

The Sanctity of Life and the Criminal Law

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BOOK REVIEWS

THE SANCTITY OF LIFE *and the Criminal Law*, by Glanville L. Williams

Alfred A. Knopf, New York, 1957. Pp. xi, 350. \$6.00.

Reviewed by

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The Sanctity of Life and the Criminal Law is an expanded and revised version of a series of five lectures delivered at the Columbia University School of Law in the James C. Carpentier Series by Glanville Williams, in April, 1956.

The unifying factor in this book is the extent to which human life, actual or potential, is or ought to be protected (in the opinion of the author) under the criminal law of the English-speaking peoples.¹ Its scope is wide in that it deals with infanticide, contraception, sterilization, artificial insemination, abortion, suicide and euthanasia. But its breadth is broader still, for the author considers these in the legal, theological, biological, moral, social, demographic and penological aspects. The author modestly avers that outside of the legal sphere he is trespassing.² Little, however, of the restraining influence of this avowal is felt throughout the book.

Right at the beginning, it must be asserted that we of the Judaeo-Christian Scholastic tradition and the author, Glan-

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¹ WILLIAMS, *THE SANCTITY OF LIFE and the Criminal Law*, Preface, p. IX (1957).

² *Ibid.*

ville Williams, travel in diametrically opposed philosophical schools. Whereas we of the Catholic Church see man as a pluralistic being, a citizen of two worlds, sojourning on earth, yet passing through death into eternity whose significance is seen and evaluated ultimately in the light of the hereafter, the author, by inference and by statement, sees man as a purely natural entity, one dimensional and essentially earth-bound. This sets up an opposing set of values and it is in this perspective alone that any discussion can be had of this book. The author sees no relationship between human conduct and enacted law on the one side and moral principles and a law of nature on the other side. Law, as the author sees it, is pragmatic, to be enlightened by the biological and sociological sciences, and its values determined by man's necessity of having to live in society peacefully and productively, uncomplicated by the notions of an hereafter or of man as a supernatural entity. Thus the law (man-made law) would regulate life, when it should be generated, by whom, in what numbers, in what genetic combination, and how long it should encumber this planet if it fails of its usefulness and purpose. The author, to put it concretely (though not in his words), sees society as a well-run farm and its in-

habitants healthy, well-bred, well-fed stock and even cultured, in a way looked after by the law with careful eugenic supervision and kindly though effective extirpation or emasculation, of those with unhealthy or unsociable genetic complexions. The "freedom" would function within this framework.

Lest the reader fear that violence is being done to the text, let the text speak for itself. The author, resenting the influence of Western (by which the author means Catholic) morality on birth-control research says: "When religious opinions are embodied in the law, the cramping effect upon free scientific inquiry is even more disastrous."³ Apropos of sterilization, the author feels that:

There is a striking contrast between human recklessness in our own reproduction and the careful scientific improvement of other forms of life under man's control. No rose-grower, pigeon-fancier or cattle-breeder would behave as men do in their own breeding habits.⁴

With some relish the author quotes a kindred soul: "Imagine," says Bertrand Russell, 'the feelings of a farmer who was told that he must give all his bull calves an equal opportunity!'"⁵ Referring to artificial insemination, the author notes (and the context reflects no disapproval but rather a warm enthusiasm):

It opens the way for separating the procreative from the companionate and sexual elements in marriage. A woman can now choose one man as the biological father of her children, and another as her lover and companion, and as the father of her children by adoption. It offers the possibility, too, of immensely increasing the number of

women whom it is practicable for one man, regarded as of good stock, to fertilize.⁶

As to the procurement of donor semen in artificial insemination, the author observes: "The parallel easily suggests itself between the donor — or rather vendor — of semen and the prostitute: both sell the use of their bodies in respect of their sexual or reproductive functions."⁷ But, says the author, after a distinction between the two and referring to sale of semen: "... there is nothing intrinsically wrong in selling a part of the body, e.g., hair."⁸ Finally, to quote the author once more (though not by any means to exhaust a host of analogous expressions), he has this to say of the mother who finds that she has given birth to a monster or an idiot child: "... an eugenic killing by a mother, exactly paralleled by the bitch that kills her mis-shapen puppies, cannot confidently be pronounced immoral."⁹

Before proceeding to the examination of some specific points in the book, one more general observation remains to be made. Reference is made here to the highly personal element in the author's presentation which reduces it in places, all too many, to a personal attack and diatribe on the Catholic Church. By innuendo, by implications, by sarcasm and by forthright insult, the book deteriorates into a vehicle of personal bitterness and malice reminiscent of the black days of post-reformation England. The author notes in the Preface that he has tried to be objective — but not impartial.¹⁰ The partiality is understandable and to be expected; the objectivity, however, is a thin

³ P. 46.

⁴ P. 82.

⁵ *Ibid.*

⁶ P. 115.

⁷ P. 140.

⁸ *Ibid.*

⁹ P. 20.

¹⁰ Preface, p. X.

veil which at times only poorly hides his prejudices. The latter ïll-becomes the man of the law, even more so the teacher of the law. Thus, speaking of the transmission of Original Sin, the author says: "... when biologists outside the Soviet sphere are firm against the inheritance of acquired characteristics, the doctrine of original sin might seem to be deprived of its last vestige of rational support."¹¹ To treat Original Sin as a physical characteristic and transmissible or non-transmissible as such, is either profound ignorance or sarcastic humor; both very much out of place here.¹² Referring to the Catholic use of the phrase "acts against nature" and "frustration of a natural faculty," the author calls it: "This extremely primitive if not blasphemous theology . . ."¹³ and "... the statement that an act is unnatural, coming from a moralist, means little more than that he does not like it."¹⁴ To add one more:

Apart from sex-phobia and masochism, the mystical view of 'nature' contributed powerfully to the clerical attitude towards contraception.¹⁵

In discussing the Catholic viewpoint on sterilization an obiter dicta remark of the author is that:

. . . any forethought with regard to sexual functions is an interference with Providence, which has apparently planned that deformed and moronic children shall be born.¹⁶

¹¹ P. 17. The author's use of such phrases as "might seem to be," "it may be said that," etc., used with profusion throughout the book strike this reader as an application of the theory that you can have your cake and eat it too. This clever device (though rather transparent) allows the author to tell freely what he thinks yet always leaving the door open for a fast retreat, if needed.

¹² P. 61.

¹³ P. 61.

¹⁴ P. 60.

¹⁵ P. 55.

¹⁶ P. 101.

Turning to the subject of abortion and more particularly on the decision of Rome regarding the removal of an ectopic fetus, he characterized this ruling as "... too crassly stupid even for the most rigid religious conformism."¹⁷

These general observations serve to introduce the topics presented in the text. Specifically the author treats of seven major moral-social-legal problems, all associated with life; its avoidance (birth control and sterilization), its extinction (abortion, infanticide, suicide and euthanasia), and the substitution (all or in part) of the paternal germ plasm (artificial insemination). The author does not present the topics in this order, or grouping, but this arrangement facilitates their review.

Mr. Williams views contraception and sterilization as two forms of birth control; the former as a temporary, repetitive and at times considerably doubtful method, the latter as a permanent, single and effective method. It should be noted here that the author reflects (at least to the mind of this reviewer) a growing tendency to regard sterilization more and more as a *usual* method whereas in the past it was looked upon rather as an *unusual* and at times *penal* control of the procreative powers of the mentally ill, the defective or of the criminal sex deviate.¹⁸

The author of course is a strong advocate of both of these methods and would like to see the law not only as permissive in these matters but at times even as prescribing them, especially as to sterilization. Mr. Williams sees no particular morality associated with these practices and in his

¹⁷ P. 202.

¹⁸ See e.g., *Human Betterment Association of America*, *STERILIZATION: QUESTIONS AND ANSWERS*.

view, ought not to see them. They are merely social controls which society exerts for its betterment and survival.

It is on the subject of contraception (either temporary or permanent) that the author mangles much of the thought and reasoning of the Scholastic doctrine of natural law. Thus in pointing out that birth control and birth control methods have a long history, his conclusion is that this "... does tend to show that the demand for birth control cannot be characterized as 'unnatural,' except in a very peculiar sense of that word."¹⁹ Now the Church has never said that the interest in or the demand for the control of fertility was per se unnatural. The word "unnatural" or *contra naturam* and in fact the total concept of natural law are misunderstood by the author. He shares that view of the natural law which has brought so much ridicule on the traditional teaching and which is as unacceptable to us as it is to them. The result has been that:

The habit of viewing laws as ultimately grounded in norms inherent in the nature of man and society gave way to analytical jurisprudence, which viewed laws as pure facts wholly disconnected from morals; to historical jurisprudence, for which the ultimate source of laws is evolving custom; and to positivism of many varieties but all of them united in the concept that under the ever changing stream of fact there is no intelligible abiding substratum and therefore no truth superior to the transient findings of experimental science.²⁰

Under these circumstances the author's endorsement of contraceptive measures is readily explained.

The philosophy that the source of law is

evolving custom is the author's explanation for the Church's attitude on abortion and infanticide. This attitude, says the author, evolved from the allegorical tale of Adam's fall and the theory of Original Sin that unbaptized infants are eternally lost.

The author believes that infanticide should be controlled by law, but that the occurrence of it should be treated mildly if at all. So too abortion, to protect women against abortion rings and unlicensed operators who imperil maternal life. But he favors a broadening of the law so that any hardship such as the number of children, limited financial income, etc., would be sufficient cause for legal or therapeutic abortion. His relating of the experience of the Scandinavian countries is interesting since the legalization of abortion with very broad reasons for its legality increased the number of legal abortions but did not decrease the number of illegal abortions. In fact, says the author, in the opinion of some, abortions have become more numerous "... because the legislation has helped to remove the feeling that abortion is wrong, and indeed promotes an abortion mentality which extends to all women who have become unintentionally pregnant."²¹

As to suicide and euthanasia, the author sees no purpose in laws to forbid these since ultimately the individual has the right to decide if he wishes to dissolve his existence.

... [T]he pretension of the moral theologian [as to euthanasia], sitting in the calm of his study, to dictatorial powers of moral interpretation must be rejected. This question, at least, is one for the patient himself, or else for the practical judgment of the medical practitioner. ...²²

¹⁹ Pp. 47-48.

²⁰ 1 UNIVERSITY OF NOTRE DAME NATURAL LAW INSTITUTE PROCEEDINGS 87 (1949).

²¹ P. 242.

²² P. 317.

Finally, in reference to artificial insemination, the author sees this as a blessing for the childless marriage and indeed he almost revels in its eugenic implications.²³ Of considerable concern, however, is the increasing acceptance of the dissociation of the sexual faculties from their basic linkage with parenthood, home and family. Practices such as improved contraception, sterilization, abortion and artificial insemination are bound to have their repercussion in the sexual codes and mores of the day. Not only are these becoming of more common occurrence among the married but their extension to the unmarried and the youth of the community gives great concern.

Mr. Williams' total separation of civil positive law from morality and of human conduct from a standard in the natural law causes great concern. One cannot help but feel that the author walks with a deluded sense of security. He can well afford to speak of a society without deep, moral convictions, of a law which precludes spiritual values, but only because he enjoys the fruits of 2000 years of Christianity where these values have flourished and of which he has been the unwitting beneficiary. But his is an uncontributing form of membership and in time this pragmatic and materialistic philosophy brings it consequence. Balfour has put it well when he said:

I desire neither to ignore the existence nor to minimize the merits of these shining examples of virtue unsupported by religion.

²³ Pp. 113, 115.

But though the facts be true, the reasoning based on them will not bear close examination. Biologists tell us of parasites which live, and can only live, within the bodies of animals more highly organized than they. For them their luckless host has to find food, to digest it and convert it into nourishment which they can consume without exertion and assimilate without difficulty. Their structure is of the simplest kind. Their host sees for them, so they need no eyes; he hears for them, so they need no ears, he works for them and contrives for them, so they need but feeble muscles and an undeveloped nervous system. But are we to conclude from this that for the animal kingdom, eyes and ears, powerful limbs and complex nerves are superfluities? They are superfluities for the parasite, only because they have been necessities for the host, and when the host perishes the parasite, in their absence, is not unlikely to perish also.²⁴

So it is with the author and a host of others who profess no faith — in any real sense of that word — and who look upon the rest of the world as still benighted, still climbing out of the depth of the dark ages or medievalism. Yet the strange fact is that their lives are parasitic.

. . . [I]t is sheltered by convictions which belong not to them, but to the society of which they form a part; it is nourished by processes in which they take no share. And when those convictions decay, and those processes come to an end, the alien life which they have maintained can scarce be expected to outlast them.²⁵

²⁴ BALFOUR, FOUNDATIONS OF BELIEF 81-82 (1895).

²⁵ *Id.* at 83.



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