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Abortion - - Part IX

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VII

The Code of Canon Law (1918)¹

The last systematized collection of law had been set forth in the Decretals of Pope Gregory IX in the thirteenth century. In the meantime, much law had been promulgated by Papal Decrees, Papal Rescripts to individual Bishops, by decrees of Particular and Universal Councils and by Local Synods, by interpretations, rendered by the various Congregations, comprising the Roman Curia and by instructions issued by these same legislative agencies. Much research in many tomes was necessary in order to discover the actual law on any given matter. Thus, Pope St. Pius X, as part of his reform for the Church, ordered the collection or codification of the law of the Church. This task required many years of concentrated effort with completion being realized in 1917. The new law was promulgated by Pope Benedict XV on Pentecost Sunday, May 27, 1917 and was to become effective for the universal Church on Pentecost Sunday, May 19, 1918.

Those who were appointed to the commission for the codification and renewal of the law studied very carefully the historical background and development of each section of the law and then formulated the new

law into a series of Canons or articles, either repeating the former law unchanged or adapting the previous law to new and changing circumstances in a manner that appeared necessary or useful. Thus, the new law always contained the seeds of the previous law and its correct interpretation very frequently was facilitated by delving into the past.

The Code of Canon Law contains two statutes or directives with reference to abortion. In connection with the fitness of candidates for the reception of Holy Orders, the law states: "men who have committed voluntary homicide or who have successfully procured the abortion of a human fetus and all their accomplices are irregular by reason of a crime" (Canon 985, n. 4). In a section of the law, devoted to crimes or delicts against life, liberty, property, good reputation and Christian morality, canon 2350, §1, sets forth very clearly and forcefully: "those who successfully procure an abortion, the mother not excepted, automatically incur an excommunication reserved to the Bishops, and if they are clerics, they are in addition to be deposed."

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¹The historical analysis, prior to 1918, was presented in the previous installment.

For our present purposes, we shall not differentiate between the penalty of irregularity or the penalty of automatic excommunication because they are incurred for the same crime of abortion.

A crime, in ecclesiastical law, is usually defined as an external, morally imputable violation of a law to which a penalty or sanction is attached (Canon 2195, §1). As a basis for a crime or delict, there is always a serious violation and there is always presumed to be a mortal sin, both internally or subjectively and externally or objectively. Thus, whatever would diminish the gravity of the sinful act, would also remove the element of crime or delict. Since inculpable ignorance, force, compulsion, intimidation, fear etc. would render the objectively serious act to be less sinful, these circumstances could also work towards the removal of the stigma of a crime.

With specific reference to abortion, it is possible to have neither a mortal sin nor a crime because of the extenuating circumstances just mentioned; it is possible to have a serious sin of abortion without having the crime of abortion because e.g., one of the requirements is missing — the attempt at abortion did not result in a successfully completed abortion; it is possible to have both the mortal sin and the delict of abortion because there is adequate knowledge of the seriousness of the offense and sufficient deliberation and freedom.

In the second alternative, the attempt at abortion is seriously sinful because the voluntary and deliberate intent to commit a crime was present but the full requirements of the law for the crime of abortion were not

realized, since the law insists on a successful attempt and a completed abortion.

In short, every mortal sin of abortion does not necessarily involve the crime of abortion but whenever the delict of abortion is verified, mortal sin is always presumed.

A brief commentary on the statutes concerning abortion as a crime in the Canon Law might serve a useful purpose and provide greater understanding and more accurate knowledge.

A. The Procuring of Abortion

The "procuring" of an abortion has a very specific and restricted meaning — the direct and purposeful intent to kill the fetus and the use of efficacious means by which this objective can be accomplished. At the very beginning a distinction must be made between what is termed a direct abortion and an indirect abortion and this is largely controlled by the intention. If an individual wants, desires and intends the killing of the fetus as an end in itself or the killing as a means to a further end, the abortion is called *direct* and this is what is entailed in the sin and crime of abortion. On the other hand, if the death of the fetus is not sought, desired or intended but regretfully results, even though known in advance, from an otherwise licit procedure, the abortion is considered to be *indirect*. This would be the situation when a doctor finds a pregnant patient with a malignancy of the uterus. No one has the desire or intent to kill the fetus. However, if the malignant uterus is to be removed, which, under the circumstances, is a perfectly legitimate action and the usual method of treatment, it is known beforehand that the non-viable

fetus will die. In this situation, the death is not intended but regretfully allowed and permitted.

To procure an abortion is to intend directly the death of the fetus and to assault the fetus directly. The attack is made directly on the unborn child and its death results from this direct assault and not from an attack on some organ, which then indirectly brings about the death of the fetus. Such a direct intent to cause the death of the unborn can be a serious or mortal sin in itself even though, in carrying out the intent, the abortion does not result and, in this latter eventuality, the sin, but not the crime, of abortion will be present.

There must be a relationship between the intent to effect an abortion and the means chosen to accomplish this objective. In order to verify the crime of abortion, the means must be efficacious, i. e., they must be capable in general of bringing about the death of the fetus, although they may not be effective in every case or with every woman.

The efficacious means may be physical or moral (psychic trauma); they may be single or multiple; they may be simple or complex. What is important and necessary is that the means can accomplish the purpose, which is the direct and intended killing of the unborn child. Since the law must be interpreted strictly where a possible crime is involved, it must be said that the crime of abortion would not be verified if the fetal death resulted accidentally or not as a result of the means that were employed, even though there was an intent to bring about an abortion.

B. Definition of Abortion

Before proceeding further, it will be helpful to define the term *abortion* as

it is used with reference to the sin and the crime since it can have one meaning for the doctor, a second meaning for the theologian or canonist and a third meaning for the layman. Also, abortion is to be differentiated from a miscarriage and a premature delivery.

It will be recalled that Pope Sixtus V defined *abortion* in 1588 as "the ejection of an immature fetus and that has remained as the classic, the official and the accepted definition. Under this definition there are three concepts to be considered — the concept of ejection, the concept of what constitutes a true fetus and the concept of immaturity.

1 Concept of Ejection

Abortion is a process which consists in at least three distinct phases or stages — the detachment or separation of the fetus from its nidating site in the uterus; the passage through the uterine cervix and into the vaginal canal and finally, the expulsion into the outside world.

While an abortion is not considered to have been accomplished until the dead fetus has been expelled, an abortion process is definitely begun when means are employed to detach or separate the fetus from the uterine wall and the process continues until the expulsion, which may be spontaneous or may be assisted. Thus, an extraction from the womb directly would be considered an ejection just as much as the detachment accomplished per vaginam. Also, whatever will bring about separation or detachment of the fetus — be it by drug, instrument or digital manipulation — is included in the notion of ejection or in the notion of the abortion process. It matters not whether assistance is provided for the continuing process or for the final

expulsion because it is known that, after detachment has been accomplished, the process can continue spontaneously.

2 Concept of Fetus

While medical specialists might differentiate between an ovum, an embryo and a fetus, the canonist in reference to abortion, understands by the term *fetus* the product of conception in any stage of uterine growth or development from the moment of conception up to the time of delivery.

It goes without saying that a pregnancy must be present before a fetus can be present. After sufficient development, a fetus, when expelled, is easily observable and recognizable. In the early stages, a difficulty in recognition might be present but what is expelled is presumed to be a fetus when a pregnancy has been verified and there is no indication to the contrary. It is the prerogative solely of doctors to indicate that a pregnancy does exist and then only after the usual presumptive, probable and positive signs have been detected. The crime of abortion is possible as long as moral certitude about a pregnancy exists. This type of certitude is had when all prudent and positive doubt of the truth of the contrary has been excluded. Moral certitude of a pregnancy is required and suffices. If the presence of an immature fetus is morally certain, the crime of abortion can be present.

It follows from this that, if a pregnancy is *thought* to be present and an abortion is directly intended, the crime is not verified if a mere tumor — what was *thought* to be a fetus — is expelled or removed.

Since the avowed purpose of a deliberately induced abortion is to

effect the death of the fetus, it might be of interest to inquire when death should occur in order to verify the commission of the crime of abortion. Must the fetus be alive at the time the abortion procedure is commenced? Must the fetus die during the process of expulsion? Can the fetus be still alive at the time of final expulsion?

It is always assumed and presumed that the fetus will be alive when the abortion procedure is initiated in order to determine that the crime of abortion has been committed. If it has been ascertained by trained medical specialists that fetal death has already intervened and this judgment has been reached in accordance with accepted medical criteria, then the removal of the fetus, not only does not constitute the sin or the crime of abortion, but is necessary and useful to prevent further disease to the mother. If the fetus is *thought* to be alive before the expulsion process is begun but post-expulsion proves that it had been dead previous to the attempt to detach it from the uterine wall, the *sin* of abortion would be involved because of the intent to kill but the *crime* of abortion would not be verified because the fetus, *in fact*, was not alive. Usually, after conception and pregnancy have been established, the presumption that the fetus is alive maintains until its death has been proved by positive and probable indications. If positive and probable doubt remains as to the survival of the fetus when the abortion process is initiated, the crime of abortion cannot be charged or its penalties incurred.

Must the living fetus be animated or non-animated, in accordance with the present existing law, in order to have the *crime* of abortion? It will be recalled that the Septuagint translation of the text of Exodus 21/22-23

referred to the crime of abortion only if the fetus was animated and formed and that this same conclusion was held by St. Augustine and Ivo of Chartres and was incorporated into the Decree of Gratian in the twelfth century and was the universal law from the twelfth century until 1869 with reference to the censure of excommunication and until 1918 with reference to irregularity for the reception or exercise of Holy Orders. The present law, with reference to the censure of excommunication or the irregularity for Holy Orders, does not recognize any distinction or differentiation between animation and non-animation of the fetus. Any directly-intended death of a conceptus or fetus at any moment after conception or pregnancy begins will involve the crime of abortion, if all the requirements for the crime have been verified.

Because of this change, those who now propose a liberalization of the existing civil laws concerning abortion and those who propose a complete legalization of abortion for any reason or for no reason at all — excepting the mere desire and will of the expectant mother — claim that the Catholic Church, which is their single most adamant opponent, has not held a consistent and universally-true position on abortion down through the centuries; that the unchangeable Catholic Church has, in fact, changed; that the Catholic Church has recognized the right to perform an abortion before the fetus has become animated; that the Catholic Church has allowed abortion before the fetus became formed.

Nothing could be further from the truth. The Catholic Church has never allowed or tolerated abortion; the Catholic Church has never changed its

basic principles concerning this moral evil, which was considered wrong and sinful in the Pre-Christian laws of the Sumerian Code, the Hammurabi Code, the Assyrian Code, the Hittite Code, etc. — and has been consistently condemned in the teachings of Christ and the Apostolic Fathers, in the legislation of all Councils and Synods, in the formal Collections of Law and in the recent pronouncements of the Supreme Pontiffs. In all of the two thousand years of Christian tradition, the Catholic Church has never recognized abortion as virtuous, has never advised or recommended that abortions be performed, has never allowed or tolerated abortions. The Catholic Church has always and consistently and without exception denounced abortion as a moral evil, as a sin and, in certain circumstances, even as a crime.

The problem is that our opponents, in studying the history of abortion, do not distinguish between the *sin* of abortion and the *crime* of abortion. As everyone knows not every sin is a crime and not every sin, which can be a crime, is a crime under all circumstances. As previously mentioned, only the more serious sins are also crimes since the definition of a crime requires it to be a morally imputable violation of a serious law to which a *specific penalty* has been attached in the law.

With respect to each and every crime, the law sets down very specific requirements and unless each and every such requirement has been verified, the crime, as crime, is not present but the serious sin, which is the basis of every crime, may be present.

In the general law, which was in effect from the twelfth century up to

the nineteenth and twentieth centuries, with the exception of the years 1588 to 1591, and which concerned abortion and its penalties, one of the requirements, before the *crime* of abortion could be verified, was that the fetus be animated and the usual criterion for judging animation was forty days for the male fetus and eighty days for the female fetus. Now, what was the position of the Catholic Church concerning an abortion which might occur during the period of non-animation? Did the Catholic Church recommend or advise such abortions? Did the Catholic Church allow or tolerate such abortions? Other things being equal, the Catholic Church condemned such abortions as *morally evil* and as *sinful* — even though they may not have been *crimes*. Recall that the law recognized such killings as “*quasi-homicides*” and inflicted penances, penalties and punishments for these deaths, even though they were less severe as compared with the penalties incurred for killing an animated fetus.

Outstanding moralists tell us: ²

Gury: “Abortion, in case the fetus is animated, is homicide in the strict sense: if the fetus is inanimate, it is anticipated homicide. For even before the infusion of the soul the fetus is destined to form a man.”

(Gury-Ballerini-Palmieri, 1907, Vol. 1, n 407).

Busenbaum: “Whoever maliciously procures an abortion in herself or in another commits a grave sin. The reason is that if the fetus is animated the act is a real homicide; if the fetus is not yet animated, the act tends to the killing of a man, and is against the nature of generation.”

(Quoted by St. Alphonsus Liguori, Lib. 3, n. 394, Gaude edition)

Lessius: “(Direct killing of a fetus) is not allowed after the infusion of the soul, because one may not directly kill one human being to save another; nor is it allowed even before the infusion of the soul, because to procure an abortion for the sake of health is wrong, just as it is wrong to procure a pollution for the same end. Both are contrary to the nature of generation.”

(*De iustitia et Iure*, Lib. 2, Cap. 9, n. 61)

St. Alphonsus: “It is certain that to expel a fetus even though it be inanimate, is *per se* a mortal sin; and the person guilty of it is responsible for homicide . . . because, although he does not destroy a human life, yet his act has a close causal connection with preventing a human life . . . It is not lawful to take medicine for the *direct* purpose of expelling the fetus And it will not do to say that an inanimate fetus is part of the mother; for the answer is that the fetus does not form part of the body of the mother, but is a distinct human individual in an early stage of development”.

(Gaude edition, Lib. 3, n. 394)

Molina: “Abortion is sometimes committed after the fetus is animated with a rational soul, in which case alone there can be question of homicide, since before that time the fetus is not a man, and only the killing of a human being is homicide. Sometimes, too, it is committed while the fetus is not yet animated with a rational soul. And although in such an abortion there is no homicide, it is nevertheless a grave sin, and in its way is against the fifth commandment, if voluntary, inasmuch as it prevents the generation of a human life.”

(*De Iustitia et Iure*, T. 4, disp. 27, n. 1)

Zaccharias: “In no case is it allowed directly to procure such an abortion, even though it be known for certain that the fetus is not yet animated. The reason is that pollution directly procured is never licit; therefore much less will abortion be allowed.”

(La Croix, Lib. 3, dub. 4, n. 823)

De Lugo: “(Direct abortion after the infusion of the soul is wrong) because after

² These quotations are found in “*Ethics of Ectopic Operations*” by Bouscaren, Bruce Publishing, Milwaukee, second edition, revised — 1944

animation this would be directly to kill a child, which is never allowed. Before animation it is not allowed to procure an abortion directly, just as it is not allowed to procure the effusion of seed, even to save one's life. For it must be observed that as nature reserves to herself the administration of the semen, so does it also of the fetus; and denies to the parents the right to dispose of the one or the other except to the end of generation which is intended by nature herself; for any power granted to them beyond this might easily involve consequences contrary to the end of generation."

(*De Iustitia et Iure*, Disp. X. nn. 130-131)

Sporer: "To procure the abortion of a fetus already conceived, even though it be not yet animated, is contrary to the end of generation, an end which in this instance is not only *per se* intended by nature, but is already actually in process of attainment and near fruition. Therefore, *a fortiori* it will never be allowed to procure an abortion, even for the sake of saving the life of the pregnant woman."

(*Theologia Sacra*. Pars IV, Cap. IV sec. 1, n. 704)

Vermeersch: "Even if the fetus is not yet animated with a rational soul, it may not be directly expelled without incurring guilt similar in kind, though graver in degree, than that which is incurred by pollution or an onanistic use of marriage. For in both cases, even though there were question of securing physical health, a faculty which is given to use immediately for the good of the species is directed to the good of the individual, contrary to the order indicated in human nature. It is therefore a sin against nature."

(*Theologia Moralis*, Vol. 2, n. 623)

There exists a much older tradition in the Catholic Church even than the above-mentioned theologians represent — a tradition that considered abortion, even of an inanimate fetus, to be wrong and sinful and, therefore, not recognized as licit or allowed or tolerated:

St. Basil: "Let her who purposely desires a fetus suffer the penalty of murder. For into the subtle question whether the fetus was animated or not, we do not enter."

(*In Epistola Canonica ad Amphiloicum*, n. 2)

St. Jerome: "Whilst nature receives the seed, nourishes it, gives it a body and differentiates that body into various members, whilst within the narrow enclosure of the womb the hand of God is ever at work — for it is the same Creator who fashions the body and the soul — too insolent I say is he who thus impudently disregards the goodness of the Potter that is of God, who fashioned the human vessel, created it, and willed its existence."

(Quoted by Pope Sixtus V. in the Apostolic Constitution *Effraematum* of October 29, 1588, *Fontes Iuris Canonici*, Vol. 1, n. 165).

St. Augustine: "Sometimes this sinful cruelty, or cruel lust, goes as far as to seek out poisons that produce sterility; and if that fails, (the guilty one) in some way extinguishes and destroys the fetus conceived in the womb, desiring that her child shall die rather than live, or if it already lives in the womb, that it be killed before it is born."

(*De Nuptiis et Concupiscentiis*. Lib. 1, Cap. 15).

Bouscaren summarizes the matter thusly: "It is always a grave sin directly to expel the fruit of conception before viability. And whether the fetus be animate or inanimate, the reasons why the act is wrong are not fundamentally so very different, although it is certain that only an animated fetus is a human person."

The answer to the question as to when the fetus becomes a true human person, i.e., animated — whether at the very moment of conception or at some later period — has always been and still remains a moot and uncertain one. It will be recalled that the universal law

of the Church, in reference to abortion, recognized the distinction between animated and non-animated fetus from the twelfth to the nineteenth and twentieth centuries, with the exception of the years 1588 to 1591, and considered that animation for the male fetus occurred forty days after conception and that animation for the female fetus occurred eighty days after conception. This was the popular theory of that day — whether philosophical or biological is of little import — and was embraced by the Church, which depends on science for the facts and the conclusions to which it applies its unchanging principles.

If the findings of science change from one age to another and if science makes great strides in developing the fund of scientific knowledge, as it has in the past twenty-five years, the Church will welcome and accept all the new conclusions and the most recent data. While the basic moral principles, promulgated by the Catholic Church will remain stable, unchangeable and unalterable, the final judgments on matters involving morality can change and may change, as the facts, findings, data and conclusions of science, to which these basic principles of morality are applied, undergo revision, growth and development and an evolutionary change.

Thus, the principles of the Church cannot be said to have changed simply because the Church in the twentieth century adopts new concepts of embryology which were not known in previous centuries. Where previously science believed that animation did not occur immediately at conception, the most recent theories of the advancing and developing science of embryology seem to indicate that the

fetus becomes a human person at the moment pregnancy begins or very shortly thereafter. The Catholic Church is never unalterably wedded to any specific scientific finding, theory or conclusion; it awaits new data and development and will apply its unchanging moral principles to them.

Since it cannot be determined exactly and precisely when the fetus becomes a human person and since the probability certainly favors the position that the fetus becomes a human person immediately at conception or at the time of blastocyst (seven or eight days after conception) abortion cannot be allowed because of the danger that a human person will be killed and murdered. But even if the fetus does not become a person for some brief period after the pregnancy is commenced, abortion cannot be allowed because such direct intervention, by which new life is extinguished, violates and frustrates the creative power of God, does violence to the natural order of generation and forcibly deprives the right to be born and the right to live. In either case, abortion is a moral evil, a grave sin and, under no circumstance, can it be allowed, tolerated, recognized or advised.

In the past, abortion always was considered to be closely related to homicide and murder in that the life of an actual person or at least the life of a potential person was extinguished. While this still remains true, the present law recognizes that abortion is a crime separate and distinct from murder and that the successful extinction of the life of a fetus at any moment after conception, whether the fetus has become a human person or not, constitutes the crime of abortion.

The advanced findings of modern embryology certainly indicates that

C. Abortion must actually occur

The legislation of Pope Sixtus V clearly contained the notion that the abortion must result before the crime of abortion can be verified. Both the Constitution of Pope Pius IX and the Code of Canon Law have identical phraseology — also requiring the completed and successful abortion in order for the crime of abortion to be present and for the stated penalties to be incurred. Thus, it is necessary that the abortion actually result from the utilization of specific efficacious means and that there be certitude.

Obviously, then, an attempted abortion or a frustrated abortion does not suffice for the verification of the crime although these may be seriously sinful because of the intent to abort and the attempt at abortion. The attempt at abortion might not succeed because the individual had a change of heart and did not prosecute to completion after the attempt had been initiated. The abortion attempt might be frustrated in its result because the means employed were not in fact efficacious means although they may have been erroneously thought to be. In any event, or for whatever reason an attempt might be unsuccessful, the crime of abortion is not had when the actual abortion of the immature fetus does not result.

If a pregnancy has been confirmed with certainty and definite attempts at abortion have been made and there is no evidence to warrant a finding of accidental, spontaneous abortion and the pregnancy is found to have been terminated, it can be safely concluded that an abortion has resulted and has caused the termination of the pregnancy. The actual passing of the fetus need not be witnessed because, if this were required, it could be deliberately avoided by the patient so

as to escape the penalties for the crime.

Not only must the abortion actually be effected but it must result from the very means employed to attain this objective. If a trained and experienced doctor uses drugs of known abortifacient quality, deliberately dilates the cervix, cures the uterus or punctures the membrane and the immature fetus is ejected, there can be no question that the means used were efficacious and caused the abortion. On the other hand, if an abortion is intended and completely inefficient means are utilized and an abortion results, it must be concluded that some other cause is responsible and while there may be moral guilt because of the intent and the attempt, the crime of abortion cannot be said to be present. If drugs or techniques are used, which have abortifacient properties but which are not necessarily infallible, the resulting abortion must be attributed to them in the absence of any other known cause or reason. If drugs or methods are employed, whose abortifacient efficacy is doubtful and unreliable, it may not be possible, with any degree of probability or certainty, to evaluate the cause of the subsequent abortion and, therefore, the crime cannot be said to be present and penalties cannot be incurred from a doubtful or non-existent crime.

If truly efficacious means are used to effect an abortion but, before these means could be operative, another factor intervenes which accounts for the eventual abortion, a serious sin may be present but the crime of abortion cannot be verified.

The certitude that must be had and that suffices in the matter of determining that the actual abortion resulted from the means employed for

that purpose is a *moral* certitude, which is customary in human affairs and which precludes the *probability* that the opposite may be true.

D. The persons who incur the penalties

1) *The Censure of Excommunication*

In the period intervening between the Constitution of Pope Sixtus V in 1588 and the effective date of the Code of Canon Law in 1918, there was discussion and difference of opinion as to whether or not the mother herself incurred penalties for submitting to an abortion. Those who favored the position that the mother was subject to the penalties argued that, while the mother was not specifically mentioned, the general tenor and wide scope of the Constitutions, the purpose of the law, which was the prevention of abortion, the failure of the law to exempt the mother, the recognition of the fact that the mother was a principal agent — all indicated that the mother was considered to be liable for the crime and the ensuing penalties.

Those, who championed the position that the mother was excluded from or exempt from the penalties, pointed out that the mother was not named or mentioned as a subject of penalties for abortion but mentioned as subject of penalties for the crimes of homicide and procuring sterility and penal laws are to be interpreted strictly, that the categories mentioned were all cooperators in the crime of abortion and a mother could not be conceived of as cooperating with herself, that the entire matter is in doubt and a mother cannot be held liable for the penalties until an authentic decree clearly declares that she is subject to the penalties.

Despite the controversy and discussion, the majority opinion of the

theologians held that a mother, if guilty of the crime of abortion, is liable to the penalties set forth in the law.

The Code of Canon Law clearly, distinctly and authoritatively settled the dispute by legislating that the mother is not exempt from the penalty of excommunication if she, with sufficient knowledge and adequate voluntariness, can be judged to have been guilty of the crime of abortion.

While Canon 2350 § 1, which sets forth the penalty of excommunication for the crime of abortion, makes no mention of punishment for accomplices and cooperators, the general canons on crime, canons 2231 and 2209 1, 3, clearly indicate that co-agents and *necessary* cooperators automatically incur the excommunication, other things being equal. However, those who facilitate the abortion (Canon 2209 § 4) and mere *negative* cooperators (Canon 2209 § 6) — who do not prevent the abortion — are not liable for the penalty of excommunication.

A co-agent is defined as one who intends, along with the mother, to procure an abortion, places executive acts which bring about the abortion and physically participates in the abortifacient procedures. Obviously, those who prepare or sell the drugs, sterilize the instruments, give counsel concerning the abortion etc. cannot be considered as co-agents but as cooperators who facilitate the process or make the preparations for the abortion and who, in a given set of circumstances, could be considered as necessary cooperators.

There is no question in the law that, to incur the penalty of excommunication for cooperation, the

"The infliction of death whether upon the mother or upon the child is against the commandment of God and the voice of nature: 'Thou shall not kill'. The lives of both are equally sacred and no one, even the public authority, can ever have the right to destroy them.

"It is absurd to invoke against innocent human beings the right of the State to inflict capital punishment, for this is valid only against the guilty. Nor is there any question here of the right of self-defense, even to the shedding of blood, against an unjust assailant, for none could describe as an unjust assailant an innocent child. Nor, finally, does there exist any so-called right of extreme necessity which could extend to the direct killing of an innocent human being. Honorable and skillful doctors are therefore worthy of all praise when they make every effort to protect and preserve the life of both mother and child. On the contrary, those who encompass the death of the one or the other, whether on the plea of medical treatment or from a motive of misguided compassion, act in a manner unworthy of the high repute of the medical profession.

"This teaching is in full accord with severe strictures of the Bishop of Hippo upon those depraved married persons who, having attempted unsuccessfully to forestall the conception of offspring, criminally and ruthlessly put it to death. 'Their licentious cruelty', he writes, 'or their cruel licentiousness, sometimes goes to such lengths as to procure sterilizing poisons, and if these are unavailing, in some way to stifle within the womb and eject the fetus that has been conceived. They want their offspring to die before it comes to life, or, if it is already living in the womb, to perish before it is born. Surely, if they are both of such a mind, they do not deserve the name of husband and wife; and if they have been of such a mind from the beginning, it was not for wedlock but for fornication that they became united. If they are not both of such a mind, then I will venture to say that either the woman is the mere mistress of the husband or the man is the paramour of the wife'

"It is permissible and even obligatory to take into account the evidence alleged in regard to the social and eugenic 'indication' so long as legitimate and proper means are used and due limits observed; but to attempt to meet the needs upon which it is based by the killing of the innocent is an

irrational proceeding and contrary to the divine law; a law promulgated also by the Apostle when he says that we must not do evil that good may come.

"Governments and legislatures must remember that it is the duty of the public authority to protect the life of the innocent by appropriate laws and penalties, especially when those whose life is attacked and endangered are unable to protect themselves, as is particularly the case with infants in their mother's womb. If the State authorities not only fail to protect these little ones, but by their laws and decrees suffer them to be killed, and even deliver them into the hands of doctors and others for that purpose, let them remember that God is the Judge and Avenger of the innocent blood that cries from earth to heaven". (Encyclical *Casti Connubii*, December 31, 1930, pp. 251-254)

b) Pope Pius XII

1) The Holy Office was asked: "Whether it is licit, upon order from the public authority, to kill directly persons who, although they have committed no crime which merits death, are nevertheless, owing to psychic or physical defects, unable to be of any use to the nation, and are judged rather to be a burden to it and to be an obstacle to its vigor and strength?"

Reply: "In the NEGATIVE, since this is against the natural law and the divine positive law."

(This reply was approved and confirmed by Pope Pius XII on December 2, 1940 and ordered to be published — footnote on p. 407; Bouscaren, *Canon Law Digest*, Vol. II, pp. 96-97).

2) "The fifth commandment — 'Thou shalt not kill' (Matthew 19/6), this synthesis of the duties regarding the life and the integrity of the human body, is rich in teaching both for the professor in his university chair and for the practicing doctor. As long as a man is not guilty, his life is sacrosanct, and every act which tends directly to destroy such a life is therefore

unlawful, whether such destruction is intended as an end in itself or only as a means to an end, whether it is a matter of a life in embryonic form or already fully developed and at its peak. God alone is Master of the life of man not guilty of a crime punishable by death! The doctor has no right to dispose of the life either of the mother or of the child: and no one in the world, no private person, no human power, may authorize him to proceed to such a complete destruction. His office is not to destroy life but to save it. These are fundamental and unchangeable principles which the Church, in the last ten years or so, has found necessary to repeat and clarify in the face of such contrary opinions and methods.

"The Catholic doctor will find a safe guide in this respect both for his theoretical judgment and practical conduct in the resolutions and decrees of the teaching authority of the Church."

(Allocution to the Biological-Medical Union of St. Luke, November 12, 1944 - pp. 357-358)

3) "You (midwives), more than others, can appreciate and realize what human life is in itself, and what it is worth in the eyes of sane reason, before your moral conscience, before civil society, before the Church and, above all, what it is worth in the eyes of God. God created all earthly things for man; and man himself, as regards his being and his essence, has been created for God and not for any other creature, even if, as regards his actions, he has obligations towards the community as well. The child is 'man', even if he be not yet born, in the same degree and by the same title as his mother.

"Besides, every human being, even the child in the womb, has the right to life *directly* from God and not from his parents, not from any society or human authority. Therefore, there is no man, no human authority, no science, no 'indication' at all, whether it be medical, eugenic, social, economic, or moral - that may offer or give a valid judicial title for a *direct* deliberate disposal of an innocent human life, that is, a disposal which aims at its destruction, whether as an end in itself or as a means to achieve the end, perhaps in no way at all illicit. Thus, for example, to save the life of the mother is a very noble act; but the direct killing of the child as a means to such an end is illicit. The direct destruction of so-called 'useless lives', already born or still

in the womb, practiced extensively a few years ago, can in no wise be justified. Therefore, when this practice was initiated, the Church expressly declared that it was against the natural law and the divine positive law, and consequently that it was unlawful to kill, even by order of the public authorities, those who were innocent, even if, on account of some physical or mental defect, they were useless to the State and a burden upon it. The life of an innocent person is sacrosanct, and any direct attempt or aggression against it is a violation of one of the fundamental laws without which secure human society is impossible. We have no need to teach you in detail the meaning and the gravity, in your profession, of this fundamental law. But never forget this: there rises above every human law and above every 'indication' the faultless law of God."

(Allocution to midwives, October 29, 1951, pp. 406-408)

4) "At the center of this doctrine, matrimony appeared as an institution at the service of life. In strict relation with this principle, in accordance with the constant teaching of the Church, we expounded a thesis which is one of the essential foundations not only of conjugal morality, but also of social morality in general, that is, that the direct attack on innocent human life, as a means to an end - in the present case to the end of saving another life - is illicit.

"Innocent human life, in whatever condition it may be, from the first moment of its existence is to be preserved from any direct voluntary attack. This is a fundamental right of the human person, of general value in the Christian concept of life; valid both for the still hidden life in the womb and for the new born babe; and opposed to direct abortion as it is to the direct killing of the child, before, during, and after birth. No matter what the distinction between those different moments in the development of the life, already born or still to be born, for profane and ecclesiastical law and for certain civil and penal consequences - according to the moral law, in all these cases it is a matter of a grave and illicit attempt on inviolable human life.

"This principle holds good both for the mother as well as the child. Never and in no case has the Church taught that the life of the child must be preferred to that of the mother. It is erroneous to place the question

with this alternative: either the life of the child or that of the mother. No; neither the life of the mother nor of the child may be submitted to an act of direct suppression. Both for the one and the other the demand cannot be but this: to use every means to save the life of both the mother and the child.

"To seek always new ways to assure the life of both is one of the most beautiful and noble aspirations of medicine. If, notwithstanding the progress of science, there still remain, and will remain in future, cases in which the mother's death is certain, when she desires that the life in her womb continue its life's course, and does not desire to destroy it, thus violating God's commandment: do not kill (Exodus 20/13) — there remains for man, who to the last moment shall have attempted to help and to save, only to bow down with respect to the laws of nature and to the dispositions of divine Providence.

"But — it is objected — the life of the mother, especially the mother of a large family, is far superior in value to that of the still unborn child. The application of the theory of the scale of values to the case which here concerns us has already been favorably received in juridical discussions. The reply to this tormenting objection is not difficult. The inviolability of the life of an innocent person does not depend on its greater or lesser value. More than ten years ago, the Church formally condemned the killing of a life deemed 'useless'; and those who know the sad antecedents that provoked such a condemnation, those who know how to ponder the disastrous consequences that would follow were the sanctity of an innocent life to be measured according to its value, can easily appreciate the motives which led to such a disposition. On the other hand, who can judge with certainty which of the two lives is in reality the more precious? Who can know what path that child will follow and to what heights of perfection and of work it will reach? Here, two greatnesses are compared, about one of which nothing is known.

"It has been our intention here to use always the expressions 'direct attempt on the life of the innocent person', 'direct killing'. The reason is that if, for example, the safety of the life of the future mother, independently of her state of pregnancy, might call for an urgent surgical operation, or any other therapeutic application, which would have as an accessory consequence, in

no way desired nor intended, but inevitable, the death of the fetus, such an act could not be called a *direct* attempt on the innocent life. In these conditions the operation can be lawful, as can other similar medical interventions, provided that it be a matter of great importance, such as life, and that it is not possible to postpone it till the birth of the child, or to have recourse to any other efficacious remedy."

(Allocution to the Association of the large families, November 26, 1953 - pp. 437-440).

5) "There remains to be mentioned other mistaken attempts to avoid hereditary defects, which the text quoted above calls 'preventive means and abortive practices'. These do not even come under consideration in eugenics, because by their very nature they are to be rejected."

(Allocution to the First Symposium of Genetic Medicine — September 7, 1953 - p. 452).

6) "It is criminal, therefore — a no matter justified by a reason of the State or eugenic or economic argument — to make any attack on the life of the child from the womb to the cradle, and here must be included not only the direct killing of the innocent, but also the fraud against the plans of nature which, as such, express the will of the Creator. 'If a profound sense of common welfare is the soul of the healthy and strong state, the dignity and sanctity of conjugal and family life is its backbone. When this suffers great damage, the healthy condition of the State is over and the people sooner or later fall into ruin' (radio message of Pope Pius XII to the Swiss people on September 20, 1946). For this reason, speaking to the midwives, he (Pope Pius XII) inculcated 'the apostolate of esteem and love for new life' and defined as 'opposed to God's plan and the sentiments of Scripture, and to sane reason and the sentiment of nature' the modern mentality hostile to the ideal of a fruitful family."

(Letter of Monsignor Montini (Pope Paul VI) to Cardinal Siri on the occasion of the 26th Social Week of Italian Catholics, September 27, 1953 - pp. 454 - 455).

7) "Medical law is subject to medical ethics, which expresses the moral order willed by God.

"Therefore, medical law can never permit either the physician or the patient to practice direct euthanasia, and the physician can never practice it either on himself or on others. This is equally true for the direct suppression of the fetus and for medical actions which go counter to the law of God clearly manifested. In all this, medical law has no authority and the doctor is not obliged to obey it. On the contrary, he is obliged not to take it into consideration; all formal assistance is forbidden him, while material assistance falls under the general norms of *cooperatio materialis*."

(Radio message to the International Congress of Catholic Physicians, September 11, 1956 - pp. 493 - 494).

c) Pope John XXIII

1) "Human life is sacred: from its very inception, the creative action of God is directly operative. By violating His laws, the Divine Majesty is offended, the individuals themselves and humanity degraded, and likewise the community itself of which they are members is enfeebled."

(Encyclical, *Mater et Magistra*, May 15, 1961, St. Paul Editions, n. 194).

d) Pope Paul VI ⁴

1) "We are certain that the consciousness of your professional function will illuminate and guide your skillful medical art, and that, in the exercise of your practice, you will always recall the principles of ethics, which Christian morals raise to their highest and most exigent expression, particularly when it is a matter of defending the life of each human being. You know that the voice of the Church, acting as interpreter of that Christian law, was heard in the teaching of Our Predecessor, Pope Pius the twelfth, concerning a fundamental point, when he said: 'Innocent human life, no matter in what condition it may be, is, from the first instant of its existence, to be secure from every direct voluntary attack. This is a fundamental right of the human person . . . (and) this principle is valid for the life of the child, just as it is valid for the life of the mother'."

(Allocution of November 27, 1951).

(Address to members of the New England Obstetrical and Gynecological Society, October 3, 1964).

2) "The Pope (Paul VI) never spoke of birth control but of regulation of the family in conformity with the law of God. He condemned without reservation all solutions, such as abortion, that undermine and injure the very source of life."⁵

(Communiqué of the Vatican clarifying a statement by the Indian Embassy after a meeting between Pope Paul VI and S. Chandrasekhar, Indian Minister of Health and Family Planning).

e) Second Vatican Council

1) "Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or wilful self-destruction, whatever violates the integrity of the human person . . . all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator."

(Constitution on *The Church in the Modern World*, n. 27).

2) "To these problems (controlling the size of the family) there are those who presume to offer dishonorable solutions indeed; they do not recoil even from the taking of life. But the Church issues the reminder that a true contradiction cannot exist between the divine laws pertaining to the transmission of life and those pertaining to authentic conjugal love.

"For God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life in a manner which is worthy of men. Therefore from the moment of its conception life must be guarded with the greatest care. . . . Relying on these principles, sons of the Church may not undertake methods of birth control which are found blameworthy by the teaching authority of the Church in its unfolding of the divine law.

(Constitution on *The Church in the Modern World*, n. 51).