Abortion as a Secondary Birth Control Measure - A Functional Approach

Barbara Plant

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ABORTION AS A SECONDARY BIRTH CONTROL MEASURE
- A FUNCTIONAL APPROACH -

BY
BARBARA PLANT

Submitted in partial fulfillment of the requirements
for the Master of Arts degree
in the Department of Sociology
University of Windsor
April, 1971
ABSTRACT

This paper endeavours to give a functional interpretation to the practice of abortion.

A structural fit between the conjugal family and the current technological system was established. One of the dominant characteristics of the conjugal family is that of its decreasing size. A small family can only be established through some method of family planning. But, the conventional birth control techniques are not reliable either because of their inherent infertility or through usage by the user. A back-up measure is needed to prevent births that cannot be planned with the conventional means of birth control. Abortion is the safety valve that allows the small, conjugal, nuclear family to be maintained for it is the functional consequence of its need for a post facto method of birth control. This lends to the hypothesis that there has been steadily increasing evidence for a more permissive attitude to abortion in America in this century.

Accepted by the faculty of the Department of Sociology of the University of Windsor in partial fulfillment of the requirements for the Master of Arts degree.

Manuel J. Blair
Advisor
ABSTRACT

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This hypothesis was examined by tracing the discussion of abortion by laymen's periodicals from 1929 to 1969. Three basic trends were evident in the thirty year period. The years 1929 to 1939 were characterized by a positive approach. The magazines drew attention to the inadequacies of the law, and also to the short-comings of the surrounding institutions such as medical facilities in combating the abortion problem. During the second period 1940-1955, public opinion shifted to supporting the
current restrictive abortion laws. The presence of the war and the post war emphasis on motherhood and family togetherness contributed to this attitude change. The third period 1955 to 1969 was the one of greatest change as there was an increasing push towards more permissive abortion laws. Various factors such as medical crises (thalidomide incident and rubella epidemic), concern by professional groups i.e. doctors and lawyers, and the presence of pressure groups, contributed to this change in attitude. This latter period was then analyzed as a social problem using the conceptual framework of the natural history approach developed by Richard Fuller and Richard Myers. The three stages of awareness, policy determination, and reform were used to describe the steadily increasing pressure for more liberal abortion laws.
ACKNOWLEDGMENT

The author would like to express her gratitude to Dr. Mansell Blair of the University of Windsor for his guidance and supervision in the writing of this paper; to Dr. Hyman Rodman of The Merrill-Palmer Institute (Detroit) for helping to select and to initiate this study; to Dr. Robert Whitehurst of the University of Windsor for his many words of encouragement and his unfailing interest.

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B.A.P.
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Abortion is an ancient practice, but even in antiquity it provoked sharp differences of opinion. Plato, in the Republic, approved abortion to prevent the birth of incestuous offspring; Aristotle, always a practical fellow, looked upon it as a useful Malthusian governor. The Hippocratic oath, on the other hand, contains the words "I will not give to a woman a pessary to produce abortion"; Seneca and Cicero condemned abortion on ethical grounds, and the Justinian Code prohibited it. There seems little doubt, however, that in the Roman Empire and the Hellenistic world abortion was, as one authority has stated, "very common among the upper classes." The Christian Church took a stern stand against this "pagan attitude," and pronounced abortion a sin. In many states the law followed church doctrine and made the sin a crime. But in Anglo Saxon law abortion was considered "an ecclesiastical offense only."

James R. Newman

The American family of the nineteenth and early twentieth century was characterized by a highly structured patriarchal system, subordination of women, unplanned pregnancies, many children, nuclear, an extended kinship network and a sense of duty as the highest obligation of family members. This type was

CHAPTER ONE

INTRODUCTION - PURPOSE OF THE STUDY

Abortion is a very old and ancient custom that has been practiced in many societies throughout history, but recently it has received greater concern and notoriety in America. During the past four decades there has been an increasing debate over abortion and a rising number of abortions, as well as an inquiry into the cause and effects of these abortions. Why has abortion become so prevalent a topic in the past forty years? What is there that can account for this sudden interest in the practice of abortion? This paper will attempt to answer these questions by looking at the role of abortion in contemporary society. This study will be explanatory in nature, and it will endeavour to give a functional interpretation to the practice of abortion.

THEORETICAL CONSIDERATIONS

The American family of the nineteenth and early twentieth century was characterized by a highly structured patriarchal system, permanence of marriage, unplanned parenthood, many children, familism, an extended kinship network and a sense of duty as the highest obligation of family members. This type was

1 Harry L. Shapiro, "An Anthropologist's View," Abortion In A Changing World, Robert Hall (editor), Columbia University Press, New York, 1970, p.183-187. In this article Shapiro stated "Of the 200 tribal dossiers in the Human Relations Area File at Yale, 125 contained positive records of its(termination) occurrence - over 62 per cent. In a larger survey of general literature, Deuveux was able to list over 300 separate tribal or cultural groups where induced abortion was known and practiced."
designated the institutional family by E.W. Burgess. But gradually the family structure has changed to what Burgess refers to as a companionship family. This type is characterized by mutual affection, sympathetic understanding and comradeship of members. It is mainly a small-group family with few children, usually no elderly in the household, and with a reduction of most of the traditional functions. Emphasis is placed on the equality of the husband and wife, and the family is seen as a great base in that happiness is a goal and "raison d'etre" for marriage and family living.

The family structure has changed from a large family with extended kinship ties to that of a small, conjugal, nuclear family, but the cause of this change has not been established conclusively. William Ogburn has postulated the theory that all changes within the family have their basis in technology. In other words, technological advances have been responsible for changes such as the increasing individualism and freedom of family members; smaller families; a lowering of the age at which people marry; a transferring of functions from the family to other institutions such as schools, churches and government agencies; more wives in the labour force; a decline in the authority of fathers; increasing emphasis on children; and an increasing divorce rate.

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3 Burgess, ibid., p.336

While Ogburn has argued that technology is the causal agent in changing the family structure, William J. Goode contended that industrialization was not necessarily the causal agent in these changes in family structure. Although the trend is towards some type of conjugal family system, factors other than industrialization such as ideology and value systems must also be taken into consideration. Other authors have also examined the hypothesis that industrialization is the cause of the conjugal family. After looking at the Barbados where the nuclear family is found in the same form and with the same functions as in industrialized Western society, but without industrialization and urbanization, Sidney Greenfield called the traditional hypothesis into question.

Reasons can be given both for and against the hypothesis that the small nuclear family of Western Europe and the U.S. is a functional consequence of the urban-industrial revolution. However, it is not the intention of this paper to argue the merits of either stand; it is sufficient to say that there is a structural fit between the conjugal family and the demands made upon it by industrialization. Rodman has stated: "that neither industrialization nor urbanization is therefore necessary to explain the 'isolated' nuclear family. Nevertheless, there

5 William J. Goode, World Revolution and Family Patterns, The Free Press, New York, 1963,


may be a greater likelihood of finding an 'isolated' nuclear family in association with an industrialized economy... because of the functional reasons that Parsons and others such as Nimkoff and Middleton have cited." In their study on the types of family and the types of economy, Nimkoff and Middleton found that in an industrial setting the family is organized along independent lines because (a) there is a small demand for family labour; (b) employment is based on individual competence not family membership; (c) there is a high rate of mobility.

Talcott Parsons has elaborated upon the structural integration of the conjugal family and the industrial system as he shows how the open, multilinage, conjugal family has made an effective adaptation to the requirements of an industrial economy. The status of the family in American society is overwhelmingly bound up with the occupation of the husband through the income, prestige and style of life which derive from it. In pre-industrial days there was often a direct integration between the family and the occupational system. The father worked at home and the other family members assisted him in his productive activities, but with the appearance of the factory system such direct integration was no longer possible.


9 M.F. Nimkoff and Russell Middleton, "Types of Family and Types of Economy," American Journal of Sociology, November 1960, p.225

The occupational world (i.e. the factory) operates on universalistic criteria characterized by self-control, formal impersonal relationships, specific role delineations and promotions based on performance. On the other hand, particularistic criteria govern relationships within the family. Roles in the family tend to be open-ended and free to interpretation. Moreover, one's rights and obligations within the family are defined primarily by membership as such and by the ascribed differentiations of age, sex, and biological relatedness. Having established that these two groups (the occupational world and the family) have very divergent structures, it is essential to note that in order for these two systems to work together, a very delicate balance must be maintained. A direct integration of the occupational system with the kinship system is impossible. Rather a separation of these two systems is more effective. This separation is not a total isolation of the nuclear family, but rather the family tends to be somewhat isolated in that particular relationships are not obligatory, but must be maintained voluntarily within the geographic and economic constraints imposed upon them. The concept which is most useful to describe the contemporary family structure is that of the modified extended family, a concept frequently used by Eugene Litwak.\footnote{This concept is described in two articles - Eugene Litwak, "Occupational Mobility and Extended Family Cohesion," American Sociological Review, 25, February 1960, p.9-21; and Geographical Mobility and Extended Family Cohesion," American Sociological Review, 25, June 1960, p.385-394}
to describe the partial dependence of nuclear family members upon each other. But this concept does not detract from the basic approach of Parsons for he did not say that the nuclear family typically maintains no contact with other kin. Rather, it is simply that in order to describe the structural fit between industrialization and the nuclear family, there is a tendency to use ideal constructs to describe phenomena.

Thus, the ideal isolated family facilitates both social and geographic mobility which is required by industrialization. This isolation of the nuclear family is the mechanism which frees the occupation-bearing and competing member of the family from hampering ties which would both inhibit his chances and interfere with the functioning of the industrial system. Moreover, the conjugal family with its neolocal residence pattern is more suited for shifting from place to place than a kinship group which is bound to a particular residence location by occupational, property or status interests of other members. In functional terms, the structure of the family system is such as to favour a breaking of family ties at any point where the continuance of those ties would prejudice participation in the occupational system.  

We have thus far established the structural fit of the conjugal family and the industrial economy. We have also

12 Leslie, op.cit., p. 331  
13 Leslie, op.cit., p. 245
described the conjugal family as a small group where individualism is stressed and where affective bonds are paramount. Rodman has noted: "The conjugal family has become a much more specialized group, and it now concentrates its functions on the socialization of the child and the emotional support and affection that is exchanged among its members."14 In other words, the main function of the family is that of emotional support for the various members and that of socializing the child to take his place in the highly objective occupational setting and in the very emotional family setting. Parsons has applied the label of 'instrumental activism'15 to the type of socialization required by the occupational and social system. The socialization process is one in which achievement, mastery, efficiency and rationality are important elements. There is an emphasis on the autonomy and responsibility of the individual. Parsons' contention is that we have a type of socialization in American society that prepares the child for the autonomous role he will play in our achievement-oriented society.16

This type of orientation towards socialization is such that a smaller family is more compatible with this approach than a family with an unlimited number of children. The very nature of the socialization process indicates that one must actively

14 Rodman, op.cit., p.265
15 Talcott Parsons, "Youth in the Context of American Society," Daedalus, 1962, p.100
16 Rodman, op.cit., p.278
promote the attributes of rationality, autonomy and responsibility in each child as well as treating each child as an individual. The amount of time and energy that must be expended is so great that one cannot raise an unlimited number of children in this manner. One can account for the need for this type of socialization process by the fact that through instrumental activism the child is prepared for the objective, rational occupational system which is isolated from the personal emotional family setting.

Another factor that influenced the socialization process was the decline in family size due to technological factors of production. In pre-industrial days the family was an economic unit of production. Children were regarded as an economic asset for they were able to contribute to the family economy; large families were essential. With the growth of industrialization the family declined as an economic institution, and production was no longer done at home but rather at a factory. As the family changed from a unit of production to a unit of consumption, the need for many children decreased as children were no longer an asset, but an economic liability.

Implicit in this discussion on the declining family size is the element of increasing individuality and freedom, also one of the consequences which Ogburn attributed to technological advances.17 One aspect of this freedom is that individuals do not choose their mates on the basis of economic skills, but rather men and women seek mates who will be good companions and

17 Ogburn, op.cit., p.7
and for whom they will feel affection. The shift away from economic aspects to that of emotional or affective aspects has influenced the freedom of choice in other areas as well. Parents are now able to exercise their freedom of choice in the size of family which they desire. In commenting on the changing size of the American family, Rodman has stated: "A declining birth rate was seen as an indication of the lesser utility of children—they were no longer needed for the family farm or the family firm. As a result, parents were beginning to have as many children as they 'wanted' rather than as many as they 'needed' ".

The structural fit between the conjugal family unit and the occupational system has stressed the need for smaller families in Western society. This decrease in family size can be accomplished through some means of family planning that aids in both limiting the size of the family and spacing the interval between members. Various birth control devices such as condoms, diaphragms, chemicals, pills and intrauterine devices may be used. All of the above named devices necessitate planning and forethought prior to sexual intercourse such as insertion in the case of diaphragms, foams, jellies or IUD's, or regular pill-taking in the case of oral contraceptives. Some birth control methods do not require appliances such as coitus interruptus (withdrawal prior to ejaculation) and periodic

18 Ogburn, op. cit., p.8

abstinence (rhythm method). One can also control human fertility through sterilization, a vasectomy for the male or a tubal ligation or hysterectomy for the female. These operations are considered a final means of birth control, and practically irreversible in their effects.

In evaluating the use of these devices for family planning one must look at the effectiveness of each method. Sterilization will not be discussed since this method is used to end the reproductivity of a family; it cannot be used for spacing the intervals between various family members. The use-effectiveness of a contraceptive method is defined in terms of its capacity to prevent unwanted pregnancies. It is usually expressed in terms of a failure rate per hundred woman years of exposure and abbreviated as HWY.\textsuperscript{20} Table 1 will illustrate the failure rate of various methods of birth control. These failure rates are based on actual results, no distinction being made whether the method failed or the individuals were careless in using it. The lower rates are generally achieved by highly motivated individuals under close medical supervision.\textsuperscript{21}

\textsuperscript{20} John Peel, and Malcolm Potts, \textit{Textbook of Contraceptive Practice}, Cambridge University Press, 1969, p.45

The basis for calculating this failure rate is known as Pearl's formula. It is expressed:

\[
\text{Failure rate per HWY} = \frac{\text{Total accidental pregnancies}}{\text{Total months of exposure}} \times 1200
\]

A failure rate of 10 per HWY would mean that in 100 years of exposure to a particular method, a woman would have 10 accidental pregnancies.

<table>
<thead>
<tr>
<th>Method</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>No contraceptive</td>
<td>80</td>
<td>80</td>
</tr>
<tr>
<td>Aerosol foam</td>
<td>-</td>
<td>29</td>
</tr>
<tr>
<td>Foam tablets</td>
<td>43</td>
<td>12</td>
</tr>
<tr>
<td>Suppositories</td>
<td>42</td>
<td>4</td>
</tr>
<tr>
<td>Jelly or cream</td>
<td>38</td>
<td>4</td>
</tr>
<tr>
<td>Douche</td>
<td>41</td>
<td>21</td>
</tr>
<tr>
<td>Diaphragm and jelly</td>
<td>35</td>
<td>4</td>
</tr>
<tr>
<td>Sponge and foam powder</td>
<td>35</td>
<td>28</td>
</tr>
<tr>
<td>Condom</td>
<td>28</td>
<td>7</td>
</tr>
<tr>
<td>Coitus interruptus</td>
<td>38</td>
<td>10</td>
</tr>
<tr>
<td>Rhythm</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>Lactation</td>
<td>26</td>
<td>24</td>
</tr>
<tr>
<td>Steroid contraception (pill)</td>
<td>2.7</td>
<td>0</td>
</tr>
<tr>
<td>Abortion</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Intrauterine contraception</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Lippes loop)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 - 12 months</td>
<td></td>
<td>2.4</td>
</tr>
<tr>
<td>12 - 24 months</td>
<td></td>
<td>1.4</td>
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The preceding table has indicated that abortion is the only method that is effective one hundred per cent of the time. The other methods of birth control have failure rates varying from 1.4 HWY (intrauterine devices) to 43 HWY (foam tablets).[^22] Tietze has said: "There can be no doubt that these high pregnancy rates reflect so-called patient failures, that is, various degrees of inconsistency in the practice of contraception."[^23] Several reasons can be suggested for these high failure rates such as lack of motivation, ignorance, high cost, unavailability etc. Rainwater, for example, has related the use of birth control to the level of understanding of the reproductive system by the user. He stated: "Female appliance methods require some more sophisticated understanding of the mechanics of contraception than just the idea that intercourse causes pregnancy."[^24]... "inadequate and male-dominated notions about the mechanics of contraception tend to encourage the use of the condom."[^25]

We have thus far established the structural fit between the conjugal family and the current technological system. One of the dominant characteristics of the conjugal family is that

[^22]: The high scores were selected for analysis since the low scores were achieved by highly motivated individuals under close medical supervision, a factor which is not universally present.


[^24]: Lee Rainwater, And The Poor Get Children, Quadrangle Books, Chicago, 1960, p.147

[^25]: Rainwater, ibid, p.149
of its decreasing size. A small family can only be accomplished through some method of family planning. The birth control techniques which we have examined are not entirely reliable either because of their inherent fallibility or through misuse by the user. Those birth control methods have been devices that were used in some way (i.e. insertion) prior to coitus. What is needed is a birth control method which can be used after sexual intercourse has taken place. "We will always need a method of birth control that can be used as an afterthought to prevent a natural but undesired consequence of unforeseen events. Abortion is the much needed backstop in the system of birth control," writes Garrett Hardin.26

One can now account for the role of abortion in the conjugal family system. It is my belief that abortion plays an integral role as a safety valve for the conjugal family pattern. Abortion may be considered a 'last resort' method of birth control which can be utilized after other methods have failed. Abortion allows the conjugal family system to be maintained even if pressures such as 'an unwanted pregnancy' threaten the structure. Dr. Hardin has pointed out that even a method of contraception with a one per cent failure rate produces a quarter of a million unwanted children a year.27


Alice Rossi has stated that the American population approves family planning by means of acceptable contraceptive techniques, but any failure of traditional birth control measures should be followed not by an abortion, but by an acceptance of the pregnancy.28 But the failure of a contraceptive does not result in sweeping changes in the motivation for childbirth.29 It is hypocritical to urge family planning but withhold help when such planning fails.30 Therefore, abortion acts as a back-up measure, which can be used if other types of birth control devices fail or are improperly used. Abortion is the safety valve which allows for smaller families which are compatible with industrialization.


POSTULATES:

From the discussion the following postulates can be stated:

a. the small conjugal family is compatible with the current technological system;
b. the conventional means of birth control are unsatisfactory as a method of planning small families;
c. a back-up measure is needed to prevent births that cannot be planned with the conventional means of birth control;
d. abortion is a back-up device which can be used post factum;

HYPOTHESIS:

Therefore, abortion is the safety valve that allows the small, conjugal, nuclear family to be maintained for it is functional consequence of the need for a post factum method of birth control.

This suggests there should be a continued, steadily increasing pressure for a more liberalized stand on abortion in American society accompanying the shift from institution to companionship and from the productive to the consumptive family. This leads to the hypothesis that there has been a steadily increasing pressure for a more favourable attitude to abortion in America in this century.

The push towards more liberal abortion laws is not expected to occur in a unilinear progression from more restrictive statutes to gradually increasing permissiveness.
This viewpoint may be anticipated by examining some of the changing trends in the feminine outlook on family life, babies, and careers. Betty Friedan has provided an analysis of this in her examination of the content of four major women's magazines — The Ladies Home Journal, McCall's, Good Housekeeping, Womans Home Companion. The heroines of women's magazine stories in the 1930's were young career girls who were about to embark on a bright future filled with promise and excitement. References to home-making and children were noticeably absent from their stories. Then suddenly the picture changed, and during the mid-forties the career-bound woman became the happy housewife who turned her energies toward home-making and having children. Togetherness became a movement of spiritual significance as advertisers, ministers and newspaper editors urged mothers and fathers to do things together as a family, and to make children the central focus of one's life. Motherhood was thus applauded. It was against this background the Betty Friedan wrote about the unhappiness of women caught in the trap of being only housewives and having babies. She heralded the day when women would no longer regard having babies as their only occupation.

With this brief analysis of the changing attitudes towards motherhood and also towards the desired number of children, one can expect that attitudes toward abortion will

fluctuate in accordance with the previously mentioned changes in attitudes toward the desirability of having children. Therefore, a unilineal attitude change is not expected. The particular manifestations of these changes will be discussed in a later section of this paper.


CHAPTER TWO

METHOD OF STUDY

During the past forty years the popular presses have printed an increasing amount of material on the subject of abortion. At the same time, the number of abortions has been increasing. Fisher stated in the introductory remarks of Abortion in America that at least 330,000 pregnancies were illegally interrupted annually in the U.S.¹ In a later edition of the same book editor Harold Rosen raised the estimate to 2500 abortions daily.² In 1957 Dr. Christopher Tietze told the Planned Parenthood Federation that estimates ranged from 200,000 to 1,200,000 abortions yearly.³ In addressing the opening session of the International Conference of the Association for the Study of Abortion, John D. Rockefeller III stated: "Estimates (of illegal abortions) range from 200,000 up toward one million a year in the U.S."⁴

This paper represents an effort to study the changes in public thinking on a particular social problem during a limited period of time. By tracing events in a particular issue, abortion, one might get an idea of what those in about the press, and other what positions are taking place.

¹ Fisher, Abortion in America, Harold Rosen (editor), Beacon Press, Boston, 1955, Introduction,


³ Lawrence Lader, Abortion, Bobbs Merrill Co., New York, 1966, p. 2

period of time. By tracing the discussion by the media of a particular issue, abortion, one might see what there is about the period, 1929 to 1969, that might account for this change in public thinking. Through a content analysis of the popular literature available on the subject of abortion, one can illustrate the changes that have occurred in public thinking on abortion. Moreover, by examining the content of the popular printed media, one can infer the functional importance of abortion as a post factum means of birth control.

This method of content analysis of the popular press has been used by other authors to illustrate the attitudes held by the public on particular issues. William O'Neil in his book Divorce in the Progressive Era, pointed out the value of content analysis of this type:

"The thinking of middle-class America on the divorce question is always affected much more by newspapers, magazines, and popular books than by learned studies and reports, and perhaps the most legitimate function of the press is its way of articulating the deep anxieties of the literate masses. The press may not mold opinion, but there is little doubt that it gives expression to very genuine fears...Only one article in ten may say something of intrinsic value, yet all of them mirror aspects of our national thought and character, about which we cannot be too self-conscious."

magazines only. This choice was somewhat arbitrary, but it was felt that magazines which have a nationwide distribution would be preferable to selecting a number of newspapers as a representative sample of the newspapers available to the public. It was also felt that magazines would be preferable to popular books for the articles on abortion were printed along with other articles, and people who did not want to read an article on abortion would not cancel their subscription or fail to buy the magazine on the newstand because of the other articles available. The same cannot be said for popular books. Therefore, magazines were chosen as the source of data for this study.

The analysis of the data will be a twofold task. The first part of the task is that of establishing the short-run patterns in the literature, while the second part of the task is that of establishing some trend or sequence in these short-run patterns. The short-run patterns are those patterns which emerge as one reads the various articles and places the article in meaningful groups or categories. Usually these patterns spread over a time period of no more than five years. The second part of the analysis is that of defining the basic patterns or trends which can be found in these smaller short-run patterns.

A study of the literature available in laymen's periodicals as found in The Reader's Guide to Periodical Literature, indicated that a number of articles on abortion had been written from 1929 to 1969. Table 2 illustrates the number of articles listed under the heading of abortion. All articles that dealt with abortions other than human abortions, and those articles written in a language other than English, were eliminated.
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Tables 3, 4, 5 and 6 illustrate the number of articles that appeared in each periodical in a given year in a given decade. Table 7 is a collapsed version of the previous tables, and it illustrates the number of articles that appeared in each periodical in a given decade. It also gives the total number of articles that appeared in each periodical in the forty year period.
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CHAPTER THREE

PATTERNS IN ABORTION LITERATURE

The earliest article on abortion appeared in the Westminster Review in 1899. As there is a span of thirty two years between this article and the article which followed in temporal sequence, I shall not try to establish a pattern or trend on the basis of this single case. I shall report on this article however, for the purpose of adding general information about the published literature on abortion.

This article, "A Crime and Its Causes," tells the story of how a young man, convicted because he had tried to abort his female companion, was greeted with shouts of praise as he was led from court. It seems that the crowd felt the young man to be very noble in that he felt a responsibility to the young woman whom he had impregnated, and not wishing her to bear the social degradation of illegitimacy, he had tried to induce an abortion. The author observed that society cannot eliminate sexual irregularities (promiscuity); therefore, it must help with the results of these affairs. In conclusion the author commented: "Can any reasonable person marvel that a woman, weak and offending though she may have been, should seek to escape from a position of such inhuman justice (stigma of illegitimacy) by compassing the destruction of her offspring before it is born?"

Historical events must be considered when one is attempting to establish patterns or trends. Therefore it is essential that one note the occurrence of the depression and its resulting

2 ibid, p. 137
conditions before one examines the literature of the early thirties.

The articles published in the early thirties were an attempt to point out the need to change the existing social conditions in order to combat the growing abortion rate and the rising death rate due to maternal causes. Some authors stressed only the social conditions causing or influencing the high abortion rate; others attempted to relate possible solutions for this problem to the reasons for abortion. It is reported that 48 per cent of the Russian abortions were performed because of economic factors. Furthermore, Hungarian gynecologists stressed that the loss of population through abortion might be alleviated by increased care for mothers and infants. In the U.S. it was noted that one fourth of maternal deaths occurred after some type of abortion, and that possibly maternal deaths would decrease if prenatal visits were encouraged, and if better obstetric care existed. There was a general feeling that better means of birth control would alleviate the problem of abortion.

The latter half of the third decade saw a growing awareness of the need to change the legal structure. An editorial in Nation described these laws in the following manner: "draconic and bigoted; these laws obviously defeat themselves." At this time,


6 Nation, Vol.148, April 15,1939, p.425
authors began to openly advocate changes in the laws regarding the whole question of abortion. As early as 1934, women were urged to use their votes to change the laws so that one could obtain an abortion.\footnote{New Republic, Vol.78, April 11,1934, p.25} A new tactic was also introduced at this time in the writings on abortion, namely that of describing the number of deaths which resulted from abortions performed under unsanitary conditions, and the likelihood of this number increasing greatly, if laws were not changed. As their predecessors had done, the authors continued to examine the social conditions surrounding the need for abortion, and to make suggestions for changing these conditions, but they also mentioned what would occur (i.e. more abortions) if these conditions were not alleviated.

There was also an increasing effort to make the public more aware of the growing number of abortions. The highly publicized case of the acquittal of Dr. Eric Wilson, an abortionist, revealed the existence of a Pacific coast abortaria extending from Seattle to San Diego.\footnote{Time, Vol.28, Oct.19,1936, p.70-1} Abortion syndicates flourished, mainly due to the highly restrictive laws on abortion; authors were quick to point out the correlation between restrictive laws and the growing number of illegal abortions. Louis Blanchard Kaley writes: "that there are so many unhappy women determined to have their wombs devastated with steel on a hastily wiped table is a fact to shudder at....it emphasizes our inept handling of a great social problem."\footnote{Louis Blanchard Kaley, "This Business of Abortion," Forum and Century, Vol.100, July 1938, p.33} Moreover,
corruption among law enforcement agencies aided the very existence and growing rate of abortion syndicates. Tolnai described this corruption among policemen who received money for not reporting the existence of abortaria. ¹⁰

The existence of such abortaria was not confined to the U.S. In 1936 the Soviet Union changed its abortion laws, and prohibited abortion except when pregnancy was harmful to the health or life of the female. This change came after many years of relatively unrestricted laws on abortion. In the many commentaries about the probable outcome of this change in legislation, writers were quick to point out the likelihood of an increase in illegal abortions. Women would not stop having abortions; they would simply stop having legal abortions. In an extensive two part report on the new abortion law, Louis Fischer predicted: "A host of personal tragedies will flow from this law. 'Bootleg' abortion clinics will kill and cripple women. A hysterical cry will go up from women who will knock at door after door seeking an abortion permit. The youth will suffer. Perhaps, before many months have elapsed, the wailing and misery will compel the U.S.S.R.'s first Parliament to repeal this unjustifiable act at its first session in 1937. That would redeem Soviet democracy." ¹¹

The use of test cases to provoke public sentiment was also indicative of the trend to openly advocate changes in the legal


structure. Such was the story of Dr. Aleck Bourne of Great Britain who opposed the British abortion law which allowed abortion only to save the life of the mother. Dr. Bourne performed an abortion on a fourteen year old girl who had become pregnant as the result of a multiple rape, and then publicized his action as a test case illustrating the need for changes in the legal system. He was granted an acquittal, for the judge stated that life depends on health, and it may be that, if health is gravely impaired, death results...

During this period of intensified concern with legal structures, some factual studies were carried out to illustrate the conditions surrounding abortions. These studies, because they were of a factual nature and devoid of emotionalism, were held as a source of validation for the need for legislative changes. In 1936, Dr. Frederick J. Taussig published the first medical textbook on how to produce and prevent abortion, Abortion: Spontaneous and Induced. In this book, he outlined twelve conditions under which he felt abortions could be performed to save a mother's life:

1. very recent pregnancy,
2. general debility with weight loss,
3. after suppurative appendicitis that produced extensive adhesions,
4. after previous Caesarian section,
5. plastic repair of pelvic floor,
6. eugenic reasons (defective child or feeble-minded parent),
7. prevent prolapse of pelvic organs,
8. suicidal tendencies,
9. economic reasons in women with high fertility,
10. prevent postpartum infection,
11. co-existing malignant disease,
12. travel to remote malignant areas where pregnancy cannot be cared for

12 *Time*, Vol.32, August 1, 1938, p.17
13 *Newsweek*, Vol.12, August 1, 1938, p.29
14 *Time*, Vol.27, March 16, 1936, p.52-54
Some of these conditions did not deal directly with saving the mother's life. Thus, the acceptance of these conditions would require some legislative changes to deal with the conditions that indirectly affected the mother's health.

As stated previously, authors were very aware of the social conditions precipitating rising abortion rates. Many suggestions were given including the need for more birth control information and better medical care. At this time, an objective study by Regina K. Stix and Doronty G. Wiehl was reported in the American Journal of Public Health. This study, complete with charts, tables etc, gave information on the relationship between spontaneous and illegal abortions and birth order, between spontaneous and illegal abortions and income, between spontaneous and illegal abortions and morbidity, as well as infection rates from abortions with and without instrumental interference. The authors concluded that one could curb the morbidity of spontaneous abortions through better medical care, and that one could curb the morbidity of illegal abortions through increased economic security, adequate housing and maternal clinics. This study validated what many authors had been writing throughout the third decade. It also tried to illustrate through factual means the growing need for legislative changes.

In medical terminology the word abortion is used to describe the expulsion of the embryo or fetus of an unborn offspring. This expulsion may be either spontaneously that is, involuntarily

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expelled from the female, or it may be voluntarily expelled through an induced abortion. The first type of abortion is commonly referred to as a miscarriage. This term is more frequently used by laymen than is the actual medical term of abortion or habitual abortion. The choice of the term miscarriage rather than the proper term abortion may reflect a value judgment among the people who choose such a term. Because the term abortion usually connotes a secretive illegal procedure, hastily performed with crude instruments, one prefers to use the term miscarriage since it suggests an involunatary action of the mother, thus placing her in a position of sympathy rather than one of censure. One notes that in the increasing amount of literature on the subject of spontaneous abortions and their causes, the authors often choose to use the word miscarriage, or else distinguish between spontaneous and induced (usually illegal) abortions. In an article entitled "Too Many Miscarriages" Morris Fishbein carefully distinguishes between the words miscarriage and induced abortion, so that readers will not be upset by the use of the term abortion.

The 1940's may be characterized by a growing trend of writing about the causes and circumstances surrounding spontaneous abortions. Articles on this subject appeared in two types of magazines: the scientific magazines such as Science Newsletter, which merely reported scientific discoveries in a plain objective manner, and the woman's magazines such as Ladies Home Journal, which reported such

discoveries, but in a more subjective and emotional manner. It is to these latter magazines that we shall address ourselves most directly.

The accounts of the various studies or research articles on the causes of spontaneous abortion served two functions. The manifest function was that of informing the public about the latest discoveries in the world of medicine. Many of the findings aided couples who previously were unable to have children because of habitual abortions. An example of such a finding was reported by Gretta Palmer in an article "Saving the Unborn,"18 in which she described the use of progestin to combat spontaneous abortions. She noted how successive treatment aided childless couples to begin families. Thus, the publication of such information may have been simply to inform the readers about current medical and scientific discoveries.

On the other hand, the publication of such factual information performed a latent function of advising women that the causes of spontaneous abortions were very complex in nature. This was in direct opposition to the common household myths that abortion may be induced by such common reasons as falls, long trips or heavy housework.

In his textbook on abortion, Dr. Frederick Taussig had stated in 1936 that spontaneous abortions may be caused by "a blow, a fall, or a scare."19 However, since the publication of that book, there had been an increasing amount of study on the actual causes or

19 Time, Vol.27, March 16,1936, p.52-54
reasons of spontaneous abortions. But women may still have believed
that they could induce abortion by such things as falling down a
flight of stairs. Thus, this literature on spontaneous abortion
tried to illustrate to the readers that the causes of spontaneous
abortion were highly complex, and simple things such as pounding
one's stomach would not induce abortion. The literature also
pointed out indirectly to those women that did seek illegal abortions,
that if the abortion attempt was unsuccessful, and they had to be
hospitalized, the probability that doctors would believe excuses
such as heavy housework was unlikely. The tendency to use excuses
such as falling down a stairs was emphasized by Maxine Davis in her
article on "Most Woman Can Have Babies,"20 in which she described
the complex reasons for spontaneous abortions, and then commented
that too many silly women try all sorts of 'accidents' to avoid
unwanted babies.

The literature of the early forties may also be characterized
by the tendency to advocate negative attitudes toward abortion, and
also the tendency to encourage women to have their babies rather
than abort. This latter position was foreshadowed by an article
by Gretta Palmer in 1937.21 She had written: "To the question 'Can
I afford another baby' she will wisely add, 'Can I afford to risk
leaving my children without a mother?' There are few households
where one more child is a greater evil than one less mother....
And the most tolerant and unprejudiced minds of the medical world

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20 Maxine Davis, "Most Woman Can Have Babies," Good Housekeeping,
Vol. 111, September, 1940, p.30+

21 Gretta Palmer, "Not To Be Born," Pictorial Review, Vol. 38,
February, 1937, p.24+
advise you - Have your baby!" All of the literature was written in the period of the second world war, and one can see that certain situations were created that were peculiar to the war-time period.

The shortage of manpower during the second world war resulted in a large percentage of women in the labour force, particularly in war-time factories. Pregnancy was considered the number one industrial health problem, for women who did not want to lose their war-time jobs often resorted to abortion as a means out of this problem. Illegal abortion clinics sprang up around industrial areas, and the term "three day absence" (the length of time one could be absent without a doctor's note) was synonymous with abortion. War-time plants were encouraged to have more lenient attitudes toward pregnant employees such as allowing them to work at lighter jobs, giving maternity leaves, and allowing former employees to return to work after the birth of the child. Wider contraceptive education was also encouraged.

Aside from advocating changes in the social conditions which would encourage women to have their babies, women were also told of the many deaths that resulted from illegal abortions, and also the many dangers such as perforation of the uterus, poor general health, hemorrhage etc. Such views were substantiated by reports that even where therapeutic abortions were performed under

22 Gretta Palmer, "Your Baby or Your Job?" Woman's Home Companion, Vol.70, October, 1943, p.4.

23 Vera Connolly, "Death Before Birth," Readers Digest, Vol.44, April, 1944, p.77-9

24 Maxine Davis, "Have Your Baby" Good Housekeeping, Vol.118, June 1944, p.45
sterile conditions (i.e. Russia), a large number of pelvic disturbances result. The instillation of fear was a very popular weapon among the anti-abortionists.

When a therapeutic or induced abortion is performed in a hospital, one of four methods may be used:

(i) **DILATION AND CURETTAGE**: commonly known as a "D & C", in which dilation refers to the expansion of the mouth of the cervix and curettage means scraping the lining of the uterus;

(ii) **VACUUM CURETTAGE**: the cervix is dilated and a hollow tube called a vacurette is inserted into the uterus and the vacuum pressure causes the fetal tissue to flow through the tube;

(iii) **INTRA-AMNIOTIC HYPERTONIC SALINE**: a strong saline solution is inserted into the uterine cavity; this causes premature labour and miscarriage;

(iv) **HYSTEROTOMY**: this resembles a caesarean section in which an incision is made in the abdominal wall, and fetal tissue is removed through it;

When an induced abortion is performed illegally it may be done in three basic ways. The first type is similar to the hospital procedure for a "D & C" in which the uterus is scraped by some instrument. Secondly, the abortion may also be induced through the insertion of some type of object into the uterus such as knitting needles, coat hangers, slippery elm bark, chopsticks, ballpoint pens, pastes, catheters, gauze (packing), artist paintbrushes, curtain rods, and telephone wire, or through the insertion of fluids into the uterus such as soap suds, alcohol, potassium permanganate, lye, lysol, and pine oil. A third method of inducing abortion is by taking orally some type of purgative such as ergot compounds, quinine sulphate, estrogen and castor oil.²⁵

During the late 1940's much of the literature dealt either directly or indirectly with the last two types of 'spontaneous' abortions. In a report in the British Medical Journal, Dr. Albert Davis wrote about the increasing use of purgatives as a way of bringing about abortion.\textsuperscript{26} The most frequently used purgative was quinine, although many home-made potions of questionable composition were used. It must be noted that the use of such purgatives would not induce abortion, or cause the fetus to be expelled. Any success which was attributed to these drugs occurred because the women were never really pregnant.\textsuperscript{27} Women whose menstrual periods were late became panicky, and without going to a doctor for a verification of the pregnancy, they took some oral medicine. When their menstrual period commenced, usually slightly heavier because of the delay, the women mistakenly believed that this was an abortion. Thus, the belief in such purgatives gained popularity.

The 'purple paste' phenomena was of a more serious nature. It was based on the belief that by inserting a purple paste, usually a salve of potassium soap compounds,\textsuperscript{28} or a paste of poisonous metallic salts\textsuperscript{29} into the uterus, one could induce abortion. The salve was quite dangerous, as it could burn the tissues of the vaginal and uterine walls. Nevertheless, the sale of such paste was extremely popular, and if the paste was sold within the state in which it was produced, its sale was not illegal.

\textsuperscript{26} Newsweek, Vol.36, July 31,1950, p.48

\textsuperscript{27} Patricia Lochridge, "Abortion Is An Ugly Word," Woman's Home Companion, Vol.74, March 1947, p.4+

\textsuperscript{28} Newsweek, Vol.32, October 18,1948, p.64

\textsuperscript{29} Time, Vol.52, October 18,1948, p.50
Because of the increasing belief in such faulty remedies as purgatives and 'purple paste', the literature about new scientific discoveries about the causes of spontaneous abortions continued to serve the manifest function of communicating the complex causes of habitual abortions. It was discovered that miscarriages could result from the presence of the Rh factor in the blood,\(^\text{30}\) from the absence of the thyroid hormone in the blood stream or from defects in the fertilized ovum.\(^\text{31}\)

During all of this literature about various types of abortions, there was a marked decline in the literature advocating change in abortion laws. A concern about the rising abortion rate was voiced, but the emphasis was not on liberalizing abortion laws so that abortions could be performed safely and under sterile conditions, but rather that alternatives to changing the abortion law (i.e. more birth control clinics) should be instituted. Patricia Lochridge wrote: "Abortion is an ugly word for an ugly deed, and most women avoid both yet it is time for American women to face the shocking fact that abortion is one of our most serious social evils."\(^\text{32}\) She advocated an increased public awareness of the dangers of abortion, increased sex education, the use of marriage guidance clinics, and better maternal welfare clinics. This stance may be constrained with the stance of a decade earlier in which changes in the abortion laws themselves were advocated rather than changes in the surrounding institutions. Thus, there was a shift of focus from changing abortion

\(^\text{30}\) *Parents Magazine*, Vol.21, September 1946, p.30-1

\(^\text{31}\) *Newsweek*, Vol.30, November 10, 1947, p.48

laws themselves to calling for changes in the other peripheral areas as an indirect means of attempting to combat the rising number of illegal abortions.

The early fifties ushered in an increasing amount of anti-abortion literature. The writings were mainly of two types: articles describing negatively what had happened in other countries such as Sweden and Japan where abortion was legal, and articles describing the dangers of illegal abortions in the United States.

Countries such as Sweden, Japan and Switzerland had more liberal laws on abortion than did the U.S. Therefore, they might be used as an example to illustrate possible outcomes of changing abortion laws. The authors of the period 1950-1955 stressed the negative results of the more liberal abortion laws, thereby warning the American people that if such changes were made in the laws in the U.S. such negative results would likely occur in America. In his writings on Sweden, Gunnar Kumlien emphasized such negative results as the increase in neurosis among women following an abortion, the increasing reluctance to use birth control since abortions were available, the popularity of combining abortion and sterilization operations especially with insanity cases even though this double operation had an extremely high mortality rate, and the possibility that doctors were performing abortions after the sixth month of pregnancy.33 This latter comment aroused much public sentiment, since after the sixth month the fetus is fully formed, and is capable of life outside the womb. Doctors were becoming increasingly concerned and alarmed about performing abortions because of the publicity over these negative results. It

was reported for example, that Geneva, Switzerland was the abortion capital of Western Europe; that in 1953 over 3200 abortions were performed, over half of which were on non-residents. Moreover, the number of abortions exceeded the number of live births.\textsuperscript{34} Thus, doctors were becoming more hesitant to perform such a massive number of abortions, particularly when public sentiment was aroused against such operations, especially following the publicity about abortions after the fetus was fully formed. Switzerland had tried to impose some restrictions on the abortion rate by authorizing only a few doctors to perform abortions, requiring psychiatric observation of patients, and requiring quarterly reports of all abortion cases. Gunnar Kumlien described the situation of the doctors who opposed abortion on the basis of their conscience in the following manner: "The doctor has been forced to fall back on a position very near the Roman Catholic Church which has proved to be the only consistent and defendable argument."\textsuperscript{35}

While other countries were chastised for the negative results of freer abortion laws, Americans were reminded of their own problems in the area of illegal abortions. A leading woman's magazine, \textit{Ladies Home Journal}, devoted the "Tell Me Doctor" column for two successive months to discuss the consequences of criminal abortions. This column, which is written as a doctor-patient dialogue, discusses various medical problems in a factual way yet always in layman's terms. In this series of articles the doctor assumed a paternalistic moralizing stance as he reprimanded the woman who was the victim of

\textsuperscript{34} \textit{Time}, Vol.63, February 22, 1954, p.66

an unsuccessful abortion with the words: "abusing the marvelous bodies that the good Lord gave them." 36 He also felt that the authorities should "put every criminal abortionist in Sing Sing where he belongs." 37 This column, which is usually devoted to facts and only facts, also carried an added feature, that of emotional persuasion. At the conclusion of the first article a short note was given about the forthcoming article in the following manner: "In January, Tell Me Doctor continues with the ever present danger from induced abortion, and its perilous consequences." 38 Thus, the American public, particularly the women were reminded of the serious consequences of criminal abortions.

It is interesting to note the parallel writings about the terrible consequences of freer abortion laws in other countries and the equally terrible results on the American scene because women were going to criminal abortionists. The literature of this time was designed to increase what Lawrence Lader in his book Abortion 39 referred to as "the mythology of fear." In reading about abortions one was bombarded by the negative results of criminal abortions performed in unsanitary conditions, plus the negative results of abortions performed under sterile hospital conditions. The combined effect of these two types of literature was that of an increasing fear about abortion in general, whether under sterile or unsanitary conditions.


37 ibid, p. 51

38 ibid, p. 52

39 Lawrence Lader, Abortion, Bobbs Merrill, Indianapolis, 1966
conditions. Thus, abortion per se was brought under negative sanction.

While the early fifties were characterized by a growing negativism about abortion in general, the latter fifties were characterized by mixed feelings about the subject of abortion. The anti-abortionists continued to lash out about the dangers of allowing both therapeutic and criminal abortions to continue; there was once again a growing concern, particularly among doctors, for the need for legislative change. Since the doctors were placed in a precarious position with reference to therapeutic abortions, these professionals felt that an open discussion of the whole issue was the only answer to the many shortcomings of the law.

In the famous Kinsey report, abortion was described as a field of great ignorance and mystery, and the author noted that student doctors spent more time learning about the social and legal aspects of abortion than about the actual mechanics of the operation. The abortion laws varied from state to state; what was allowed in one state might be illegal in another. Furthermore, the degree to which the laws were enforced varied from hospital to hospital. Morton Sontheimer noted that doctors must protect themselves from the law and from censure from their peers, and because of this it was difficult to practice in a professional manner for one must first think of the legal aspects, and then of the patient. He advocated bringing the problem into the open so that it was not entirely a problem of the medical profession. For a long time the government had looked to the medical profession to solve the problem of abortion.


41 Morton Sontheimer, "Abortion in America Today," Woman's Home Companion, Vol.82, October 1955, p.44
by expelling members of the medical profession who violated their professional medical standards, and performed abortions. However, expulsion from the medical society was no an effective way of curbing the abortion problem. Dr. C. Lotrell Timanus, a medical doctor barred from practice, spoke to the 1955 Planned Parenthood Conference, and told them of the number of abortions he had performed, the number of referring doctors, and also how he knew the latest techniques. The legislators had hoped that expulsion from medical practice would eliminate these former doctors from performing abortions, thereby decreasing the number of abortions because of a scarcity of people sufficiently skilled to perform abortions. The expelled doctors did not usually stop performing abortions; they merely performed illegal abortions. These delinquent doctors were viewed as a convenient solution for the doctors since they could refer patients to these former doctors for abortions, and still have confidence that a medically competent person would conduct the operation.

However, the doctors were concerned about the shortcomings of the law particularly with reference to therapeutic abortion cases. Morton Sontheimer commented that the law fails to consider rape and incest as reasons for therapeutic abortion. In June, 1956, Newsweek told of a West Coast housewife who was raped

42 Time, Vol. 71, June 2, 1958, p. 70
43 Morton Sontheimer, "Abortion in America Today," Woman's Home Companion, Vol. 82, October 1955, p. 44
by an intruder, but because of the law was unable to obtain an abortion. Doctors were also concerned over the interpretations of particular phrases or definitions. For example, British doctors interpreted the law "abortion can be performed to save the life of the mother," to mean the emotional life of the mother, yet Americans did not interpret this phrase in that manner.

Sociologist Edwin Schur felt that there was a strong moral feeling about abortion, yet this strong feeling was not about abortion per se, but rather the feelings of guilt and anxiety that were the result of the "illegal" aspect of abortion. He stated: "Public opinion for the most part is not against abortion. The abortionist exists because the public lets him."

It was at this point that the Roman Catholic Church began to criticize openly the practice of abortion under any circumstance, and to write profusely against this practice both in Japan and in the U.S. The articles of the late 1950's were but a vanguard of the many articles to appear in the thorny sixties when a real controversy occurred. Up until the 1960's the literature on abortion was somewhat sporadic in nature, and usually a debate or verbal confrontation did not occur. While the Roman Catholic Church was not the only opposition to abortion laws, it was one of the most well-known, particularly because it was a large, organized body, and because its views were well publicized via various media - pulpit, periodicals, church magazines, speeches etc. The official position

44 Newsweek, Vol. 47, June 25, 1956, p. 28

45 Time, Vol. 70, July 15, 1957, p. 93

of the Roman Catholic Church was stated by Pope Paul XII on October 29, 1951: "...every human being even the infant in the mother's womb, has the right to life immediately from God, not from the parents or from any human society or authority...There is no man, no human authority, no scientific, no medical, eugenic, social or moral indication that can show or give a valid juridical title for direct deliberate disposition concerning an innocent life...Thus, for example, to save the life of the mother is a most noble end, but the direct killing of the child as a means to this end is not licit."47

Thus, at the time when doctors were turning to society and advocating an open discussion of the abortion question with the intention of creating more liberal abortion laws, the Roman Catholic Church made its stand by criticizing the whole practice of abortion. The church writings appealed to the emotions. For example, George P. Carlin, in writing about the practice of legalized abortion as a birth control device used to help Japan in its economic crisis, referred to abortion as "a cold blooded measure." He blames the U.S. for introducing abortion and birth control into Japan, and commented: "One can only hope that the U.S. will bend all efforts this year to aid Japan in the solution of her problem, and bring an end to the murder of Japanese babies which was touched off by craven American citizens and representatives."48 Such a statement indicated that the Roman Catholic Church placed abortion and infanticide on the same footing... In a comment on this very


topic, an editorial in *America* reported that infanticide has been the mark of impoverished primitive societies and pagan communities. The legalized survival of this crime is masqueraded under the euphemism of therapeutic abortion. The article continued to point out that the practice of therapeutic abortion was a regression to barbarism, and if this practice was not stopped, "it would devour the Judeo-Christian tradition of morality." Such a statement was a strong emotional comment on the subject of abortion, but it was indicative of the very firm position of the Roman Catholic Church in the whole question of abortion whether therapeutic or voluntary.

It has already been pointed out that at this time the doctors were very concerned about the abortion laws. Another group of professionals were also concerned about the ramifications of the present abortion laws. Thus, in 1959, the lawyers of the American Law Institute drafted a model abortion law to be used as an example of what a liberalized law on abortion should contain. The law suggested that a therapeutic abortion be performed under three categories: (1) if the pregnancy was the result of rape or incest; (ii) if the pregnancy threatened the woman's physical or mental health; (iii) if the pregnancy was likely to produce a mentally deranged or physically deformed child. This model abortion law was indicative of the growing concern and consensus about the need for abortion reform. In 1960 the American Medical Association recommended that abortion laws be changed to allow abortion for medical, eugenic and humanitarian reasons. Later in the same year the American College of Surgeons also urged liberation of the abortion laws.

The desire to discuss the whole topic of abortion received support from many quarters Dr. Alan Guttmacher of the Planned Parenthood Association felt that abortion laws made hypocrites of all whose lives were touched by them, and that the present laws resulted in preferential treatment for those who could afford abortion. He stated: "if we want to stop the tragedy of abortion with its human misery and waste, we can do so only by facing the problem squarely and realistically."

In Science Newsletter Dr. Mary Calderone stated: "Illegal abortion is a disease and the only way to cure it is to bring it out of hiding and to look at it with a view to correcting this social illness." At the same time, an editorial in the religious periodical Christian Century stated: "when a law offends the dignity of innocent human beings, destroys physical and psychic health, and menaces life itself, that law is not civilized and humane, but barbaric and cruel."

The abortion crusade was reaching out into various media. Early in 1962, CBS TV televised a show, "The Benefactor," part of "The Defenders" series, in which the main actor, a doctor, crusaded for legalized abortion. Although the original sponsors withdrew support because of the controversial nature of the program, the show was scheduled, and another sponsor was found at the last minute.

As many segments were advocating an open discussion of abortion,


51 Mary Calderone, Science Newsletter, Vol. 78, August 6, 1960, p. 86

in the legal realms, the Roman Catholic Church continued to launch forth with claims about the "barbaric destruction of fetal life" and accusations of murder. Since the central aspect of abortion discussion was the need for changes in the laws regarding therapeutic abortions, particularly if and when such abortions should be performed, the Roman Catholic writers lashed out that there is no difference between a therapeutic and a criminal abortion. In the Church's eyes "...both involve deliberate destruction of human life and fall under the prohibition of murder." In fact, these authors felt that therapeutic abortions were unnecessary - they were a product of ignorance, laziness or malice on the part of the doctors. Throughout the whole of the 1960's Roman Catholic writers wrote against the question of abortion, and it is important to note the patterns or trends within the arguments which these writers used.

A major impetus to changes abortion laws occurred in the early sixties when a Phoenix, Arizona housewife, Mrs. Sherri Finkbine, took a drug "thalidomide" during the early weeks of her pregnancy. It was discovered that this drug was responsible for birth defects such as congenital deformities of various limbs, and that children were born with seal-like limbs, rather than legs and arms. Mrs. Finkbine applied for a therapeutic abortion, and permission was given, but this permission was retracted by the court upon the massive publicity given the case. Eventually

Mrs. Finkbine had the operation performed in Sweden, where it was confirmed that her fetus was severely malformed.\textsuperscript{55}

Various articles appeared after this incident, some condemning the action of Mrs. Finkbine, and others, using the event as an example of the inadequacies of current abortion laws, advocating abortion reform. The Roman Catholic writers called the action murder - "no matter how praiseworthy the motives...to deliberately terminate the life of an innocent human being on private authority is murder."\textsuperscript{56} The core argument used was that of the sanctity of human life, and the principal concern was that of the consequences of such action. Would such an action result in neo-pagan regressions and eventually euthanasia?\textsuperscript{57} The authors cited the offers of numerous people to adopt the deformed Finkbine baby rather than allow an abortion to occur, and used these offers to augment their stand by stating that incurables (those deformed physically and mentally to an extreme degree) if asked, do not wish to die, and that it is a joy to work with these people.\textsuperscript{58}

In contrast to the Roman Catholic writings, other authors used the Finkbine incident as an example of the shortcomings of the current legislation on abortion. As it was difficult to obtain a legal therapeutic abortion in the U.S. there were two alternatives open to a female: either she could go to a country

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56 \textit{America}, Vol.107, August 11,1962, p.582
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58 ibid, p.1242-4
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where abortion was legal such as Mrs. Finkbine had done, if she could afford such an expensive adventure, or she could go to a local criminal abortionist, who, depending on her connections and ability to pay, varied in his degree of competence and sterile conditions. Dr. Alan Guttmacher, in advocating abortion reform stated: "Don't tell me your town doesn't have a criminal abortionist. You're just too naive to know who he is." 59

The controversy which followed the thalidomide episode was characterized by the expression of many diverse opinions. Groups and individuals were no longer sitting back and ignoring the problem, but rather there was an increasing amount of literature on the subject of abortion. This literature was divided into two main areas of discussion. The first area for discussion was that of a moral issue, and this controversy centred mainly upon Catholic writings which stressed the moral wrongness of any type of abortion as against other groups which argued that life does not begin at the moment of conception. The second area of discussion concerned those who felt that illegal abortions were dangerous, and something had to be done about this. The replies to this question fluctuated between those who urged women to have babies rather than abortions, and those who felt that since illegal abortions were dangerous, one must try to alter the legal structure in such a manner as to allow more abortion to be performed legally under sterile conditions.

The Roman Catholic Church in its writings on abortion considered

59 Alan Guttmacher, Newsweek, Vol. 60, August 13, 1962, p. 54
itself to be the upholder of public morality. Much of its writings centred around the fact that if it (the Roman Catholic Church) did not oppose abortion, society, as we know it, would collapse. In arguing against therapeutic abortions where the continuance of pregnancy would impair the physical or mental health of the mother, or if the unborn child would be born with a physical or mental deformity, the Roman Catholic Church stated that such a law would increase the use of abortion, and that people would feel that the law is right. Such a law "would result in an even more far reaching breakdown in public morality."60 The Church also pointed out that its stance on therapeutic abortion had aided science, since it had forbidden therapeutic abortion, and forced improved obstetric techniques - "a case of moral principle spurring science on to spectacular and humanly advances, necessary advances. (On a more pragmatic level, it offered a warning to its followers against the campaign of abortion reformers). first one rallies lawyers and doctors. Leading newspapers and magazines help by publishing articles on the 'abortion problem.' The television networks run documentary films and panel discussions on the subject. Avant garde clergymen make statements in support of the cause."61 Readers were admonished to be vary of these propaganda mechanisms.

In juxtaposition to the claims of the Roman Catholic Church that abortion was morally wrong, were those writers who opposed the Catholic view that life begins at the moment of conception.

The argument in this instance centred on a theological basis. Such a viewpoint was taken by Lester Kinsolving when he noted that "Albertus Magnus and his pupil St. Thomas Aquinas stated that the soul was infused in the embryo not at conception but when the embryo was sufficiently formed to receive it."62 Another argument was that the fetus became human forty days after conception in the case of males and eighty days after conception in the case of females. In these debates, the basis of discussion is theology, and one rarely achieves a satisfactory answer for it is difficult to obtain a theological consensus in a pluralist society.

That illegal abortions tended to be extremely dangerous seemed to be somewhat of an understatement. Although a few reputable (skilful) abortionists were able to perform medically competent abortions, the vast majority of abortionists were unskilled in their trade, and used crude tools such as coat hangers, knitting needles, hairpins or rusty surgical instruments pilfered from hospitals. The dangerousness of such crude operations had resulted in two differing approaches to the problem.

The first approach, most frequently used by women's magazines, was that of using the dangerousness of abortion as a deterrent to having abortions. This type of approach depended upon the sensationalism of telling in vivid detail the stories of women who bled profusely after a clumsy abortion, the excruciating pain of abortions performed with only a local or no anesthetic at all, the probability of being sterile or possibly even dying as the

result of some back room abortion. It was hoped that the fear evoked by such stories would cause women to avoid going to illegal abortionists. Muriel Davidson summarized such a viewpoint when she wrote: "It is far better to have the baby than submit to an illegal abortion which may maim or kill the mother."\(^6^3\)

It is interesting to point out the cyclical nature of this argument, for Gretta Palmer in 1937\(^6^4\) used almost the identical argument in trying to discourage women from having abortions as these abortions were dangerous and had undesirable aftereffects such as sterility or the probability that the next pregnancy would be more more difficult i.e. labour would be longer and a dangerous forceps delivery would be required. She concluded her article by giving the advice: "Have your baby!"

A second approach to the question of abortion may have resulted from the realization of the dangerousness of illegal abortions and the subsequent attempt to alleviate these dangers. This approach was characterized by the belief that abortion always would exist regardless of whether abortions were illegal or not. Having stated this premise, one would now seek to know how one could best alleviate this situation either by altering the conditions which cause one to seek an abortion (i.e. economic) or by altering the conditions under which one could obtain an abortion (i.e. rape cases.)

The need for legislative reform was one of the most frequent

\(^6^3\) Muriel Davidson, "The Deadly Favour," \textit{Ladies Home Journal}, Vol.80, November 1963, p.53-7,

suggestions for curbing the rising abortion rate. Dr. Alan Guttmacher of the Planned Parenthood Association often spoke on the need for legal reform. In writing for Science Newsletter, he outlined six reasons for abortion which he felt should be incorporated into law. They were:

1. if the health of the mother is threatened;
2. if the mother has been exposed to rubella;
3. if the mother is an addict, and is unable to care for the child;
4. if the pregnancy is the result of sex crimes;
5. if the mother is unwed and under eighteen;
6. if the mother is unable to support the child. 65

Many authors joined this cause to advocate legal reform. Lawrence Lader pointed out the inadequacies and discrimination of therapeutic abortion rules since in many hospitals quotas were applied, and even if a person qualified for a therapeutic abortion, the quota may have been filled. 66 Moreover, these therapeutic abortion rules were used preferentially since, for example 93 per cent of the therapeutic abortions in New York were those of white women who had private rooms at voluntary hospitals. Negroes and Puerto Ricans rarely had therapeutic abortions at the hospitals, thus forcing them to resort to the dangers of an illegal abortion. Many inconsistencies and shortcomings of the present laws were pointed out with the hope that

65 Science Newsletter, Vol. 86, December 19, 1964, p. 397
legislators would soon begin to discuss the subject openly.

Besides the prolific discussions which resulted following Sherri Finkbine's decision to seek a therapeutic abortion after taking thalidomide, another medical crisis aided the cause of those seeking changes in abortion legislation. The nationwide German measles (rubella) epidemic in 1963 and 1964 provided further impetus for abortion law reform. Twenty thousand stillbirths and thirty thousand congenitally abnormal babies were born to women who contacted rubella during the first trimester of pregnancy.67

The treatment of this subject was a very interesting phenomenon for different magazines representing differing interests wrote about the incident in diverse ways. For example, Life wrote a feature article on two mothers (one of whom was Roman Catholic) who, after having been exposed to rubella, decided to have a therapeutic abortion rather than risk the possibility of children born with heart defects, blindness, deafness, bone and blood abnormalities or mentally retarded.68 Life illustrated their article with pictures and factual descriptions of the severe consequences of rubella, as well as the difficulties of obtaining a therapeutic abortion even in such a case as this. The Catholic magazine America, on the other hand, wrote an extremely emotional negative editorial on the feature article in Life since one


of the mother was Roman Catholic. The editorial referred to the magazine as - "a grotesque version...attributed to an overzealous bureau which was carried away by the sensational possibilities...the result of their enthusiasm was such an egregious departure from the elementary standards of journalistic accuracy that even Life's stubborn libel lawyers threw in 'the sponge.'"69

At a pragmatic level the rubella epidemic was another instance in the growing number of cases illustrating the need for abortion law reform. It was felt particularly that physicians were forced to break the law in order to practice modern medicine.70 Several physicians in the San Francisco area who had performed therapeutic abortions on patients who had been exposed to rubella were brought before the California State Board of Medical Examiners on charges of unprofessional conduct.71 It must be noted that these physicians had performed these abortions with the approval of the hospital therapeutic abortion committees.72

Because of the wide discrepancy between the interpretation of the abortion laws and between the actual practice, and because of the widespread use of abortion committees that varied from hospital to hospital, a further clamor for abortion legislation reform was sounded. Many authors pointed out the

69 America, Vol.113, September 18, 1965, p.273
70 Newsweek, Vol.68, November 14, 1966, p.92
71 Science Newsletter, Vol.90, October 22, 1966, p.320
72 Newsweek, Vol.67, June 6, 1966, p.58
the extreme shortcomings of the laws in dealing with the problem of abortion, and this cause was further punctuated by the very real illustrations of the thalidomide and rubella incidents. Lawrence Lader stated that the abortion laws were hypocritical and often cruel in their results, for with the use of abortion committees to protect the hospital, the point had been reached where many hospitals considered that a minimum abortion rate was a virtue and a status symbol.73

While it might be stated that in prior decades the topic of abortion was somewhat diminished in importance, the events and tragedies of the early sixties had resulted in an increased public awareness of the abortion question. Although the discussion of rubella and thalidomide cases was part of a discussion on a specific aspect of abortion, namely, increasing the reasons for therapeutic abortions, attention was also focused on other aspects of the abortion question. Look magazine reported the use of advertisements for products supposedly used to induce abortions - "Period Delayed? Don't Worry! Use doctor's prescription. Be relieved of this worry...Supply packed in confidential box! Only $10.00."74 Such an advertisement was similar to those of the late forties when such remedies as "purple paste" were popular for inducing abortions. Newsweek reported that the largest single cause of maternal deaths was still abortion,75 while the Saturday Evening Post

74 Look, Vol.29, October 19, 1965, p.149-50
75 Newsweek, Vol.68, November 14, 1966, p.92
pointed out that class discrimination occurred in regard to therapeutic abortions, since abortion committees favour the rich, and also, if one was unable to obtain an abortion through these boards, the wealthy women were able to fly to Puerto Rico or Japan, while the poor had no alternative but a criminal abortionist. 76 The Ladies Home Journal noted the importance of police in maintaining abortion rings for if the police left the abortionists alone, many abortions would be performed skillfully; if the police cracked down, qualified abortionists would be arrested or would leave for other areas, thus leaving only the poorly qualified abortionists who would perform sloppy jobs which may result in maternal deaths or maimed bodies. 77

Although the Roman Catholic Church had originally had an unanimous stand against abortion on a purely theological argument that life began at the moment of conception, the mid 1960's saw the Roman Catholic Church alter its strategy. The Church began to give a number of moral reasons why abortion was wrong (i.e. life begins at the moment of conception, therefore abortion is killing), and also a number of reasons explicitly designed to counteract the opposition of abortion law reformers (i.e. there is no evidence that having a baby will increase psychological suffering.) A second character:


istic of the changed anti-abortion strategy was the increased emphasis on the need to offer solutions other than abortion. In looking at some of the literature which illustrated the increasing number of reasons why abortions should not be practiced are two articles in *America* which described the changing strategy of the Roman Catholic Church. The first, written by Richard McCormick, listed six reasons why abortion was wrong. Not all of these reasons dealt with with the moral argument against abortion.

1. one should not destroy an innocent human life.

2. one cannot put a price on human life — if an abortion law is passed, this is done.

3. life begins at the very moment of conception.

4. therapeutic abortions are unnecessary (Dr. Hefferman of the American College of Surgeons stated "that anyone who performed a therapeutic abortion was either ignorant of modern medical methods of treating the complications of pregnancy or unwilling to take the time to use them").

5. suffering is good for the soul.

6. the Church is really looking after the mother at a time when she is incapable of making a decision due to emotional stress.78

The second article, by Richard P. Vaughan, discussed "Psycho-Therapeutic Abortion."79 It was the opinion of the author that psychological reasons were never sufficient grounds for an abortion since psychologists were able to


bring a patient out of her neurosis without submitting to an abortion, "if he (the therapist) is doing his job, the final outcome should be a more mature patient," and that abortion should never be the answer to a neurotic woman since "one of the most gratifying advances in psychiatry is family therapy."  

These articles illustrated that the Roman Catholic Church was not merely stating abortion was wrong, but rather it was beginning to attempt to confront some of the many reasons given by abortion reformers such as the need for therapeutic abortions on medical grounds and on psychiatric grounds. Moreover, Roman Catholic writers were also aware that sheer theological arguments without any alternative solutions were useless. An editorial in Commonweal was concluded by the statement: "Simple opposition to change without corresponding efforts to alleviate basic problems is likely to impress few people."  

This feeling was again echoed by Norman St. John-Stevas who wrote: "Those who oppose abortion on social or religious grounds have an obligation to offer constructive solutions to the problem."  

The changing strategy of the Roman Catholic Church was not without consequence. The year 1967 was filled with varying opinions. There was a growing concern over the fact that in an age in which churches of varying faiths were striving towards ecumenism, the differing viewpoints on the question of abortion

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were hindering any progress in establishing open communication and dialogue among the faiths. Besides the difficulties encountered by the Roman Catholic Church and its relation to other denominations, there were intra-denominational difficulties. While a majority of the clergy were still adhering to the strict observance of absolutely no abortion, some of the clergy were beginning to sway on this point, and to suggest a modified stance. Such were the problems for the Roman Catholics in 1967.

There was a growing belief that there was an increasing sentiment among Jews and Protestants to liberalize abortion laws within certain bounds. Such a position or belief was not particularly compatible with an ecumenical movement among the churches. Many Roman Catholic writers felt compelled to write about this topic, and their feelings may be best clarified by an editorial of March 11, 1967 in America, in which the editor urged the spirit of ecumenism to continue and hoped that with courtesy and charity in mind, the churches would be able to carry out a dialogue and communication. However, the vast differences in opinion continued to exist.

The differences of opinion between the Roman Catholic Church and its fellow churches were mirrored by a difference of opinion among the clergy within the confines of the Roman Catholic Church. Many held steadfastly to the old traditional viewpoint arguing unequivocally that human life began at the moment of conception, and abortion was therefore murder: "the

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very possibility that a fetus may be a human being is sufficient reason not to molest, no less kill it." 85 Some argued that easier abortion laws would encourage selfishness: "While it is easier to feel that an abortion is being performed for the sake of the fetus, honesty requires us to recognize that we perform it for adults." 86 Still others stated that clinical experience with women who have had abortions has shown that later they suffered torturing guilt. 87 Some resistance to abortion reform was the result of a complex understanding of society and how freer abortion laws affect it:

"If laws become so lax that abortion becomes simply a way to get rid of unwanted children, then there is more to the morality of abortion than the consequences to mother and baby: such laws threaten the very basis of society." 88

Although these arguments were mere variations of earlier arguments, for the first time, there was some Roman Catholic literature that swayed from the traditional viewpoint that all abortion was murder, and therefore wrong. Robert Drinan was one of the first authors to acknowledge a change in strategy. 89 He felt that a liberal abortion law would be enacted, and it was better therefore, to suggest some form of restraint for the campaign for a general abortion law would be blunted by a public

85 Commonweal, Vol. 85, February 24, 1967, p. 582-3
discussion of the desirability of a restrictive law for the exceptional case. Drinan offered some tentative solutions including immediate medical attention to prevent pregnancy in all rape cases, complete medical care at state expense for all deformed children, and the performance of therapeutic abortions after the mother had received the best possible medical care available, and if three specialists signed publicly that danger of death existed unless a therapeutic abortion was performed. These suggestions may not have seemed an advancement in terms of current legislation; the fact that a Roman Catholic writer would advocate any type of abortion (since all abortions were murder) was indicative of some dissension among the ranks. In commenting on Robert Drinan's suggestion, one editor applauded his stand by stating: "Here another moral principle of comparable magnitude in terms of life and death contravenes." 90 Richard McCormick added that each age must re-interpret for itself the meaning of 'respect for human life' as a demand of Christian love. 91 And so, some writers within the Roman Catholic Church have looked at the abortion situation, and in appraising their positions felt that Roman Catholics could block an abortion bill for a time, but not permanently, and it would be better to work for a modified bill. 92


While the Roman Catholic Church was changing its strategy to confront the various legislative bills that would be voted upon in the future, the state of Colorado passed a new abortion law on April 25, 1967, following the American Law Institute's model. Abortions could be performed — (i) if pregnancy was the result of rape or incest; (ii) if pregnancy threatened the woman's physical or mental health; (iii) if one was likely to produce a mentally deranged or physically deformed child.93 This legal first was followed by many articles on the feasibility of abortion reform. Most heralded the law as a long delayed humanitarian measure, and many watched and waited to see what the consequences of such a law would be. Only a few wrote negatively about the law itself. Dr. Robert Stewart, president of the Catholic Physicians Guild, commented: "Colorado will be the abortion mecca for the nation, and the next step is abortion by demand, and after that we'll give the state power to rid itself of anyone it wants."94

Since the law was a new step in abortion legislation, the state of Colorado was watched as a test case. Thus, many offered opinions about the success of the law, and made analyses of the law as a means of curbing the high rate of illegal abortions. The Saturday Evening Post called Colorado's


example "a valuable and enlightened one." Newsweek wrote that Colorado was not likely to become a mecca for abortions, and that proponents of abortion legislative reform felt satisfied since there was less hypocrisy now as the law had come into conformity with existing practice in Colorado. Although heralded as a new liberal law, Phil Kerby wrote: "The Colorado law is liberal only in comparison with archaic laws – it is a cautious approach to a major medical problem," and he urged even further reform. Nevertheless, the Colorado law was the first part in a long series of legislative proposals and bills, which gradually resulted in more liberalized abortion legislation.

The year following the innovative step by Colorado was characterized by a lull period as far as literature on abortion was concerned. A few other states such as Maryland and California passed new abortion laws, and some discussion about their effectiveness was generated, but by and large, the year was characterized by an absence of literature, especially when compared to the large amount of literature in previous years.

The reason for this absence may be attributed to the concept of cultural lag. After a particular innovative element


96 Newsweek, Vol. 70, October 9, 1967, p. 92

has been introduced, there is a lag in the time from which the element is introduced to the time when other institutions have adjusted to it. Such may have been the case with the new abortion legislation. Everyone was holding back any comment on abortion either pro or con until after the abortion legislation had had a chance to be proved one way or another. Time noted that the period of adjusting to the new legal abortions may be slow since people may not know how or where to obtain such legal abortions; some women may want a quick abortion without the fuss of going through the proper legal channels; also legal abortions may be more expensive because of the large number of specialists involved.98

During the last month of 1968, some analysis of the California abortion law was made. This law was similar to that of the state of Colorado except that the clause dealing with deformed children eliminated (this was a direct result of the San Francisco incident in which several doctors performed abortions on females exposed to rubella, and then were called before the State Board of Examiners) Although this law was expected to create an impact on the number of illegal abortions, it was very ineffective since the conditions under which an abortion could be obtained were highly restrictive. The phrase "if pregnancy is likely to seriously impair the mental health of the mother," was interpreted to mean only if the mother was dangerous to herself or to other persons, or in need of supervision. 99 Such a strict interpretation severely limited

99 Newsweek, Vol.72, December 2, 1968, p.82-3
its application. Moreover, the process was very expensive because of the large number of specialists involved in giving referral letters, and also because of the need to appear before a therapeutic abortion board.100

California was again in the news in 1969. The trial of Dr. Leon Belous of Los Angeles again publicized the inadequacies of the California law, particularly the clause dealing with mental health. Dr. Belous was fined $5000, and his medical license was suspended for two years because he had sent a woman (who, in his opinion, was unable to cope with her pregnancy emotionally) to an abortionist since he was unable to perform an abortion himself under the present California statutes. Several periodicals wrote on behalf of Dr. Belous, using him as an example of one who was caught in the entanglements of the law. Time reported that the statute under which Dr. Belous was convicted was enacted in 1850 when doctors could not control contagious infections. More importantly, the law did not define the boundary between criminal and legal abortion under psychiatric reasons.101 Even William F. Buckley Junior wrote that in this instance "the law is not precise."102

Thus, the question of abortion law reform was far from answered. The reformers who had hoped that the legislative


101 Time, Vol.94, September 19, 1969, p.66

reforms such as those in Colorado and California would alleviate the abortion problem, saw that the more liberal laws of Colorado and California still suffered from the age old problem of interpretation. Just who has the right to interpret and define the restrictions placed on the right to obtain an abortion? It was pointed out that some suggested guidelines for defining terms such as rape, incest, life or health, resulted in the fact that doctors were having to judge whether an abortion should or should not be performed not on the basis of medical opinion, nor on the basis of a complex number of background variables, many of which they were unable to assess accurately.\footnote{103}

The solution to the problem of how to define the restrictions of the abortion laws was of crucial importance. It was at this time that the real impetus for abortion law repeal received its greatest thrust. Those who had supported the legal reforms of the previous years had seen how the presence of any restriction was open to discrimination. Those states which had freer abortion laws were experiencing as many problems as they had had in the years when their abortion laws had been more restrictive. And so, the need for complete repeal of abortion laws was voiced. There was a National Association for the Repeal of Abortion Laws.\footnote{104} Albert Maisel wrote: "In view of the disappointing California results many former advocates of broadening the grounds for legal abortions have now joined with the very few, who have all along,}

\footnote{103 "Abortion For Whom," \textit{New Republic}, Vol. 161, October 25, 1969, p.12}

insisted that the only solution to the problem is to repeal all laws that restrict abortion."

Thus, the cry was sounded for the total repeal of all abortion laws. This would make abortions available on the same basis as any other medical treatment. The rationale for this opinion was simply that any type of restriction placed on the availability of abortion merely acted as a cause for illegal abortions to exist. If women were restricted in their desire to obtain an abortion legally, then they would turn to a criminal abortionist. Moreover, if the restrictions for obtaining an abortion were concerned with proving one's threatened emotional health or a danger to one's physical health, then those women who could afford to have a number of private physicians were given a preferential bias. Therefore, it was the hope of abortion reformers that, if all restrictions for obtaining an abortion were removed, all women would have an equal opportunity to seek and obtain a legal abortion under sterile hospital conditions.

The reaction to such a suggestion was of mixed response. The Roman Catholic response to the idea of freer abortion laws or no abortion laws at all, was that of warning society of the negative social consequences which would result from this step. Departing from sermonizing on the moral sanctions of such an action, the Church pointed out that abortion was but a first step towards


euthanasia, the first step towards a social policy which determined who should live and who should die.\textsuperscript{107} Permissive abortion laws or the absence of abortion laws would result in the proliferation of emotional ills, and an increase in sexual promiscuity, for abortion produces severe physical and psychological damage in what may be considered a significant number of women.\textsuperscript{108} It was felt that Catholics must protect the inalienable human rights of the embryo for "if human life is yielded to the mother's happiness or utility, the state is abdicating its primary responsibility, human life is devalued, and society is corrupted at its source."\textsuperscript{109}

In juxtaposition to this stance is the stance of those who felt that further abortion reform was necessary. Perhaps the best illustration of this viewpoint is that of the stand of Judge Gerhard Gesell of Washington D.C., who in November 1969, declared the 1901 law "that it is a crime for a doctor to perform an abortion except when necessary for preserving the life or health of the mother," unconstitutional. This law was considered so vague that a physician accused of violating the law could not defend himself.\textsuperscript{110} Judge Gesell commented: "A woman's liberty and right of privacy extends to family, marriage and

\textsuperscript{107} Frank J. Ayd, "Liberal Abortion Laws," \textit{America}, Vol.120 February 1, 1969, p.130-2

\textsuperscript{108} "Abortion Law Developments," \textit{America}, Vol.120, May 3, 1969, p.518-519

\textsuperscript{109} "Public Policy and Abortion Laws," \textit{America}, Vol.120, March 1, 1969, p.239-40

sexual matters, and may well include the right to remove an unwanted child in the early stages of pregnancy." Thus, the first step in the march for no abortion laws had been taken. At that point no abortion law existed in the District of Columbia. In a commentary on the situation, the periodical Nation stated: "It is long past the time that these laws, medieval in their philosophical roots and unconstitutional by nature, be stricken down."

A long road of stormy debates, emotionally laden letters, bitter editorials, condemning articles, and pugnacious confrontations had been covered since that first article in 1899 had stated that abortion was needed by certain types of women, and in the interest of humanity, we should help them. However, the first step had been taken in the elimination of restrictive abortion laws. The year 1969 would leave its mark on the abortion question.

111 Time, Vol. 94, November 21, 1969, p. 65
112 Nation, Vol. 209, December 1, 1969, p. 589
CHAPTER FOUR
DISCUSSION AND ANALYSIS

An analysis of the periodical literature dealing with abortion revealed the presence of a concerted effort for unrestricted abortion. Three basic trends were evident in the thirty year from which the data were taken. The years 1929 to 1939 were characterized by a positive approach towards changing the abortion laws. The public magazines drew attention to the inadequacies of the law, and also to the short-comings of the surrounding institutions (i.e. medical facilities) in dealing with the problem of unwanted pregnancies.

Originally the abortion laws had been part of a humanitarian effort by the government in the mid-nineteenth century to protect the health and welfare of its citizens;¹ these statutes were enacted to protect women from the consequences of unskilled abortionists. Population policies stressed expansion not restriction; no thought was given as to how women should eliminate unwanted pregnancies.

This great emphasis on the need for legislative changes coincided with the Great Depression, and it was not unlikely that the pressing economic conditions of the day influenced the public thinking on abortion. The people were calling into question the population expansion policies of the earlier decades, for additional mouths to feed were an added economic burden in times of low income. Thomlinson has noted that

economic fluctuations in themselves should not be regarded as primary causes of fertility trends, but as important conditioning influences.²

During the second period, 1940 to 1955, public opinion shifted from that of advocating changes in the abortion laws to that of supporting and upholding the present abortion statutes. Maintaining the status quo seemed to be the prevailing attitude. External factors contributed to this change in public thought. The presence of the second world war with its subsequent loss of manpower and population did much to increase the war-time feeling of "have your baby." Women were needed to replace the manpower lost to the armed services, and deaths due to clumsy abortions were deemed an unnecessary and needless loss at a time when the population was losing people elsewhere.

Following the war public opinion continued to promote and sustain an anti-abortion feeling. Again this can be attributed to external forces for at the end of the war there were many reasons to encourage people to have many children within a short period of time. The severity of the depression, the loss of population due to war-time casualties, the number of marriages delayed because of the war, and the promise of thriving times were all factors which were responsible for the population increase. Thomlinson has noted: "The high annual birth-rate during 1947-1957 can be explained...as a change in the timing

of births...part of the bumper crop of babies...were children postponed by couples in the depression decade...people who marry during depression postpone having children until prosperity and those marrying in prosperous times have their children as soon as possible."

These factors which encouraged a baby boom were the very factors which discouraged any discussion of changes in abortion legislation. Rather than explaining any of the shortcomings of the law, the magazines concentrated on warning the public about the dangers involved in going to an abortionist, thereby advocating that one have the baby instead.

Public opinion shifted once again during the third period, 1955 to 1960. This period of time was subject to many outside influences, each of which left its mark on the abortion question. The baby boom of the post war era was decreasing, and people were becoming more concerned about population growth. In an effort to control reproduction, the public was clamoring for more reliable birth control methods. Questions were voiced about the naturalness of birth control, and about the moral implications of interfering with the natural reproductive cycle. But throughout the discussion of birth control, women continued to go to illegal abortionists to eliminate unwanted pregnancies for hospitals were unable to help them.

Two medical crises, the thalidomide controversy and the rubella epidemic also sparked interest in the abortion issue.

3 ibid, p.195
The thought of bringing children who were likely to be deformed into the world caused many people to take a sharp look at the abortion laws. These crises were important also for bringing abortion into the open, and for making it a public issue. For so long abortion had been a backroom topic shrouded in secrecy, but it was time for such a topic to be discussed openly, objectively and intellectually. No longer could abortion be crowded into the background and lost in the many entanglements of therapeutic abortion committees, hospital procedures and rules, hasty trips to foreign countries or short visits to criminal abortionists.

Meanwhile, various organized groups were joining in the abortion debate. Doctors had pointed out the inadequacies of the present laws for they (the doctors) were prevented from practicing medicine in the best interests of the patient because of the varying interpretations and legal entanglements of abortion laws. Lawyers were also concerned for the abortion laws might be considered an infringement on the civil rights of the individual. Many discriminatory practices were prevalent in applying for a therapeutic abortion, and preferential treatment was given to those of privileged means. The lawyers also questioned the intent of these statutes for women were not protected against the butchery of unskilled abortionists which was the original intent of these laws, but rather they were forced to go to criminal abortionists for legal abortions were unavailable.

While a small number of professions were taking stands on the question of abortion, various organizations were formed to
concentrate on the problem of abortion. Patricia M. Maginnis founded The Society For Humane Abortion, an organization which devoted itself primarily to educating the public as to the inadequacies of present laws, staging a continuous series of radio and television debates and public meetings, particularly on college campuses. A second group was The Association For The Study Of Abortion, founded in 1964. The Association used the influence of its many medical experts to educate the public towards reform with speakers appearing regularly at civic meetings and on radio and television. It concentrated particularly on professions related to the abortion problem.

Opposition to abortion law reform came primarily from the Roman Catholic Church. The Catholic Church was not the only group to oppose changes in the abortion laws, but it was the largest and the most well-known. The Church put forth a concerted effort to stop all changes. If a bill designed to liberalize these laws was being discussed, legislators were often swamped by mail from unhappy Catholic constituents. The Catholic argument concentrated on when life began (at the moment of conception) and the right of the fetus to be born. The Church was subject to much criticism for many people felt that civil laws should not uphold the religious beliefs of a particular religious body which was in conflict with others. The government did not make laws against eating pork because Jewish people did.

4 Lader, op. cit., p.147
5 Lader, op. cit., p. 148
not eat pork, and therefore, the civil law should not forbid abortion because of Catholic opposition.

The preceding discussion has indicated that there is a push towards unrestricted or so-called "abortion-on-demand" laws. It must be noted that the advance towards more liberal abortion laws did not occur in a unilineal progression from that of restrictive abortion laws to permissive abortion laws to no abortion laws at all. Originally it was felt that abortion literature followed a cyclic pattern in that a definite cycle was established (i.e. literature on restrictive abortion laws, then literature on more permissive abortion laws, and back to literature on more restrictive abortion laws) and that this cycle merely repeated itself. However, this analysis does not give a true picture of the situation for it does not account for the uneven advances in the growth of abortion laws, nor does it adequately account for the back-sliding in this growth process. Originally the public supported the restrictive laws. But as external events influenced their thinking there was a push towards discussing the need for more liberal laws. This forward thrust was counterchecked by a push back to the stance of favouring the old restrictive laws. This regression did not go back to the original point, thereby completing the cycle, but rather public support regressed in the general direction of more restrictive abortion laws, but not to the severe degree of their original stance. Rather than labelling this process as cyclic, an analogy of a tug-of-war game was more appropriate, and through the use of this example, a more descriptive picture
could be given. As each side (abortion law reformers and the status quo group) tugged at the question, the centre marker moved first to one side and then to the other. But as the abortion law reformers increased their thrust, the marker advanced towards that side, and with each pull by the status quo group, the marker would move back, but not as far towards them as it had done previously. Finally, the centre marker was pulled to the abortion law reformers' side, when they scored a point in Washington, D.C., in the fall of 1969.

The degree of liberalization for which the abortion law reformers were fighting may be pictured as a continuum. Ruth Roemer has said: "The abortion laws of different countries may be classified on a six stage continuum, ranging from the most permissive to the most restrictive. The six stages are - i. laws authorizing abortion on the insistence of the woman with medical consent; ii. laws authorizing abortion on social grounds; iii. laws authorizing abortion on sociomedical grounds; iv. laws authorizing abortion on medical grounds only; v. laws authorizing abortion only to save the life of the woman; vi. abortion is never allowed." At first the abortion law reformers felt that moving from very restrictive laws (i.e. stages five and six) to a somewhat less restrictive level (i.e. stage four) might minimize the abortion problem. But as the reformers became aware of the

shortcomings and difficulties of the various stages, they gradually began to press for extreme permissiveness - to allow the female to choose whether or not to have an abortion.

In order to analyze the changing attitudes toward abortion, one might consider abortion as a social problem, and then examine a conceptual framework which has been used to study specific social problems. Fuller and Myers have provided such a framework in their article, "The Natural History of a Social Problem." They state: "A social problem is a condition which is defined by a considerable number of persons as a deviation from some social norm which they cherish. Every social problem thus consists of an objective condition and a subjective definition." Using this definition abortion may be defined as a social problem for abortion may be considered a deviation from social norms although the direction of this deviation may vary from group to group. The Roman Catholic Church, for example, considered any type of abortion a contradiction of their basic tenet of "Thou shalt not kill." Other groups such as doctors felt that the rules and procedures by which one was able to secure a therapeutic abortion were so complex, that they (the doctors) were unable to practice medicine in the best interests of their patients. Lawyers felt that the laws were such that


8 Fuller and Myers, ibid, p.320
individual freedom was questioned, and moreover, the existing laws were so structured as to discriminate against particular social groups. Social workers, ministers and welfare workers also saw that abortion laws were used preferentially, and the vast majority of women were forced to seek out illegal abortionists who might not be medically competent. This practice violated the rights of the individual.

Fuller and Myers maintained that all social problems passed through a common order of development; that social problems did not arise full-blown commanding community attention and evoking adequate policies and machinery for their solution; that social problems exhibited a temporal course of development; that a social problem passes through the natural history stages of awareness, policy determination and reform.  

AWARENESS OF THE PROBLEM

The genesis of every social problem lies in the awakening of people in a given locality to a realization that certain cherished values are threatened by conditions that have become acute. One of the groups which had a vested interest in the question of abortion and which was among the first to be cognizant of the magnitude of abortion as a social problem was the medical profession. With the exception of women, doctors were the one group most immediately affected by abortion legislation. Failure to comply with the law might result in

9 Fuller and Myers, *ibid*, p.321
10 Fuller and Myers, *ibid*, p.322
heavy fines, imprisonment or a loss of licence. Let us examine the role of doctors in the awareness of abortion as a social problem.

During the early fifties many hospitals changed their policies regarding the procedure for obtaining a therapeutic abortion. Prior to this time a woman could obtain an abortion if two consulting physicians wrote letters stating that, in their opinion, an abortion was needed to save the life of the mother. Usually the abortion would be performed at a hospital, but sometimes it might be performed by a doctor who specialized in abortions such as Dr. G. Loutrelle Timanus. But all that was needed were two letters from referring doctors.

However, medical reasons for interrupting a pregnancy were becoming less and less as medical discoveries were enabling doctors to help more women through successful pregnancies without fear of loss of life. For example, vomiting of pregnancy (hyperemesis gravidarum) was a medical reason for a therapeutic abortion. Now Guttmacher writes: "The patient with hyperemesis is rarely seen nowadays who does not react favourably to hospitalization, intravenous fluids, parenteral vitamins, tube feeding and suggestive therapy, and who therefore has to be aborted." 11

Not all scientific discoveries dealt solely with medical factors. Cardiac disease was a medical case in which social factors played a role. Careful medical supervision with

intelligent use of a salt-free diet, weight control, diuretics, digitalis, antibiotics, anticoagulants, rest and improved anaesthesia for delivery have made it possible for many cardiacs to have children, but the patient must be able and willing to co-operate to the full.\textsuperscript{12} The severe cardiac patient who could not avail herself of proper care ran a much greater risk by becoming pregnant. Therefore, while medical reasons for abortion have been declining, the picture was not as simple as was first implied. True the risk of loss of life due to pregnancy was becoming less, but this decrease involved a greater amount of care and supervision by medical authorities. Whether the patient could and would follow a strict regimentation of her diet, exercise, weight gain etc. was dependent upon a number of social, economic and psychological factors. Would a woman with cardiac disease who was childless, the wife of a successful businessman who could afford part-time household help, and the woman with cardiac disease who was the mother of five children and married to an unskilled labourer have an equal chance of surviving pregnancy?

At the same time as the advances in medical technology were decreasing the number of medical reasons for abortion, psychological reasons were increasing. The field of psychology was expanding, and further studies revealed the relationship between psychological well-being of the mother and her relationship to her child, the results of maternal rejection, as well as

\textsuperscript{12} Guttmacher, \textit{ibid}, p.17
a general increased knowledge about the emotional health of individuals. As the knowledge increased, new techniques of therapy were available. Harold Rosen has described the use of hypnosis in treating women who want abortions. But he has also indicated the cases in which therapy was not successful, and a therapeutic abortion was suggested. May E. Romm has stated: "Women with major psychoses of the schizohrenic or manic-depressive types which are not amenable to protected therapy, if pregnant should be relieved from continuing the gestation, both as a humane measure for themselves and for the sake of human beings who otherwise would be brought into an untenable environment." She also suggested that therapeutic interruption of pregnancy might be advisable for unmarried patients where "the traumatic experience of an abortion appears to be less dangerous to her (the unmarried girl's) welfare than the vicissitudes involved in pregnancy, child-birth and maternity before she is capable of weathering them."  

From the above discussion, one can note that the decision to suggest an abortion was no longer a simple matter. Differences of opinion could occur among physicians. Moreover, individual doctors were reluctant to take the responsibility for a decision for abortion since they might be subject to criticism and


15 Romm, ibid, p.212
and censure by their colleagues. Moreover, individual doctors began to fear judicial action against them for failure to comply with the law might mean fines or imprisonment. Ironically, these laws had been enacted to protect women from the butchery of non-medical abortionists not to punish medical personnel who had performed an abortion in the best interests of their patient.

It was in this setting that the abortion board system was introduced.\textsuperscript{16} The board system had the advantage of consultation among several senior physicians who shared the responsibility in the name of the hospital for all abortions passed by the committee. An individual doctor was not held responsible for the decision because it had occurred at a group level.\textsuperscript{17}

While this system in theory protected the individual doctor from direct judicial action, it resulted in many handicaps. First of all, the traditional doctor-patient relationship was severely altered. No longer did a woman go to her own doctor, and to a consulting doctor selected by her own doctor. Now her case was placed before a committee for inspection. Sometimes, the patient might be required to go to a psychiatrist, not of her own choice, but of the committee's so that he might pass

\textsuperscript{16} Guttmacher, \textit{op.cit.}, p.15 In this selection he describes the abortion board that was set up in 1952 at Mt.Sinai Hospital in New York City.

\textsuperscript{17} Note that in 1966 several San Francisco physicians were brought before the California State Board of Medical Examiners for performing abortions on patients exposed to rubella even though they had approval of the abortion committees.
judgment on her emotional stability and ability to carry her pregnancy to term. The introduction of committee approval radically altered the doctor-patient relationship in which the patient came to her doctor for advice in a particular area, expected to receive advice, and then with her doctor made plans to implement the advice. As Lader pointed out: "No other medical procedure, including lobotomy, the sensitive brain operation that can alter and warp the whole personality, demands the sanctity of committee approval."18

The committee system, while protecting the doctors from judicial involvement, also reduced the number of requests for therapeutic abortions. Border-line cases were not likely to be considered, and often even the existence of the board deterred women from seeking abortions from medical authorities. Illegal abortions, while varying in degrees of safety, were often the only ones available to a large number of women. The abortion committees were very cumbersome, and often took a length of time to discuss a case, an aspect which was crucial if a woman might be rejected and be forced to find an abortion elsewhere. Furthermore, hospitals began to do fewer and fewer abortions as the laws were difficult to interpret, and one might never be sure of what the legal authorities might say. The wording of the laws was unclear and rather than risk the chance of legal ramifications, hospitals performed fewer and fewer abortions. 

18 Lader, op.cit., p.27
Kinsey described abortion as a field of great ignorance and mystery.\textsuperscript{19} He also noted that student doctors spent more time learning about the social and legal aspects of abortion than about the actual mechanics of the operation. The laws varied from state to state; much depended upon the interpretations of the local hospitals, and whether they encouraged or discouraged abortions. The choice of whether or not to perform an abortion was not merely a medical decision, but the choice was based on a complex set of variables bound up by the hospital's policy, local authorities, the opinions of colleagues, the number of abortions previously performed that year, as well as the patient's medical record.

Doctors were becoming increasingly concerned over the abortion question. They could make a decision based on medical grounds, but they could never be certain of the legality of their decision. There was a tendency not to perform an abortion rather than run the risk of legal entanglements.

On occasion doctors did enter the political arena, but their opinions were judged not on the soundness of medical grounds, but on other bases. For example, in 1961, the New Hampshire Medical Society petitioned the legislature to change the current abortion law. The original law forbade therapeutic abortion before the time of quickening (about five months after conception). According to medical opinion an abortion should be

performed before five months or ideally at three months since it is safer. The bill did not involve changing the reasons for abortion; it simply asked to change the timing of therapeutic abortions, a factor that would fall under medical opinion. This bill, supported by the doctors as a group, resulted in such a stormy outburst from the people of New Hampshire (forty per cent of whom were Roman Catholic) and the Bishop of Manchester, The Reverend Ernest J. Primeau that the Governor, Wesly Powell vetoed the bill.\(^{20}\) This bill was the first bill to be brought forth by a medical association as such, but unfortunately it merely illustrated the difficulties of the abortion problem. Fuller and Myers have stated that the outstanding characteristic of this initial phase of awareness inheres in the constant recurrent statements of people involved in a challenging situation that 'something ought to be done.'\(^{21}\) Indeed the doctors were clamoring that something ought to be done for they were placed in a helpless position for they could not perform abortions when they deemed it necessary; yet they were unable to persuade the legislators to alter the law.

The medical profession was not the only professional group to become aware of the abortion problem and to become involved in advocating certain reform measures. Lawyers were also conscious of the magnitude of the problems associated with the question of abortion. Their interest in the problem did not

\(^{20}\) Lader, op. cit., p.11-116 "Storm Over New Hampshire."

\(^{21}\) Fuller and Myers, op. cit., p.322
stem only from an interest in the inconsistencies and the discrimination caused by the present law, but rather from a more basic issue - that of the freedom of the individual. Did a woman have a constitutional right to control her own body and her own reproductive system? Many years ago in a campaign for the use of birth control, Maragaret Sanger stated: "No woman can call herself free who does not own and control her body. No woman can call herself free until she can choose consciously whether she will or will not be a mother." This struggle was a two part battle for it involved the rights and privileges of an individual.

Numerous sources have documented the changing female role. William Ogburn, for example, attributed this change to increased technology for in the traditional agrarian family a strict role segregation occurred. The only role open to women was that of mother and home-maker. But modern technology has made it possible for a woman to choose her role. Modern conveniences gave women more time to participate in work and pleasure activities outside the home. With the increasing emphasis on education and with the growing number of educational facilities, the traditional housewife role has been minimized in that females have a choice as to whether they wish to pursue an occupation or whether they wish to combine an occupation with that of homemaker.

22 Margaret Sanger, Woman And The New Race, Truth Publishing Co., New York, p. 94

This has been a very brief outline of the transition of the female role, but it was sufficient to illustrate that there has been a significant change in the feminine role for women may now make a choice to be a mother and home-maker or a career woman or both. An important factor in this decision was the ability to choose when to have children and how many. But this choice involved the use of birth control measures, not all of which were socially or legally approved. Judith Blake has commented: "To a very real extent, restrictions on abortion bolster the public sentiment that motherhood is "natural" and inevitable, rather than planned and discretionary." In other words, abortion laws were a vestige of a time when motherhood was the only role open to women.

But the role transition was not complete unless one was able to plan one's future. An unplanned pregnancy might thrust a career-bound woman back to the traditional mother-homemaker role before she had been able to experience her freedom to choose. Noonan stated:

"With every technological advance, with every step in the mastery of the environment, the wish not to be subject to irrational accident, the wish to determine one's future, became stronger. To have one's energy and resources dissipated, one's plans spoiled, by a pregnancy that it lay in one's power to end seemed senseless self-denial. Viewed as a technique available at the personal option of a woman, abortion maximized both freedom and planning."  

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The concern with the abortion problem has been based on a concern about the fundamental rights and privileges of the female. Was the female able to control her bodily functions, one of which was child-bearing? Ability to control one's physiological needs was a basic part of the life, liberty and freedom of an individual. Failure to be able to partake in this threatened one's belief in democratic processes.

Erving Goffman has noted that one of the first characteristics of living in a total institution was that the person was totally dependent upon the institution for the satisfaction of his physical needs.26 Robert Jay Linton has also pointed out that when one is totally dependent upon others for the satisfaction of every physical need, one is derived of the power and mastery and self-hood of adult existence.27 The same question may be posited about abortion. Was the control over one's reproductive system an infringement upon one's rights as an individual? Would the continued use of laws to force one to bear a child against one's will or to seek an illegal (and possibly incompetent) abortion derive one of mastery and power over one's life? Harriet Pilpel has stated the problem concisely: "Does it not constitutionally deny a woman's life, liberty and the pursuit of happiness if despite her wishes and


the opinions of concurring doctors, she is forced to bear a child she doesn't want and objectively, shouldn't have?"28

Fuller and Myers have stated that before a social problem can be identified, there must be awareness on the part of people who express their concern in some communicable or observable form.29 Lawyers were aware of the social problem of abortion, and thus, after a ten year study conducted by the American Law Institute, a model abortion law was brought before the members in 1962.30 This proposed reform was accepted by the participating members. The lawyers were expressing their concern in a formal communication - a model penal code.

POLICY DETERMINATION OF A SOCIAL PROBLEM

The second stage in the natural history of a social problem is that of policy determination. The stage of policy determination differs significantly from the stage of awareness in that interest groups are now concerned primarily with "what ought to be done," and people are proposing that "this and that should be done." Specific programs occupy the focus of attention.31

28 Harriet Pilpel, speech at American Civil Liberties Union Convention, Boulder, Colorado, June 1964.

29 Fuller and Myers, op. cit., p.322

30 The American Law Institute is a group of 1500 lawyers representing practitioners, judges, and professors, whose role is to promote clarification of the laws and their better adaptation to social needs, and to secure administration of justice and scholarly legal work. From Robert Cooke et al. The Terrible Choice, Bantam Books, New York, 1968, p.52

31 Fuller and Myers, op. cit., p.324
Doctors and lawyers were among the first to become aware of the social problem of abortion. Yet as various events occurred more people began to look at the question of abortion. Groups were organized such as The Society For Humane Abortion, founded by Patricia M. Maginnis. This organization defined abortion as a social problem for they felt that abortion laws deviated from the norm of individual choice; subsequently, they tried to educate the public on the inadequacies of the present law. The Society's platform was that abortion should be a decision which the person or family involved was free to make as their own religious beliefs, values, emotions and circumstances may dictate; that the operation should be available at a cost that was not prohibitive and in a manner that was in no way humiliating nor discriminatory; that the indications for abortion were 'some compelling reasons': physical, psychological, mental, spiritual or economic. 32

A second interest group which was organized was The Association For The Study Of Abortion. Founded in 1964, this group was comprised of many professionals including doctors and lawyers. The Association concentrated on presenting factual information to professions which had the closest ties to the abortion problem such as clergymen, sociologists and social workers.

The membership of The Association was varied so that numerous suggestions were given on how to solve or minimize

32 Lader, op. cit., p.148
the abortion problem. These suggestion reflected the background and field of study of the individual advocating a particular plan. For example, Harriet Pilpel, a lawyer, felt that the most practical technique of reform was through the determined insistence of the medical profession on its rights within existing laws. If the law allowed abortion to save the health of the mother, it should be doctors who make the decision to abort not the courts. She felt that doctors should be the ones to judge the abortion cases on a day to day basis, thereby allowing doctors and hospitals to perform abortions without constant fear of legal repercussions. At the 1965 American Medical Association Convention, Dr. Kenneth R. Niswander and Dr. Morton Klein, two obstetricians from Buffalo, New York, discussed how they had been able to institute a policy of freer abortion for 'psychogenic reasons' (a combination of emotional, social and economic pressures.) They allowed no abortion committees, only the approval of two appropriate consultants, saying: "Certainly the physician who knows the patient is in a better position to judge the status of her disease and its relation to pregnancy than are not necessarily more competent consultants who may only see the patient briefly."

The earlier concerns of the lawyers over the fundamental rights and privileges of the female were still present. Others joined with the lawyers to voice their concern over the right

of females to control their own bodies. Alice Rossi wrote: "On a microscopic level, my concern centres on the means whereby individual choice and opportunity to exercise autonomous control over one's life is maximized in a society, in this instance, women's right of access to legal, inexpensive abortion as a necessary element in their control of their reproductive lives." 34 "Emancipation of women is not complete until women are free to avoid the pregnancies they do not want," wrote Garrett Hardin. 35

One of the channels through which the lawyers were able to express their concern was that of the American Civil Liberties Union. In 1965 this union advocated a change in the law that a person is guilty of abortion if he is not a duly licensed physician and intentionally terminates the pregnancy of another. In other words, the law would deal only with non-licensed abortionists. This law would protect doctors and prosecute only non-medical abortionists, thereby protecting women from the butchery of quack abortionists, the very intention of the original abortion laws in the 1800's.

Their proposal of changing the abortion law to punish only those who were not medical doctors did not meet with approval either by legislators or by other interest groups.


Nevertheless, The American Civil Liberties Union (ACLU) continued to point out the shortcomings of the law. They also persisted in their exploration of the legality of abortion law, hunting for possible contradictions that might have been overlooked by laymen. The Union began to raise the question of the legality of denying women the right of access to abortion. Ehrlich and Ehrlich reported that late in 1968 the ACLU took the stand that present (abortion) laws infringed on women's civil liberties and the laws were unconstitutional because they were based on Roman Catholic dogma. Furthermore, the ACLU maintained that judgments on the morality of abortion 'belonged solely in the province of individual conscience and religion.'

Thus, the ACLU began to press for the abolition of abortion laws, for it was felt that only by eliminating the restrictions could one truly eliminate the unconstitutionality of the present abortion laws. In other words, the Union asked that abortion laws be dropped from the books and that abortion be considered simply an ordinary medical operation. Harriet Pilpel, a spokesman for the Union said: "There is therefore, an increasing demand that the abortion laws be repealed rather than amended so that abortion, which is a medical procedure, can be treated the same as any other medical procedure i.e. under the laws relating to medical practice and pursuant to the regular canons of medical ethics."


REFORM OF A SOCIAL PROBLEM

The third stage in the natural history of a social problem is that of reform. General policies have been debated and defined by the general public, by special interest groups, and by experts. It is now the task of administrative experts specially trained in their jobs to administer reform. The emphasis is no longer on the idea that 'something ought to be done' or that 'this or that should be done' but on the fact that 'this and that are being done.'

The transition from the stage of policy determination to the reform stage is not a clear-cut path. A particular policy may be selected by a governmental body as the way to alter or change the abortion laws. However, after this particular policy has been enacted, certain inconsistencies may still be present, thereby giving rise for the need for further policy determination to eliminate the short-comings of the particular policy. Interest groups are usually quick to point out these weak spots in the policy. In the U.S. the regulation of abortion laws falls under the jurisdiction of individual state legislatures. Nation-wide changes have not occurred because the pressure groups within each state have varied in intensity and effectiveness in pressing the elected representatives to reform the law. Only a few states have entered the reform stage; most are watching the few innovative states to see what will be the result of more permissive abortion laws.

38 Fuller and Myers, op. cit., p.326
The following process may occur. A particular interest group lobbys for certain changes in the abortion legislation in a state; when the law is changed, the interest group will observe the effectiveness of that particular change in liberalizing abortion; if the newly enacted law continues to have major flaws or weak points, then the interest group will concentrate on pointing out the inadequacies of that particular policy change; the policy will be used as an example to advocate even more liberal laws in another state legislature. One can illustrate this process by referring to the first states that changed their abortion laws.

Colorado was the first state to change its abortion law. In April 1967, Governor John Love signed into law legislation that permitted the termination of pregnancy in an accredited hospital following hospital-board determination that (i) pregnancy had resulted from rape or incest; (ii) there was substantial likelihood that the child would be deformed or mentally retarded; (iii) the continuance of pregnancy would result in the death of, or serious mental or physical damage to the mother. There were no residency requirements. 39

In North Carolina a law passed in May, 1967, permitted an abortion to be performed if the life or health of the mother is in danger, if there is substantial risk that the child will be born with a mental or physical deficiency, or if the

39 Robert Cooke et al, op cit., p. 54
pregnancy resulted from rape or incest. Three doctors must examine the patient and approve the abortion, and the abortion must be performed in an accredited hospital. There is a four-month residency requirement.\textsuperscript{40}

The California law, signed by Governor Ronald Reagan in June, 1967, permits an abortion if a three-man committee of the medical staff of an accredited hospital unanimously agrees that there is substantial risk that continuance of the pregnancy will gravely impair the physical or mental health of the mother, or if the pregnancy resulted from rape or incest. In the case of rape, either the district attorney or the court must hold that there is probable cause to believe a rape did take place before the abortion may be performed. There is no residency requirement.\textsuperscript{41}

By mid-1969, eleven states (Colorado, North Carolina, California, Maryland, Arkansas, Georgia, New Mexico, Kansas, Oregon, Delaware, and Mississippi) had modified their laws to include some or all of the following grounds for legal abortions; threat to physical or mental health, rape, incest, and potentially defective offspring.\textsuperscript{42}

The states of Colorado, North Carolina, and California took the first cautious steps toward liberalized abortion laws.

\textsuperscript{40} Cooke et al. \textit{ibid}, p.55

\textsuperscript{41} Cooke et al. \textit{ibid}, p.53-4

Although the changes made by these state legislatures may not seem a significant step when compared to contemporary standards, these changes were a vast step forward when compared to the very restrictive laws which they replaced. These new laws were greeted with mixed approval. Roman Catholic doctors feared that Colorado would be the abortion mecca for the nation. Dr. Robert Steward President of the Colorado Catholic Physicians Guild, felt that the new law was merely a step towards abortion on demand, and that soon the state would have the power to rid itself of anyone it wanted. 43

After observing the implementation of these laws, abortion reformers did not feel that these laws were an answer to the social problem of abortion. The number of women who were able to obtain therapeutic abortions by these new laws were extremely small compared to the number of women who were obtaining illegal abortions. The process involved in obtaining a therapeutic abortion was still so rigid and time-consuming, that the majority of women either were rejected or felt that the process was so complex that it was still easier to seek an illegal abortionist. The abortion board was still part of the process, and the presence of this board tended to lengthen the time needed to process an application for abortion. Time was a very crucial element in an operation of this type for the length of pregnancy was a variable in determining the type of operation.

or if an operation would be performed. Another mechanism that slowed the abortion board process was that of the presence of Roman Catholic doctors on these boards. The presence of the abortion board system destroyed the usual doctor-patient relationship for the case history of the patient was given to doctors not necessarily of her doctor’s choice or of her own choice. One also needed letters of approval from various specialists to validate one’s reason for abortion. These letters were difficult and costly to obtain as many specialists had a standard fee of $75.00 for a letter of recommendation. A final problem of the board was that often they disagreed over the exact interpretation of a particular phrase in the abortion law. The term mental health was a phrase that was open to various interpretations. In California one could obtain a therapeutic abortion on psychiatric grounds only if the continuation of the pregnancy would seriously impair the mental health of the mother. This was interpreted to mean only if the mother was dangerous to herself or others or in need of supervision. In other words, one could obtain an abortion on these grounds only if one had a history of severe psychiatric problems or if one was confined to a mental hospital.

On the basis of the above criticism of the abortion boards, abortion reformers began to comment that the newly formed laws were not able to help the largest group seeking abortions — married women who already had a number of children, and who seek an abortion because they want no more. The abortion
legislation was unable to help this group obtain abortions. The reformers were aware of the need for women to use abortion as a means of birth control particularly when other methods of birth control failed. While society can force a woman to bear a child, it cannot force her to love and want the child. Society can make the mother bring her pregnancy to term, but it can never keep her bitterness from poisoning the relationship with this child or the rest of the family. The number of unwanted children who are born is increasing greatly, and the problems which these children encounter is catastrophic. In talking about the unwanted child, Karl Menninger has said: "Nothing is more tragic, more fateful in its ultimate consequence than the realization by a child that he was unwanted. Where one child reacts to this in later life with an acute mental illness, dozens of children react to it in more subtle ways by developing self-protective barriers against the inner perception of the feeling of being unwanted."

Any adequate consideration of the problem of therapeutic abortion must include consideration of what happens to the child who may be born after a mother has sought to terminate a pregnancy by abortion, but has been dissuaded or has not succeeded. Richard Jenkins has studied the relationship

44 Lader, op.cit., p.156

between maternal rejection and subsequent childhood behaviour.46 When the pregnant woman who rejects her pregnancy has successfully carried it to term and delivery, the psychological problem of the effect of her rejection upon the child has not terminated, it has only begun.47 Jenkins elaborated that there are five basic types of behavioural problems among the children who are brought to child guidance clinics for assistance. Of these five types, three kinds of behaviour (the unsocialized aggressive child, the overinhibited or over dutiful child given to internal conflict, and the schizoid child) are related to the problem of maternal rejection.

The fate of the unwanted child is an important factor in the current inquiry into abortion. A Swedish study followed from birth to adulthood 120 children born to mothers whose requests for abortions had been refused, and compared them to wanted children born at the same time and carefully matched as to several family characteristics. The unwanted children were more often brought up in a broken home, more often registered for psychiatric services, more often registered for anti-social and criminal behaviour, slightly more often cited for drunken conduct, and more often in need of public assistance than the wanted children. A few more of


47 Jenkins, ibid, p.270
The unwanted children were educationally subnormal, and far fewer pursued higher education. 48

The above studies have indicated some of the concerns of the abortion reformers who felt that the small concessions made by the legislators were not sufficient to allow for the freedom and choice of the individual. The reformers were also concerned about the child that would be born unwanted and about his fate in such a role. They stressed the need for having a wanted child, not an unwanted child. Dr. Garrett Hardin has said: "A woman who aborts this year because she is in poor health, neurotic, economically harassed, unmarried or on the verge of divorce or immature, may well decide to have another child five years from now - a wanted child." 49

The reform stage of the social problem of abortion has not ended, rather it is just beginning. Legislative changes have been made, and have been initiated by various authorities. However, abortion reformers have not been satisfied that these legislative changes are an adequate answer to this very pressing social problem. The current laws leave the growing problem of unwanted children unanswered. And so once again, the reformers begin a stage of policy determination, to explore ways by which the problem of unwanted children can be solved. Some feel that


unrestricted abortion laws would provide the solution. Lawrence Lader has written: "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."\(^{50}\)

\(^{50}\) Lader, op.cit., p.110
CONCLUSION

In an earlier section of this paper it was stated that abortion is the safety valve that allows the small, conjugal, nuclear family to be maintained for it (abortion) is the functional consequence of the need for a post facto method of birth control. This statement suggested that there is a continued, steadily increasing pressure for a more liberalized stand on abortion in American society accompanying the shift from institution to companionship and from the productive to the consumptive family. Thus, it was hypothesized that there has been a steadily increasing pressure for a more favourable attitude to abortion in America in this century. The data confirmed this hypothesis by showing three basic patterns in the attitudes toward abortion. The period 1955 to 1969 clearly illustrated the increasing pressure for a more liberalized stand on abortion. By 1969 several states had changed from very restrictive abortion laws to less restrictive ones. Based on the evidence collected in this study, it can be stated that in the future there will be a continued pressure for even less restrictive abortion laws.
EPILOGUE

Three states made significant changes in liberalizing their abortion laws in 1970. On March 11, Hawaii enacted an abortion law whereby a mother who desired an abortion could obtain one, provided that she had fulfilled a ninety day residency requirement. The latter stipulation was used to prevent an influx of pregnant women who wanted abortions from the mainland.\(^1\) The second state to radically alter its abortion law was Alaska. As of April 30, any mother could obtain an abortion if she wanted one, provided that she had fulfilled a thirty day residency. In the case of females under the age of eighteen, parental consent was also required.\(^2\)

The most permissive abortion law was passed by the state of New York. The former 142 year old law whereby abortion was justified only to save the life of the mother, was replaced on July 1, by the law –

"an abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such act is necessary to preserve her life, or (b) within 24 weeks from the commencement of her pregnancy.\(^3\)

Fuller and Myers have commented that the reform stage is the institutionalized phase of the social problem in that established policies are carried out by publicly authorized

\(^1\) Newsweek, Vol. 75, March 9, 1970, p. 46


\(^3\) Linda Greenhouse, "After July 1, an abortion should be as simple to have as a tonsillectomy but —" New York Times Magazine, June 28, 1970, p. 7
policy-enforcing agencies. Prior to the implementation of this law much discussion occurred about how to adhere to this law. One of the immediate problems was whether to perform abortions only in hospitals or whether special clinics could be used; secondly, doctors had to decide what methods to use to abort their patients since most doctors had performed relatively few abortions. Robert Hall, President of the Association for the Study of Abortion, urged a very cautious approach. Dr. Hall based his views on the limited abortion experience of most doctors in New York, and on his conviction that New York's handling of the abortion law will be a crucial test for the course of abortion reform in the rest of the country.

The abortion controversy is continuing. Advocates of abortion law reform point to New York as a symbol of hope, while those supporting restrictive laws point out the failures of the New York law such as a live fetus. The discussion continues as more state legislatures prepare to examine abortion reform bills.


5 Greenhouse, op. cit., p.28
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