ARGUMENTS FOR AND AGAINST THE LEGALIZATION OF ABORTION

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by

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ABSTRACT

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Free association to the word "abortion" would probably yield a fantastic array of emotional responses: pain, relief, murder, crime, fear, freedom, genocide, guilt, sin. Which of these associations people have no doubt reflects their age, marital status, religion or nationality. To a thirty-five-year-old feminist, the primary response might be "freedom" and "relief"; to an unmarried American college girl, "fear" and "pain"; to a Catholic priest, "murder" and "sin"; to some black militants, "genocide."

As a result of the Supreme Court rulings in Roe v. Wade, and Doe v. Bolton, 93 S.Ct. 705 (1973), every woman in the United States has the same right to abortion during the first three months of pregnancy as she has to any other minor surgery. These rulings have been received differently throughout society. While abortion proponents have viewed the rulings with exhilaration, pro-life advocates consider the decision a monumental error which will result in chaos.

The purpose of this paper was to explore the arguments for and against the legalization of abortion. This study includes an analysis of the Supreme Court rulings on abortion

and the definitions, assumptions, and perspectives that abortion proponents and pro-life advocates have internalized in defense of their diametrically opposed views toward abortion. This study will trace the history of abortion and will include the judicial developments which preceded the Supreme Court rulings. The affirming and dissenting opinions of the Supreme Court Justices will be discussed with emphasis being placed on the basic principles represented by those opinions.

A review of the literature was the major procedure used to gather information. Data extracted from the Supreme Court rulings, professional journals, government documents, periodicals and private organization decision papers provided background information and contemporary thought upon which an objective analysis could be based.

ACKNOWLEDGMENTS

It is always a pleasure to acknowledge the vital contributions by many people and organizations which a project of this nature requires. I am grateful to my committee, Dr. Charles Friel, Dr. Ann Baker, and Dr. Erwin Ernst, for their able assistance and supervision. I am also indebted to the United States Army, Military Police Corps, for granting me the opportunity and financial assistance to complete this project. Finally, I would like to publicly acknowledge the continuing support, assistance, and understanding my wife, Caren, has given me throughout this period.

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CHAPTER I

INTRODUCTION

Statement of the Problem

When two factions holding diametrically opposed views toward a single phenomenon are pitted eye-to-eye, the result is often catastrophic. Each faction views the object of concern with its own distinct set of definitions, assumptions, and perspectives. Presently, abortion is such a question. At one extreme are the abortion proponents arguing for the eradication of all laws governing abortion. At the other extreme are the pro-life advocates arguing that abortion is not justifiable, except in the rare medical cases, when the mother's life is in danger.

Abortion proponents label the opposition as "sexists,"[1] "fascists," "religious fanatics," and "sadists." Pro-life advocates define their antagonists as "Nazis," "misguided and duped radicals," and "baby killers." They each have their horrors to unveil. Abortion proponents recount pitiful cases of women forced to bear children they did not want and the effects of this involuntary breeding on their mental and physical health. They also cite cases of women who have suffered agonizing deaths at the hands of loathsome backroom butchers because society refused to provide safe and clean

abortion facilities for its desperate citizens. Pro-life advocates produce photographs of tiny aborted fetuses, some complete and some dismembered, leaving only the most perceptually defensive individuals able to deny that they are looking at a deliberately destroyed human being. They also relay accounts of tiny aborted babies gasping, kicking, and crying at the bottom of hospital wastepails until life eventually ebbs away.

As a result of the Supreme Court rulings in Roe v. Wade and Doe v. Bolton, 93 S. Ct. 705 (1973), every woman in the United States has the same right to abortion during the first three months of pregnancy as she has to any other minor surgery. Needless to say, these rulings have been received differently throughout society. Abortion proponents have viewed the rulings with exhilaration, and pro-life advocates consider the decision a monumental error which will result in chaos.

Purpose and Organization of Study

There have been numerous articles and papers written concerning the abortion dilemma; however, most tend to be written with a single point of view. The purpose of this study is to explore all aspects of the abortion controversy. This study traces the history of abortion, includes an analysis of the Supreme Court rulings of Doe v. Bolton and Roe v. Wade,

and presents the perspectives of both abortion proponents and pro-life advocates.

The objective of this study was to explore the arguments for and against the legalization of abortion. For organizational purposes, this thesis is divided into four chapters. Chapter I outlines the historical development of the abortion controversy, including: ancient attitudes, Common Law, English Statutory Law, American Law, the 1973 Supreme Court decision, and current public opinion. Chapter II contains the arguments for abortion, while Chapter III presents the arguments against abortion. Chapter IV summarizes each position's arguments and liabilities, reviews the Supreme Court decision and discusses the prospect for the fetus.

History of Abortion

Ancient Attitudes

The earliest known record of an abortive technique goes back almost 3,000 years before Christ, in the royal archives of China. An Egyptian medical papyrus of 1550 B.C. mentions another technique, one that resembles both contraceptive and abortifacient. Although the code of Hammurabi (1728 B.C.) and the Jews, during their Egyptian exodus, established penalties against abortion, these were strictly limited to the payment of compensation when an assault on a pregnant wife resulted in miscarriage (Lader, 1966).

The Greek city states and ancient Rome made abortion the basis of a well-ordered population policy. Plato (427-347 B.C.) insisted on abortion for every woman after forty. Aristotle (384-322 B.C.) preached all forms of population control and urged: "When couples have children in excess and there is an aversion to exposure of offspring, let abortion be procured before life and sense have begun (Lader, 1966, p. 76)."

Soranus of Ephesus (98-138 A.D.), a Greek described as the greatest of the ancient gynecologists, was generally opposed to Rome's prevailing free-abortion practices. He found it necessary to think first of the life of the mother, and he resorted to abortion when, upon this standard, he felt the procedure advisable (Roe v. Wade, 1973). Greek and Roman law afforded little protection to the unborn.

If abortion was prosecuted in some places, it seems to have been based on a concept of violation of the father's right to his offspring. Ancient religion did not bar abortion.

The Hippocratic oath is the only significant work in early Greek sources to condemn abortion. The Oath varies somewhat, depending upon translation, but in any translation the content is clear: "I will give no deadly medicine to anyone if asked, nor suggest any such counsel, and in like manner I will not give to a woman a pessary to produce abortion (Roe v. Wade, 1973, p. 716)." To the question, "Why

did not the authority of Hippocrates dissuade abortion practice in his time and that of Rome?" Doctor L. Edelstein answered:

> ... the abortion clause of the Oath echoes Pythagorean doctrines, and in no other stratum of Greek opinion were such views held or proposed ... . The Oath originated in a group representing only a small segment of Greek opinion and was not accepted by all ancient physicians. Medical writings down to Galen (130-200 A.D.) give evidence of the violation of almost every one of its injunctions. But with the end of antiquity a decided change took place. Resistence against abortion became common. ... the emerging teachings of Christianity were in agreement with the Pythagorean ethics. The Oath became the nucleus of all medical ethics and was applauded as the embodiment of truth. Thus, it is a Pythagorean manifesto and not the expression of an absolute standard of medical conduct (Roe v. Wade, 1973, p. 716).

Neither Roman law nor morality opposed abortion, since the basic legal principle was that the fetus was not a human being but pars viscerum matris. This principle probably stemmed from the Stoic philosophy which held that the soul was created at birth. The incidence of abortion was at its peak during Ceasar's reign. The Lex Julia et Papia (18 B.C. and A.D. 19) sought to stem the increase through tax benefits and political preferment for additional children. Septimius Severus (A.D. 193-211) even attempted to exile wives for abortion. The laws and tradition of abortion had become so ingrained in the Roman Empire that even when Christianity achieved official toleration throughout the Roman Empire in 313, the old abortion laws remained unchanged (Lader, 1966).

Common Law

Throughout the history of common law, abortion performed before "quickening" (the first recognizable movement of the fetus) was not an indictable offense. The absence of such a law appears to have been developed from a combination of earlier philosophical, theological and civil and canon law concepts of when life begins. This question was normally approached in terms of the point at which the fetus became formed or recognizably human, or in terms of when a person came into being, that is infused with a soul or animated. Although Christian theology and the canon law fixed the point of animation at forty days for male and eighty days for a female, there still remained little agreement about the precise time of formation or animation. There was agreement, however, that prior to this point the fetus was to be regarded as part of the mother, and its destruction was not homicide. Because of the continued uncertainty about the precise time when animation occurred, a lack of any empirical data for the forty-eighty day view, and Acquinas' definition of movement as one of the two first principles of life, quickening was focused upon as the critical point (Roe v. Wade, 1973).

Whether abortion of a quick fetus was a felony at common law, or even a lesser crime, is still disputed. Bracton, writing early in the thirteenth century, thought it homicide (Roe v. Wade, 1973). But the later and predominant view has been that it was a lesser offense. Sir Edward Coke

(1552-1634) took the position that abortion was a misdemeanor and not murder (Roe v. Wade, 1973). Sir William Blackstone (1723-80) advocated Coke's position when he stated: "Life begins in contemplation of law as soon as the infant is able to stir in the mother's womb (Lader, 1966, p. 78)."

The English Statutory Law

England's first criminal abortion statute came in 1803. It made abortion of a quick fetus a capital crime and provided lesser penalties for the felony of abortion before quickening. This destruction was continued in the general revision of 1828, but disappeared, together with the death penalty in 1837, and did not reappear in the Offenses Against the Person Act of 1861. This act formed the core of English anti-abortion law until the liberalizing reforms of 1967. The most notable development in the English law was the case of Rex v. Bourne, 1K.B. 687 (1939). This case answered in the affirmative the question of whether an abortion necessary to preserve the life of a pregnant woman was excepted from the criminal penalties of the 1861 Act (Roe v. Wade, 1973).

In 1967, Parliament enacted a new abortion law. The Act permits a licensed physician to perform an abortion only on the agreement of two doctors under the following conditions: (1) that continued pregnancy would involve serious risk to the life and health, physical and mental, of the woman; (2) that a substantial risk existed that the child would be born suffering from physical or mental abnormalities

that would be a severe handicap; (3) that the pregnant woman's capacity as a mother would be severely overstrained by the care of a child or another child; and (4) that the pregnant woman was defective, under sixteen, or had become pregnant as a result of rape (Hordon, 1971). The Act also provides that in making this determination, account may be taken of the woman's actual or reasonably foreseeable environment. It also permits a physician, without the concurrence of others, to terminate a pregnancy where he is of the good faith opinion that the abortion is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman (Hordon, 1971).

The American Law

In this country, the law in effect in all but a few states until the mid-1800's was the pre-existing English common law. Connecticut, the first state to enact abortion legislation, adopted in 1821 that part of England's 1803 Abortion Statute which related to a woman "quick" with child. Abortion before quickening was made a crime in that state in 1860. In 1828, New York enacted legislation that was to serve as a model for early anti-abortion statutes. While barring destruction of an unquickened fetus as well as a quick fetus, it made the former only a misdemeanor but the latter second-degree manslaughter. It also incorporated a concept of therapeutic abortion by providing that an abortion was excused if it "... shall have been necessary to preserve the life of

such mother, or shall have been advised by two physicians to be necessary for such purpose (Roe v. Wade, 1973, p. 719)." By 1840, only eight states had statutes dealing with abortion. However, after the Civil War, every state passed laws to restrict the practice of abortion. Most of these laws stated that abortion was permitted only when necessary to preserve a pregnant woman's life. With these new laws the quickening distinction disappeared, and the degree of the offense and the penalties were increased. In effect, all of these laws were similar, prohibiting abortion except in situations of rather severe physical disease or impairment. These statutes existed unchallenged until 1966, when Mississippi altered its law slightly to also provide for legal abortion for pregnancies resulting from rape.

In 1962, the American Law Institute's (ALI) revision of the Model Penal Code contained a ready-made proposal for abortion reform (see Appendix A, The American Bar Association's Uniform Abortion Act of 1972). Their concept was that abortion should not be considered a crime when performed by a licensed physician on the grounds of substantial risk that continuance of pregnancy would gravely impair the physical or mental health of the woman, or that the child resulting from the pregnancy would be born with grave physical or mental defects, or in cases of pregnancy resulting from rape or incest. In 1964, an epidemic of Rubella resulted in the birth of an estimated 20,000 defective babies in the United States.

This heightened public acceptance in favor of the concept that legal abortion may be desirable in some situations. During this epidemic, many physicians ignored state abortion laws to perform abortions on women exposed to Rubella in the first three months of pregnancy, and the medical profession in many states supported changing the laws to correspond with this practice.

In April, 1967, Colorado became the first state to enact a new abortion law designed along the lines proposed by the American Law Institute. North Carolina, California, Georgia, Maryland, Arkansas, Delaware, New Mexico, and Oregon soon did the same. During 1970, three more states, South Carolina, Virginia and Kansas, enacted abortion laws similar to the Model Penal Code. More significant, however, was the enactment in 1970 of a new kind of abortion law which contained no restriction on the reasons for which an abortion may be legally obtained. Hawaii was the first state to pass this law. Changes in Alaska and New York law followed with the New York law containing fewer restrictions than those enacted in Hawaii and Alaska. In Washington State, a non-restrictive abortion law resulted, not from legislative action, but from a referendum during the November 1970 general elections. Public opinion was not uniform. Similar referendums were defeated in Michigan and North Dakota in 1972 (see Appendix B for the 1972 state laws permitting abortion on request for reasons of health).

Roe v. Wade

Jane Roe (a pseudonym), a single woman who was residing in Dallas County, Texas, instituted a federal action in March, 1970, against District Attorney Wade. She sought a declaratory judgement that the Texas Criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes. Roe alleged that she was unmarried and pregnant; that she wanted to terminate her pregnancy by an abortion performed by a competent, licensed physician under safe, clinical conditions; that she was unable to get a legal abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague, and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments. By an amendment to her complaint, Roe purported to sue on behalf of herself and all other women similarly situated (Roe v. Wade, 1973). The Texas statutes that were of concern to the Supreme Court were Articles 1191-1194 and 1196 of the State's Penal Code (see Appendix C). Similar statutes are in existence in thirty states (Roe v. Wade, 1973).

The Supreme Court decided on January 22, 1973, that the Texas statute was in violation of the Due Process Clause of the Fourteenth Amendment. The Court Stated:

> For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgement of the pregnant woman's attending physician. For the stage subsequent to approximately the end of the first trimester, the State ... may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability the State ... may ... regulate and even proscribe, abortion except where it is necessary, in appropriate medical judgement, for the preservation of the life or health of the mother (Roe v. Wade, 1973, p. 718).

Doe v. Bolton

On April 16, 1970, Mary Doe (a pseudonym), twenty-three other individuals (nine Georgia licensed physicians, seven registered nurses, five clergymen, and two social workers), and two non-profit Georgia corporations advocating abortion reform, instituted a federal action in the Northern District of Georgia against the State's attorney general, the district attorney of Fulton County, and the chief of police of the city of Atlanta. The plaintiffs sought a declaratory judgement that the Georgia abortion statutes were unconstitutional in their entirety. They also sought injunctive relief restraining the defendants and their successors from enforcing the statutes. Mary Doe stated that she was a twenty-two year old Georgia citizen, married, and nine weeks pregnant. She had three living children. The two older ones had been placed in a foster home because of her poverty and inability to care for them, and the youngest, born July 19,

1969, had been placed for adoption. Mary further stated that her husband had recently abandoned her, and she was forced to live with her indigent parents and their eight children. Mary, a former mental patient at the State Hospital, had been advised that an abortion could be performed on her with less danger to her health than if she gave birth to the child she was carrying. She also contended that because of her economic status, she would be unable to care for or support the new child. On March 25, 1970, she applied to the Abortion Committee of Grady Memorial Hospital, Atlanta, for a therapeutic abortion under Section 26-1202 of the Georgia Criminal Code. Her application was denied on April 10, 1970, on the ground that her situation was not one described by the Georgia Code (Doe v. Bolton, 1973).

Mary Doe alleged that because her application was denied, she was forced either to relinquish her right to decide when and how many children she will bear or to seek an abortion that was illegal under Georgia statutes. This invaded her rights of privacy and liberty in matters related to family, marriage, and sex and deprived her of the right to choose whether to bear children. She alleged that this was a violation of rights guaranteed her by the First, Fourth, Fifth, Ninth and Fourteenth Amendments. The statutes allegedly also denied her equal protection and procedural due process, and because they were unconstitutionally vague, deterred hospitals and doctors from performing abortions.

She sued on her own behalf and on behalf of others similarly situated (Doe v. Bolton, 1973).

The Georgia statutes that were of concern to the Supreme Court were Sections 26-1201, 26-1202, and 26-1203 of the State's Criminal Code (see Appendix D). After examining these statutes, the Supreme Court decided on January 22, 1973, that those portions of the Georgia statutes requiring that abortions be conducted in hospitals, or accredited hospitals, requiring the approval of a hospital abortion committee, requiring confirmation by other physicians, and limiting abortion to Georgia residents are unconstitutional in that these statutes are in violation of the Fourteenth Amendment (Doe v. Bolton, 1973).

Recent Public Opinion

In a survey released by the Gallup Poll on January 28, 1973, the public was found to be evenly divided on the issue of making abortion legal during the first three months of pregnancy with 46 percent in favor, 45 percent opposed, and 9 percent undecided. However, support for legalized abortion has grown since a November, 1969, survey when the vote was 50 to 40 percent against the right to terminate pregnancy during the first three months. The most recent survey was based on personal interviews with 1,504 adults, eighteen and older, in more than 300 scientifically selected localities across the nation, interviewed during the period December

8-11, 1972. The November, 1969, survey, in which the identical question was asked, was based on personal interviews with 1,511 adults, interviewed November 11-17, 1969. As can be seen in Table 1, the change since 1969 has come about almost entirely among persons under fifty years old. Those over fifty remain steadfastly opposed. Increased support since the earlier survey is also recorded among both Protestants and Catholics. Protestants are now divided on the issue, while a majority of Catholics remain opposed. Persons with a college background are most likely to favor liberalizing abortion laws. In the latest survey, they voted two to one in favor of making abortion legal for the first three months of pregnancy. The question asked of the sample and their response was: "Would you favor or oppose a law which would permit a woman to go to a doctor to end preganacy at any time during the first three months?"

	Favor	Oppose	No Opinion
December, 1972	46%	45%	9%
November, 1969	40%	50%	10%

In another survey conducted by the Gallup Poll in June, 1972, the following question was asked: "Do you agree or disagree with the following statement regarding abortion: The decision to have an abortion should be made solely by a woman and her physician." The results of this question, depicted in Table 2, were based on personal interviews with 1,574 adults in more than 300 scientifically selected

TABLE 1

Percent in Favor of Law Permitting Abortion During First 3 Months*

	1972 %	1969 %	Point Change
National	46	40	+ 6
College	63	58	+ 5
High School	44	37	+ 7
Grade School	30	31	- 1
Under 30 years	55	46	+ 9
30-49 years	48	39	+ 9
50 and over	39	38	+ 1
Protestants	45	40	+ 5
Catholics	36	31	+ 5
Men	49	40	+ 9
Women	44	40	+ 4

*American Institute of Public Opinion, The Gallup Poll, Princeton, New Jersey, Released January 28, 1973.

TABLE 2

Abortion: A Woman - Doctor Decision*

	Agree %	Disagree %	No Opinion %
TOTAL	64	31	5
Men	63	32	5
Women	64	31	5
Protestants	65	31	4
Catholics	56	39	5
Republicans	68	27	5
Democrats	59	36	5
Independents	67	28	5
College	74	22	4
High School	65	30	5
Grade School	47	45	8
East	69	27	4
Midwest	62	34	4
South	53	40	7
West	73	21	6
Under $5,000/year	53	38	9
5,000 - 6,999	55	40	5
7,000 - 9,999	71	26	3
10,000 - 14,999	68	27	5
15,000 and over	74	24	2
Under 30 years old	64	31	5
30-44 years old	63	33	4
45 and over	63	31	6

*American Institute of Public Opinion, The Gallup Poll, Princeton, New Jersey, Released August 25, 1972.

localities across the nation. The sample was designed to represent, in correct proportions, persons of varying religious and political affiliations, age, income, educational background and geographical location. The survey found that two out of three Americans think abortion should be a matter for decision solely between a woman and her physician. Contrary to the traditional stand of the Roman Catholic Church, 56 percent of Catholics believe that abortion should be decided by a woman and her doctor. The comparable percentage for Protestants was 65 percent. The Gallup interviewers found that a greater proportion of Republicans (68 percent) and Independents (67 percent) than Democrats (59 percent) hold the belief that abortion should be a decision between a woman and her physician. Geographically, approval on the issue ranged from 53 percent in the South to 73 percent in the West. About the same percentage of all age groups agreed with the statement on abortion.

Shortly after the Supreme Court ruling, Modern Medicine polled 33,000 physicians and asked their opinions regarding the Court's decisions. ("Doctors Speak Out," 1973). In answer to the question, "What are your reactions to the decision?", 64.7 percent of the respondents were in favor of it, 34.7 percent were opposed, and less than .5 percent gave no opinion. From the poll results, it was apparent that more younger doctors were in favor of the Supreme Court ruling than were their elders. Among physicians under thirty-five years

of age, 75 percent were in favor of the decision, compared with 59 percent of those sixty-five and older. The six categories of doctors most involved in abortion counseling or in the procedure itself seemed to respond to the ruling in inverse proportion to their involvement with the actual procedure. Thus, surgeons, obstetrician-gynecologists, and general practitioners were 59 percent in favor; pediatricians, 69 percent; internists, 71 percent; and psychiatrists, 86 percent. Responses to the abortion ruling also varied according to religious affiliation. Jewish physicians, who made up 8 percent of the respondents, were 92 percent in favor; Protestants, who comprised 44 percent of the doctors, were 69 percent in favor; doctors who listed themselves as Greek and Eastern Orthodox, Hindu, Buddhist, Moslem and Humanist, who comprised 3 percent of the doctors, were 71 percent in favor; doctors who stipulated no religion, or atheist or agnostic, 6 percent of the respondents, were 79 percent in favor; and Catholics, accounting for 15 percent of the respondents, were 73 percent against the abortion ruling.

The second question of Modern Medicine's poll asked, "If favorable (to the Supreme Court ruling), would you approve abortions during: First trimester only? Second trimester? Last three months depending on health of mother?" Of the doctors who favored the court decision, one-half said they would approve of abortion during the first trimester only. Abortion during the second trimester was approved by

27 percent, and during the last three months, 23 percent. The third question asked was: "To your knowledge are hospital services for abortion currently available in your area?" Twenty-three percent of the doctors said they did not know of any facilities; 13 percent said there were no facilities available; 3 percent knew of out-patient facilities only; and 39 percent knew of both in-and-out patient facilities. The fourth question asked was, "Does this decision pose any ethical problems for you?" For 70 percent of the doctors it did not; 27 percent said yes; and 3 percent gave no answers. The younger doctors were less troubled than the older physicians. Of those thirty-five and under, three-fourths reported no ethical problems resulting from the decision on abortion. In the sixty-five and older category, 62 percent reported no problems. Proximity to the abortion itself tended to determine whether an individual physician would be likely to have problems. For example, 31 percent of the surgeons, general practitioners, and obstetrician-gynecologists said that the decision created ethical problems compared with 27 percent of the pediatricians, 24 percent of the internists, and 20 percent of the psychiatrists. As for the effect of religion on the answers, a definite pattern emerged. Catholic physicians had the highest percentage of ethical problems (52 percent). Of the Protestant physicians, 26 percent said the decision posed moral problems; of the atheists and

agnostics, 20 percent said it did; of the Jewish physicians, 12 percent felt it did.

CHAPTER II

ARGUMENTS IN FAVOR OF ABORTION

Although there are numerous pro-abortion organizations (see Appendix E), the pro-abortion proponents themselves can be placed into two large camps. The first camp would be those who advocate "abortion for cause," and the second would be those who advocate "abortion on request." Danger to the life or health of the mother, rape, incest or fetal deformity are the justifications often used by the first camp. Total female freedom, the birth of "unwanted" children, or socioeconomic conditions are the justifications given by the latter group. The purpose of this chapter is to present the arguments for the legalization of abortion, including: the interpretation of the biological data, the abortion-for-cause position, the abortion-on-request assertions, and the majority opinion of the Supreme Court.

The Beginning of Human Life

The answer to the critical question of "When does human life begin?" often dictates one's position concerning abortion. Concerning this question, Callahan (1970) has said that there are three basic schools of opinion: those who believe the pertinent criteria for establishing the "beginning" are genetic; those who believe they are developmental, that

it is the stage of morphological development which is critical; and those who believe the criteria are social, a consequence of the political and social decisions people choose to make. Each "school" of opinion has chosen to interpretate the biological data somewhat differently (see Appendix F for a summary of the known biological data). The developmental and social consequences schools are supportive of the pro-abortion position, while the genetic school strengthens the pro-life position.

The Developmental School

Within the developmental school are grouped those who hold that, while conception does establish the genetic basis for an individual human being, some degree of development is required before one can speak of the life of an individual human being as an issue in abortion decisions. Within the school, there are differences of opinion on just how much development is required. The general argument for some kind of development norm has been well put by Thomas L. Hayes (1967):

> The first cell of the new individual contains all the genetic information that, during development, will interact with its environment to produce the first human organism. However, the first cell itself cannot be described in either form or function as a complete human individual. It is not a tiny body that only needs to grow in size to become a developed human person. Development does not take place by growth alone but is an intricate process of interaction between genetic material and its environment that produces new form and function in the embryo as development proceeds. Even the genetic material itself may change in form and function ... . As development proceeds, certain landmarks can be noted

> in the continuous transition from single cell to complete human individual. Implantation in the wall of the uterus, development of the placenta, movement or quickening and birth are all important events, but none represents a point in development where the biological form and function of the human individual are suddenly added ... . The attributes of form and function that designate the living system as a human individual are acquired at various times during development in a process that is relatively continuous. The fetus late in development is obviously a living human individual in form and function. The single cell stage, early in development, does not possess many of the attributes of biological form and function that are associated with the human individual (pp. 677-78).

Rudolf Ehrensing has suggested that "the presense of human life does not necessarily mean that a human person is present," resting his distinction between a "human life" and a "human person" on the necessity in the latter of "the existence of a living human brain in some form." Moreover, "it is not the potential for structuring matter in the form of a body, a human brain, that calls for the presence of a human person, but the actual accomplishment, the actual incorporation of matter (Ehrinsing, 1966, p. 4)." Ehrensing does not pinpoint just when, by the use of a brain-development criterion, personhood is actually present, but Roy V. Schenk (1968), arguing in a similar way, does:

> Each human fetus progresses through a continuous series of developmental stages and ultimately passes through the level of complexity at which self-awareness becomes possible. It seems reasonable to propose that this is the point at which the fetus changes from a potential to an actual human person. Embryological studies on the developing cerebral cortex suggest that this level of complexity is probably not achieved before the sixth month of development. ... The arguments against abortion have stressed the dignity and importance of each human person; and if a fetus has not yet become a human person,

> then it would seem that the other person involved, and particularly the mother, should become of major importance (p. 16).

Malcolm Potts (1969), denying that genetic individuality can be taken as a criterion of humanity, contends that the whole reproductive process is a continuum, resistant to the drawing of sharp lines between human and non-human. He writes:

> An ethical system founded on biology must begin by recognizing that reproduction is a continuum. It can be traced back to the time when the primordial germ cells are first recognizable in the yolk sac endoderm (at about the 20th day after fertilization in man) and it is still incomplete when a grandmother baby sits for her daughter's children ... . The simplest and most satisfactory ethic on abortion is to avoid ascribing any legal or theological status to the embryo during the first two weeks of development; beyond this time the embryo becomes increasingly important and at viability (28 weeks) the fetus should have the same rights as a newborn child (p. 77).

N.J. Berrill, while noting that "the history of the individual begins with the development of the egg following fertilization," contends that "not until sometime between the sixth and eighth week of development--when all the organs are present in a rudimentary way--can one say that the person in the womb is present (Berrill, 1968, p. 46)." Martin J. Buss, arguing that there are achieved levels of organization at different stages in gestation, suggests that "the onset of brain waves provides a reasonable dividing line between the sheerly organic and the sociocultural level of organization (Buss, 1967, p. 250)."

The most obvious strength of the developmental school is precisely that it assigns significant weight to the development process. By not resting the full weight of the "human" on genetic characteristics alone, it thus opens into a fuller understanding of the whole range of human attributes. It also has the advantage of taking account of the possibility that any given zygote may fail to develop in a viable direction; it presupposes that further development is necessary to determine whether in fact a human being does exist. Moreover, and perhaps most importantly, it makes a place for some important ethical distinctions. If one's aim, in line with an affirmation of the sanctity of human life, is to recognize the dignity of such life, what exactly is he trying to protect? A distinction can be drawn among "life," "human life," "individual human life," "human being" and "person." Genetically, sperm and ova are "life" and, to a considerable extent, "human life." Only when the sperm and the egg are united in the one-cell zygote can one speak of "individual human life." Those who are representative of the developmental school are ready to grant that fertilization genetically establishes individual "human life." They raise the question, whether it is that form of human life which is really critical in establishing the basis for abortion decisions. If one believes it wrong to kill all forms of genetically individual human life, then a decision to use the time of conception as critical is coherent and consistent. The developmental school is asking

whether one's real concern ought not to be the protection of "human beings" (which implies some state of development beyond the zygote stage) or of "persons" (which implies an even further state of development). Both Ehrensing and Schenk deliberately choose to talk in terms of the development of a "person." Such a choice assumes that, for moral purposes, one ought to be comparatively more concerned with human persons than with "human life," particularly when one is looking for a way to resolve abortion dilemmas (Callahan, 1970).

The Social Consequences School

Glanville Williams and Garrett Hardin are two of the strongest advocates of the social consequences school. Williams (1958) has said:

> The real question is not when 'life' begins but when 'human life' begins. 'Life' is continuous and thus admits no simple line drawing. Of course, the ovum was alive before it was fertilized and so was the sperm. Both cells, before they met, had a life history of their own in the bodies of their respective parents. But 'human life' is another matter ... no 'human being' can be said to exist at the moment of conception. ... the decision to call the conceptus a 'human being' is to be made on the basis of the social consequences of the decision. Do you wish to regard the microscopic fertilized ovum as a human being? You can if you want to, and if there were no social consequences of doing so, there might be no reason why you should not. But there are most important social arguments for not adopting this language. Moreover, if you look at actual beliefs and behavior, you will find almost unanimous rejection of it. ... viability should be established as the dividing line, with the beginning of 'brain waves' as a possible compromise solution (pp. 208-210).

Garrett Hardin (1968) has stated his position by saying:

> What does the embryo receive from its parents that might be of value? There are only three possibilities: substance, energy and information. As for the substance in

> the fertilized egg, it is not remarkable: merely the sort of thing one might find in a piece of meat, human or animal and there is very little of it ... . The energy content of this tiny amount of material is likewise negligible ... . Clearly, the humanly significant thing that is contributed to the zygote by the parents is the information that 'tells' the fertilized egg how to develop into a human being ... . The zygote, which contains the complete specification of a valuable human being, is not a human being, and is almost valueless ... . The early stages of an individual fetus have had very little human effort invested in them; they are of little worth. ... The expected potential value of each aborted child is exactly that of the average child born. It is meaningless to say that humanity loses when a particular fetus is or is not conceived ... . Whether the fetus is or is not a human being is a matter of definition, not fact; and we can define any way we wish. In terms of the human problem involved, it would be unwise to define the fetus as human. ... no state or nation requires that a dead fetus be treated as a dead person ... (pp. 250-251).

The strength of this "school" is that it is aware of the necessity that developed, adult human beings must finally decide what is to be called "human"; the biological facts do not directly dictate a definition of the "human." The school also tries to take account of the apparently widespread fact that people do not feel the same way emotionally about a zygote, embryo, or fetus as they do about a born, living child. They are saying, in effect, that arguments which try to establish that a zygote (embryo or fetus) is a "human being" lack emotional credibility to most people. That most states and nations do not require death certificates for early aborted fetuses or stipulate methods of disposal for them serves to confirm that legal practice reflects common conviction and common attitudes. Their contention is that, given the conflict of values that arises in abortion dilemma and

the need to account for the reasons why women want abortions, one should define "human" in such a way that the chosen definition does not preclude abortion (by making abortion equivalent to the murder of a human being (Callahan, 1970).

Abortion-for-Cause

Those who advocate abortion-for-cause use danger to the life or health of the mother, rape, incest or fetal deformity as justifications for their position. The American Medical Association, the American Bar Association, the Protestant Churches and Judaism are all supportive of this philosophy.

American Medical Association

The anti-abortion mood prevalent in this country in the late nineteenth century was shared by the medical profession. An AMA Committee on Criminal Abortion was appointed in May, 1857. The Committee deplored abortion and listed three causes of this general demoralization:

> The first of these causes is a wide-spread popular ignorance of the true character of the crime--a belief, even among mothers themselves, that the fetus is not alive until after the period of quickening. The second of the agents alluded to is the fact that the profession themselves are frequently supposed careless of fetal life. ... The third reason of the frightful extent of this crime is found in the grave defects of our laws, both common and statute, as regards the independant and actual existence of the child before birth, as a living being. These errors, which are sufficient in most instances to prevent conviction are based, and only based, upon mistaken and exploded medical dogmas. With strong inconsistency, the law fully acknowledges the fetus in utero

> and its inherent rights for civil purposes; while personally and as criminally affected, it fails to recognize it, and to its life as yet denies all protection (Roe v. Wade, 1973, p. 721).

In 1871, a long and vivid report was submitted by the Committee on Criminal Abortion. The report recommended that it be unlawful and unprofessional for any physician to induce abortion or premature labor without the concurrent opinion of at least one respectable consulting physician, and then always with a view to the safety of the child. Except for periodic condemnation of the criminal abortionist, no further formal AMA position was advocated until 1967.

In 1967, the Committee on Human Reproduction urged the adoption of a stated policy of opposition to induce abortion except when there is documented medical evidence of a threat to the health of the mother; or that the child may be born with incapacitating physical deformity or mental deficiency; or that a pregnancy resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the patient. The report also recommended that the two other physicians must have examined the patient and have concurred in writing, and the procedure must be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals. In 1970, the House of Delegates adopted preambles and most of the resolutions proposed by the reference committee. The resolution read:

> Whereas, abortion, like any other medical procedure, should not be performed when contrary to the best interests of the patient since good medical practice requires due consideration for the patient's welfare and not mere acquienscence to the patient's demand; and Whereas, The standards of sound clinical judgement, which together with informed patient consent should be determinative according to the merits of each individual case; therefore be it Resolved, That abortion is a medical procedure and should be performed only by a duly licensed physician and surgeon in an accredited hospital acting only after consultation with two other physicians chosen because of their professional competency and in conformance with standards of good medical practice and the Medical Practice Act of his State; and be it further Resolved, That no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgement. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally-held moral principles. In these circumstances good medical practice requires only that the physician or other professional personnel withdraw from the case so long as the withdrawal is consistent with good medical practice (Roe v. Wade, 1973, p. 722).

The Position of the American Bar Association

At its meeting in February, 1972, the ABA House of Delegates approved, with seventeen opposing votes, the Uniform Abortion Act that had been drafted and approved the preceding August by the Conference of Commissioners on Uniform State Laws (see Appendix A).

The Position of Judaism

Although Judaism has no central authority, and its congregations are organized into three branches, Orthodox, Conservative, and Reform, often differing in interpretation of Jewish tradition, its position on the beginning of human life contrasts sharply with Catholic theology. In no case is abortion completely prohibited. Judaism has never been concerned with the concept of soul and the movement of its

infusion in the fetus; nor does it treat the fetus as a human entity apart from its mother. Rabbi Israel Margolies has said:

> Only when a child is about to be born, and has actually begun to emerge is it termed a nefesh, a living soul, and only then may we not put aside one life for another. Prior to actual birth, the unborn infant is not deemed truly to be a living soul, a human being. If it should die before birth, or even during the first thirty days of infancy, no funeral service is held, no Kaddish, or memorial prayer for the dead need be recited, because this infant is not considered to have lived at all (Lader, 1966, p. 97).

The chief Talmudic source on abortion is the Mishna, a collection of early religious-legal decisions, in which it is stated: "A woman that is having difficulty in giving birth is permitted to cut up the child inside her womb and take it out limb by limb because her life takes precedence." With the exception of these authorities, codified by Maimonides in 1168, the Jewish position is based on a series of opinions or "responses" handed down by great rabbis and teachers through the centuries. While the basic Jewish position places the life and health of the mother above that of the fetus and raises no religous obstacles to destruction of the fetus for medical necessity, there is little support for the abolition of all abortion laws. During November 11-16, 1967, the Union of American Hebrew Congregations spoke out in favor of needed revisions in the abortion laws:

> We command those states which have enacted humane legislation in this area and we appeal to other states to do likewise and permit abortions under such circumstances as threatened disease or deformity of the embryo or fetus,

> threats to the physical and mental health of the mother, rape and incest, and the social, economic and psychological factors that might warrant therapeutic termination of pregnancy. We urge our constintuent congregations to join with the forward-looking citizens in securing needed revisions and liberalization of abortion laws (American Friends Service Committee, 1970, p. 98).

The Protestant Position

The majority of the Protestant Church groups are chiefly concerned with threats to the life of the mother based on physical rather than emotional factors. They emphasize that the problem is usually to be settled by the individual physician, clergyman and patient. In general, they tend to give primary consideration to the mother rather than to the fetus.

The resolutions that were adopted at the American Baptist Convention during May 29-June 1, 1968, typify the Protestant position:

> ... abortion should be a matter of responsible personal decision ... legislation should provide that (1) the ending of a pregnancy before the twelfth week be at the request of the individual concerned and be regarded as an elective medical procedure governed by the laws regulation medical practice, and (2) after that period a pregnancy be terminated only by a duly licensed physician at the request of an individual concerned for reason suggested by the Model Penal Code of the American Law Institute (substantial risk to physical or mental health of the mother; risk that the child would be born with grave physical or mental defect; rape, incest, or other feloncious acts as the cause of pregnancy) ... . Further, we encourage our Churches to provide sympathetic and realistic counseling on family planning and abortion (American Friends Service Committee, 1970, 9.96).

Abortion-On-Request

In most places in the United States, it was not possible until recently to present an abortion-on-request position to the general public; the mass media and the public seemed open, at most, to pressure in favor of moderate liberalization of abortion laws, but nothing very radical. It is only since the mid-1960's that pressure in favor of abortion-on-request has surfaced, best signaled perhaps by the formulation of the National Association for the Repeal of Abortion Laws in early 1969 under the leadership of Lawrence Lader. The Society of Friends (Quakers) and the American Civil Liberties Union were also actively engaged in defense of this position. The Society of Friends holds the following position regarding abortion:

> We believe that no woman should be forced to bear an unwanted child. A woman should be able to have an abortion legally if she has decided that this is the only solution she can accept and if the physician agrees that it is in the best interests of mother and child. ... Believing that abortion should be subject to the same regulations and safeguards as those governing other medical and surgical procedures, we urge the repeal of all laws limiting either the circumstances under which a woman may have an abortion or the physician's freedom to use his best professional judgement in performing it. ... no physician should be forced to perform an abortion if it violates his conscience; but if this is so, he has an obligation to refer his patient to another physician willing to serve her. ...
>
> Current laws in the United States are discriminatory, since the rich find it possible to secure abortions unobtainable by the poor. They promote criminal activity and disrespect for the law. They are an invasion of human rights: the right of a child to be wanted and loved, the right of a woman to decide whether and when she will have children ... . The most decisive factors in reaching our

> conclusion have been our concern that the individual, the family, and society achieve the highest possible quality of life and our conviction that this is unlikely for mentally and physically damaged or unwanted children, for their parents, and for an overpopulated world. ... At the center of our position is a profound reverence for human life, not only that of the potential human being who should never have been conceived, but of the parents, the other children, and the community of man (American Friends Service Committee, 1970, pp. 64-65).

The American Civil Liberties Union's position on abortion was established in March, 1968. The position enumerated the following points:

> ... The violation of civil liberties inherent in the present abortion laws are sharply accentuated by the immense medical and social problems to which these laws have given rise. ... Although these problems are without doubt extremely serious, in pressing for legislative abolition of the abortion laws the Union bases its arguments solely on its desire to promote and protect the civil liberties of all citizens. We believe that the abortion laws violate civil liberties in the following specific ways:
>
> (1) They deprive women of the liberty to decide whether and when their bodies are to be used for procreation without due process of law.
>
> (2) They are unconstitutionally vague.
>
> (3) They deny to women in the lower economic group the equal protection of the laws guaranteed by the Fourteenth Amendment, since abortions are now freely available to the rich but unobtainable by the poor.
>
> (4) They impair the right of physicians to practice in accordance with their professional obligations in that they require doctors not to perform a necessary medical procedure. In many cases their failure to perform their medical procedure because of the statutory prohibition on abortion would amount of malpractice.
>
> (5) They infringe upon the right to decide whether and when to have a child, as well as the marital right of privacy (American Friends Service Committee, 1970, p. 103).

A prototypical statement of the abortion-on-request position can be found in the writings of Simone de Beauvior (1961):

> Nothing could be more absurd than the arguments brought forward against the legalization of abortion. ... Enforced

> maternity brings into the world wretched infants, whom their parents will be unable to support and who will become the victims of public care or 'child martyrs' ... . We must also reckon with ... masculine sadism ... . Contraception and legal abortion would permit woman to undertake her maternities in freedom (pp. 457-458).

The passage just quoted sums up the key points in most abortion-on-request arguments: enforced maternities should not take place; unwanted children should not be brought into the world; male domination is responsible for stringent abortion laws; and female freedom is ultimately dependent upon a woman's full and free control of her procreative life. Lawrence Lader (1966) made the same points when he wrote:

> The laws that force a woman to bear a child against her will are the sickly heritage of feminine degredation and male supremacy ... . The neglect of man-made laws to grant the choice of motherhood not only condems women to the level of brood animals, but disfigures the sanctity of birth itself. By making birth the result of blind impulse and passion, our laws ensure that children may become little more than the automatic reflex of a biological system ... . The complete legalization of abortion is the one just and inevitable answer to the quest for feminine freedom (pp. 167-69).

A few contend that abortion should be treated strictly as a medical question. B. James George, Jr., has said, "It seems appropriate to make the primary legal context within those decisions are to be made that of the statutes regulating hospitals and doctors (George, 1967, p. 31)." However, the majority of abortion-on-request proponents are reluctant to press this line of argument. They prefer to rest their case on the more general principles of woman's rights, the undesirability of unwanted children, and the hazards of underground abortions. Moreover, as many advocates of abortion-on-

demand realize, to press the case on medical grounds or to talk of the problem as essentially medical leaves the focus of the debate on the exceptional rather than on the common situation. As Alice S. Rossi has pointed out:

> Few women who seek abortions have been exposed to German measles or taken thalidomide and hence fear a deformed fetus; few have serious heart or liver conditions that constitute a threat to their life if they carried the pregnancy to term; fewer still have been raped ... . The majority of women who seek abortions do so because they find themselves with unwelcome or unwanted pregnancies; abortion is a last-resort birth-control measure when preventive techniques have failed or have not been used. It is the situation of not wanting a child that covers the main rather than the exceptional abortion situation (Callahan, 1970, p. 451).

Professor Garrett Hardin (1967) spelled out the social case for abortion-on-request when he wrote:

> Is it good that a woman who does not want a child should bear one? An abundant literature in psychology and sociology proves that the unwanted child is a social danger. Unwanted children are more likely than others to become delinquents ... and when they become parents they are more likely than others to be poor parents themselves and breed another generation of unwanted children. This is what an engineer would call positive feedback; it is ruinous to the social system ... . In this day of the population explosion, society has no reason to encourage the birth of more children, but it has a tremendous interest in encouraging the birth of more wanted children (pp. 82-83).

Alice S. Rossi, discussing the problem of the unmarried woman, has written that "to withhold the possibility of a safe and socially acceptable abortion for unmarried women is to start the chain of illegitimacy and despair that will continue to keep poverty, crime, and poor mental health on the list of pressing social problems in the United States

(Callahan, 1970, p. 454)." Lawrence Lader spoke similarly when he said, "The right to abortion is the foundation of Society's long struggle to guarantee that every child comes into this world wanted, loved, and cared for. The right to abortion along with all birth-control measures, must establish the Century of the Wanted Child (Lader, 1966, p. 166)."

In 1945, Stella Brown said that "woman's rights to abortion is an absolute right. Abortion should be available for any woman without insolent inquisitions or ruinous financial charges, for our bodies are our own (Callahan, 1970, p. 460)." "The widespread use of abortion," Edwin M. Schur has said, "is striking evidence that millions of American women do want more control over deciding when they shall bear children, our laws against abortion may well serve to further women's subservient social status (Callahan, 1970, p. 460)." Speaking of women's rights, Marya Manner has said that "this most important of all has so far been denied us: the right to control what takes place within our own body. This is our citadel, our responsibility, our mental, emotional and physical being (Callahan, 1970, p. 461)." Also speaking of woman's rights, Alice S. Rossi has written:

> The passage of ... a reform statute is only one step on the way to the goal of maximum individual freedom for men and women to control their own reproductive lives. Such freedom should include the personal right to undo a contraceptive failure by means of a therapeutic abortion ... . The only criterion should be whether such an induced abortion is consistent with the individual woman's personal set of moral and religious values, and that is something only she can judge (Callahan, 1970, p. 461).

Those who advocate liberalized abortion laws make the following arguments:

1. Restrictive abortion laws give rise to a major health problem, encouraging hazardous illegal abortions or self-induced abortions, and degrading those women forced to resort to illegal abortion.

2. Restrictive abortion laws are de facto discriminatory. The affluent woman can much more easily and safely get an illegal abortion than a poor woman.

There is no special reason to deny that a woman intent upon abortion, convinced it is the right course, could find the process of procuring an illegal abortion degrading. In a restrictive system she is forced to go outside the law, to act in cladestine ways to deal with doctors and unskilled abortionists, themselves operating outside the law, and very often to undergo the abortion under medical conditions which are unsanitary, unsafe and unappealing.

To some, self-induced abortion may seem a less shameful and frightening way of solving their problem. In other cases, lack of funds or knowledge of just where to turn may lead the woman to attempt the abortion herself. Although the press frequently paints a lurid picture of the professional abortionist and his activities, many women are probably unaware of the greater dangers involved in self-induced abortions. Such techniques as severe exercise, hot baths, falls down stairs, and manipulation of the abdomen are rarely successful

in accomplishing their purpose unless undertaken so vigorously that they also seriously endanger the life of the woman herself. Chemicals or drugs taken orally are equally hazardous if taken in dosages large enough to abort the fetus. Attempts at laceration with a sharp object demonstrate the extreme desperation of some women (Schur, 1965).

Far more difficult to deal with is the argument that restrictive abortion laws lead to a major public health problem because of their encouragement of illegal abortion. K.H. Mehlan has presented data from the 1950's showing that the stricter the laws of a country, the greater the number of illegal abortions (Callahan, 1970). The same point has been pressed vehemently by a variety of commentators. "Criminal Abortion," Kenneth R. Niswander claims, "remains the major health problem which cannot be ignored ... . Legal abortion in a well-equipped hospital is not hazardous but criminal abortion currently accounts for thousands of deaths annually in the United States. If a realistic relaxation of state laws on abortion will decrease this total of needless deaths, society owes this protection to desperate women (Niswander, 1967, p. 59)." Using a figure of a million to a million and a half illegal abortions per year in the United States, Harriet F. Pilpel (1967) has written:

> It is one of the most tragic aspects of the situation that only one-third of those out-of-hospital abortions are performed by doctors, so that in, let's say, 650,000 or more cases every year, an operation which would be relatively safe and simple if properly performed under

> proper conditions becomes a fantastic health hazard ... . It seems fair to say that any other health problem of this dimension would be the concern, not only of substantial private groups ... but also of the government itself ... . The 'disease' of abortion is man's own creation in the sense that it is the government itself which has created, and which perpetuates, the problem (pp. 101-102).

Lawrence Lader underscores the point when he says, "When so great a number of women each year are forced into the hands of private abortionists, the result is a shocking toll in injuries and fatalities (Lader, 1966, p. 3)."

The essence of the "public health" argument is threefold: women who cannot get legal abortions are "forced" to procure illegal abortions; there is a very large number of illegal abortions performed each year; and illegal abortions, as usually performed outside of hospitals, are dangerous and the source of many deaths and injuries each year. The first point is self-evident. If a woman has decided that one way or another she will procure an abortion when a legal one is not available, then she is "forced" to get an illegal abortion. The actual number of illegal abortions and the medical disasters which follow such abortions pose more complicated problems. Rarely are illegal abortions reported to public health authorities, much less the police. Those strongly favoring liberalized laws are prone to cite very high estimates and those opposed to cite very low estimates. Most often, some very broad estimate is cited (e.g., 200,000-1,200,000) (Callahan, 1970).

The second argument of those unhappy with restrictive American law is the apparent discrimination which has accompanied the application of these laws. First, it is held that educated, affluent women find it much easier to purchase a safe illegal abortion than do poor women. Second, it is contended that it is much easier for a woman in the private services of a hospital to get an abortion than a woman on the ward services. Third, it is argued that there is a tremendous variation among hospitals in the performance of abortions, meaning that a woman's chance of getting a safe hospital abortion depends in great part upon which hospital she happens to chance upon or live near. On the first point, Dr. Harold Rosen has said that "the difference between having an abortion or a child is the difference between having one to three hundred dollars and knowing the right person or being without funds and the right contact (Rosen, 1967, p. 89)." There is no reason to dispute this argument. It is well known that in many areas of American life that the affluent find it safer to break the law than do the poor. In addition, one of the advantages of an education is that a woman will sometimes be more resourceful in finding a safe abortion, whether by taking a trip abroad, to another state, or by locating those qualified doctors who perform illegal abortions, either in their offices or in hospitals.

On the second point, more hard data are available. Dr. Alan F. Guttmacher (1967) has summed up the evidence:

> Both in regard to incidence and indications between patients on private and clinic services and voluntary and municipal hospitals ... it has long been apparent to physicians, district attorneys, and laymen that municipal hospitals follow the letter of the law of the abortion statute much more exactly than voluntary hospitals, and also that private patients are treated by a more lenient interpretation of the law than service patients (p.11).

Robert E. Hall (1967) has been assiduous in collecting data which bear out this assertion:

> National surveys bear testimony to the fact that hospital abortions are performed four times as often on the private services as on the ward services. In New York City, between 1960 and 1962 the ratio of therapeutic abortions to live births in the proprietary hospitals was 1:250; on the private services of voluntary hospitals, 1:400; on the ward services of the same voluntary hospitals, 1:1,400; and in the municipal hospitals, 1:10,000. The same inequity pertains to ethnic origin. The rate of therapeutic abortions per live births among white women in New York is 1:380; among non-whites, 1:2,000; and among Puerto Ricans, 1:10,000. Approximately half of the puerperal deaths among New York's Negroes and Puerto Ricans are due to criminal abortions, as opposed to only a quarter of the puerperal deaths among white women (p. 1934).

On the third point, the variations among hospitals in the number of abortions performed, Kenneth R. Niswander (1967) has written:

> Hospitals vary greatly in their abortion practice. At the Los Angeles County Hospital, which treats only clinic patients, Russel reports that from 1946 to 1951 there was an incidence of one therapeutic abortion per 2,864 deliveries. At the opposite extreme, one finds reputable hospitals permitting abortion for one out of every 35-40 deliveries. The variation in the hospital survey by Robert E. Hall extended from no abortions in 24,417 deliveries to one in 36 deliveries. It seems inconceivable that medical opinion could vary so widely. Socioeconomic factors must be playing a major role in the decision to abort in certain institutions (p. 53).

One of the rare attempts to develop in a philosophically systematic way the woman's-rights argument for abortion-on-request has been made by Ti Grace Atkinson. She writes:

> The woman is the artist. The property which distinguishes her as a woman is her reproductive function. She may choose not to exercise her function at all, or she may choose to exercise it. The man may try to give her certain material which would then become her property. She can accept or reject the gift. Once accepting the gift, she can choose to exercise her special capacity on this material or not. It is at this stage that the initial choice is made by the woman whether or not to exercise the reproductive process on the sperm. The method implementing her choice might be some contraceptive technique ... . Both the raw material gift and the special reproductive functions are properties of the woman. She may decide to permit the special function, her function, to operate upon her raw material gift ... (or) she may decide to stop the process; the embryo is destroyed ... . Both her reproductive function and the fetus constitute her property. She may decide at any time during this period that she does not want to exercise this function any longer, at which time she is free not to do so. It is only when the fetus ceases to be the woman's property (her reproductive process ceases at natural termination) that the choice to exercise or not her reproductive function on that fetus can be interfered with. The fetus ceases to be her property when (1) certain minimal criteria are met defining what it is to be a person: the denotative definitive characteristic as a single separate man, woman, or child, or (2) the woman decides to give the fetus child-status by naturally and/or voluntarily expelling the fetus from her body thereby declaring personhood on the fetus (Callahan, 1970, pp. 462-463).

The Supreme Court Decisions

The 7-2 opinion rendered by the Court in Roe v. Wade and Doe v. Bolton, 93 S. Ct. 705 (1973), was viewed by pro-abortionists with exhilaration. The concurring opinions of the Justices now serve as the legal foundation from which the

abortion proponents operate. Mr. Justice Blackmun, who delivered the opinion of the Court in Roe v. Wade, stated:

> The right of privacy ... is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress ... with the unwanted child, and ... the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases ... the continuing difficulties and stigma of unwed motherhood may be involved ... .
>
> On the basis of elements such as these, appellants and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellants' arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination is unpersuasive. ...
>
> We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation (Roe v. Wade, 1973, p. 727).

The majority opinion rejected the idea that a fetus becomes a "person" upon conception and is thus entitled to the due process and equal protection guaranteed of the Constitution. Justice Harry A. Blackmun concluded for the majority that the word "person," as used in the Fourteenth Amendment, does not include the unborn, although states may acquire, at some point in time of pregnancy, an interest in the "potential" human life that the fetus represents, to permit regulation. It is that interest, the Court said, that permits

states to prohibit abortion during the last ten weeks of pregnancy. Justice Balckmun, in Roe v. Wade, stated:

> When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists. The exception contained in Art. 1196 (see Appendix C), for an abortion procured or attempted by medical advice for the purpose of saving the life of the mother, is typical. But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendment's command?
>
> There are other inconsistencies between Fourteenth Amendment status and the typical abortion statute. It has already been pointed out that in Texas the woman is not a principal or an accomplice with respect to an abortion upon her. If the fetus is a person, why is the woman not a principal or an accomplice? Further, the penalty for criminal abortion specified by Art. 1195 (see Appendix C), is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different (Roe v. Wade, 1973, p. 729)?

Chief Justice Burger, who concurred in both abortion decisions, stated:

> I agree that, under the Fourteenth Amendment ... the abortion statutes of Georgia and Texas impermissibly limit the performance of abortions necessary to protect the health of pregnant women ... . In oral argument, counsel for the state of Texas informed the court that early abortive procedures were routinely permitted in certain exceptional cases, such as ... rape or incest. In the face of a rigid and narrow statute, such as that of Texas, no one in these circumstances should be placed in a posture of dependence on a prosecutorial policy or prosecutorial discretion. Of course, States must have broad power, within the limits indicated in the opinions, to regulate the subject of abortion, but where the consequences of state intervention are so severe, uncertainty must be avoided as much as possible. For my part, I would be inclined to allow a state to require the certification of two physicians to support an abortion, but the Court holds otherwise. I do not believe that such a procedure is unduly burdensome, as are the complex steps of the

Georgia statute, which require as many as six doctors and the use of hospital certified by the J.C.A.H.

I do not read the Court's holding today as having the sweeping consequences attributed to it by the dissenting Justices; the dissenting views discount the reality that the vast majority of physicians observe the standards of their profession, and act only on the basis of carefully deliberated medical judgements relating to life and health. Plainly, the Court today rejects any claim that the Constitution requires abortion on demand (Roe v. Wade, 1973, p. 756).

Mr. Justice Douglas, concurring in Doe v. Bolton, stated:

> The Georgia statute is at war with the clear message that a woman is free to make the basic decision whether to bear an unwanted child. ... child birth may deprive a woman of her preferred life style and force upon her a radically different and undesired future. For example, rejected applicants under Georgia statutes are required to endure the discomforts of pregnancy; to incur the pain, higher mortality rate, and aftereffects of childbirth; to abandon educational plans; to sustain loss of income; to forgo the satisfaction of careers; to tax further mental and physical health in providing childcare; and, in some cases, to bear the lifelong stigma of unwed motherhood, a badge which may haunt, if not deter, later legitimate family relationships. ...
>
> The vicissitudes of life produce pregnancies which may be unwanted; or which may impair 'health' in the broad Vuitch sense of the term, or which may imperil the life of the mother, or which in the full setting of the case may create such suffering, dislocations, misery, or tragedy as to make an early abortion the only civilized step to take. These hardships may be properly embraced in the 'health' factor of the mother as appraised by person of insight. Or they may be part of a broader medical judgement based on what is 'appropriate' in a given case, though perhaps not 'necessary' in a strict sense. ...
>
> There is no doubt that the state may require abortions to be performed by qualified medical personnel. The legitimate objective of preserving the mother's health clearly supports such laws. Their impact upon the woman's privacy is minimal. But the Georgia statute outlaws virtually all such operations--even in the earliest stages of pregnancy. In the light of modern medical evidence suggesting that an early abortion is safer healthwise than childbirth itself, it cannot be seriously urged that so

comprehensive a ban is aimed at protecting the woman's health. Rather, this expansive proscription of all abortions can rest only on a public goal of preserving both embryonic and fetal life.

The present statute has stuck the balance between the woman and State's interests wholly in favor of the latter. I am not prepared to hold that a State may equate, as Georgia has done, all phases of maturation preceding birth. We held in Griswold that the States may not preclude spouses from attempting to avoid the joinder of sperm and egg. If this is true, it is difficult to preceive any overriding public necessity which might attack precisely at the moment of conception. As Mr. Justice Clark has said:

'To say that life is present at conception is to give recognition to the potential, rather than the actual. The unfertilized egg has life, and if fertilized, it takes on human proportions. But the law deals in reality, not obscurity--the known rather than the unknown. When sperm meets egg, life may eventually form, but quite often it does not. The law does not deal in speculation. The phenomenon of life takes time to develop, and until it is actually present, it cannot be destroyed. Its interruption prior to formation would hardly be homicide, and as we have seen, society does not regard it as such. The rites of Baptism are not performed and death certificates are not required when a miscarriage occurs. No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life.'

In summary, the enactment is overbroad. It is not closely correlated to the aim of preserving pre-natal life. In fact, it permits its destruction in several cases, including pregnancies resulting from sex acts in which unmarried females are below the statutory age of consent. At the same time, however, the measure broadly proscribes aborting other pregnancies which may cause severe mental disorders. Additionally, the statute is overbroad because it equates the value of embryonic life immediately after conception with the worth of life immediately before birth. ...

The protection of the fetus when it has acquired life is a legitimate concern of the State. Georgia's law makes no rational, discernible decision on that score. For under the act the developmental stage of the fetus is irrelevant when pregnancy is the result of rape or when the fetus will very likely be born with a permanent defect or when a continuation of the pregnancy will endanger the life of the mother or permanently injure her health. ... In short, I agree with the court that endangering the life of the woman or seriously and permanently injuring her

> health are standards too narrow for the right of privacy that are at stake. I also agree that the superstructure of medical supervision which Georgia has erected violates the patient's right of privacy inherent in her choice of her own physician (Doe v. Bolton, 1973, pp. 759-62).

Summation of Pro-Abortion Arguments

The arguments presented by the pro-abortion proponents for the legalization of abortion include the following:

1. While conception does establish the genetic basis for an individual human being, some degree of development is required before one can speak of the life of an individual human being as an issue in abortion decisions.

2. Arguments which try to establish that an embryo or fetus is a "human being" lack emotional credibility to most people (that most states and nations do not require death certificates for early-aborted fetuses or stipulate methods of disposal for them serves to confirm that legal practice reflects common convictions and common attitudes).

3. The following medical indications justify therapeutic abortion:

   a. when continuation of the pregnancy may threaten the life of the woman or seriously impair her health,

   b. when pregnancy has resulted from rape of incest,

   c. when continuation of the pregnancy is likely to result in the birth of a child with grave physical deformities or mental retardation.

4. No woman should be forced to bear an unwanted child.

5. Current laws in the United States are discriminatory, since the rich find it possible to secure abortions unobtainable by the poor.

6. Current laws violate civil liberties in the following ways:

a. women are deprived of the liberty to decide whether and when their bodies are to be used for procreation without due process of law,

b. they are unconstitutionally vague,

c. they impair the right of physicians to practice in accordance with their professional obligations in that they require doctors not to perform a necessary medical procedure,

d. they infringe upon the right to decide whether and when to have a child, as well as the marital right of privacy,

e. they deny to women the equal protection of the laws guaranteed by the Fourteenth Amendment.

7. Laws that force a woman to bear a child against her will are the sickly heritage of feminine degradation and male supremacy.

8. Underground abortions are hazards to the physical health of the mother.

CHAPTER III

ARGUMENTS AGAINST ABORTION

The generalized picture of those who vigorously expouse the right to life are "old," "conservative," "religiously dogmatic," "superpious and moralistic," and "close-minded." It may be true that some pro-life advocates fit these stereotypes, but one can make the mistake of "throwing the baby out with the bathwater" by wanting to disassociate with any idea, regardless of its merit, because some of its adherents have qualities judged "undesirable." However, a more important point to be made here is that these stereotypes, like most, are inaccurate. The purpose of this chapter is to present the arguments against the legalization of abortion including: the Roman Catholic position, the biological or genetical approach, private organizational positions, the shortcomings of the pro-abortion assertions, and the dissenting Supreme Court Justices' arguments.

The Roman Catholic Position

Although there are many pro-life organizations (see Appendix G), the most vocal institution which opposes abortion is the Roman Catholic Church. The historical source of the Catholic teaching on abortion was the conviction of the early Christian community that abortion was incompatible with, and

forbidden by, the fundamental Christian norm of love, a norm which forbade the taking of life. Though the New Testament itself contains no specific reference to abortion, it appears that the early Christian community took such a condemnation to be implicit in the ethics of Jesus. In the Didache, a very early and authoritative source of Christian law (Circa 80 A.D.), abortion was treated as a grievous sin and ranked in importance with those acts forbidden by the Ten Commandments. In his Pedagogus, Clement of Alexandria (Circa 150-Circa 215) attacked abortion on the dual ground that it destroyed what God had created, and the destruction of the fetus was an offense against his neighbor. By the fifth century, while the condemnation of abortion continued without diminishment, distinctions were drawn on occasion between abortion and homicide. Both were adjudged grave sins, but not necessarily the same sin or to be subject to the same ecclesiastical penalty. While theologians of the Eastern Church were apparently the first explicitly to draw a distinction between the "formed" (ensouled) and the "unformed" fetus, there quickly developed a strong tradition against using the distinction to differentiate homicide and abortion. St. Basil the Great, in his Three Canonical Letters (374-375 A.D.), set the stage for this refusal to make any moral distinctions by saying, "A woman who deliberately destroys a fetus is answerable for murder. And any fine distinction as

to its being completely formed or unformed is not admissible among us (Callahan, 1970, p. 410)."

In the Latin Church the distinction continued, particularly in the writings of St. Jerome and St. Augustine. While a number of Church councils unequivocally condemned abortion between the fifth and twelfth century, the distinction between a "formed" and "unformed" fetus has made its mark. With the publication in 1140 of Gratian's Decretum (the first fully systematic attempt to compile ecclesiastical legislation), the distinction was firmly established and operative. In answer to the question of whether the procurement of an abortion is homicide, Gratian said, "He is not a murderer who brings about abortion before the soul is in the body." Gratian's position was sustained in ensuing commentaries on the Decretum. With the Decretals of Pope Gregory IX in 1234, formally legislating for the whole Church, the distinction was sustained, though in an ambiguous fashion. The Decretals included both the canon Sicut Ex, which contained Gratian's use of the distinction, and also another canon, Si Aliquis, dating from the tenth century, which had specified that the penalty for homicide was to be applied to contraception and abortion, regardless in the latter case of the stage of fetal development. The implicit contradiction between the two canons was soon taken by later commentators on the Decretals to mean that while all abortion is murder and

thus gravely sinful, the canonical penalties should vary according to the stage of fetal life (Callahan, 1970).

The period 1450-1750 saw a number of attempts to strike a balance between the life of the early conceptus and the life of the woman. The Jesuit Thomas Sanchez (1550-1610) argued that while there was an absolute prohibition against contraception, there were exceptions to the prohibition of abortion. In particular, if the fetus was not ensouled and the woman would die without an abortion, then abortion was "more probably" lawful, the fetus in this instance being an invader and attacker. The justification was that the intention of the woman was to save her own life, an act which had the double effect of taking the life of the fetus and preserving the life of the woman. But it was the intention of the woman--rather than the de facto end result of the act--the killing of the fetus--which was, in Sanchez's view, decisive. As long as there was no "direct intention" to kill, the act could be lawful, a conclusion supported by the Belgian Jesuit Leonard Lessius and St. Alphonsus Liguori. However, while there was a tendency among theologians to find exceptions to an absolute prohibition of abortion, the Papacy moved towards a more stringent direction. Pope Sixtus V, in his full Effraenatam (1588), stated that the same penalties, canonical and secular, should apply to abortion as to homicide regardless of the age of the fetus, and no exceptions were cited. In 1591, Pope Gregory XVI rescinded all of the

penalties specified in the Effraenatam with the exception of those which had applied to an ensouled fetus. In 1679, Pope Innocent IX's Holy Office condemned as scandalous two propositions:

> 34. It is lawful to produce abortion before ensoulment of the fetus lest a girl, detected as pregnant, be killed or defamed.
> 35. It seems probable that the fetus (as long as it is in the uterus) lacks a rational soul and begins first to have one when it is born; and consequently it must be said, no abortion is homicide (Callahan, 1970, p. 413).

Since the middle of the eighteenth century, the papal trend has been toward an increasingly more stringent prohibition of abortion. Stimulated by a spread of abortion in the nineteenth and early twentieth century, by a gradual scientific rejection of the Aristolelian analysis of gestation (with its forty to eighty day theory of the development of a rational soul from a vegetable one), and by a parallel decline in its theological respectability, the papacy took the lead in condemning abortion at all stages, denying any exceptions and erasing the distinction between a formed (ensouled) and unformed fetus. Pope Pius IX, in his 1869 Constitution Apostalicae Sedis, made a sharp change in Church law by eliminating any distinction between a formed and unformed fetus by inscribing the penalty of excommunication for abortion. With the promulgation of the new Code of Canon Law in 1917, the whole of the Code was rewritten to remove reference to the forty to eighty day distinction used in other parts of the earlier Code. The belief that the woman herself

was not included in the stipulation of excommunication was specifically hindered by her inclusion among those to be excommunicated. A series of responses from the Holy Office between 1844 and 1902, increasingly decisive in their elimination of exceptions, further signaled the trend.

These shifts culminated in a series of strong, uncompromising twentieth century papal statements which have continued to the present. In his encyclical Casti Connubii (1930), Pope Pius XI set the following tone:

> We must also allude to another very serious crime, Venerable Brethren: that which attacks the life of the Offspring while it is yet hidden in the womb of its mother. Some hold this to be permissible, and a matter to be left to the free choice of the mother or father; others hold it to be wrong only in the absence of very grave reasons, or what are called 'indications' of the medical, social, or eugenic order ... . As for the 'medical and therapeutic indications,' we have already said, Venerable Brethren, how deeply we feel for the mother whose fulfillment of her natural duty involves her in grave danger to health and even to life itself. But can any reason ever avail to excuse the direct killing of the innocent? For this is what is at stake. The infliction of death whether upon mother or upon 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, not even 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 (Callahan, 1970, p. 414).

Pope John XXIII carried forward these themes. In Mater et Magistra (1961), he wrote that "... 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 (Callahan, 1970, p. 415)." The Second Vatican Council, which Pope John initiated, stated, in the Pastoral Constitution, that "whatever is opposed to life itself, such as any type of murder, genocide, abortion or self-destruction is an infamy indeed ... . From the moment of its conception, life must be guarded with the greatest care, and abortion and infanticide are unspeakable crimes (Callahan, 1970, p. 415)." After the Council, Pope Paul VI, in his encyclical on birth control, Humanae Vitae (1968), said that "the direct interruption of the generative process already begun, and, above all, directly willed or procured abortion, even if for therapeutic reasons, are to be absolutely excluded as licit means of regulating birth (Callahan, 1970, p. 415)."

Today two exceptions to the prohibition of abortion remain: abortion in the instance of ectopic pregnancy and abortion in the instance of a cancerous uterus. Both exceptions are explained on the grounds that the "direct" intention of the act which removes the Fallopian tube (in the instance of an ectopic pregnancy) and the act which removes the cancerous uterus is to save the woman; indirectly these acts kill the fetus, but this is not their direct intention.

The substance of the Catholic position can be summed up in the following assertions: (1) God alone is the Lord of

life; (2) human beings do not have the right to take the lives of other innocent human beings; (3) human life begins at the moment of conception; and (4) abortion, at whatever the stage of development of the conceptus, is the taking of innocent human life. From these assertions, one would conclude that abortion is wrong except in the case of an abortion which is the indirect result of an otherwise moral and medical procedure (e.g., the treatment of an ectopic pregnancy and cancerous uterus).

The power of the traditional Catholic position is that it takes all human life seriously, even that life which can claim for itself only genetic individuality and unactualized potentiality. It reflects a moral policy which bends over backward in favor of life at whatever its stage, however doubtful its degree of development, however unknown its future, and whatever its origin or circumstances of origin. It has chosen such a moral policy because it believes that a moral policy of respecting all forms of human life provides the best basis for the security and stability of human law, institutions and society.

The Beginning of Human Life

The answer to the critical question of "When does human life begin?" often dictates one's position concerning abortion. As noted in Chapter II, Callahan (1970) has said that there are three basic schools of opinion: those who

believe the pertinent criteria for establishing the "beginning" are genetic; those who believe they are developmental; and those who believe the criteria are social. Each "school" of opinion has chosen to interpretate the biological data somewhat differently (see Appendix F for a summary of the known biological data).

The Genetic School

The genetic school parallels the position of the traditional Catholic Church. Those in this school advocate that life begins at conception. John T. Noonan, in a statement to the New York State Legislature, said:

> I know only one test for humanity: a being conceived by human parents and is potentially capable of human acts is human. By what other test could you prove that an infant of one day was human? ... In all their states--infancy, insanity, sickness, sleep--a man is not expressing his humanity by thought or rational action. We know he is a man because he came of human flesh and is expected, at some point, to be able to perform a human act, to think a human thought (Callahan, 1970, p. 379).

Paul Ramsey and Andre Hellegers argue in much the same way with, however, some important nuances. Ramsey has written:

> Indeed, microgenetics seems to have demonstrated what religion never could; and biological science, to have resolved an ancient theological dispute. The human individual comes into existence first as a minute information speck, drawn at random from many other minute information specks his parents possessed out of the common human gene pool. This took place at the moment of impregnation ... . Thus it can be said that the individual is whoever he is going to become from the moment he is conceived. Thereafter, his subsequent development may be described as a process of becoming the one he already is. Genetics teaches that we were from the beginning what we essentially still are in every cell and in every human attribute (Callahan, 1970, p. 379).

The position held by Ashley Montagu best typlifies the genetic school: "Life begins not at birth, but at conception, and what happens in the interval between conception and birth is very much more important for our subsequent growth and development than we have, until recently, realized (Callahan, 1970, p. 380)."

Private Organizational Positions

A host of groups organized for the expressed purpose of upholding the right to be born has sprung up in recent years (see Appendix G). The impetus for their inception has been a reaction to the surging trend toward relaxing or effectively abolishing abortion statutes. However, it would be grossly inaccurate to characterize their groups solely as reactionaries dedicated to upholding the status quo. There is, on the contrary, a completely modern "civil rights" flavor to the movement. Their members are dedicated to the humane solving of human problems and view abortion as a negative non-solution which degrades humanity. Their primary mission is to provide alternatives to abortion through increased education and provision of services. Sincere concern and friendship for the clients are stressed, and all services are free of charge.

Some of these groups are organized on a national level, such as the National Right to Life Committee and Americans United for Life. Others are more active on the state or

regional level. The Right to Life League of Southern California, for example, provides an around-the-clock telephone "hotline" for women who are distressed over their pregnancy. In cooperation with other community resources, they offer the kinds of assistance which might lead to a decision other than abortion. Minnesota Citizens Concerned for Life is another active regional group which, aside from striving for the protection of unborn life and providing educational resources, encourages assistance in the care and rearing of children with birth defects. The Pro-life Council of California is an advisory board composed of representatives from each county in the state. They are also dedicated not only to increasing the protection of the right of the fetus to life, but to the aged, the mentally ill, the physically handicapped, and any other segment of society whose lives may be "threatened." Another Minnesota-based group, Birthright, offers a variety of services to women with "problem pregnancies." These include emergency housing, legal help, referrals to appropriate agencies, and medical and psychiatric assistance.

A student-based pro-life movement, the National Youth for Life Coalition, is spreading to many campuses across the country. The original group, SOUL (Save Our Unwanted Life), was started on the University of Minnesota campus as a reaction to the one-sidedness of the abortion question as it is generally presented to the college student. The instigators of this movement claimed that they were being duped

into accepting a pro-abortion stand--"the abortion distortion," they called it. Not content to simply condemn abortion, these students have also instigated and promoted positive and constructive measures to serve as alternatives to decisions to abort. These include responsible interpersonal relationships, insurance benefits for unwed mothers, increased Rubella vaccination programs, seeking state-aid benefits for families of the handicapped and streamlining and "humanizing" adoption services.

As already stated, each of these organizations see abortion as a non-solution in dealing with unwanted or problem pregnancies. Several points they raise deserve particular attention. The first point deals with the unwanted fetus. Everyone would agree that even when children are born "wanted," parenthood is a difficult task requiring years of sustained dedication. When children are born "unwanted," the abortion proponents argue, this is a tragic situation for both the parents and the child. The parents may not be able to muster the love and care necessary to assure the healthy development of the child. The child, who may be unloved and poorly cared for, may suffer in such a way as to preclude his ever becoming an emotionally stable and responsible citizen. Most abortion proponents believe that the best all-around solution is to abort the unwanted child. Pro-life advocates vigorously dispute this practice as an acceptable solution to the problem. They contend that this is a barbaric

non-solution for several reasons. First, an implicit assumption in the pro-abortion proposal is that "wanted" children will be better treated and loved as compared to unwanted children. Just because a child is wanted does not mean that he will be physically and psychologically well nourished. Next, it is important to stress that "unwanted pregnancies" can and have turned into "wanted babies." Pro-life advocates also make the point that just because an unborn child will be unwanted by his natural parents does not mean that he will be unwanted by everyone. In many states the number of prospective adoptive parents far exceeds the number of babies available for placement. Adoption, however, has been condemned as a viable alternative to "pregnancy termination" by many abortion advocates. These objections take various forms and range from labeling adoption as an intolerable psychological hardship on the mother to "kidnapping." Though pro-life advocates are sympathetic with the emotional dilemma of the woman when in the later stages of pregnancy she feels within her a life she may never see, they find it difficult to reconcile the argument that destroying a baby is somehow superior to the giving of life. An adopted child is no longer seen as a "stigma," and it is unlikely that an adopted child will be the only one in the neighborhood or in his classroom. The desire to adopt children should continue to rise not only because available babies may be harder to come by, but

because more couples actually prefer to live and raise children "as their own" who were not wanted by the natural parents, as opposed to "making their own."

Secondly, pro-life advocates feel that abortion discourages sexual responsibility. It does not foster acceptance of the reality that sexual participation may result in the creation of a new life with which the participants are entrusted. In an already sex-saturated society, where too often women are considered sex objects and children unwanted complications, permissive abortion makes possible the final victory of the "Playboy" philosophy which denies sexual responsibility and glorifies transient pleasure and excitement. The third point raised is that even legalized abortion carries with it medical and psychological risks for the woman which are not insignificant. Pro-life advocates feel that with the increasing number of women seeking abortion, the number of women suffering complications and death will surely rise. Fourthly, without the protection of the law, it may be increasingly difficult for women who want to give their baby a chance for life to withstand outside pressures. It is hard not to imagine that with legal abortion women will be subject to increasing pressure to abort by husbands and boyfriends who are reluctant to accept responsibility for their offspring. Parents, too, are often interested in having their daughter abort her baby, sometimes against her will, so that the bridge club and the neighbors will never know.

The fifth point often raised is the concern that the acceptance of the abortion mentality will make it less likely that women, physicians, or institutions will look for alternative solutions to problem pregnancies. It is more difficult, takes more time, perhaps more money, and more love, to help a woman through a trying pregnancy than it does to send her for an abortion--or perform one for her. It takes more willingness to become involved to uncover the woman's reason(s) for rejecting her child and to deal with it positively than it does to give her the name of an abortionist.

Shortcomings of the Pro-Abortion Position

Nearly every slogan used by the pro-abortion proponents has been challenged by the pro-life advocates. The pro-abortion position presented by Ti Grace Atkinson in Chapter II, although unique, is not without its problems. Some of the shortcomings of her position are typical of many other abortion positions. First of all, it is not established why or in what sense the fetus can be called the "property" of the woman. It took the contribution of the male, his sperm, to make the fetus possible; his genetic contribution is as constitutive of the fetus as hers is. It is simply declared to be her property, on the undefended grounds that she has total freedom to decide whether, once a conceptus exists, to continue exercising her reproductive process or not. Second, Miss Atkinson's argument that the fetus ceases

to be a woman's property when it becomes a person rests on a very odd definition of "person," i.e., "a single separate man, woman or child." But genetically, hormonally and in all organic respects, the source of its nourishment, a fetus and even an embryo is separate from the woman. The only connecting link is the placenta, from which the fetus derives nourishment; a fetus is in a woman, but it is genetically and morphologically quite clearly distinguishable from the woman's body. And after viability, it can live without the organic assistance of the maternal placenta. To be sure, it is not a "man, woman or child" in the ordinary sense of those words, but it is a single separate being. Yet apparently this last fact is of small consequence, affecting its status as "property" not at all. Third, Miss Atkinson's way of talking about the conferral of personhood is curious. Since when has it become possible for one person to "confer" personhood on another? In terms of what extant political or legal code is this right given to anyone? Miss Atkinson claims that legislation which interferes "in any way" with a woman's freedom of reproductive self-determination is a violation of her constitutional rights. Yet there is no support in the American Constitution or legal system for the notion that one human being has the right to declare personhood on another being. She does not say, but her language suggests, that it is the woman's decision alone which determines whether a fetus is to be declared a person. Fourth, Miss Atkinson does not

show why the fact of birth somehow makes the child no longer her "property." Whose "property" is it at that point? She tells us when it comes to be her property, but not why it so ceases. The only explanation she gives is drawn from trying to show an analogy between a fetus and a sculpture. She says that a work of art achieves an "independent, non-property status" when (1) the sculptor states that that is his idea of a statue of a person, or (2) the work meets some objective criteria of what it is to be a state of a person. It is a poor analogy, spoiled by the obvious legal fact that the sculptor retains the right to destroy the statue if he so chooses at any time after its completion. It is still his property, to do with as he pleases; that it is a finished, completed statue does not alter in the least his rights of ownership or disposal (Callahan, 1970).

Another more serious shortcoming can be found in those arguments based on "women's rights." A number of writers claim that the right to abortion is an "absolute right," a sub-species of the claim that women have an absolute right to control their own pro-creative destiny. Two questions arise here. First, even if one grants that abortion is a right, what justification would there be for elevating it to the status of an "absolute right," a phrase entailing that no other conceivable human right could ever take precedence over it? Second, if abortion is a woman's "right," does this entail or require one to say that the fetus has no

countervailing rights at all? On the first question, it seems indefensible to call abortion an "absolute right," for that would make all other human rights relating to procreation relative and, for decision purposes, inconsequental. It would presume that no possible interest of society could even weaken the right or even admit of a genuine conflict of rights. To call any right "absolute" is to establish it as a supreme human right, capable of being abridged under no circumstances. It is one thing to emancipate women from discrimination and male tyranny; it is quite another to emancipate them from all human claims and obligations toward the rights of others. To claim or presume an absolute right to abortion or to make "women's rights" absolute is to create a set of rights for women subject to none of the moral limitations of life in the human community. To make the rights of women the sole rights at issue, and to make the crux of this right exclusively a woman's desire, is to preclude the need to examine any other data than verbal statement of a woman. The traditional Catholic position was criticized for a like weakness. Both positions have a similar logic. The Catholic position says the only moral question of importance is when human life begins. Once that has been determined, then all other possible questions and considerations become irrelevant. The "woman's rights" position proceeds in the same way, the difference being that it locates the critical moral factor in

the desire of the woman. Thus in neither position is room left for an integration of other possible relevant data or for a balancing of rights.

Sidney Callahan (1972), an active feminist, has said that every slogan in the pro-abortion arsenal is male-oriented and a sellout of true feminist values. She cites the following examples:

> 1. 'The fetus isn't human and has no rights to life.' But the feminist movement insists that men cease their age-old habit of withholding human status form women, blacks, Jews and other helpless human life. ... out of sight, out of mind, may do for a bombardier's conscience but not for a feminist movement dedicated to ending unilateral suppression of life. Embryonic life is also life, life with a built in future.
>
> 2. 'A woman has the right to control her own body.' How valiantly the feminist movement has struggled against the male obsession to control. ... any view of mere bodies as separate and subordinate to self smells of an alienation reminiscent of male gnostic anxiety. Men have always tried to detach themselves from the body, viewing female bodies in particular as a form of property. Men are only too happy to separate female 'reproductive systems' from the self. More middle class men favor elective abortion than any other group because it suits the male norm of human body. Full feminine sexuality is a threat, better to have women look at their own bodies as objects which they can manipulate at will and keep under control. Privately, discreetly, efficiently, with no messy demands.
>
> 3. 'Males have no right to speak or legislate on the abortion issue, since abortion is solely a matter between a woman and her physician.' Feminists demand equal male-female cooperation, decision-making and mutual responsibility in all areas of social life. ... Each fetus not only has a direct link to a male, but ... is linked to the whole human species. Who owns the human species? Who owns life? We don't let people in the name of private property pollute their own water, contaminate their own air or shoot their own eagles; so how can aborting potential human life not be a public socio-legal concern (pp. 1-2).

Some pro-life advocates argue that the new liberalized abortion statutes have brought unprecedented inconsistencies to the law. Maledon (1970), citing the laws of Rhode Island, Missouri, North Carolina, and New Jersey, states that the unborn child, under the law of property, can inherit and own an estate, be a tenant-in-common with his own mother, and be an actual recipient prior to birth. Is it a crime for a woman to misappropriate the estate of her unborn child, and yet no crime for her to kill that child? Can a woman, who has inherited an estate as a tenant-in-common with her unborn child, increase her own estate 100 percent simply by killing the child? Will the law which has recognized the unborn child as an actual income recipient prior to birth allow the child's heir (the mother) to kill the child for her own financial gain? Will the law that has specifically said that an unborn child's estate cannot be destroyed where the child has not been represented before the court allow the child himself to be destroyed without being represented before the court? In regards to the law of torts, pro-life advocates have asked, "Will the pregnant woman who is hit by a negligent driver while she is on her way to the hospital to have an abortion still have a cause of action for the wrongful death of her unborn child? And if so, how is it possible for the law to say that a child can be wrongfully killed only hours before he can be rightfully killed (Maledon, 1970, p. 83)?"

Maledon (1970) has stated that if legalized abortion is within the law's power to grant, then there is no reason why the law cannot just decide who will live and who will die. Both medicine and the law have agreed that death is to be defined by the absence of any brain activity as evidenced by a flat electroencephalogram (EEG). The brain of an unborn child has been found to produce an EEG reading as early as the seventh month of gestation. If life, therefore, is to be evidenced by the presence of an EEG reading, then the unborn child is legally alive, and to kill him--whether it be called abortion, therapeutic abortion or eugenic abortion--is murder by the law's very own terms. It would appear that there are due process and equal protections problems if some people who are "legally" alive are entitled to the law's protection while others are not. William J. Maledon (1970) summarized this position when he said:

> There is no such thing as a constitutional right to kill another human being as suggested by the court in Babbitz v. McCann, 1970, when they held that a woman had a constitutional right to abort a child that had not yet quickened. It might be possible for a court to say that a woman has a constitutional right to choose whether or not to become pregnant, as the Supreme Court did in Griswold v. Connecticut, but for any court to interpret this to mean that a woman may destroy life after it has begun is legal nonsense. The unborn child is not a part of the mother. The organs and the blood of the child are his own, and at six weeks the features of his face--a human face are discernible (p. 85).

Another argument challenged by the pro-life advocates is the position taken by pro-abortionists that the laws regulating abortion indirectly affect the life and health of

women by forcing women who seek abortions not permitted by law to undergo criminal abortion with serious danger to their life or health. Alice S. Rossi (1967) has asserted that 8,000 women per year are killed in criminal abortions. Louisell and Noonan, Jr., disagree with Rossi's figures by stating that "material mortality as a result of abortion is known with some exactness in the United Stated. Approximately 250 women each year are known to have died as a result of abortions (Louisell and Noonan, Jr., 1970, p. 231)." They also stated that even under the safest medical conditions, there was a 0.7 percent morbidity in abortion, and that the sterility resulting from induced abortion would run from 1 to 2 percent. Louisell and Noonan (1970, p. 233) summarize their position by stating "these cautious medical observations should be contrasted with the careless optimism of those discounting all danger to the mother in abortion."

It has often been argued by advocates of abortion that the statutes directed against it discriminate against the economically deprived. Lader (1966) suggested that there is an advantage to the class which is able to obtain abortions, and that this advantage is enjoyed by the wealthier persons in America. Pro-life advocates do not disagree that, undoubtedly, persons who are poor find it harder to travel to a place where abortion might be legal, and often they cannot afford treatment by a private physician who might sympathetically find a legal reason for a therapeutic abortion.

They also agree with the fact that a large number of criminal laws bear with unequal severity in practice on the poor, who are more likely than the rich to be caught, to be prosecuted, to be unskillfully defended, to be convicted, and to be punished. However, pro-life advocates contend that these de facto defects in the American system of the law are reasons to urge reform of the administration of criminal justice and should not serve as an excuse to invalidate abortion statutes. Louisell and Noonan (1970) have stated that statutes regulating abortion do not intend to discriminate by race, class, religion, sex, color, age, occupation, income, or any other invidious basis. The persons who are punished under them are not the poor, but those practitioners of illegal abortions who profit from the activity condemned.

Another argument of the pro-abortionists alleges abortion laws are obsolete because they are ineffective. The heart of this argument rests on statistics. Alice S. Rossi (1967) announced that there were 850,000 to 1,200,000 illegal abortions a year, and that one in every two or three married women between the ages of thirty and fifty would have had an abortion. Since Rossi did not say how she arrived at these figures, her statistics should be questionable for their accuracy. The act of abortion is not only criminal, but unlike a crime such as robbery, its perpetration is secret. If it is successful, its accomplishment remains a secret. It is not easily subject to statistical survey. It is a matter of

guesswork and extrapolation from fragmentory bits of information. Pro-life advocates argue that it would seem unreasonable to declare a law obsolete because of guesses made as to the number of violations of the law, and even if the wildest of guesses made were correct, it is not clear that failure to enforce a law means that the law should be repealed. Louisell and Noonan (1970) summarized the pro-life argument when they stated:

> The laws against theft were violated in 1966 by 762,352 cases of larceny of amounts over $50 known to the police, and by 486,568 cases of auto theft known to the police. Unlike the cases of abortion where there is an enormous range in the guesses, we have a known pattern of theft of which the police are aware. Does anyone argue from this enormous number of violations that there is something wrong with our laws on larceny, that the real trouble is with the victims whose property is taken, that we should reform the laws of larceny to accomodate the moral standards of those who steal from others? It seems fair to say that the only time that persons use guesses about the number of violations of law to urge the repeal of the law is when, for reasons very different from the law's ineffectiveness, they have already rejected the values preserved and protested by the laws (p. 244).

In analyzing the arguments used to support abortion, one finds that they reflect certain underlying attitudes. First of all, there seems to be an inability by some, and even an unwillingness, to recognize the humanity of the fetus. Secondly, there seems to be a reluctance to deal with the more fundamental problems for which abortion is proposed as a solution and reluctance to seek alternative solutions. Finally, even among those who accept the humanity of this early life, there is a willingness to destroy it in the

pursuit of the enhancement of another's "quality" of life. The dehumanization of the fetus, particularly in its early stages, has occurred despite advances in scientific knowledge to the contrary, even among physicians whose medical judgement is otherwise quite impeccable. But if one examines the rhetoric that underlines much of the abortion debate, some light can be shed on this phenomenon.

The terminology used by the pro-abortionist to describe the human organism before birth has, over the years, subtly but definitely eroded man's natural and intuitive recognition of the humanity of his pre-born offspring. Even the human cell immediately after conception falls under the impact of such rhetoric. The term "zygote" is rarely used, but instead reference is made to a "fertilized ovum" which, of course, suggests that this cell is no more than the sum of its parts (sperm and ovum). In addition, it is said that this intrauterine existence is a "mere blueprint" of what it is to be, and that it is only a "potential human being." Terms such as "fetal tissue," "products of conception," and "a few embryonal cells" are used to reduce the emotional impact of abortion. Such terms purposely disregard any suggestion of human essence, form or function. This rhetoric dulls the imagination, and renders one less capable of grasping the humanity of the unborn, so long as it remains <u>in utero</u>, where it cannot be seen. Some people are repelled by abortions only when confronted with pictures of the obvious "human" form of a

twelve week aborted fetus. They may not be repelled at all by an aborted zygote or embryo. Yet man, through his intellect, should have the imagination to perceive beyond form and comprehend the essence of human life.

The human zygote possesses the dynamic force necessary to develop further what it already is. This force continues to exert itself during the entire unfolding of human existence. Therefore, there is no stage at which the organism can logically be considered a "mere blueprint" of what is to be; a blueprint does not possess the intrinsic force necessary to become, of itself, what it was designed to be. Nor can it be said that the zygote or embryo is a "potential human being." Rather, it is a human being with potential. A man-made object is built stepwise by materials that never change into itself. Such an object, therefore, is only "potential" until it reaches a certain stage of formulation. A living organism, however, develops gradually, almost imperceptibly, by changing materials into itself. It exists with potential from the beginning. Nor can its existence be attributed to having attained a particular and acceptable "human" form. The outward characteristics of the human organism are continually changing, even after birth and throughout its life. This change in outward manifestation of form and function cannot logically be used to designate any particular state of human development as the one in which human existence begins. Any stage so designated, and following conception, would be

arbitrary and based on an emotional response to form and function rather than an intellectual group of human essence with its necessary understanding of the dynamic force and unfolding potential of human existence.

Again, looking at the abortion issue in rhetorical perspective, it can be seen that the pro-abortionists have been appealing to man's sense of fear with such slogans as "standing room only," "no contraceptive is 100 percent effective," and "every child has a right to be born wanted." Under the influence of such rhetoric, many have disregarded historical experience which would lead them to the opposite position. As is well known, the traditional guardian of preborn life has been the physician. He has ideally sought both the well-being of the mother and her offspring. To this end, he has developed knowledge and skill so that today there are virtually no diseases demanding the interruption of pregnancy. Cannot this same incentive to save life be brought to bear on the social and economic conditions which foster abortions? Such social and economic pressures are generally regarded as "psychiatric indications" by society. Yet when abortions are done for these so-called psychiatric reasons, the women involved are actually left untreated. Considering the numerous means available to the physician to attend to this patient's psycho-social needs--counseling, psychotherapy or drugs--it is difficult to comprehend the growing acceptance of abortion as a psychiatric "treatment." Even should there be an

occasional psychiatric benefit, would this justify the annihilation of another life? Would anyone consider killing an adult who is causing severe despondency in another?

When those who support abortion argue that abortion is in the best interest of an "unwanted" fetus, they are in an even more difficult position. The assumption is made that it is better not to be born at all rather than to be born illegitimate. To date, no study has shown a significant correlation between unwanted pregnancies and unwanted children. A child initially unwanted may become dearly wanted later in life; a wanted child may later become unwanted. Those who argue for abortion as a means of family planning must realize the basic difference in preventing a new human from coming into existence and taking a life when it is already there. From a pragmatic point of view, it may be said that wherever abortion is used as a backup for contraception, programs for the latter are generally ineffective. In addition, abortion is less safe, more expensive, and more demanding of medical personnel and facilities than is contraception. Furthermore, just because it is now possible as never before in the history of mankind to prevent conception most of the time, man has not automatically acquired a right to annihilate any unplanned offspring. Effective family planning and population control are primarily matters of

motivation and education. Success in such planning can be attained by various methods other than abortion (e.g., abstenence, contraception or sterilization).

There are many for whom the above arguments have no appeal. They admit the existence of human life from conception, but nonetheless are willing to permit its existence for one reason or another. Some are intent on assuming this life-death control; others seem content to let them do it. Those willing to assume life-death control view man as a mere utilitarian object within society. In such a philosophy, when a human life is a burden, is unwanted, or is merely inconvenient, it may be eliminated. When utility becomes the ultimate appeal, rather than man and his natural rights, man becomes subject to laws of utility. The unwanted can simply be redefined as a disposable class of humanity. In this philosophy, man loses his capacity to make any sacrifice for the survival and well-being of other human beings. What are the implications for a society that rejects the handicapped? Will care for the existing handicapped improve or deteriorate? Will the handicapped now be regarded as children who should have been exterminated prenatally? Those who advocate abortion should reflect on the consequences for the traditional Western view of man. This Western ethic has always placed great emphasis on the intrinsic worth and equal value of every human life and has been the basis for most of our laws and much of our social policy.

The Supreme Court Decision

The rulings of the Supreme Court in the cases of Roe v. Wade and Doe v. Bolton, 93 S.Ct. 705 (1973), have been viewed by the pro-life advocates as a monumental error in judgment. Edwin A. Roberts (1973) has said "the court's 7 to 2 vote in favor of legalized abortion is puzzling both in substance and in style. Reading Justice Harry A. Blackmun's majority opinion, one is struck by its legislative tone. It sounds more like a Senate bill than a judicial decision, and there is good reason to believe history will one day mark it as a hideous error." Quoting a letter to the editor of the New York Times (written by Dr. Landrum B. Shettles, a physician at New York's Presbyterian Hospital, which stated that human life begins at conception), Roberts (1973) said:

> Right there Dr. Shettles put his finger on the outrageous and unquestionable immortal fault of the Court's decision. Human life begins at conception--that is a fact. But it's an inconvenient fact. To recognize it would have made impossible the result the Court legislators wanted. So in their concern for unmarried pregnant women, for the miserable mothers of large very poor families, and for the simple convenience of housewives who want to escape the domestic routine, the Justices have declared what is known with certainty to be unknown ... . Once conception occurs, let's let the new life live. Nobody should kill an unborn baby, even though the Supreme Court says it's all a matter of size (p. 36).

In answer to the Court when it said that it is only "a theory" that human life is present from conception, Dr. Andre Hellegers (1973), Director of the Kennedy Institute for the Study of Human Reproduction and Bio-Ethics, said:

> ... the fact that human life is present from conception can be substantiated beyond mere theory ... . I don't know of one biologist who would maintain that the fetus is not alive. The alternative to alive is dead. If the fetus was dead, you would never do an abortion. Today we are employing euphemisms to pretend that human life is not present. This stems from the fact that we are not quite ready yet to say, yes, there is human life but it has no dignity (p. E2).

John Noonan, Jr. (1973), has said that Roe v. Wade and Doe v. Bolton may stand as the most radical decisions ever issued by the Supreme Court. In his analysis of the decisions, Noonan stated that the court did not decide whether a state could (1) require the father's consent to abort, (2) permit only licensed physicians to destroy the product of conception in the early stages of growth by such means as menstrual extraction, (3) prevent experimentation on a six to nine month old fetus outside the womb, and (4) prevent or regulate the role of fetuses by their mothers or by physicians, hospitals or clinics. In an attempt to answer the question why the court went so far, Noonan (1973) said:

> It is not particulary fruitful to speculate on the psychology of the individual judges. One does not ordinarily expect or find original thinking on the part of the court. Populated by ex-government officials and ex-corporation lawyers, hard-pressed to keep abreast with its flood of business, the court has neither the background nor the time to do original work in history, biology, or social science. Typically it catches on to the cliches born of the thought of an earlier generation. What is dominant in the court's opinion are the values of the technocrates. It is with a bow to these values that the court, self-critically, announces that its holding is consistent with the demands of the profound problems of the present day (p. 2).

Noonan has also stated that these decisions can be compared to the classic blunder of American history, Dred

Scott v. Sanford. The following parallels exist: (1) Dred Scott attempted to resolve forever a deep moral issue agitating the American people; so do Wade and Bolton; (2) The method chosen by the court was to invalidate long-standing legislation as unconstitutional and to try to make it impossible for an American Black ever to be accorded the protections and privileges of citizenship. Wade and Bolton invalidate long-standing legislation and try to make it impossible for a fetus ever to be accorded the protection and privileges of a person; (3) Each case was decided by a 7-2 majority; (4) Dred Scott implied that the Supreme Court could go further and permit slavery in states which had prohibited slavery. Wade and Bolton imply that the Supreme Court can go further and eliminate other state protections of life; and (5) Dred Scott failed miserably to settle the moral issue. Will Wade and Bolton resolve the morality of destroying fetal life?

Noonan has stated that the only effective means of remedying the Court's error is to amend the Constitution of the United States to protect human life. He has suggested the amendment be called "The Human Life Amendment" and be worded as follows: "The protection of the law shall not be denied to any human, born, or unborn, nor shall the life of any human be taken on account of his, hers or anyone else's health (Noonan, 1973, p. 4)." As of June 22, 1973, three

major types of bills for constitutional amendments on abortion have been introduced into Congress (see Appendix H).

Justices Rehnquist and White were the two Justices who filed dissenting opinions in both cases. Justice Rehnquist dissented because of the following reasons:

> ... I have difficulty in concluding ... that the right of 'privacy' is involved in this case. ... an operation such as this is not 'private' in the ordinary usage of that word. Nor is the 'privacy' a distant relative of the freedom from searches and seizures protected by the Fourth Amendment. If the Court means by the term 'private' no more than that the claim of a person to be free from consenual transactions may be a form of liberty protected by the Fourteenth Amendment ... . But that liberty is not guaranteed absolutely against deprivation but only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law has a rational relation to a valid state objective. The Due Process Clause of the Fourteenth Amendment places a limit on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective ... . But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors which the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgement than a judicial one ... .
>
> The fact that a majority of the states ... have had restrictions on abortion for at least a century seems to me a strong indication that the asserted right to an abortion is not so rooted in the traditions and conscience of our people as to be ranked as fundamental ... . By the time of the adoption of the Fourteenth Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. The Texas statute ... enacted in 1857 has remained substantially unchanged to the present time. There apparently was no question concerning the validity of this provision or any of the other state statutes when the Fourteenth Amendment was adopted. The only conclusion possible from this history is that the drafters did not intend to have the

Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.
... the actual disposition of the case ... is still difficult to justify. The Texas Statute is struck down in toto, even though the Court apparently concedes that at later periods of pregnancy Texas might impose these self-same statutory limitations on abortion. My understanding of past practice is that a statute found to be invalid as applied to a particular plaintiff, but not unconstitutional as a whole, is not simply 'struck down' but is instead declared unconstitutional as applied to the fact situation before the Court (Roe v. Wade, 1973, pp. 736-38).

Justice White dissented because of the following reasons:

... I find nothing in the language or history of the Constitution to support the Court's judgement. ... The upshot is that the people and legislatures of the 50 states are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus on the one hand against a spectrum of possible impacts on the mother on the other. ... in my view the Court's judgement is an improvident and extravagant exercise of the power of judicial review which the Constitution extends to this Court.

The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life she carries.
... I find no constitutional warrant for imposing such an order or priorities ... . This issue ... should be left with the people and to the political processes the people have devised to govern their affairs.
... the Texas statute is not constitutionally infirm because it denies abortion to those who seek to serve only their convenience rather than to protect their life or health. Nor is this plaintiff, who claims no threat to her mental or physical health, entitled to assert the possible rights of those women whose pregnancy assertedly implicates their health.
... Likewise, because Georgia may constitutionally forbid abortions to putative mothers who, like the plaintiff in this case, do not fall within the reach of section 26-1202 (a) of its criminal code, I have no occasion to consider the constitutionally of the procedural requirements of the Georgia Statute as applied to the pregnancies posing substantial hazards to either life or health (Roe v. Wade, 1973, pp. 762-63).

Summation of Pro-life Arguments

The arguments presented by the pro-life advocates against the legalization of abortion include the following:

1. The traditional Roman Catholic position asserts the following:

   a. God alone is the Lord of life;

   b. human beings do not have the right to take the lives of other innocent human beings;

   c. human life begins at the moment of conception;

   d. abortion at any stage of development of the conceptus is the taking of innocent human life.

2. Microgenetics and biological science indicate that the individual is whoever he is going to become from the moment of impregnation.

3. "Unwanted pregnancies" can turn into "wanted babies."

4. Just because an unborn child may be unwanted by his natural parents does not mean he will be unwanted by everyone.

5. Abortion discourages sexual responsibility.

6. Even legalized abortion carries with it medical and psychological risks for the woman which are significant.

7. The abortion mentality might make it less likely that women, physicians, or institutions will look for alternative solutions to problem pregnancies.

8. There exists no justification for considering abortion an "absolute right" for women. Such a position would require one to say that the fetus has no countervailing rights at all.

9. The statutes regulating abortion do not intend to discriminate by race, class, religion, sex, color, age, occupation, income or any other invidious basis. (However, these de facto defects in the American system of the law are reasons to urge reform of the administration of criminal justice and should not serve as an excuse to invalidate abortion statutes).

10. The failure to enforce the abortion laws does not mean the law should be repealed.

11. Effective family planning can be attained by various methods other than abortion.

CHAPTER IV

CONCLUSION

The purpose of this study was to explore the arguments for and against the legalization of abortion. This chapter reviews each position's arguments and liabilities, summarizes the moral dilemma and discusses the prospects for the fetus.

Pro-Abortion Arguments

The arguments presented by the pro-abortion proponents for the legalization of abortion include the following:

1. While conception does establish the genetic basis for an individual human being, some degree of development is required before one can speak of the life of an individual human being as an issue in abortion decisions.

2. Arguments which try to establish that an embryo or fetus is a "human being" lack emotional credibility to most people (that most states and nations do not require death certificates for early aborted fetuses or stipulate methods of disposal for them serves to confirm that legal practice reflects common convictions and common attitudes).

3. The following medical indications justify therapeutic abortion:

a. when continuation of the pregnancy may threaten the life of the woman or seriously impair her health;

b. when pregnancy has resulted from rape or incest;

c. when continuation of the pregnancy is likely to result in the birth of a child with grave physical deformities or mental retardation.

4. No woman should be forced to bear an unwanted child.

5. Current laws in the United States are discriminatory, since the rich find it possible to secure abortions unobtainable by the poor.

6. Current laws violate civil liberties in the following ways:

a. women are deprived of the liberty to decide whether and when their bodies are to be used for pro-creation without due process of law;

b. they are unconstitutionally vague;

c. they impair the right of physicians to practice in accordance with their professional obligations in that they require doctors not to perform a necessary medical procedure;

d. they infringe upon the right to decide whether and when to have a child, as well as the marital right of privacy;

e. they deny to women the equal protection of the laws guaranteed by the Fourteenth Amendment.

7. Laws that force a woman to bear a child against her will are the sickly heritage of feminine degradation and male supremacy.

8. Underground abortions are hazards to the physical health of the mother.

Pro-Abortion Liabilities

The developmental approach is not without its logical difficulties. One of these is that it does not give a wide range to the concept of "potentiality." A zygote has, genetically, the potentiality to become a "person." In terms of actualized personhood--presupposing actualized rationality, interaction with others, affectivity, culture-making--an embryo, despite the presence of brain waves, has a long way to go. The brain waves of a fetus do not in themselves actualize the potentiality of personhood; they signify only a more developed stage of potentiality, with only the physicalogical basis of personhood being actualized. An embryo which has not reached that stage has, however--statistically--a good chance of reaching that stage. In an individual's history, all the stages of development are necessary; he cannot reach the brain wave stage unless he has passed through the earlier stages, all the way back to the zygote.

There is also the difficulty that, if one chooses to use a development criterion, there are any number of stages

other than that of brain development that might be chosen. Implantation, gastrulation, the presence of all organs, completion of the brain structure, "quickening," viability, birth, etc., have been suggested as the dividing line by different commentators. Why choose one rather than the other? At each point, the being in question is still far more potentiality than actuality. That so many different developmental points have been suggested shows how complex the choice of a developmental norm can be. Noonan expressed concern about any criterion of the human based on varying potentialities. The thrust of his concern was that once the legitimacy of a developmental norm has been admitted in principle in a society, the way is logically open for a miscue of the norm or a shifting of the particular required point of development to serve debased interests or self-interest. The safest course to take is to rule out all such norms in the first place (Callahan, 1970).

The most obvious shortcoming of the "social consequences school" is that, while its authors cite biological data and discuss them, their final position logically serves to make all biological data irrelevant. If one can define human any way he wishes, being concerned only with the social consequences of his definition, then there seems no reason why he should feel obliged to consult biological data at all. If one can define any way he wishes then this is to say no less than any one definition is biologically as good as any

other; there are no biological norms or guideposts, at all. It also fails to meet another test: making a place for the concept of "potentiality" in any definition of the "human." This is particularly apparent in Williams' handling of his own argument. He concedes that biologically a fertilized ovum is a "potential human being," but allows that point to carry no weight at all in his argument. Yet inevitably, on his own terms, it must. The definition of "human," in short, is to be tailored to the desired moral policy, in this case the goal of making abortion available to those women who need or want it. This definition has some serious, possible dangerous implications. If it is possible to define "human" any way he wished in the instance of prenatal life, is there any logical reason why he should not be able to do the same thing with postnatal life? In short, the enunciated principle of defining as one wishes provides no philosophical basis for distinguishing between abortion and infanticide. It becomes open, logically, to define as non-human any being whom society finds it socially useful to define as non-human. Society could define the chronically ill, the senile, or the elderly as non-human and thus justify the taking of their life on grounds of the social good to be obtained. The social consequences school has thus laid down a general norm for decision-making (do as you wish in the light of social consequences) which can be used in all situations turning on the definition of "human." By logically severing that norm from

biological evidence and by resting the entire weight of decision-making and line-drawing on social consequences (which of course, shift from time to time), mores, wishes and desires become the Ruler (Callahan, 1970).

Pro-life Arguments

The arguments presented by the pro-life advocates against the legalization of abortion include the following:

1. The traditional Roman Catholic position asserts the following:

   a. God alone is the Lord of life;

   b. human beings do not have the right to take the lives of other innocent human beings;

   c. human life begins at the moment of conception;

   d. abortion at any stage of development of the conceptus is the taking of innocent human life (abortion is wrong except in the case of an abortion which is the indirect result of an otherwise moral and medical procedure).

2. Microgenetics and biological science indicate that the individual is whoever he is going to become from the moment of impregnation (life begins at conception).

3. "Unwanted pregnancies" can turn into "wanted babies."

4. Just because an unborn child may be unwanted by his natural parents does not mean he will be unwanted by

everyone (adoption serves as a viable alternative to pregnancy termination).

5. Abortion discourages sexual responsibility.

6. Even legalized abortion carries with it medical and psychological risks for the woman which are not insignificant.

7. The abortion mentality might make it less likely that women, physicians, or institutions will look for alternative solutions to problem pregnancies.

8. There exists no justification for considering abortion an "absolute right" for women. Such a position would require one to say that the fetus has no countervailing rights at all.

9. The statutes regulating abortion do not intend to discriminate by race, class, religion, sex, color, age, occupation, income or any other invidious basis. However, these de facto defects in the American system of the law are reasons to urge reform of the administration of criminal justice, and should not serve as an excuse to invalidate abortion statutes.

10. The failure to enforce the abortion laws does not mean the law should be repealed.

11. Effective family planning can be attained by various methods other than abortion (e.g., abstenence, contraception or sterilization).

Pro-life Liabilities

Some of the criticism of the traditional Catholic position has centered on the fact that it does not allow a sufficient place in its theoretical approach to the consideration and weighing of other values than that of the right to life. It presumes that the right to bodily life of the fetus takes precedence at all times over other rights. If it is a mistaken approach, its error does not lie at the obvious level of fallacies of logic or patently false ways of reading biological evidence. It has been worked out over a long enough period of time to avoid gross fallacies; and its readings of the biological evidence, while by no means the only possible one, is at least compatible with that evidence. Callahan (1970) states that its mistake lies in the totality of its approach, in the stance it has chosen to take toward the entire problem. By choosing to give the right to life primacy over all other rights, by choosing that value as one with the presumed power to obliterate all other values, it:

1. Obviates human responsibility and choice.

2. Fails to take account of the full range of human rights, relationships and obligations.

3. Makes a whole range of data and experience irrelevant to the moral equation.

4. Offers no possibility whatever of responding to the needs of women whose crisis is not one of mortal conflict

with their fetuses, but whose conflict lies at no less important level of their duty to self and to others.

5. So defines the issues in advance of particular cases that their particularities are rendered beside the point.

6. Assumes a fixed order of values, rights and obligations, somehow resistant to human choice, history and contexts (Callahan, 1970).

Neither desperate poverty, mental illness, crippling physical disease, grave family responsibilities, incapacity for motherhood nor violent impregnation are allowed a place in the Catholic schematization of the problem. One would think that any position which leads to so many exclusions, so narrow a focus, would merit rejection. A reading of the entailments, the rigid hierarchies of values and rights, and the rigid exclusion of experience and social data would lead one to believe that the Church's position is an internal one. At the same time, however, the traditional position--that nascent life has value--is a position which should have an integral place in any alternative attempt to work out a richer method of moral decision-making. It is a value, a critical value, a primary value. But it is not the only value at stake. A presumption in its favor is reasonable and desirable, but not so overwhelming a presumption that human beings are trapped by an ironclad logic, left helpless and

passive in the face of genuine moral conflicts, the resolution of which can go in only one direction.

There are some significant liabilities which weaken the force of the genetic school of thought. Noonan speaks of a "criterion for humanity," but it is useful to ask whether this is exactly what is needed for abortion decisions. Is society's concern to protect human life--humanity in the abstract as an attribute of a being--or is it to protect individual human beings? In abortion decisions, which arise case by case in particular pregnancies, it is the life, or purported life, of an individual human being which is at issue. Society is not asking whether a decision to abort is a decision for or against the attribute of "humanity" but whether it is a decision for or against a particular human being. If one were seeking simply a test for "humanity," then both the egg and the sperm separately could pass that test: under proper conditions (i.e., their union), they could pass the test of constituting a being potentially capable of human acts. Noonan stipulates that the being must be conceived by human parents; that is the starting point he recognizes as the beginning of humanity. But just what is the potential at this point? Noonan also contends that once conception takes place "there is a sharp shift in probabilities, an immense jump in potentialities ... . At the point where the conceived being has a better than even chance of developing, he is a man (Noonan, 1967, p. 129)." The trouble with

this statement is that this formulation represents a stipulation about what should be counted as "a man," thus begging the question of whether a particular conceived being is in fact, a man. That a particular conceived being may, statistically speaking, have a better than even chance of developing does not entail that it will so develop. Because of genetic or other abnormalities, a particular fertilized egg may be destined for a spontaneous abortion. The zygote can develop or fail to develop in a number of directions. Under favorable circumstances, it will develop into a human being; but this is not biologically or statistically inexorable. The potentiality of a zygote to become a human being need not necessarily be fulfilled; that possibility will in any specific case depend upon many other conditions to bring this potentiality to actuality. As Thomas Hayes has observed: "Such simple criteria as functioning genes are insufficient to define a living system as a human being: such criteria are necessary but not sufficient conditions. Such parameters do not distinguish between systems such as human tissue culture or the placenta and the embryo. Also, many of the biological qualities exist in the sperm and ovum before fertilization (Callahan, 1970, p. 382)."

Paul Ramsey's approach suffers from similar liabilities. First of all, it is misleading to say that "microgenetics seems to have demonstrated" when a human individual comes into existence; such an assertion assumes that the

antecedent philosophical questions concerning the meaning of "human" has been settled, and that a methodology for relating a concept like "human" to biological data has been settled upon. Second, it does not seem wholly accurate to say, as Ramsey does, that at the moment of impregnation "the individual is whoever he is going to become" or to speak of his "becoming the one he already is." Who he is, to return to a fundamental biological point, will be determined not just by his genotype, but by interaction and interrelationships of the genotype with its different environments. Society does not know who a being is or what he will become just by knowing that he has a particular genotype. Who this being becomes is not something rigidly set from the genetic beginning, but will be determined by interaction with the environment. Neither Noonan nor Ramsey gives sufficient place to the importance of development as part of the process of becoming human. Both of their positions seem to amount to saying that a person with a human genotype is a sufficiently subsistent being to merit the appellation "human." But this seems a doubtful conclusion unless one has presumed that an exclusively genetic norm is decisive. Far from presuming a rich definition of the word "human," Noonan and Ramsey are willing to stake themselves on the narrowest: genetic individuality alone. This willingness seems to reveal the influence of a moral policy, one which would like to prevent the assigning of

different values to different individuals according to the degree to which genetic potentiality is actually realized.

The Moral Dilemma

One's moral position is established by the way data are interpreted by his "school" of choice. Each school has some unique strengths and sensitivities just as each has some liabilities. The genetic school has the asset of being supported by considerable genetic evidence. The developmental school has the asset of bringing to bear a more nuanced set of concepts concerning the different forms and stages of human life; and these concepts have considerable biological support. The social-consequences school has the asset of recognizing the necessity that human beings define the "human" underscoring the point that biological data as such does not establish definitions. Each school has its liabilities as well. The genetic school rests so much of its case on potentiality that the importance and role of development in producing a fully developed human being is not given sufficient attention. The developmental school does not give sufficient weight to potentiality. The social-consequences school appears to make biological evidence irrelevant altogether.

Each of the schools takes its stand not just on its theory of how the biological data ought best to be interpreted but also on the moral consequences of adopting one reading over another. The social-consequences school does

this most explicitly. The genetic school believes it best to use the biologically legitimate norm of genetic individuality because that is a norm with good moral consequences: all forms of human life are respected, without discriminating among them on a scale of relative value. The developmental school believes it best to use the biologically legitimate norm of stages of development because that norm will allow some distinctions among human life, distinctions which are morally useful when choices have to be made between lives, as in abortion decisions. The social-consequences school holds that, since the biological evidence leaves one free to draw a line between the human and non-human as he wishes, one should avail himself of this freedom and define his terms in such a way as to serve his social needs.

Data as such do not entail either a philosophical or moral conclusion; however, it is legitimate to allow one's moral theory to help him decide how the data might illuminatingly be read. Indeed, this seems to become imperative when one is in the position of having to make an abortion decision; for one then needs to interpret the data with a view toward acting, as the outcome of the decision-making process. Thus one's moral policy becomes crucial at each stage of the decision-making process: choosing the relevant data, interpreting the data and then deciding how he should act in light of the data. But there is a point at which one's moral policy must be at least tempered by, or consistent with,

the data. One must take account of the widest range of evidence. He must not read the evidence in one situation (e.g., abortion) in a way inconsistent with the manner in which he reads it in other situations (e.g., moribund adult life). One must allow a place for the biological evidence in his moral theory; the aim is a biologically informed moral theory. Moreover, his moral policy must be further tempered by the precise moral problem at stake. It has to be a policy which will help him decide not only the generality of cases (the entire class of abortion cases) but specific cases as well. It must enable him to do so in a way systematically cognizant of and sensitive to all the different values and needs that come into conflict in abortion cases. At the same time, one's policy should not make use of general moral principles which could, as principles--if used in other than abortion context--have dangerous consequences (Callahan, 1970).

Using these tests, the developmental school has the weightiest assets. It takes account of the biological evidence and allows this evidence to influence its moral policy. It allows the possibility of making abortion decisions sensitive to the greatest range of values at stake. It provides a way of weighing the comparative value of the lives at stake--a distasteful responsibility, but one which it recognizes must be borne. Its major liability, the hazards of introducing a developmental norm into decisions involving life, seems bearable, particularly since one is (in abortion cases)

called upon to make a decision, to choose one life or the welfare of one life rather than the other. The moral policy of the genetic school is clearly the safest policy, if the kind of safety desired is to forestall all distinctions, and thus all weighing of the comparative value of lives. By making its central focus the avoidance of all basis for discriminating among lives, it unfortunately lacks the capacity to do nuanced justice to the conflict of values in particular abortion cases. Its moral policy has the effect of lumping all abortion cases together and dealing with them as a class, thus losing sensitivity to particular cases. This places it at a serious disadvantage in relationship to arguments of the developmental school. The weakest school is that of social consequentialists, not only because of its failure to take serious account of the biological data--and thus of the need for a biologically grounded and supportable definition of the "human"--but also because its moral policy rests on ill-defined and potentially dangerous moral principle: define as one wishes.

Another element in favor of the developmental school is that, on the one hand, it is sufficiently sensitive to the genetic data to accord the status of "human life" even to a zygote. On the other hand, it is sufficiently sensitive to a wide range of values to recognize the possibility of real dilemmas even when they are not so severe as to put a life against a life. By contrast, the genetic school, in its

eagerness to preclude all forms of discriminating judgements, renders itself systematically deaf to the claims of values other than that of the right of life. Granted that physical life, even the life of a zygote, ought to be respected, what else ought to be respected?--or what other values also ought to enter into abortion decisions? By the logic of the genetic school, the outcome of any abortion dilemma is de jure, decided in advance: a pregnant woman is, by definition, a woman carrying human life within her; she may not, therefore, have an abortion. The social-consequences school suffers from a similar kind of weakness. By making the meaning of "human" a matter of social utility and, in the instance of abortion, denying the title to any early conceptus, it also removes any need to make judgements according to individual cases, or to see different values in conflict with each other. Specifically, by weighing the conflict of values so heavily in favor of the pregnant woman, it succeeds in removing almost all value from the conceptus; thus any real moral dilemma is resolved in advance. The moral problem is defined out of existence in advance by defining "human" in such a way that a conceptus is denied that attribute. Far from seeking to extend the range of protection to human life, it deliberately seeks to narrow it. The consequences for an "indications policy" are widest. Either any "indication" (i.e., any reason) will do, however remote any real danger, or no "indications" at all need be required. If a conceptus has been

defined out of the class of "human," then no reason at all need be given for a desire to have an abortion; the issue is removed from the moral sphere altogether. Moreover, no place is left for attributing any value to potential human life; "human" is defined in terms of achieved potentialities (Callahan, 1970).

Prospects for the Fetus

For the financially secure, happy and healthy couple anxiously awaiting the birth of their baby, the prospect for that fetus is optimistic. But for babies conceived into other situations (and this may represent the majority of them), the picture is quite pessimistic. The "termination" of the fetus is an increasingly appealing "solution" to problems which are not caused so much by his presence as by the continued reluctance of society and its members to face and conquer the roots of human suffering and degradation. The fetus currently serves as a symbol for society's failures. He has become the target--and is an easy mark because of his lack of visibility, his size, and his helplessness. That any woman should face censure, shame, and hardship because she is pregnant is an indictment of society--particularly an affluent one which considers itself to be sympathetic, problem-solving oriented, and civilized.

The job ahead for pro-life advocates is not an easy one. Battling the abortion proponents and vigorously fighting

the Supreme Court decision on abortion through the development of a "Human Life Amendment" should only be a portion of their cause (see Appendix H). Thus, in order for the pro-life philosophy to emerge victorious, numerous changes must be made. Many of these have to do with upgrading the lives of all people, which will in turn benefit the fetus, since he will be more likely to be accepted if he is conceived into "healthy" circumstances. To enumerate all of these areas of need would be difficult; however, they should include: (1) increased health services to women of childbearing age; (2) widespread, easily accessible prenatal care facilities; (3) vigorous educational programs in such areas as sexual facts and relationships, pregnancy and childbearing, and child rearing; (4) a real war on poverty; (5) continued research into the prevention and counteraction of atypical fetal development; (6) increased availability of genetic counseling centers; (7) establishment of attractive viable alternatives to abortion, such as more humanized adoption procedures; (8) various types of non-degrading assistance to pregnant women in need of financial assistance or psychotherapy; (9) establishment of programs such as high-quality daycare centers available to all women with children; and (10) a reversal of attitudes which label the unmarried pregnant woman as immoral or shameful.

Abortion is a complex problem, a source of social and legal discord, moral uncertainty, medical and psychiatric

confusion and personal anguish. The only way abortion can appear uncomplicated, capable of decisive, lasting and satisfactory solution, is by fostering a dedicated singlemindedness of one or another of the many facets of the question exclusive of all others. Abortion is not readily amendable to one-dimensional thinking. It is a moral problem because it raises the question of the nature and control of incipient life. It is a medical problem because the doctor is the person called upon to perform an abortion; both his conscience and his medical skills come into play. It is a legal problem because it raises the question of the extent to which society should concern itself with unborn life, and with public control of the medical profession. A person may be convinced from his own perspective, that all these wide ranging, multifacted problems admit of direct, uncomplicated solutions. But he ought to at least recognize that the great variety of differing moral attitudes to abortion today suggest that it is by no means an easy problem for mankind to come to grips with. The Supreme Court ruling on abortion has made the statutes in all fifty states invalid. The Supreme Court in Roe v. Wade and Doe v. Bolton, 93 S.Ct. 705 (1973), held that:

1. The right to terminate a pregnancy at any time during the pregnancy was a right protected by the United States Constitution, a fundamental right, implicit in the concept of ordered liberty (Wade).

2. A state had no power to regulate abortion in any way to protect the fetus in the first six months of fetal existence (Wade).

3. In the final three months of fetal existence, a state had no power to prefer the fetus' life to the health of the mother (Wade).

4. The "health" of the mother was to be determined by a medical judgement "exercised in the light of all the factors --physical, emotional, psychological, familiar, and the woman's age--relevant to the well being of the patient (Bolton)."

5. A state does not have the power to require an abortion to be performed in a hospital accredited by the Joint Commission on accreditation or in any hospital (Bolton).

6. A state does not have the power to require a review of an abortion decision by a hospital committee (Bolton).

7. A state does not have the power to require concurrence in the abortion decision of two physicians other than the attending physician (Bolton).

8. A state does not have the power to require that the mother be a resident of the state (Bolton).

9. A state does have the power to require that only a licensed physician perform an abortion (Wade).

10. A state does have the power to require that a licensed facility house the operation after the fetus is three months old (Bolton).

Each state must now draft new statutes regarding abortion. The Uniform Abortion Act of 1972 (see Appendix A) could serve as a basic model. An ideal law would meet the following specifications: (1) it would permit abortion on request up to the point where the medical danger of abortion becomes a concern (three months); thereafter serious reasons would be required, and the decision would not wholly be the woman's (though her voice ought to carry the greatest weight); (2) it would offer--but not require--prior to abortion, a formal counseling process by at least one trained person other than the doctor who would perform the operation; (3) it would provide for free abortions for all women who desire an abortion, as well as providing free assistance of the kind needed to bear if that option is chosen; (4) it would require a contraceptive counseling and assistance after an abortion was performed; (5) it would include a "conscience clause" for doctors and nurses, as well as specifying those conditions under which a doctor could, on medical grounds, refuse to perform an abortion; and (6) it would require all abortions be performed by trained medical personnel and be recorded for statistical purposes (Callahan, 1970).

Such a law would accomplish a variety of ends. It would give women optimal freedom and express the serious concern of society about abortion. It would also express society's respect for unborn life. It would provide maximum freedom for everyone concerned with abortion decisions; the

woman who must make the decision, the doctors who must perform the abortions, and the society which has a stake in the number, kind and quality of legal abortions. By its provision for the offering of alternative solutions to women and by its requirement for post-abortion contraceptive counseling and assistance, it would respect society's interest in reducing the number of abortions and the need for abortions. It would also indicate that abortion does not represent by any means the ideal way to limit unwanted pregnancies.

A value-free analysis of abortion is difficult if not impossible. The data one chooses to discuss or thinks important to consider, the strategy chosen to organize and deploy it, and the method of analysis used all depend upon the aims and presuppositions, conscious, or unconscious, of the person trying to grapple with the problem. One's view of reality, man and society inevitably come into play; and one's personal history will also have an impact. To think about abortion ought to be an experience in which one meditates not only on the available empirical evidence or the opinions and convictions of others, but also about oneself.

FOOTNOTES

FOOTNOTES

[1]Quotation marks will be used throughout this paper to add emphasis to those words which pro-life and pro-abortion advocates themselves highlight in their respective arguments.

BIBLIOGRAPHY

BIBLIOGRAPHY

"Abortion." Pamphlet printed by the National Center for Family Planning Services, Rockville, Maryland.

Bates, Jerome E. and Zawadzhi, Edward S. Criminal Abortion. Springfield, Illinois: Bannerstone House, 1964.

Beauvois, Simone. The Second Sex. New York: Bantam Books, 1961.

Berrill, N.J. The Person in the Womb. New York: Dodd, Mead and Co., 1968.

Buss, Martin J. "The Beginning of Human Life as a Ethical Problem." Journal of Religion, (July, 1967), 247-251.

Calderone, Mary S., ed. Abortion in the United States. New York: Hoeber-Harper, 1958.

Callahan, Daniel. Abortion: Law, Choice and Morality. London: Macmillan Co., 1970.

Callahan, Sidney. "Feminist as Anti-Abortionist." Colorado Right to Life Newsletter, April 7, 1972.

Cattrell, Jack W. "Abortion and the Mosaic Law." Christianity Today, March 16, 1973, pp. 6-9.

Champion, Donald. "Supreme Court on Abortion." America, February, 1973, p. 81.

"Doctors Speak Out on Abortion." Modern Medicine, May 14, 1973, pp. 31-35.

Doe v. Bolton. Supreme Court Reporter, 93, 8 (February 15, 1973), 739-756.

Ehrensing, Rudolph. "When is it Really Abortion." The National Catholic Reporter, May 25, 1973, pp. 3-5.

George, B. James. "Current Abortion Laws: Proposals and Movements for Reform." Abortion and the Law. Edited by David T. Smith. Cleveland: Western Reserve University Press, 1967.

Granfield, David. The Abortion Decision. Garden City, N.Y.: Doubleday, 1969.

Guttmacher, Alan F. "Abortion--Yesterday, Today and Tomorrow." The Case for Legalized Abortion Now. Edited by Alan F. Guttmacher. Berkeley: Diablo Press, 1967.

Hall, Robert E. "Abortion in American Hospitals." American Journal of Public Health, November, 1967, pp. 1932-1937.

Hardin, Garrett. "Abortion--Or Compulsory Pregnancy." Journal of Marriage and the Family, 30 (May, 1968), 245-250.

_____. "Abortion and Human Dignity." The Case for Legalized Abortion Now. Edited by Alan F. Gurrmacher. Berkeley: Diablo Press, 1967.

Hayes, Thomas L. "A Biological View." Commonweal, March 17, 1967, pp. 676-679.

Hordern, Anthony. Legal Abortion: The English Experience. New York: Pergamon Press, 1971.

Kaufman, Sherwin A. "What You Should Know About Abortion." Parents, April, 1973, pp. 62-65.

Lader, Lawrence. "A Guide to Abortion Laws in the United States." Redbook, June, 1971, pp. 20-28.

_____. Abortion. Boston: Beacon Press, 1966.

Landau, Richard. "Equal Protection." National Review, January 19, 1973, pp. 87, 107, 109.

Lee, Nancy H. The Search for an Abortionist. Chicago: University of Chicago Press, 1969.

Lindsell, Harold. "Abortion and the Court." Christianity Today, February 16, 1973, pp. 32-33.

Louisell, David W. and Noonan, John T. "Constitutional Balance." The Morality of Abortion: Legal and Historical Perspective. Edited by John T. Noonan. Cambridge, Mass.: Howard University Press, 1970.

Maledon, William J. "Unborn Child." Law Review Digest, November-December, 1970, pp. 82-85.

Mechlenburg, Marjory. "Developing Alternatives to Abortion." Testimony delivered before the Pennsylvania Abortion Law Commission, Pittsburg, Penn., March 14, 1972.

Nelson, J. Robert. "What Does Theology Say About Abortion." The Christian Century, January 31, 1973, pp. 124-128.

Niswander, Kenneth R. "Medical Abortion Practices in the United States." Abortion and the Law. Edited by David T. Smith. Cleveland: Western Reserve University Press, 1967.

Noonan, John T. "Abortion and the Catholic Church." Natural Law Forum, 12 (1967), 85-131.

_____, ed. The Morality of Abortion: Legal and Historical Perspective. Cambridge, Mass.: Howard University Press, 1970.

_____. "Raw Judicial Power." National Review, March 2, 1973, pp. 260-264.

Pilpel, Harriet F. "The Abortion Crisis." The Case for Legalized Abortion Now. Edited by Alan F. Guttmacher. Berkeley: Diablo Press, 1967.

Potts, Malcolm. "The Problem of Abortion." Biology and Ethics. Edited by F.J. Ebreling. New York: Academic Press, 1969.

Report Prepared for the American Friends Service Committee. Who Shall Live? Man's Control Over Birth and Death. New York: Hill and Wang, 1970.

Roberts, Edwin A. "High Courts Abortion Legislation." The National Observer, March 10, 1973, pp. 34-38.

Roe v. Wade. Supreme Court Reporter, 93, 8 (February 15, 1973), 705-739, 757-763.

Rosen, Harold E., ed. Abortion in America. Boston: Beacon Press, 1967.

_____. "Psychiatric Implications of Abortion: A Case Study in Social Hypocrisy." Abortion and the Law. Edited by David T. Smith. Cleveland: Western Reserve University Press, 1967.

Rossi, Alice S. "Public Views on Abortion." The Case for Legalized Abortion Now. Edited by Alan F. Guttmacher. Berkeley: Diablo Press, 1967.

Schenk, Roy V. "Let's Think About Abortion." The Catholic World, April, 1968, pp. 14-17.

Schulder, Diane and Kennedy, Florynce. Abortion Rap. New York: McGraw Hill, 1971.

Schur, Edwin M. Crimes Without Victims. Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Sunday Star and Daily News, Washington, D.C. "Avoiding a Question About Human Life." March 4, 1973, p. E-2.

"Three Abortion Amendments in Congress." Colorado Right To Life Newsletter, June 22, 1973.

Wahlberg, Rachel C. "Abortion: Decisions to Live With." The Christian Century, June 27, 1973, pp. 691-693.

Welsh, Paul. "A Stunning Approval for Abortion." Time, February 5, 1973, pp. 50-51.

Williams, Glanville. The Sanctity of Life and the Criminal Law. London: Faber and Faber, 1958.

APPENDIX A

American Bar Association Uniform Abortion Act, 1972

American Bar Association Uniform Abortion Act, 1972

Section 1 (Abortion Defined; When Authorized)

a. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

b. An abortion may be performed in this state only if it is performed:

1. by a physician licensed to practice medicine (or osteopathy) in this state or a physician practicing medicine in the employ of the government of the United States or of this state (and the abortion is performed (in the physician's office or in a medical clinic, or) in a hospital approved by the (Department of Health) or operated by the United States, this state, or any department, agency, or political subdivision of either;) or by a female upon herself upon the advise of the physician; and

2. within (20) weeks after the commencement of the pregnancy (or after (20) weeks only if the physician has reasonable cause to believe

i. there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother,

ii. that the child would be born with grave physical or mental defect, or

iii. that the pregnancy resulted from rape or incest, or illicit intercourse with a girl under the age of 16 years of age).

Section 2 (Penalty)

Any person who performs or procures an abortion other than authorized by this Act is guilty of a (felony) and upon conviction thereof, may be sentenced to pay a fine not exceeding ($1,000) or to imprisonment (in the state penitentiary) not exceeding (5 years), or both.

Section 3 (Uniformity of Interpretation)

This Act shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

Section 4 (Short Title)

This Act may be cited as the Uniform Abortion Act.

Section 5 (Severability)

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 6 (Repeal)

The following acts or parts of acts are repealed:

1.

2.

3.

Section 7 (Time of Taking Effect)

This Act shall take effect _____.

The Conference of Commissioners on Uniform State Laws appended the following Prefatory Note to the Uniform Abortion Act:

> This Act is based largely upon the New York Abortion Act following a review of the more recent laws on abortion in several states and upon recognition of a more liberal trend in laws on this subject. Recognition was given also to several decisions in state and federal courts which show a further trend toward liberalization of abortion laws, especially during the first trimester of pregnancy.
>
> Recognizing that a number of problems appeared in New York, a shorter time period for 'unlimited' abortions was advisable. The time period was bracketed to permit various states to insert a figure more in keeping with the different conditions that might exist among the states. Likewise, the language limiting the place or places in which abortion may be performed was also bracketed to account for differences among states. In addition, limitations on abortions after the initial 'unlimited' period were placed in brackets so that individual states may

adopt all or any of these reasons, or place further restrictions upon abortion after the initial period.

This Act does not contain any provision relating to medical review committees or prohibitions against sanctions imposed upon medical personnel refusing to participate in abortions because of religious or other similar reasons, or the like. Such provisions, while related, do not directly pertain to when, where or by whom abortions may be performed; however, the Act is not drafted to exclude such a provision by a state wishing to enact the same.

Source: Roe v. Wade. Supreme Court Reporter. February 15, 1973, p. 724.

APPENDIX B

1972 Abortion Laws

1972 Abortion Laws

ALASKA

1. On request (restricted to "non-viable fetus," that is a fetus unable to survive outside mother's body. In practical terms this means that a woman should be no more than 20 to 24 weeks pregnant).

2. Unmarried woman under 18 years of age needs consent from parent or guardian.

3. 30-day residency required.

4. Must be performed by physician in a hospital "or other facility approved for the purpose by the Department of Health and Welfare or a hospital operated by the Federal Government or an agency of the Federal Government ... ."

ARKANSAS

1. May be performed to protect the life or health of the woman.

2. May be performed in cases of fetal deformity, incest or forcible rape.

3. Four-month residency required.

4. Must be performed by a physician in a hospital with approval of three consultants.

CALIFORNIA

1. May be performed to protect the life or the physical or mental health of the woman up to the 20th week of pregnancy.

2. May be performed in cases of incest, forcible rape, or statutory rape (under age 15).

3. Must be performed by a physician in a hospital, with approval of a two-member therapeutic abortion board through the 12th week of pregnancy, a three-member board thereafter.

COLORADO

1. May be performed to protect the life or physical or mental health of the woman.

2. May be performed in cases of fetal deformity; with first 16 weeks in cases of forcible rape, incest, or statutory rape (under age 16).

3. Must be performed by a physician in a hospital with approval of a three-member board.

DELAWARE

1. May be performed to protect the life or the physical or mental health of the woman through the 20th week of pregnancy. After 20 weeks a pregnancy may be terminated to preserve the woman's life or where the fetus is dead.

2. May be performed in cases of fetal deformity, incest or forcible rape.

3. Four-month residency required, unless the woman or her husband works in Delaware, or she has previously been a patient of a Delaware physician or her life is in danger.

DISTRICT OF COLUMBIA

On request. No restrictions.

GEORGIA

1. May be performed to protect the life or health of the women.

2. May be performed in cases of fetal deformity, forcible rape, or statutory rape (under age 14).

3. State residency required.

4. Must be performed by a physician in a hospital with approval of two consultants and a three member board.

HAWAII

1. On request. (Restricted to non-viable fetus; see Alaska).

2. 90-day residency required.

3. Must be performed by a physician in a hospital.

KANSAS

1. May be performed to protect the life or the physical or mental health of the woman.

2. May be performed in cases of fetal deformity, incest, forcible rape, or statutory rape (under age 16).

3. Must be performed by a physician in a hospital "or other place as may be designated by law" with approval of three consultants.

MARYLAND

1. May be performed to protect the life or the physical or mental health of the woman through the 26th week of pregnancy. After the 26th week, to perserve maternal life or when the fetus is dead.

2. Must be performed by a physician in a hospital with approval of hospital review authority.

NEW MEXICO

1. May be performed to protect the life or the physical or mental health of the woman.

2. May be performed in cases of fetal deformity, incest, forcible rape, or statutory rape (under age 16).

3. Must be performed by a physician in a hospital with approval of a two-member board.

NEW YORK

1. On request, through 24th week of pregnancy. After 24 weeks pregnancy may be terminated to preserve maternal life.

2. Must be performed by a physician.

NORTH CAROLINA

1. May be performed to protect the life or health of the woman.

2. May be performed in cases of fetal deformity, incest or forcible rape.

3. Four-month residency required.

4. Must be performed by a physician in a hospital with approval of three consultants.

OREGON

1. May be performed to protect the life or the physical or mental health of the woman. ("In determining whether or not there is substantial risk (to her physical or mental health) account may be taken of the mother's total environment, actual or reasonably foreseeable").

2. May be performed only until the 150th day of pregnancy, except in cases of danger to life.

3. May be performed in cases of fetal deformity, incest, forcible rape, or statutory rape (under age 16).

4. State residency required.

5. Must be performed by a physician in a hospital with approval of one consultant.

SOUTH CAROLINA

1. May be performed to protect the life or the physical or mental health of the woman.

2. May be performed in cases of fetal deformity, incest or forcible rape.

3. 40-day residency required.

4. Must be performed by a physician in a hospital with approval of three consultants.

VIRGINIA

1. May be performed to protect the life or the physical or mental health of the woman.

2. May be performed in cases of fetal deformity, incest or forcible rape.

3. 120-day residence required, provable by affidavit.

4. Must be performed by a physician in a hospital with approval of board.

WASHINGTON

1. On request through 17th week.

2. 90-day residency required.

3. Must be performed by a physician in a hospital "or other place as may be designated by law." If married and residing with husband or unmarried and under the age of 18 years, with prior consent of husband or legal guardian respectively.

WISCONSIN

1. On request. No restrictions.

APPENDIX C

Texas' 1972 Abortion Statute

Texas' 1972 Abortion Statute

Article 1191. Abortion

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

Article 1192. Furnishing the means

Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Article 1193. Attempt at abortion

If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

Article 1194. Murder in producing abortion

If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same, it is murder.

Article 1196. By medical advice

Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

APPENDIX D

Georgia's 1972 Abortion Statute

Georgia's 1972 Abortion Statute

Section 26-1201. Criminal Abortion

Except as otherwise provided in Section 26-1202, a person commits criminal abortion when he administers medicine, drug, or other substance whatever to any woman or when he uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

Section 26-1202. Exception

a. Section 26-1201 shall not apply to an abortion performed by a physician duly liscensed to practice medicine and surgery pursuant to Chapters 84-9 or 84-12 of the Code of Georgia of 1933, as amended, based upon his best clinical judgment that an abortion is necessary because:

1. A continuation of the pregnancy could endanger the life of the pregnant woman or would seriously and permanently injure her health; or

2. The fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect; or

3. The pregnancy resulted from forcible or statutory rape.

b. No abortion is authorized or shall be performed under this section unless each of the following conditions is met:

1. The pregnant woman requesting the abortion certifies in writing under oath and subject to the penalties of false swearing to the physician who proposes to perform the abortion that she is a bona fide legal resident of the State of Georgia.

2. The physician certifies that he believes the woman is a bona fide resident of this State and that he has no information which should lead him to believe otherwise.

3. Such physician's judgment is reduced to writing and concurred by at least two other physicians duly licensed to practice medicine and surgery pursuant to Chapter 84-9 of the Code of Georgia of 1933, as amended, who certify in writing that based upon their separate personal medical examination of the pregnant woman, the abortion is, in their judgment, necessary because of one or more of the reasons enumberated above.

4. Such abortion is performed in a hospital licensed by the State Board of Health and accredited by the Joint Commission on Accreditation of Hospitals.

5. The performance of the abortion has been approved in advance by a committee of the medical staff of the hospitals in which the operation is to be performed. This committee must be one established and maintained in accordance with the standards promulgated by the Joint Commission on the Accreditation of Hospitals, and

its approval must be a majority vote of a membership of not less than three members of the hospital's staff; the physician proposing to perform the operation may not be counted as a member of the committee for this purpose.

6. If the proposed abortion is considered necessary because the woman has been raped, the woman makes a written statement under oath, and subject to the penalties of false swearing, of the date, time, and place of rape and the name of the rapist, if known. There must be attached to this statement a certified copy of any report of the rape made by a law enforcement officer or agency and a statement by the solicitor general of the judicial circuit where the rape occurred or allegedly occurred, that according to his best information, there is probably cause to believe that the rape did occur.

7. Such written opinions, statements, certificates, and concurrences are maintained in the permanent files of such hospital and are available at all reasonable times to the solicitor general of the judicial circuit in which the hospital is located.

8. A copy of such written opinions, statements, certificates, and concurrences is filed with the Director of the State Department of Public Health within 10 days after such operation is performed.

9. All written opinions, statements, certificates, and concurrences filed and maintained pursuant to

paragraphs (7) and (8) of this subsection shall be confidential records and shall not be made available for public inspection at any time.

c. Any solicitor general of the judicial circuit in which an abortion is to be performed under this section, or any person who would be a relative of the child within the second degree of consanguinity, may petition the superior court of the county in which the abortion is to be performed for a declaratory judgment whether the performance of such abortion would violate any constitutional or other legal rights of the fetus. Such solicitor general may also petition such court for the purpose of taking issue with compliance with the requirements of this section. The physician who proposes to perform the abortion and the pregnant woman shall be respondents. The petition shall be heard expeditiously and if the court adjudges that such abortion would violate the constitutional or other legal rights of the fetus, the court shall so declare and shall restrain the physician from performing the abortion.

d. If an abortion is performed in compliance with this section, the death of the fetus shall not give rise to any claim for wrongful death.

e. Nothing in this section shall require a hospital to admit any patient under the provisions hereof for the purpose of performing an abortion, nor shall any hospital

be required to appoint a committee such as contemplated under subsection (b) (5). A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which an abortion has been authorized, who shall state in writing an objection to such abortion on moral or religious grounds shall not be required to participate in the medical procedures which will result in the abortion; and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.

Section 26-1203. Punishment

A person convicted of criminal abortion shall be punished by imprisonment for not less than one nor more than 10 years.

APPENDIX E

Pro-Abortion Organizations

Pro-Abortion Organizations

National

National Association for Repeal of Abortion Laws; Mrs. Lee Gidding, Executive Director; 250 West 57th St., New York, New York, 10019.

State and Local

California

California Committee on Therapeutic Abortion; Keith P. Russell, M.D., Chairman; Box 2111, South Station, Van Nuys, California, 91404.

Society for Humane Abortion, Inc.; Patircia Maginnis, Chairman; P.O. Box 1862, San Francisco, Ca., 94101.

Connecticut

Connecticut League for Abortion Law Repeal, Inc.; Clarence D. Davis, M.D., President; 333 Cedar St., New Haven, Conn., 06510.

Georgia

Georgia Citizens for Hospital Abortions; Mrs. Judith Bourne, Chairman; 6150 Rivercliff Dr., N.W., Atlanta, Ga., 30306.

Illinois

Citizens for Abortion Law Reform; Paul Handler, Chairman; P.O. Box 2372, Station A, Champaign, Ill., 61820.

Illinois Citizens for Medical Control of Abortion; Helen Smith, Chairman; 100 E. Ohio, Chicago, Ill., 60611.

Indiana

Indiana Abortion Law Repeal Coalition; P.O. Box 1292, Bloomington, Ind., 47401.

Iowa

Iowa Association for Medical Control of Abortion; Mrs. Lauren Madden, State Coordinator; P.O. Box 232, W. Des Moines, Iowa, 50265.

Iowans for Human Abortion Laws; Robert Webber, Coordination Chairman; 851 19th St., Des Moines, Iowa, 50314.

Massachusetts

Massachusetts Organization to Repeal Abortion Laws; Mrs. Sue Sabath, Pres.; Box 238, Boston, Mass., 02134.

Michigan

Michigan Women for the Medical Control of Abortion; Mrs. John Tanton, Pres.; 1003 Lockwood Ave., Petoskey, Michigan, 49770.

Minnesota

The Minnesota Council for the Legal Termination of Pregnancy; Robert McCoy, Coordinator; 549 Turnpike Rd., Golden Valley, Minn., 55416.

Missouri

Sex and Abortion Study Group; Miss Sandra Carnesale, Chairman; 725 S. Taylor St., St. Louis, Mo., 63110.

Montana

Montana Organization for the Reform of Abortion Laws; Joan Uda, Chairman; P.O. Box 1168, Missoula, Montana, 59801.

Nevada

Nevada Committee for the Rights of Women, Inc.; Mrs. Leola Armstrong, Adm. Director; 3451 S. Spencer St., Las Vagas, Nevada, 89109.

New Jersey

Abortion Law Reform Committee of New Jersey; Mrs. Eugene Krasnoff, Chairman; Princeton YWCA, Princeton, N.J., 08540.

Mothers for Abortion Law Repeal; Mrs. Sharon Clark, Pres.; 208 Loetcher, Princeton, N.J., 08540.

New Jersey Committee on Abortion; Ruth Gray, Chairman; 517 Central Ave., Plainfield, N.J., 07060.

New Mexico

New Mexico Committee for Medical Termination of Pregnancy; Merrillee Dolan, Chairman; 1712 Gold, S.E., Albuquerque, N.M., 87106.

New York

Abortion Rights Association; Ruth Smith, Chairman; 250 W. 57th St., N.Y., N.Y., 10019.

Nassau Committee for Abortion Law Repeal; Sylvia Fields, C-Director; P.O. Box 27, Old Bethpage, N.Y., 11804.

New Yorkers for Abortion Law Repeal; Lucinda Asler, Pres.; P.O. Box 240, Planetarium Station, N.Y., N.Y., 10024.

Parents Aid Society; Bill Baird, Dir.; 107 Main St., Hempstead, N.Y., 11550.

Ohio

Association for Reform of Ohio Abortion Law; Richard Schwartz, M.D., Chairman; P.O. Box 18099, Cleveland, Ohio, 44118.

Abortion Education Society of Ohio; David McCalmont, Pres.; 490 Alden Avenue, Columbus, Ohio, 43201.

Oklahoma

Modern Oklahomans for the Repeal of Abortion Laws; Miss Barbara Santee, Chairman; 2952 S. Peoria, Tulsa, Oklahoma, 74114.

Oregon

Abortion Information and Referral Service; Miss Mimi Schneider, Pres.; 529 W. 8th St., Eugene, Oregon, 97401.

Abortion Information and Referral Service; Susan Ken; 1624 N.E., Portland, Oregon, 97212.

Pennsylvania

Abortion Justice Association; Mrs. Patricia Miller, Chairman; Box 10132, Pittsburg, Penn., 15232.

Pennsylvania Abortion Rights Association; Phyllis Ryan; P.O. Box 13061, Phila., Penn., 19101.

Roman Catholics for the Right to Choose; Mrs. Mary Robison, Coordinator; P.O. Box 10154, Pitts., Penn., 15232.

South Carolina

Abortion Interest Movement; Anne Bellew, Pres.; 25 Country Club Dr., Greenville, S.C., 29605.

Texas

Abortion Education Committee of Dallas; Mrs. Melvin White, Co-Chairman; 6731 Ridgeview Circle, Dallas, Tx., 75240.

Texas Abortion Coalition; Mrs. Virginia Morley, Corres. Sec.; 424 15th St., #5, Galveston, Tx., 77550.

Texas Abortion Coalition--Houston Contingent; P.O. Box 384, Bellaire, Tx., 77401.

Vermont

Committee for Revision of Vermont Abortion Laws; C. Irwing Meeker, M.D., Chairman; Dept. of Obstetrics

and Gynecology; Univ. of Vermont, College of Medicine, Burlington, Vermont, 05401.

Washington

Washington Citizens for Abortion Reform; Samuel Goldenberg, Ph.D., Chairman; 1107 N.E. 45th St., Suite 411, Seattle, Washington, 98105.

Wisconsin

The Wisconsin Committee to Legalize Abortion; Mrs. Ruth Dein, Chairman; 1153 E. Sylvan Ave., Milwaukee, Wisconsin, 53217.

OR Mrs. Paul J. Gaylor, Madison Coordinator; 726 Miami Pass, Madison, Wisconsin, 53711.

OR Kent D. Hall, Ph.D., Stevens Point Coordinator; Dept. of Biology, Wisconsin State Univ., Stevens Point, Wisconsin, 54481.

APPENDIX F

The Beginning of Human Life: The Biological Data

The Beginning of Human Life: The Biological Data

WEEK 1:

About the fourteenth day after the beginning of the menstrual cycle, a mature ovum is released from the Graafian follicle. After remaining momentarily in the peritoneal cavity, the ovum then passes into the uterine (Fallopian) tube, thus beginning its movement toward the uterus. If intercourse has taken place within 72 hours of release of the mature ovum, the ovum may then encounter the male sperm in the uterine tube. If one of the sperm fertilizes the ovum, the fertilization will probably occur in the upper part of the uterine tube. Once fertilized, the ovum becomes a single-cell zygote. Within a day or so after fertilization, the zygote begins the process of cellular cleavage, first a two-cell cleavage, then four, then eight, etc. By the third day, there are an estimated 16 cells. As this cleavage is taking place, the zygote is continuously moving down the uterine tube. The individual cells formed by the ongoing cleavage are called "blastomeres." At the end of four days, the combined blastomeres form the morula, which is a solid cluster of blastomeres. By the fifth day, this morula has begun to enlarge and becomes hollowed out. At this point, it is called a "blastocyst," and this blastocyst continues to enlarge and hallow out. By about the fifth day, the zygote, now fully in the blastocyst stage, has reached the uterus. By the sixth

or seventh day, the zygote has begun the process of implantation into the walls of the uterus. The implantation activity then takes about four more days; by the eleventh day implantation is completed.

WEEK 2:

During the time of gradual implantation, further changes occur in the blastocyst. The most important is the development of an outer layer of cells (tropoblast), which will become part of the placenta, and an inner cell mass (embryoblast), which will become the embryo. The development of the inner cell mass is first marked by a single layer of cells, which in turn gives way to the appearance of a second layer of cells (endoderm). This latter layer of cells gradually forms the primary yolk sac (still surrounded by the trophoblast). The inner sell mass is, at the same time, taking the form of a bilaminar disc, made up of the cellular layers (formative cells and endoderm). As these layers are maturing, the blastocyst is also forming the amniotic cavity. By the end of the second week, the conceptus--now usually called an "embryo," consists essentially of the amniotic cavity, the bilaminar ambryonic disc and the yolk sac.

WEEK 3:

During the third week, the bilaminar embryonic disc gradually changes, by the process known as "gastrulation" into a trilominar disc as another cell layer is added. As

gastrulation progresses, signaled by the appearance of the "primitive streak," there emerges the intraembryonic mesoderm which makes its appearance as a third layer of cells between the layers of the endoderm and formation cells. As this is happening, the embryonic disc is gradually being elongated, thus establishing the central axis of the embryo. With the formation of the "gastrula" (the three layers), the fundamental body plan is established. The process of "twinning" (for monozygotic--identical twins) is believed to occur at some point during the second or third week.

WEEKS 4 and 5:

During these weeks important stages of cell development and differentiation take place in the initially trilaminar disc. This development is especially pronounced in the area of the primitive streak where there is developed, among other things, the notocord (serving as the axial skeleton until replaced by vertebrae), cardiogenic mesoderm (which gives rise to the heart), intermediate mesoderm (which gives rise to adrenal cortex, gonads and kidneys), and the neural tube. A precocious cardiovascular system also begins functioning during this period. During the fourth and fifth weeks, the foundation of all the organ systems is established. By the fifth week, a face is beginning to make its appearance as well as primitive limb buds. In general, weeks five to eight mark the appearance of those external features which mark the embryo as

visibly human. The development of primitive brain vesicles can be discerned during the fourth and fifth week.

During the first weeks of development, the size of the conceptus is about as follows: zygote (.14 mm); blastocyst: preimplantation (.2 mm), postimplantation (.8 mm); embryo at three weeks (1.5 mm); 32 days (5.0 mm); 56 days (30 mm); from the third month to term, the growth rate is approximately 1.5 mm per day. By the sixth week, a full complement of organs is present, though still in a primitive stage. By the seventh week, a stimulation of the mouth or nose of the embryo will cause it to flex its neck. By the eighth week--at which point the conceptus is called a "fetus" rather than an "embryo"--there is a discernible electric activity in the brain; it is possible to get an EEG reading. Toes and fingers are now clearly visible. During the ninth and tenth weeks, a number of reflex activities are noticeable, particularly squinting and swallowing. By the tenth week, spontaneous movement on the part of the fetus is taking place, independent of external stimulation. By the eleventh week, the skeleton of the fetus can be captured by x-ray. By the twelfth week, the brain structure is essentially complete, and a fetal electrocardiograph through the pregnant woman can pick up heart activity. Sometime between the thirteenth and sixteenth week, the woman is likely to feel fetal movements: "quickening" as the old phrase has it. Viability is possible sometime

between the twenty-sixth and the twenty-eighth week. Birth normally occurs between the thirty-ninth and the fortieth week.

Source: Callahan, Sidney. Abortion: Law, Choice, and Morality. London: Macmillan Company, 1970, pp. 371-373.

APPENDIX G

Pro-life Organizations

Pro-life Organizations

Americans United For Life, 422 Washington Building, Washington, D.C., 20005. A non-sectarian educational organization working for the recognition of all human life with the emphasis on opposing abortion; pregnancy counseling service is offered to troubled mothers to alleviate emotional crises and economic and social pressures, to the end that the birth will not be aborted.

Birthright, 214 First Produce Bank Building, 100 N. 7th St., Minneapolis, Minn., 55401. Gives practical assistance such as emergency housing, referrals to proper agencies, medical, psychiatric, and legal help to distressed pregnant women.

Colorado Right to Life Committee, P.O. Box 20144, Denver, Colorado, 80220 or Colorado Springs Chapter, P.O. Box 415, Colorado Springs, Colorado, 80901. Aims to promote, foster, encourage, and support reverence and respect for human life without regard to condition, quality, age, race, religion, creed or color, whether born or unborn; educates the community to the dangers of abortion, euthanasia, infanticide and compulsory sterilization; encourages and promotes a favorable spiritual, cultural, and physical environment which would improve the quality of life in a manner consistent with the above purposes.

Minnesota Citizens Concerned For Life, 4804 Nocolet Ave., Minneapolis, Minn., 55409. Engages in educational,

charitable, scientific, and literary actions to improve the personal and social responsibility of man to foster the right to life for mother and child, and to promote assistance in the care and rearing of children with birth defects.

Pro-life Council of California, 41 Sutter St., Suite 505, San Francisco, Ca., 94104. Educational and legislature advisory council composed or representation from each county in California for the purpose of protecting the life of the unborn child; other interests include protection of the aged, mentally ill, and physically retarded.

Right To Life League of Southern California, 625 S. Kingsley Drive, Los Angeles, Ca., 90005. A non-profit educational organization emphasizing a positive view of man, in which respect for human life precludes the negative dehumanizing acts of abortion and euthanasia; has established a crisis intervention telephone service called "Lifeline" in six local areas to offer alternatives to abortion.

Save Our Unwanted Life (SOUL), Box 14185, Minneapolis, Minn., 55414. Founded by students at the University of Minnesota as a movement concerned with the preservation, protection, and enchancement of the primary right to life; concerns include society's "unwanted" (the weak, the sick, the aged, the mentally ill, the physically handicapped, and the unborn); provides alternatives to abortion such as education, counseling, rubella vaccination, day care centers, and medical, economic, and recreational programs for unwed mothers.

APPENDIX H

Proposed Constitutional Amendments on Abortion

Proposed Constitutional Amendments on Abortion

Representative Lawrence Hogan (R-Md)

Section 1. Neither the United States nor any state shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

Section 2. Neither the United States nor any state shall deprive any human being of life on account of illness, age or incapacity.

Section 3. Congress and the several states shall have the power to enforce this article by appropriate legislation.

Senator James Buckley (Conservative--N.Y.)

Section 1. With respect to the right of life, the word "person" as used in this article and in the Fifth and Fourteenth Articles of Amendments to the Constitution of the United States, applies to all human beings; including their unborn offspring at every state of their biological development, irrespective of age, health, function or condition of dependency.

Section 2. This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.

Section 3. Congress and the several states shall have the power to enforce this article by legislation in their appropriate jurisdictions.

Representative G. William Whitehurst (R-Va)

Nothing in this constitution shall bar any state or territory of the District of Columbia, with regard to any area over which it has jurisdiction from allowing regulation or prohibiting the practice of abortion.

Vita redacted during scanning.