

Germain Grisez

A **Abortion:**
the **M** **Myths,**
the **R** **Realities,**
and the **A** **Arguments**

ABORTION

The Myths, The Realities, and the Arguments

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TO

*Thomas, James, Joseph and Paul,
Joan, Sarah, and David,
Michael and Johnny,
Marie and Philip,
and others unnamed.*

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Introduction

The Purpose and Content of This Study

In the chapters that follow I have attempted to present the facts about abortion, the historical context for understanding these facts, and a theoretical scheme for making moral and legal judgments about them.

My original intention was to deal only briefly with the matters treated in chapters one to five, so that all five of these chapters together should only have approximated chapter six in length. However, I discovered that so many ethical and legal arguments rest upon mistaken assumptions of fact that it seemed necessary to examine the relevant scientific data and the historical facts more fully. Certain important false assumptions of fact have been so often repeated that it seemed worthwhile to report their original entry into the literature and their subsequent history as they were passed from one "source" to another.

Some of the most plausible arguments for relaxing existing laws collapse once the facts are considered. Research, as presented in the pages to follow, shows for instance that the proposed relaxation will not solve public health problems arising from illegal abortions but will, more likely, aggravate these problems; again, the general public firmly rejects complete legalization of abortion, and it is this complete legalization toward which reform measures are directed and without this the reformers will remain unsatisfied.

But an exposition of the facts does not finally settle the issue, since those who are devoted to the legalization of abortion will seek other arguments if their appeal to "facts" is rebutted. In recent years various reasons have been proposed for rejecting the traditional moral condemnation of abortion. I wished to undertake a critical examination of arguments against the received moral judgment on abortion and the legal policy based on that moral judgment. Naturally, I found it necessary to leave out much theoretical material, but I have tried at least to consider all of the arguments that are more commonly used and many others that seemed interesting and important.

The result will serve, I hope, as a source of materials for all who wish to study the issues seriously, in order to write, speak, testify, vote, judge, and

decide about this subject with somewhat more care than otherwise would have been possible.

There are many other books on abortion, of course, and some of them are indispensable. But some of the books are out-of-date, even if recently published, since they relied on outdated sources for essential facts. Others are extremely specialized, so that it is difficult for anyone not a specialist in the relevant field to understand them without considerable study. In the course of my own research, I have consulted a number of specialists, and have had relevant chapters reviewed by them. Some very useful books lack a unifying perspective, for they consist in symposia or groups of contributed essays. There are also polemical tracts, as well as some useful and interesting but superficial treatments.

Most important, after two years of preliminary study I concluded early in 1967 that my position would be an extremely *liberal* one—"liberal" not in the sense of approving abortion but *liberal* in the sense of favoring the freedom of the unborn to make their own choice about life and defending their right to live long enough to make that choice. Having come to this view, I decided that a rather thorough statement of it is needed. Most of those who oppose abortion seem to feel this position is self evident. But I think that the case against abortion is less simple than has been realized and that the complexity of the case needs a correspondingly complex exposition.

At present there are committees and commissions of legislatures and there also are courts studying the issues dealt with in this book. Even if members of such bodies begin with a personal opinion that abortion should be approved, I hope that in their official capacities those responsible to and for a pluralistic society will wish to give the most careful consideration to a view that articulates the intuitions of many citizens. Although I am not a lawyer, I have attempted to compose a brief in defense of the unborn. If lawyers notice in its details my lack of expertise, I ask them to be kind enough to correct and perfect what I have tried to do.

After the manuscript of this book was completed, the Supreme Court of the State of California decided (September 5, 1969) that the pre-1967 California statute forbidding abortion was unconstitutional. The decision of the court in the case of *The People v. Belous* rests on arguments all of which I believe I have answered sufficiently in chapter seven. At the same time, I do not think the court appreciated how strong a case can be made for the right of the unborn to life—and it is for this right that chapter seven is a brief.

As this book goes to press (November 1969) Judge Gerhard A. Gesell of the U.S. District Court for the District of Columbia has ruled that the anti-abortion statute of the District is unconstitutional insofar as it applies to physicians. This ruling probably will be appealed and the U.S. Supreme Court may rule on the matter in the near future. One can only hope that members of that Court, aware of their responsibility to protect the weakest, will study the issues to the fullest. There could be no excuse for a hasty decision in a

matter which involves such profound issues, for if the case I have developed in chapter seven is correct, a decision on this case could determine what the United States shall in the future mean by individual rights and the equal protection of the law in the entire matter of the right to life.

At the same time, opponents of the legalization of abortion should not accept any court decision, no matter how authoritative, as final. In some ways present anti-abortion laws are no more satisfactory to those who oppose abortion than to those who favor it when these laws are viewed in the light of constitutional guarantees. The vast majority of American citizens, by the evidence of all polls so far, does not accept the principle of abortion on request. Consequently, *some* laws restricting abortion may be expected to remain or to be newly enacted to replace any statutes declared unconstitutional.

Although there is at present a strong movement to remove legal protection from the right to life of the unborn, public experience with relaxed laws may engender a healthy reaction, provided that those who recognize what is at stake do not accept as defeat whatever setbacks they may suffer. The fearful violence which increasingly permeates domestic politics and which constantly threatens in international politics may help to drive home the lesson that excessive legal permissiveness and utilitarian disregard of the *unalienable* character of each individual's right to life will, if unchecked, bring to a tragic end the magnificent experiment initiated by those who created the United States Constitution.

Because I wish this book to serve as a resource book and as a guide to the literature of the subject, I have included a great many references. Much of the material will not be found in smaller libraries, but libraries will help a reader who wishes to obtain an item from a larger library, such as the Library of Congress or the National Library of Medicine.

The organization of the material presented serious difficulties. Often the same concept, document, event, or technical point comes up at several different points in the presentation. A similar difficulty would have arisen had a different outline been used. In a situation of this sort, a system of cross references would be useful. However, the book also requires a rather extensive index. I have therefore chosen to limit internal cross references to a minimum. A reader interested in any particular point will do well to check the index in order to locate other passages at which he will find it mentioned.

In references, factual statements, and the interpretation of positions I have tried to be accurate. But in a work of this scope errors are inevitable. I hope none is serious and regret any that will cause readers difficulty.

The literature on the subject of this book and related topics is so vast that only a selection of it could be dealt with. I have tried to use the clearest and strongest presentations of positions I criticize, and have generally limited references to works available in English.

Abortion is such a fast-moving subject that no treatise will remain up-to-date in all respects for long. This book was written between June 1967 and

September 1969, but work was not completed on all chapters simultaneously. Readers may wish to know at about what date work was substantially completed on the various chapters.

Composition of chapters one, two, and three was completed during the summer of 1967. These chapters are concerned with relevant biological facts and with the present abortion problem as it appears from the sociological and medical points of view. Since I am mainly concerned with the issues currently debated in the English-speaking world, I have included only limited data from non-English-speaking countries. Thus there is no unified survey of abortion problems and practices in foreign countries, but reference is made to them here and there to provide necessary background, to suggest possibilities, and to indicate what the consequences of various arrangements might be.

Chapters four and five were begun in 1968 and completed early in 1969. For this reason, revised statutes adopted after the summer of 1968 are not included in the survey of recent American legislation in chapter five. These two chapters are historical in method.

Chapter four tries to put the received moral evaluation of abortion into the perspective of the integral religious tradition from which it came. Although I do not want to minimize theological differences, I think the continuity of the tradition which is not only Catholic, or Christian, or Judeo-Christian, but Indo-European is impressive. No special idea of the soul, or of the necessity of baptism, or of creation is as central as the common notion of man, sharing in a transcendent dignity by relation to a divine source.

Chapter five tries to throw light on the various public policies that are proposed for meeting the abortion problem by tracing the alternatives to their historical origins and by analyzing the legal implementation of each policy. Also, I attempt to make clear where the present trend is leading. One of the most important considerations in the present situation is that most Americans do *not* believe abortion should be completely legalized. Yet current proposals certainly are heading toward that outcome.

Chapters six and seven were drafted in the spring and summer of 1969. In each of them I try to deal philosophically with an aspect of the decision that must be made on abortion. One aspect is that of moral judgment, dealt with in chapter six. The other is that of sound public policy, dealt with in chapter seven.

Regardless of what the laws say, individuals must form a sound judgment for themselves about the human meaning of abortion. Should one undergo, perform, or participate in such an action? If the law said nothing about abortion, these questions would still require answers. I hope the essay of chapter six will be of help.

The problem of what a proper public policy should be is distinct from the moral problem, but it cannot be separated from it. One of the more useful contributions of my study, even for those who do not agree with my conclusions, may be that the question of whether the law should *regard* the unborn

as legal persons is clearly distinguished from the question whether they *are* persons, and the latter question (treated in chapter six) is clearly distinguished from the biological facts (described in chapter one) about the unborn, living, human individual.

Some Clarifications of Key Words

“Abortion” sometimes refers to the *unsought and spontaneous* untimely ending of a pregnancy. In this book, as in ordinary English, the word is usually used to refer to *intentional interference* with developing life. The latter is called “induced abortion” in opposition to “spontaneous abortion.” We will come back to this distinction.

One way to approach an understanding of *induced* abortion is to consider it as a method of birth control. Birth control involves one of three things:

(1) The avoidance or regulation of conception by not engaging in sexual intercourse when conception is possible or probable. “Rhythm” usually refers to one method—counting days on a calendar—for determining whether conception is probable. This method is less effective than the interpretation of various symptoms that may show conception to be impossible. Of course, the most effective way to avoid conception is to abstain from intercourse altogether.

(2) The prevention or attempted prevention of conception by persons who nevertheless engage in sexual intercourse. “Contraception” properly refers to any procedure that prevents conception. “Birth control” is popularly restricted to serve as a synonym for “contraception.” The use of a condom (“rubber”) by the man or of a diaphragm and jelly by the woman are examples of contraception. *Coitus interruptus* (“withdrawal”) can be viewed either as the avoidance or as the prevention of conception, since intercourse is performed but not fully. The IUD and the “pill” are generally regarded as contraceptives; we shall see in the last section of chapter three that there is reason to qualify this classification, and to regard these as partly (or possibly) belonging with—

(3) The interruption or attempted interruption of pregnancy after conception, in order to prevent the normal development and birth that would otherwise occur. This is referred to as “induced abortion.”

In the preceding distinctions we have used the words “conception” and “pregnancy.”

“Conception” is used here and throughout this book—unless the context clearly indicates otherwise—as a synonym for “fertilization.” Conception or fertilization is not a momentary event (see chapter one) but a process lasting a few hours. When a sperm and ovum are in close proximity and begin to affect one another, this process begins. It clearly ends when the completion of the new cell is indicated by the beginning of its first division. Conception marks the beginning of each human individual. As *Life* magazine stated in an article illustrated with photographs of embryos at each stage of development:

The birth of a human life really occurs at the moment the mother’s egg cell is fertilized by one of the father’s sperm cells.¹

A standard medical text in genetics explains the origin of the individual in more technical language:

A human being originates in the union of two *gametes*, the ovum and the spermatozoon. These cells contain all that the new individual inherits organically from his or her parents. The hereditary potentialities present in the fertilized ovum are unfolded, as cell divisions succeed each other, in an environment first prenatal and then postnatal, free to vary at all stages within narrow or wide limits. The child, and finally the adult, is what he is at any time during his existence because of the hereditary constitution which he originally received, and the nature of the environment in which he has existed up to that time.²

Chapter one will deal with conception and prenatal development in some detail.

“Pregnancy” is the condition of a woman in whom conception has occurred, from conception until delivery. The word “pregnancy” also sometimes refers to the process of development the unborn individual undergoes. For medical purposes, the elapsed length of pregnancy and the age of the unborn are often calculated from the first day of the last menstrual period *preceding* conception. This is merely a convenient device for keeping accurate medical records, since the precise date of conception is usually unknown. The pregnant woman, on the other hand, is likely to calculate the beginning of her pregnancy from the last day on which menstruation was expected to begin if she had not become pregnant. Thus the calculations of the physician and his patient often disagree by about a month.

“Pregnant with child” and “with child” are often found in legal contexts, and usually they should be taken to mean the condition of pregnancy that begins with conception. But this is *not* the meaning of “pregnant with *quick* child.” This expression also is encountered in legal contexts. “Quick” is an old English word meaning *living*—the opposite of dead. A woman once was thought to have a *living* child only some months *after* conception, when she first felt the child move within her. The first perceived movement was called “quickening”—i.e., coming alive. A woman pregnant with a *quick* child has perceived quickening; she is at least three or four months along in her pregnancy.

A number of words are used to refer to the unborn individual at various stages of its development.

- (1) “Ovum” strictly speaking should refer only to the unfertilized egg, but is often used to refer to the fertilized ovum and the developing individual as long as it appears superficially similar to an ovum.
- (2) “Zygote” is the new individual formed by union of sperm and ovum when it is a single new cell. Division of cells begins and gives rise to the . . .
- (3) “Morula” (from Latin “mulberry”) a cluster of cells, sometimes mistakenly thought to be altogether similar to one another, because they are grouped in a rather symmetrical ball. As the ball develops and becomes hollow, a few days after conception, it is a . . .

(4) "Blastula" (from Greek "tiny bud") which continues to develop and, between a week and a week-and-one-half after conception implants or embeds itself into the wall of the uterus.

The words "ovum," "zygote," "morula," and "blastula" are from technical bio-medical language; they are never used to refer to the developing individual throughout the whole period of pregnancy. But "embryo" and "fetus" are used less technically.

(1) "Embryo" in this book *usually* refers to the unborn individual from conception to birth. This broad meaning is in conformity with the usage in *embryology*, which studies the development of the unborn at all stages. In a more restricted sense, which will be sufficiently indicated by the context, "embryo" refers to the developing individual from conception (still more narrowly, from implantation) until the end of the sixth or eighth week of development. When "embryo" is used in a restricted sense, the developing individual is said to become a . . .

(2) "Fetus" (also spelled *foetus*) at six or eight weeks of development, and is referred to as such until birth (or, more narrowly, until about seven months of development). But in this book "fetus" *usually* should be taken to refer to the unborn individual from conception until birth. Therefore, "embryo" and "fetus" are usually used as synonyms, unless the context indicates that one or both should be taken in a narrow sense.

(3) "Unborn child" also will be used, unless the context indicates otherwise, to refer to the developing individual from conception until birth. This broad usage is in accord with much legal usage—e.g., in reference to the "infant *en ventre sa mere*," the infant in its mother's womb. Also, many sex education courses and books for pregnant women refer to the developing individual at all stages as the "baby." More narrowly, "unborn child" may be limited to refer to the developing individual only during the last few months of pregnancy after viability. "Viability" is discussed in the last section of chapter one.

Abortion is divided into *spontaneous* and *induced*.

(1) Spontaneous abortion often is popularly referred to as "miscarriage," if it occurs before the child might have been expected to live. In some medical uses, "miscarriage" refers to a spontaneous delivery between 12–14 weeks of pregnancy and 20–26 weeks; earlier, the same event is called "abortion" and later "premature birth" if the child is born alive or "still birth" if it is born dead.

In a legal context, "miscarriage" usually refers to abortion *at any stage* of pregnancy. Physicians use the expressions "missed abortion" and "threatened abortion" to refer to medical problems that are not relevant to induced abortion.

(2) *Induced abortion*, unless the context clearly indicates otherwise, is what is meant by "abortion" in this book. An induced abortion is any procedure (or the resulting event or process) by which the normal course of the development of the child before birth is purposely interfered with; the procedure is done with the intention of preventing the continuation of normal development and subsequent normal birth. This definition is broad enough to include both the causing of untimely birth by drugs or other methods and surgical attacks on the unborn at any stage of their development. However, the use of medicine or surgery which

in fact interferes with the normal course of development for another purpose (e.g., the removal of a cancerous uterus) is not included in the definition of "induced abortion" given here. In Roman Catholic theology, "indirect abortion" refers to certain treatments and procedures excluded by my definition.

A classical definition of induced abortion is *the expulsion of a non-viable fetus*. The definition given here is wider in two respects. First, I include procedures which kill the child within the mother. Second, if the purpose of the procedure is detrimental to the child, I include the killing of *viable* children.

In some medical usage, especially in the nineteenth century, *abortion* referred even to the induction of labor for the child's benefit. This peculiarly broad use of the word "abortion" explains why some state laws specifically permit abortion to "protect the life of the mother or of the child with whom she is pregnant." This language has been erroneously taken by proponents of revised abortion laws as a sign of confusion by the legislators who drafted the old laws. Actually, the terminology is odd only because the medical profession now uses the word "abortion" more narrowly.

Induced abortion is divided according to legality.

(1) "Illegal abortion" refers to induced abortion contrary to the criminal law of the place where the procedure is done. Thus, "illegal abortion" and "criminal abortion" are used as synonyms. In some jurisdictions abortion is technically classified as a felony, in others as a misdemeanor. "Criminal" refers to the illegal abortion however it is classified technically, since this is common usage.

(2) "Legal abortion" refers to all induced abortions that are not illegal, as defined here. Sometimes "legal abortion" and "hospital abortion" are used synonymously, but this usage is confusing. Abortions performed in hospitals can be illegal, but they are seldom or never punished as such. An abortion performed outside a hospital could (by most pre-1967 abortion statutes) be legal, although few are.

All legal abortions are sometimes referred to as "therapeutic." Strictly speaking, "therapeutic" refers to the protection of life and health. Therefore, only abortions done because of medical necessity should be called "therapeutic." Other abortions, if legal, would be referred to in accord with the specific *indication* (reason) for which they are done. For example, "eugenic abortion" refers to attempts to prevent the birth of children who might suffer from some defect, whether a matter of heredity (genetic) or not.

The World Health Organization has defined "health" as *a state of complete physical, mental, and social well-being*. This definition is extremely broad; according to it every legitimate business or profession is engaged in therapeutic activity, since all contribute to social well-being. The breadth of W.H.O.'s definition is important to notice, however, for it may be used to interpret any new abortion legislation.

Because abortion is in a complex situation of relationships, the word "abortion" can refer either to the act, the event (or process), or the result. A person convicted of abortion is convicted of an *act*; the *event* or *process* is what

is sought by a woman who wants an abortion; the aborted individual is sometimes called "an abortion," or "an abortus."

The one who performs an abortion (especially if illegal) is referred to as an "abortionist"; in some contexts in this book I refer without prejudice regarding legality to the agent as an abortionist.

"Abortifacient" refers to a drug or instrument used (or especially suited) to produce abortion. The act which causes the process of abortion may be called "abortifacient" or "abortional."

Either the pregnant woman or the unborn baby may be said to "be aborted." "Pregnancy" refers to both mother and child; abortion interferes with pregnancy from both viewpoints.

According to the definition given here, which I generally adhere to, abortion is done only if the woman is pregnant and the procedure purposely interferes. In many statutes, however, "abortion" refers to a crime that might more accurately be called "attempted abortion," since the definition of the crime does not require that the abortional act be effective. Frequently, in fact, the statutes do not require that the woman be pregnant, providing that an act is done suited to produce abortion if she were pregnant and/or she was believed to be pregnant by the abortionist. Uses of the word "abortion" to mean *attempted abortion* are fairly common in the legal section of the book and the reader will notice which is meant from the context.