in the point at which a Catholic must begin to "guard life." By then redefining conception as implantation, Diamond is finally in a position to contend that the IUD's frustration of implantation is not "abortion" and that life prior to implantation is not the sort of life whose protection Vatican II imposed. All of which is false, as we have seen above.

PHILOSOPHICAL MIRE

However, the point which I especially wish to emphasize is this: even if Diamond's argument were correct, its adoption would entangle the NRLC in philosophical and even intracatholic commitments. A secular (or at least ecumenical) organization would be in the position of saying that a life not certainly ensouled should not be legally protected or at least is none of its business. We should then have to explain to Congress why one fetus is ensouled and another is not!

Clearly, this is not a direction in which the NRLC would like to travel. Every pro-abortion medical witness who has appeared at the Bayh Subcommittee hearings has declared, like Diamond, that the point at which fetal life becomes "human" is a philosophical or religious decision. If the NRLC were to agree, the abortion debate would be quickly dismissed as a philosophical hassle beyond the competence of Congress or as a religious hassle beyond its Constitutional authority under the First Amendment. Such are the peculiar rules of American public discourse. It is all very well to lament those rules — to point out that philosophical and even religious questions are just as resolvable as scientific ones and often just as necessary to the public weal. But lamentation will not change the rules, as many movements have learned too late. For these reasons local, state, and national pro-life organizations have sought consistently to keep their arguments biological and common-sensical.

At this point, however, one must face squarely the fact that an argument's political convenience is different from its truth. So, one must ask whether the biology-common sense approach is true on its level and, even if it is, whether that level is capable of standing alone. And to raise those questions, obviously, is to enter the domain of philosophy, whether one wishes to or not. The remainder of this paper, then, will be a venture into philosophy, with the two-edged purpose of analyzing the NRLC's public argumentation and of evaluating critically the major philosophical objections which are brought against it.

SOME FORMAL CHARACTERISTICS OF THE PRO-LIFE ARGUMENTATION

The pro-life arguments share a common form of appealing from biological data to common-sense considerations. In the case of a more developed fetus, the biological data offer a rich collection of indicia for human life: heartbeat, neural activity, unmistakably human appearance, thumb-sucking, etc. For the fertilized ovum or zygote, the indicia are minimal. Nevertheless, one can still say incontrovertibly that the organism in question is alive, is a "whole" independent of the mother, and is genotypically human. Even from that bare minimum an appeal to common sense is possible. One asks: if such an organism is not a human life, what is it? Potential life? No, because if it is actually alive, it is not potentially so. It has actual life with further potential (as, hopefully, do we all). Is it, perhaps, life but not human life? No, because what is genotypically human is not nonhuman. Is it perhaps a form of human life but not a person? No, because ostensibly a "living human being" is what we mean by a "human person." Otherwise, some human beings would not be persons, which is contrary to usage.

Moreover, this living organism exists. If it exists, it can no longer be "prevented"; it can only be "killed." What is done to it by the IUD, therefore, is no longer con-

traception but killing. If the victim of this killing is not human life, what is it? And so forth, as above.

Note that this form of argumentation (which seems to me fully consistent with reality on its level) achieves its effectiveness by insisting on the empirically-grounded term "life." A life which is in any respect human (e.g., genotypically) is properly called "human life" within the terms of empirical science. But "human life" is something valued, something considered worthy of respect in itself apart from any reference to ulterior principles such as the soul. Thus a common ground is established between those who believe in man's spirituality and those who do not. Indeed, the nonbeliever may have fewer difficulties with the pro-life argumentation than the believer. For the believer may be tempted to wonder whether an immortal soul can be present in a microscopically tiny zygote, raising even it to the dignity of a spiritual being. The unbeliever, on the other hand, holds unequivocally that man's life is biological from beginning to end, so that once it has been established that the zygote is alive and genetically complete, its humanity is established *eo ipso*.

This happy ability of the pro-life argument to form a common basis for philosophically and religiously diverse activists amounts to a *prima facie* case that the argument is sufficient on its own level and for its own purpose (which, remember, is practical rather than speculative). Just as moral theology, according to Zalba, deliberates a good which is independent of the animation question, so also the pro-life argument urges the protection of a good which is conceptually independent of the philosophical questions of personhood and ensoulment. This good is precisely human life biologically defined. Call that General Thesis No. 2.

The importance of this thesis would be difficult to exaggerate. To lose sight of it is instantly to founder. Because the vast majority of pro-life workers hold a religious definition of man, they can be misled by a religious argument like Diamond's into casting away their only political asset. For, in fact, the biological definition of human life is the only definition that the American secular state can logically accept. It is this definition which puts the other side in a bind: for, to say that the beginning of human life is a philosophical or religious decision amounts to giving every individual the right to establish a religious test for admitting other individuals to the species. And on our side, for the NRLC to say that a zygote prior to implantation is not "human life" and hence that an IUD does not take "human life," would involve the ruin not of a compromiseable part of its enterprise but of the entire enterprise — precisely because such statements could not be made without abandoning the biological definition of human life in its naked sufficiency. An ulterior definition would be brought into play, necessarily philosophical in character, and that fact alone would collapse the distinction between the empirical and speculative orders. Whereupon, once again, we should have to explain to Congress why one offspring's life is "human" and another's is not.

These considerations suffice to ground the NRLC's public argumentation in an intelligibility that is self-contained and in a finality that is invulnerable to speculative objections. This is not to say that the biological definition of human life is trouble-free, but only to say that it does not stand or fall with the metaphysical issues of personhood and animation, so long as the application of these issues to embryological data is precisely what is in question.

THE PROBLEM OF PERSONHOOD

By far the most common objection to pro-life argumentation is the one which holds that human life is the bearer of special value only insofar as it is "personal" life. As we have already seen, this claim is neither here nor there so long as "person" is given its ordinary-language meaning, in which case the set of "human lives" and the set of "persons" are coterminous. The problem arises when "person" is given a philosophical definition such as the most common one, "self-consciousness." If personhood is constituted by a conscious center in which one is aware of himself and possesses himself as an individual, it follows that an organism incapable of such awareness is not a person. It may spring from persons and some day may become a person but here and now is not a person. We have, then, a philosophical major premise ("Personhood is self-consciousness"), followed by a biological minor premise ("But the zygote is not conscious of itself"), leading to a conclusion

("Therefore, a zygote is not a person").

I concede the minor but deny the major.

My starting point, again, is ordinary usage, according to which the "person" is the subject of both corporeal and consciousness-related predications. Thus, if I say, "I have a headache," and "I understand algebra," the predicates "having a headache" and "understanding algebra" are both ascribed to the same thing. What is this thing? Why do we ascribe our states of consciousness to the very same thing as certain corporeal characteristics? This is the crucial question. For the above-stated major premise depends upon its impropriety.

As P.F. Strawson argues (in his decisive article, "Persons," in *Minnesota Studies in the Philosophy of Science*, II, pp. 330ff.), for Descartes and perhaps for Wittgenstein, the question does not arise because (they say) "it is only a linguistic illusion that both kinds of predicate are properly ascribed to one and the same thing, that there is a common owner, or subject, of both types of predicate." In Descartes' case, "person" refers to one or both of two distinct substances (thinking substance or soul, and extended substance or body) which differ in such a way that "none of the properties or states of either can be a property or state of the other" (Strawson, p.333). In other words, the "I" which understands algebra cannot have a headache, and vice-versa. In which case, absurdly, "there are two uses of 'I' in one of which it denotes something which it does not denote in the other" (p.337).

For Wittgenstein, apparently (cf. *Mind*, 1955, especially pp. 13-14), even the question, "Why do we ascribe our states of consciousness to anything at all?" does not arise, since (he argues) "it is another linguistic illusion that there is any proper subject of these apparent ascriptions, that states of consciousness belong to, or are states of, anything" (Strawson, p.333). Now, this position (which Strawson calls the "no ownership" or "no subject" doctrine) has the considerable charm of destroying our present problem in one blow, since it denies any meaning to the term "person" unless it is equivalent to "body." For Wittgenstein, ascriptions of conscious states make some sense as long as the subject is the body as such, but make no sense "when the particular thing which is supposed to possess the experiences is not thought of as a body, but as something else, say an ego" (p.334). This argument would make a lovely arrow in the NRLC's quiver, were it not open to fatal objection.

Unless the sentence, "I have a pain," is to mean only, "There is pain," I must be able to say that the pain is in my body. But now can any body be "my" body unless there is some further sense to the word "me"? Moreover, even the sentence, "There is pain," ceases to be verifiable unless somebody can say, "I have pain."

NO ARGUMENT

These considerations lead Strawson to a very important conclusion: "States, or experiences, one might say, owe their identity as particulars to the identity of the person whose states or experiences they are" (p.336). In other words, it is meaningless to postulate two headaches existing at the same time unless there are two persons, to each of whom one headache belongs. Similarly, "I" cannot have had a headache two years ago, unless the "I" who now remembers and the "I" who then suffered are the same person.

This last point makes nonsense of the claim that a fetus is not a person, for in that case, no person can have suffered a fetal injury! If my mother had rubella, so that I contracted heart disease, I could not say that "I" contracted heart disease but only that some organism contracted it whose relation to "me" is utterly problematical.

Similarly with sleep. If "personhood" is incompatible with the absence of self-consciousness, then "I," asleep, am not a person and hence am not "I." In which case, if I am murdered in my sleep, I am not personally murdered!

These considerations suffice to show that personhood is not identically self-consciousness. Hence the major of the objection collapses.

One might add that Strawson's position coincides well with Aquinas and the scholastic tradition, which defined human personhood as the being (act of existence) of a human individual. This being in some states of human life (e.g. the awakened adult) is both conscious and corporeal; in other states of human life (the sleeping adult, the zygote), is not conscious.

Next week, I shall consider the problem of animation, especially as that problem is posed by the foremost American exponent of "mediate animation," the Jesuit philosopher, Fr. Joseph Donceel.

(English Translation)

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PROBATE COURT
File No. 137788

In the Estate of
LUREDA M. HARPER, Decedent.

IT IS ORDERED that the petition filed herein to admit to probate the last will of decedent and/or for summary distribution be heard on Tuesday, October 22, 1974, at 10 o'clock A.M., by this court in the Court House in Saint Paul, Minnesota. Any representative to be appointed subject to all the duties and powers provided by statute.

IT IS ORDERED that creditors of decedent file their claims in this court within 90 days from the date hereof and that said claims be heard on the first Monday in December, 1974, at 10 o'clock A.M., by this court in the Court House in Saint Paul, Minnesota.

(Seal)

WITNESS the HON. ANDREW A. GLENN, Probate Judge, this 10th day of September, 1974.

THOMAS MALONE, Clerk.

PATRICK H. DOHERTY, Attorney
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