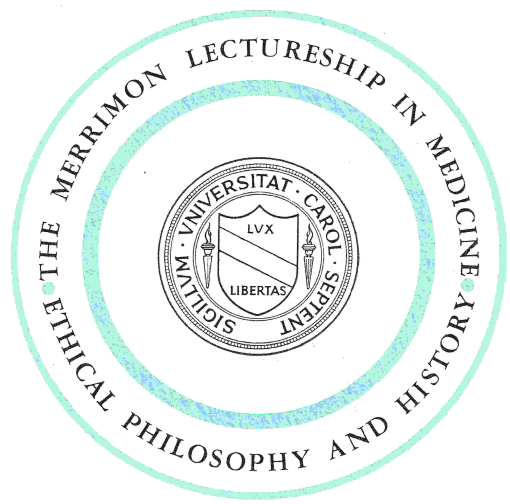


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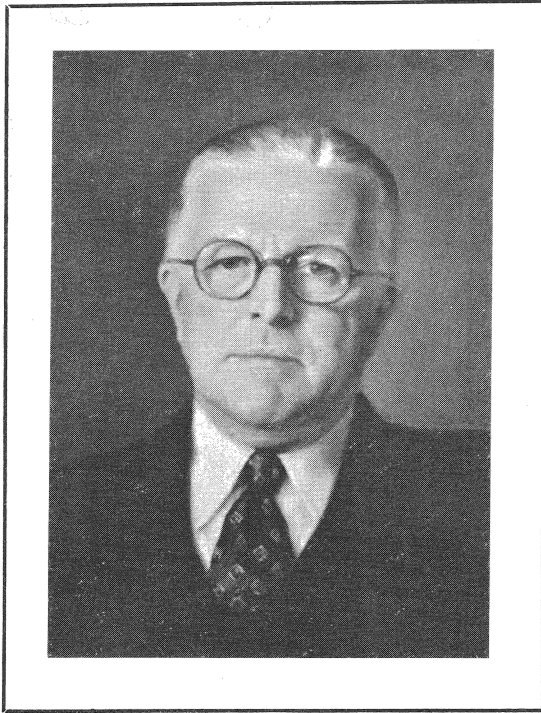


MERRIMON LECTURE

by

DR. NICHOLSON JOSEPH EASTMAN

MARCH SIXTEENTH, NINETEEN HUNDRED AND SIXTY-SIX



THE FIRST ANNUAL MERRIMON LECTURE

Induced Abortion and Contraception
A Consideration of Ethical
Philosophy in Obstetrics

by

NICHOLSON JOSEPH EASTMAN

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Introduction

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MERRIMON LECTURE

1966

Wednesday, March 16, 1966 was an important day for the School of Medicine of the University of North Carolina. On that day, Dr. Nicholson J. Eastman delivered the first Merrimon Lecture in Medicine and thus inaugurated a permanent lectureship which will play a major role in the School's future.

Under the terms of the will of Dr. Louise Merrimon Perry of Asheville, a generous fund has been established to support the lectures. Dr. Perry's intention was "to give to medical students and others interested an insight in the history, traditions, philosophy and ethics of medicine." The first lecture, reproduced here, is clearly in keeping with this aim.

In association with the first lecture, Dr. Eastman was able to spend over a week at the School of Medicine, during which he was in continual close contact with students and faculty. Thus we have benefited not only from his formal presentation but also from close daily association. We hope to continue this feature of the lectureship in coming years.

It is appropriate to acknowledge here the deep appreciation of the School for the bequest which Dr. Perry made and our gratitude to Dr. Eastman for becoming the first Merrimon lecturer.



ISAAC M. TAYLOR

Induced Abortion and Contraception

A Consideration of Ethical Philosophy in Obstetrics

In the words of the donor of the Merrimon Lectureship, "The lectures under this Foundation are to be concerned with the Origins, Traditions and History of the Medical Profession and with the Ethical Philosophy which must dominate this field of Human Endeavor if its achievements are to remain superior to the Mechanistic Arts." I am highly honored by the gracious invitation of the Dean and the Faculty of Medicine of the University of North Carolina to be the first Merrimon Lecturer. In addition, recalling the words of the Founder, I find it a source of especial gratification that an obstetrician should be chosen to make this initial Merrimon presentation because in no other area of medicine do ethical problems loom so large as they do in obstetrics. In other branches of medicine, the objective of the physician is invariably to *preserve* life. Only in obstetrics is he asked from time to time to *destroy* life. Let us consider three examples.

If a woman experiences an attack of rubella (German measles) during the first eight weeks of pregnancy, the chances that the infant will be born with grave malformations, often resulting in blindness, is about one in four. Parenthetically can any one think of a more heartbreaking tragedy than a blind child? But if therapeutic abortion is performed in four such cases, taken at random, be it remembered that, on the average, three of the four embryos destroyed will be entirely normal: three healthy, potential human beings, each with a life expectancy of some 70 years. Is it right or is it wrong to do this? Or, take the case of a woman who experiences an attack of rubella in the third month of pregnancy. Here the chance of a malformed child is perhaps one in ten. Is it justifiable to sacrifice nine normal embryos by induced abortion to prevent the birth of one malformed infant? Is this right or is it wrong?

Some 20 years ago, 85 million Japanese were living in an area about the size of Montana. Only one-sixth of that area was suitable for cultivation. The total amount of arable land per person was only about one-twentieth of that in the United States. Possibilities of emigration were negligible. Confronted with this desperate population problem, the Japanese took desperate measures to meet it and in 1949 legalized abortion. Within five years the number of abortions performed was exceeding a million per annum and has continued at about that level. This means that the number of abortions performed each year in Japan has equaled the number of live births. In other words, about one-half of all pregnancies are abolished by instrumental means. As a result, in large measure of the abortion program, the very high birth rate, long characteristic of Japan, has been brought to the remarkable figure of 17 per 1000 population. This rate is the lowest in Asia and is considerably less than that in the United States or Canada. This is an amazing achievement in population control unparalleled in history. But from an ethical viewpoint it has involved and continues to involve the eradication or (to use a more modern term) the liquidation of a million potential lives each year. Is this right or is it wrong? Has the end justified the means?

As a third example of an ethical as well as sociological problem in obstetrics, the following case recently came to my attention. A 14-year-old colored

girl, illegitimately pregnant, was admitted to a Baltimore hospital at term and in labor but with a prolapsed umbilical cord. The cord was pulsating somewhat slowly and somewhat feebly; but it seemed that immediate cesarean section would provide a 50 per cent chance of obtaining a surviving infant. True, this operation would impose a slight risk on the mother and handicap her in future pregnancies, because her future pregnancies might likewise have to be terminated by cesarean section; but it did give the infant a moderately good chance: an illegitimate infant for this 14-year-old mother, herself still a child. If this case be viewed in broad perspective, from an ethical and sociological as well as obstetric standpoint, what was the better course—to perform an immediate cesarean section or let labor take its course with the loss of the fetus. Which course was right and which was wrong?

It would seem offhand that this question of what is right and what is wrong in this world would have been settled centuries ago because innumerable philosophers from Socrates to Dewey have devoted the major portions of their lives to the study of this very problem. Indeed, it would seem that some formula or certain criteria would have evolved which, when applied to such obstetrical problems as we have cited, would demarcate what is right and what is wrong, what ought to be done and what ought not to be done. Unfortunately, this has not come to pass and the only agreement among philosophers is that criteria of what is right and what is wrong have varied widely from age to age and from society to society. Nonetheless, a number of theories or doctrines have been advanced. One of the more prominent of these is the *utilitarian* doctrine. This theory postulates that an act is "right" and "good" insofar as it contributes to the greatest happiness of the greatest number. According to utilitarianism, then, the standard of right and wrong in conduct is the tendency of any particular conduct to promote the interests of the majority. If this teaching be followed, it is easy to see that abortion might be "good" and "right" under countless circumstances. In view of the population pressures which exist in Japan and the dim outlook for any improvement in food production, adherents of the utilitarian doctrine might quite properly maintain that the million abortions performed there each year do most certainly serve the best physical interests of the vast majority of the people and are therefore "right." According to this theory a fetus has the right to live only when balanced in the scales of justice against the rights and prerogatives of the mother and of various third parties. This doctrine has been attacked for various reasons, but particularly on the grounds that the end never justifies the means. But if the end never justifies the means, how can the United States of America possibly justify the atomic bombing of Hiroshima?

Another important ethical theory is the *intuitive* doctrine. This theory holds that there is such a thing as conscience. The intuitive moralist asserts that we have an innate power of perceiving that certain courses of action are higher, nobler and better than others; he maintains that we all possess some inner sense which is able to discriminate, without reasoning, between what is right and what is wrong. Thus, we all seem to know intuitively that it is wrong to steal or tell a lie. This theory puts what is sometimes called the "sanctity of the fetus" above all else and holds that it has a right to live regardless of the rights and prerogatives of others. In regard to the rectitude of inducing abortion, the intuitive moralist would doubtless claim that dissen-

sion over this question would not have persisted throughout thirty centuries unless the procedure had somehow or another stirred the conscience of mankind.

This problem of the inviolability of fetal life is one of the oldest of ethical and legal issues. For example, in the Code of the Assyrian Law relating to Women, which is thought to have been written about 1500 B.C., the following regulation appears: "If a woman of her own accord causes to fall what her womb holds, she shall be tried, convicted and impaled upon a stake, and shall not be buried. If she died in committing abortion upon herself she shall be impaled upon a stake and shall not be buried." Other examples might be cited to show that throughout the thirty odd centuries of recorded history, the interruption of pregnancy, whether intentional or accidental, has been widely, but not universally, regarded as a grave offense.

As medical students, many of us were required to memorize the Hippocratic Oath and will recall the pledge, "I will not give to a woman an abortive remedy." In his authoritative study of the Hippocratic Oath, the late Ludwig Edelstein points out that the attitude toward abortion expressed by this pledge did not represent at all the general feeling in ancient Greece about abortion but stems entirely from the doctrines of a minority group, the Pythagoreans. Most of the Greek philosophers even commended abortion. For Plato, feticide was one of the regular institutions of the ideal state. Whenever the parents were beyond that age which he thought best for the begetting of children, the embryo, in his opinion, should be destroyed. Moreover, Aristotle regarded abortions as the best procedure to keep the population within the limits which he considered essential for a well ordered community. Both in Greece and Rome abortion was practiced not only for economic reasons but from shame at the illegitimacy of the child and even because pregnancy might detract from the mother's appearance and appeal. In sum, then, the following three facts are worthy of note in connection with abortion in classical Greece. (1) Throughout the ascendancy of one of the world's greatest civilizations—a civilization which reached the zenith of intellectual achievement—abortion was generally regarded with complacency and was even commended for eugenic and demographic reasons. During the same enlightened period, infanticide, a heinous crime by modern consensus, was practiced without scruple and condoned. (2) Despite this general attitude, a minority sect, the Pythagoreans, denounced abortion partly because of their ascetic attitude towards sex and partly in order to deter any reduction in their future ranks. (3) The pledge against abortion in the Hippocratic Oath was derived from these Pythagorean doctrines. It did not reflect the dominant opinion of the period; nor did it exert any influence on the development of modern attitudes toward abortion. These had their origin many centuries later from quite a different source.

As everyone knows, that source was the early Christian Church. The condemnation of abortion by the Church was based on the seemingly simple thesis that abortion is murder; and, since the Commandment, "Thou shalt not kill," forbids murder as sinful, killing the fetus would seem *ipso facto* to be sinful. To those unversed in theological and legal dialectics, this would appear to be a self-evident truth, but fifteen centuries of debate by learned leaders of the Church and of the Law have failed to settle this question.

Whether abortion is always murder, or whether abortion is sometimes murder and sometimes not murder, was a subject of endless discussions, synods

and ecclesiastical arguments from the third century onward. In the Western Roman Empire, the most powerful voice raised against abortion was that of Tertullian around 240 A.D. This Roman theologian called deliberate abortion murder. Since murder is forbidden, said Tertullian, it follows that the destruction of the developing human being in the mother's womb is illicit. It seems, however, that Tertullian made the charge of murder only if the fetus had attained a certain age of development and formation; for only then is the fetus a *homo*, according to Tertullian. Likewise, another great authority of the Christian Church, St. Augustine, distinguished between a "formed" and a "non-formed" fetus as well as between a "living" and a "not-yet living" fetus. Even more discussion was given to whether the fetus was "animated" or "nonanimated"—meaning whether the fetus had yet been infused with a soul or not. Just when the fetus was infused with a soul—before which time induced abortion was condoned and after which it was sinful—constituted a major issue in theological discussion for many centuries, became a part of the Canon Law, was infused into the Common Law of England and has bequeathed certain remnants even to our own day.

If abortion is actually murder, the criminal law found itself in a most awkward position because, logically, the same death penalty would then have to be imposed for abortion as is customary for the killing of an adult. General sentiment has always been opposed to such extreme punishment for abortion. This difficulty was, in effect, circumvented long ago by Roman jurists through resort to a fiction which has remained part and parcel of the law of homicide to the present day. This fiction was that the unborn was not a human being—a principle which is thought to have been derived from the Stoic Theory that the human soul was infused only at the time of birth. The fetus was not regarded as a *homo*, a living human being. Rather, it was held to be a part of the mother's viscera, something not yet living, not in "*rebus humanis*" and at most only a potential person.

This attitude toward the fetus lifted abortion not only out of the category of murder but also out of that of homicide as defined later in the Common Law of England. For, there, it was generally held that the subject of homicide must be a living human being.

As we have noted, the early Church Fathers distinguished between destruction of a nonanimated and an animated fetus. The latter was a much graver sin than the former and carried a more severe penalty. As this distinction became embodied in formalized Canon Law, about the middle of the twelfth century, and later became fused into the Common Law of England (under somewhat different terminology), it exerted a profound and lasting effect on the legal gravity of abortion. The progenitor of this sequence of events was the great Italian Canonist, Gratian, founder of the science of Canon Law. After quoting St. Augustine's condemnation of those who destroy their unborn children, he asks: "Are those who procure abortions to be judged as murderers?" Gratian's answer: "He is not a murderer who brings about abortion before the soul is infused into the body." Gratian did not indicate the time of animation. Other clerics and philosophers, both before and after Gratian, had attempted to do so but without agreement. In the fifteenth century Thomas Aquinas lent his great authority to the question by defining the soul as the first principle of life in those who lived; and he added that life is shown principally by two actions, knowledge and movement. Here at last, then, was something definite and even tangible: *movement*. Hence the rule

of the Common Law, dating from the century of Aquinas, that life starts not at a fixed time after conception but at the moment of quickening. "Life," said Blackstone, "begins in contemplation of law as soon as the infant is able to stir in the mother's womb."

Accordingly, at Common Law in England it was no crime to terminate a pregnancy before the child was quick any more than it would have been to remove an excrescence from the skin or a neoplasm from the body. But, after quickening, destruction of the fetus was a criminal offense. The emphasis which the Common Law laid on quickening is further illustrated by the manner in which pregnant women convicted of capital crimes were managed. If they were "quick with child," execution was deferred until after delivery; but if they were merely in early pregnancy, and not yet "quick," the pregnancy was no protection against immediate execution.

The importance of quickening in relation to abortion has been bequeathed down the centuries to our own time. Thus, even now, two of our States require that the woman in question be pregnant with a "quick" child to constitute the crime of abortion and several others make the distinction for the purpose of increasing the punishment.

While the question of quickening still has a small place, therefore, in the criminal law of abortion, the Catholic Church has settled the analogous and equally confusing issue of animation on the grounds that the soul enters the embryo at the moment of conception. Therefore, from Her viewpoint, the gravity of the sin of abortion is the same regardless of the time at which it is committed. As for whether abortion is homicide, the present-day legislation of the Catholic Church regards abortion as a separate juridical offense. In other words, it is a Canon Law crime in its own right, independent of the crime of homicide, and whether homicide is involved does not come into the question as far as the certification of the crime of abortion is concerned.

Still other legacies from the past have served to confuse the issue. One of these was the long-held belief that abortion meant the killing of an unbaptized child who would therefore be deprived of heavenly happiness. Another, related to sexual depravity. Thus, the stern attitude of the medieval church toward abortion was, in large measure, just part of its comprehensive and obsessive attack on anything that had to do with sex. Like sexual indulgence, abortion was categorized among the obscenities. Certainly, in the nineteenth century the violent prejudices against birth control centered almost entirely around the alleged obscenity involved. Such "intimate matters" were not thought fit subjects for open discussion and public pamphlets. It was doubtless the same blinkered prudery that prevented any general discussion of the abortion problem at that time. For, to quote a little jingle about the Victorians,

They asked no social questions;
They probed no hidden shame;
They never talked obstetrics
When the little stranger came.

But times have changed, and obstetrics, including abortion, has become a favorite topic for discussion, both at dinner parties and in the lay press. As a matter of fact, so many little strangers are arriving these days, both here and in other lands, that a huge tumult of open concern has arisen about what is going to become of all these little fellows over the next half century and

about the fact that this sex business seems to have gotten out of hand. Several foundations have been established to study and do something about population pressures. Millions are being spent to devise better contraceptives, and along with all this, a liberalization of attitudes towards abortion and contraception is taking place which would have been unthinkable only a few decades ago.

The extent to which the abortion laws have been liberalized in some of the Scandinavian countries is shown by the following facts: In Sweden a law passed in 1938 allowed induced abortion for medical, humanitarian and eugenic reasons. In 1946 the terms of the law were broadened to include, as indications, what is variously described as "presumptive weakness," "unforeseen weakness" or "anticipated weakness." Likewise in Norway, "asthenia," or physical weakness on the part of the tired housewife, constituted in a recent year the second most common indication for abortion, the first being pulmonary tuberculosis. In Denmark, Finland and Iceland, the laws have been similarly liberalized but not perhaps to the same extent as in Norway and Sweden. Of Japan, we have already spoken. Although details are not available, it has been reported that abortion was legalized some years ago in mainland China with penalties imposed on couples with more than three children. In the United States, both obstetrical and legal groups are endeavoring to liberalize somewhat the abortion laws in this country. Indeed, both in California and New York bills are pending before the state legislature directed to this end.

Likewise in respect to contraception, the general attitude today is a far cry from the days when Margaret Sanger was put in jail for opening a birth control clinic in New York City. As just one example, at a White House Conference on "International Cooperation" held in Washington late in November, the following recommendations, among others, were made: 1. That the United States Government set an international example by cooperating with state and local governments and private organizations to make family planning services and information readily available to those in the United States who wish to have them. 2. That the United States Government develop an expanded program for training United States and foreign personnel who can themselves train doctors, auxiliary personnel, communications specialists, administrators, and others needed in the implementation of family planning programs in the United States and around the world. 3. That the United States Government be prepared to make available upon request up to 100 million dollars a year over the next three years, to help other countries implement programs of family planning and strengthen national health and social services necessary for the support of family planning programs.

As everyone knows, several years ago, Pope John appointed a Commission on Population and Birth Control to review the attitude of the Catholic Church toward contraception. It has now had two meetings in Rome under Pope Paul and will hold one or more subsequent sessions there. While it is quite possible that the Commission will recommend no change whatsoever in the attitude of the Catholic Church toward contraception, the very fact that the Commission was appointed carries certain undeniable implications.

To turn to a different aspect of the attitude, not of the Vatican itself, but of certain high prelates of the Church toward contraception under certain unusual circumstances, a few words about the fate of certain nuns working in the Congo during the recent violence there is pertinent to our discussion. As is well known, a considerable number of Catholic priests and nuns were killed, and some of the nuns were raped. A number of them became preg-

nant. Abortion was prohibited in these cases since it involved the destruction of the fetus, an innocent third party. Three eminent Vatican theologians, apparently stirred by the rape of nuns in the Congo, have come to the conclusion that it is licit for at least some women in danger of rape to use oral contraceptives in order to prevent conception. Their findings were published in the authoritative Vatican publication, *Studi Cattolici*, and reported also in the New York Herald Tribune News Service, December 19, 1961. Monsignor Ferdinando Lambruschine, Professor of Moral Theology at the Lateran University, pointed out that victims of rape do not have the alternative of abstention to which married couples can resort in order to avoid conception. Francis Hurt, a Jesuit professor at Gregorian University, noted that a farmer has a right to defend his property even with machine guns and that human beings are justified, in certain circumstances, in suspending various bodily functions. Similarly, a woman threatened with rape would be justified in defending herself by suppressing ovulation. Monsignor Petietro Palazzine, the Secretary of the Vatican's Conciliar Congregation, concurred in the Jesuit's views. Thus, in the opinion of these three high officials of the Church, wilful suppression of ovulation would not seem in itself to be an evil deed if rape is a threat. But it should be emphasized again that the opinions expressed were those of these three prelates and in no way represent the official opinion of the Vatican which has remained silent on this subject.

It is a well established principle of the criminal law that carnal knowledge of a female child under a certain age, usually set at 14, is rape because such a child, not knowing the nature of implications of the act, cannot give permission, absence of consent being the *sine qua non* of rape. It is likewise an accepted principle of the law that carnal knowledge of a female who is an imbecile, *non compos mentis* or insane, of whatever age, is also rape because valid permission cannot be given. Dr. Andre Hellegers, Associate Professor of Gynecology and Obstetrics in the Johns Hopkins University and a member of the Papal Commission on Population and Birth Control, has recently applied the rape doctrine, just reviewed, to the mentally retarded. His views were set forth in an article entitled "Some Aspects of the Use of Contraceptive Agents in the Mentally Retarded," published by the School of Canon Law, of the Catholic University of America, in its periodical, *The Jurist*, January, 1965. Dr. Helleger's views are, in part, as follows:

"The licitness of the use of contraceptive agents as protection against rape can at present be considered solidly probable (J. C. Ford and G. Kelly. *Contemporary Moral Theology II: Marriage Questions*. Westminster, Md.: Newman, 1964, pp. 365-367).

"With a minimum guideline of a mental age of seven years . . . the individual Catholic physician may, pending further establishment of more exact norms, use his honest judgment as to the degree of mental development present in his individual patient with respect to the positing of a human act as above defined in the realm of intercourse. When such mental development is insufficient for this purpose, he should be aware that there is nothing in the teachings of the Catholic Church which precludes his use of contraceptive agents to protect his patient, under appropriate circumstances, from the consequences of an unjust aggression by rape.

"It should be equally obvious that where such a particular protective measure is not the one of choice for the environment of the particular retardate, different and/or additional protective measures are called for."

The pronouncements of these three high prelates in the Catholic Church and of Dr. Hellegers raise some intriguing questions, but these I will leave for you to ponder.

Throughout vast eons, the brutally high death rates approximated so closely the high birth rates that the population of the world remained stationary or almost so. The human female, a relatively slow breeder, even among mammals, had to reproduce somewhere near her physiological maximum if the family, the tribe and the nation were to survive. It took from the beginning of time until about 1850 for the human population to add up to its first billion. It reached two billion in approximately another 80 years. The third billion was added in about 30 years. However, at the present rate of growth the prospects are that the next 30 years will add not just one billion inhabitants to the globe, but a number that may approximate three billion. Dr. Irene Taeuber, one of our most conservative demographers, forecasts an additional 361 million for Africa by the end of the century, 421 million more for Latin America and two billion 350 million additional for Asia.

But before this audience it would be superfluous to dwell long on the awesome threat imposed by world population growth. We face, in fact, just two eventualities: either drastic reduction in birth rates during the next few decades or the Four Horsemen of the Apocalypse. If anyone doubts this statement, let him recall that even today, as we sit here comfortable and well fed, the Horseman on the Black Steed, Famine, rides amok in India. Throughout the greater part of history, the two ethical doctrines, the Utilitarian and the Intuitarian, went hand in hand because so critical was the struggle for human survival that any curtailment of birth rates would have been wrong by either standard. But during the present century, the artifices of medicine and public health have so reduced death rates, without comparable reductions in birth rates, that we encounter a crisis unknown in the past.

As we meet this crisis, it is indelibly clear that the issues involved, not only population growth but the countless social problems met by obstetricians, are practical, common sense, utilitarian problems, and call for a practical, utilitarian approach. By the same token, although the consciences of many may be disturbed, ethical attitudes today, in respect to induced abortion as well as contraception, are veering rapidly toward utilitarianism, the belief that conduct is right and good insofar as it promises to promote, in the long run, the greatest happiness of the greatest number.

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