

# Abortion - A Matter of Life or Death

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1.

In recent years, induced abortion has been increasingly accepted as a logical, necessary and efficient means of limitation of family size, and of population control. From this perspective, the major objection to it is the danger to the life or health of the woman when it is performed unskillfully. There has, therefore, developed a world-wide demand that induced abortion be given wider legal acceptance.

Any discussion on the legality of abortion must be prefaced by some preliminary clarification of the function of the law in a pluralist society.(B. Mitchell: "Law, Morality and Religion in Secular Society". J. Maritain: "Man and the State". H. L. A. Hart: "The Concept of Law".)

A pluralist society

Our society is composed of a large number of groups of diverse philosophical, religious or cultural beliefs. It is committed to the goal of allowing each individual as much freedom reducing legal restraints to a minimum.

Some law necessary

Even a liberal society needs laws to guarantee a certain level of public order and harmony and to protect certain essential social institutions. These legal restraints are indispensable if each member of society is to be assured of that degree of personal security necessary for him to achieve his maximum development as a person and as a citizen.

There is wide agreement that these laws must be justified on the basis of their necessity and utility for the security and well-being of the whole society. In a controversial matter, the onus is on the advocates of legal restraint to demonstrate the necessity for, and the utility of, such restraint.

Laws reflect public opinion

In most instances, the consensus of a society is assumed to be reflected in the majority opinion within that society. Laws, consequently, tend to reflect public opinion. On the other hand, reliance on the majority opinion as the source of society's laws, exposes individuals and minority groups to the very real risk of being tyrannised by the majority. This risk is particularly marked when the minority group - because of numerical, economic or political weakness - is incapable of having its voice heard in the public arena.

Human rights

Over the centuries this danger has been limited, in part, by the agreement of the various groups constituting society, on certain practical standards which must be safeguarded if society is to remain civilised. Generation after generation, a central core of practical agreement has been evolving

concerning certain rules which demand respect if society is to function peacefully and if each individual is to be protected against unjust aggression by other members or groups.

This agreement on certain practical norms underlies the concept of HUMAN RIGHTS. There has developed a consensus, which transcends cultural, philosophical, religious and national boundaries, that each individual possesses certain inalienable rights, not because they have been granted to him by a benevolent State, but because of his membership of the human race. Any legislation in a pluralist society must acknowledge and guarantee these rights, even in the face of a powerful opposing majority opinion. In fact, a society may claim to be civilised largely to the extent to which these rights are protected, especially in the case of the mentally or physically immature, the numerically weak or the economically or politically underprivileged.

## SUMMARY

Laws of a civilised society are not the mere reflection of contemporary public opinion, but must also acknowledge and actively protect the inalienable human rights of each of its members.

## 2. INNOCENT HUMAN LIFE INVIOLEABLE

The most fundamental of these universally accepted practical moral insights, is that, as far as the possession of human life is concerned, we are all equal. If a society is to remain civilised, no individual, no group of individuals, not even the State itself, can be permitted to take the life of any innocent human being.

### "Innocent" human life

It is not asserted that there is a consensus within our society that human life constitutes an absolute value. Self defence, the just war and capital punishment are examples in which the taking of human life might be morally justified. It is asserted, however, that our society views "innocent human life" as an absolute value. Before the law will condone the taking of a human life, it demands that the guilt of the person be established beyond reasonable doubt. To guarantee that no innocent human life will be taken, the law has established a whole set of criteria which must be satisfied before a verdict of guilty can be given.

The innocence of the accused is presumed; he must be given adequate representation; evidence against him is subjected to intense scrutiny and each witness must be available for full cross-examination; guilt must be adjudged by a unanimous decision of a jury of his peers after an open trial: the existence of reasonable doubt justifies a verdict of "not guilty", appeal to higher courts is permitted; commutation of sentence is still possible after a verdict of guilty if the Attorney-General suspects there has been any possibility of a miscarriage of justice. Despite even this exacting "due process", there is widespread agitation to have the death penalty abolished as incompatible with the ideals of a civilised society. One of the most powerful arguments favouring such abolition is that, despite the best efforts of our courts, an innocent life may be inadvertently taken, and where human life is at stake, the death of one innocent person is one death too many.

The inviolability of innocent human life forms the very foundation of the personal security which each citizen must be guaranteed if he is to be assured of the opportunity to unfold his life freely. It is, "the fundamental principle of secular ethics", (Thomas L. Schaffer, quoted in J. Bennett's "Abortion Law Reform", p. 12.) for if this right to life is not safe, then no other right can be considered safe.

Explicit acknowledgement of this principle

This principle is implicit in the tradition of any civilised society. It was made explicit in the American Declaration of Independence which gives it pride of place amongst man's inalienable rights:

"We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that amongst these are Life, Liberty and the Pursuit of Happiness."

It has been written into the constitutions of many modern States and was stated expressly in Article 3 of the Universal Declaration of Human Rights:

"Everyone has the right to life, liberty and security of person."

Pre-natal life is human life

Our laws have always considered the control over life and death a matter vitally affecting the public interest. If society acknowledges the inviolability of human life, a decision has to be made as to when human life begins. This is the central issue in the abortion debate. It is usually either ignored completely or given the most superficial consideration.

Advocates of easier abortion laws often assert that existing laws condemning abortion are an imposition on society as a whole of the unacceptable beliefs of a minority. Laws against abortion exist for one reason only: to protect the life of an innocent human being at the earliest stages of his existence. Advocates of easier abortion laws must face this question or the valid objection that they are avoiding the crucial issue.

The witness of contemporary science

Modern scientific evidence supports the view that -

#### (i) HUMAN LIFE BEGINS AT CONCEPTION

It is a fact of biology that species reproduce their own type. Horses beget horses; cats beget cats; dogs beget dogs. If, as a result of sexual union between a man and a woman, "something" begins to develop in the uterus of the woman and shows the characteristics of life (growth and differentiation), then one would have to cast aside one's whole biological training to deny that this "thing" is a "human living thing".

The life of each human individual begins with the union of two gametes, the ovum and the spermatozoon. Each of these gametes contains half the chromosomal constitution proper to the human species. When they unite, the fertilised cell (the zygote) contains the 46 chromosomes proper to the human species. Within these chromosomes are the genes which will determine the future development of this particular individual. The genetic constitution of each individual is unique, made up as it is of an unpredictable intermingling of genes from the mother and the father.

From this point on, the development of the individual is the outcome of the interaction between (a) his innate drive to growth and differentiation and (b) his environment. The innate drive to growth and differentiation is genetically determined. It is as if the zygote (the first fertilised cell) were "programmed" like a modern computer. This "programming" determines the rate at which the individual grows by cellular multiplication, it determines the time at which certain groups of cells will start to develop along a special line so as to produce the various organs of the body; it will

determine the form that this organ development will take. This "programming" continues to operate throughout foetal life, through infancy into adult life. It will determine the sex of the individual, his physical appearance and certain factors concerned with his general intelligence.

"Potential human life"? (Dr. Everingham: M.J.A. (Correspondence) 12/5/1968, p. 872.)

The zygote is human life in its most immature form, just as the new born infant is human life in slightly less immature form. The adolescent is human life on the verge of a final movement to adult maturity. Human life is a time-conditioned unfolding of the possibilities given at the moment of conception.

"No recognizable human characteristics"?

It is also argued that "a day old foetus with no recognizable human characteristics" cannot be accepted as "a human being with definable rights". (J. Bennett. "Abortion Law Reform", p.13.) This ignores the established fact that, to a modern embryologist, the zygote is clearly recognizable as human by its specific chromosomal constitution. This cell possesses, in fact, the essential characteristic (a human chromosomal constitution) by which the human origin of any tissue may be determined. This error arises by insisting that we apply to an early stage of human life criteria derived from a later stage. The zygote is human life possessing all the characteristics proper to human life at that stage of development. It cannot be denied humanity because it does not satisfy criteria derived from observation of infant human life or adult human life.

If the advocates of more liberal abortion laws continue to assert the existence of two phases in the development of the individual - a pre-human phase succeeded by a human phase, they will find no support from modern embryology and would appear to be basing their conclusions on certain scientific theories of Aristotle and the medieval philosophers, theories which were discarded when modern embryology offered an accurate account of the fertilisation of the ovum by the spermatozoon.

#### (ii) THE FOETUS IS A SEPARATE ORGANISM

The foetus is a separate organism from the mother. It grows and differentiates at its own innate rate quite different from that of the mother; it possesses its own unique genetic make up; its own circulation which never at any point mixes with that of the mother; its tissues are immunologically distinct from the mother's tissues, a fact well illustrated by the ability of the Rh positive blood of the foetus to sensitise an Rh negative mother. The mother's role in the development of the foetus is the provision of a safe environment and of the nutriment upon which the continued development of the fetus is dependent. The relationship of foetus and mother is one of intimate apposition rather than one of extension.

#### WIDESPREAD CONFIRMATION

The assertion that human life begins at conception receives support from -

#### (i) PERSONAL INSIGHT

Personal insight assures me that, though I am now an adult I was once an infant; that I was once a particular foetus in the womb of a particular woman; that I was once a single zygote. I know with absolute certainty that if my mother had been aborted two weeks after her missed menstrual period then that unique expression of human possibilities that I know as "my life" would not have existed. My life would have been as effectively terminated as if I had been killed as a new born infant.

## (ii) THE OPINION OF ORDINARY PEOPLE

If a woman is told that she is pregnant and then is asked to state as clearly as possible what she considers is now within her, body, the almost invariable reply is, "a little baby". Additional confirmation of this consensus occurs in many books and articles aimed at the ordinary public:

- (a) "At that moment (of fertilisation) ...the new human being is still a single cell". ("Birth Control": E. Haverman and the Editors of Life, p. 77.)
- (b) "An abortion kills the life of a baby after it has begun". (Planned Parenthood Association ( U.S A. ); "Plan Your Children", 1963")
- (c) "The human life span may be defined as the interval from conception to the age beyond which a person would not live even under the most favourable conditions". (Encyclopædia Britannica (1961), Vol. 14, p.55.)

## (iii) THE MAJORITY OPINION OF ETHICISTS

The humanity of the foetus from the time of conception is widely acknowledged by ethicists from many religious faiths. We refer, for example, to:

- (a) Professor Karl Barth (Basel): "He who destroys germinating life kills a man". (K Barth, "Church Dogmatics" (1961), 111:4 Creation, p. 446.)
- (b) Dietrich Bonhoeffer: "Destruction of this embryo in the mother's womb is a violation of the right to life which God has bestowed on this nascent life. To raise the question whether we are here concerned already with a human being or not is merely to confuse the issue. The simple fact is that God certainly intended to create a human being and that this nascent human being has been deliberately deprived of his life. And that is nothing but murder".(D. Bonhoeffer: "Ethics": Eberhard Bethge (Ed.), S.C.M. Press, 1955.)

The consensus on this matter was clearly shown in the statement by the ethicists at the International Symposium on Abortion, sponsored by the Harvard Divinity School and the Joseph P. Kennedy (Jnr.) Foundation:

"The ethicists on the basis of data now available, could only conclude that human life begins at conception or no later than that point a few days later ("blastocyst") when the question of whether one or more persons will be produced has been irrevocably settled." In a philosophical conclusion based on this biological knowledge, the panel of ethicists stated:

"The foetus, therefore, at least from blastocyst, deserves respect as human foetal life". ("The Terrible Choice: The Abortion Dilemma", pp. 84,85.)

## (iv) THE WITNESS OF CONTEMPORARY LAW

Centuries ago, Lord Coke wrote that, "by the well-settled and established doctrine of the common law, the civil rights of an infant en ventre sa mere are fully protected at all periods after conception". (Kindregan: "Abortion, the Law and Defective Children:- a Legal-Medical Study". Suffolk University Law Review, Vol. 111, Number 2, Spring, 1969, p.272.)

At common law, it was acknowledged that a pregnant woman could not be executed because such an action would deprive the foetus of its life. The very existence of laws against abortion reflect the early recognition that the foetus had a right to life which should be protected by law. Contemporary

Anglo-American law contains innumerable rulings which acknowledge that human life begins at conception, and that the foetus is a legal person possessing rights from the moment of conception. "In every area where the courts have been faced with determining whether fetal life is the subject of legal rights, the answer has been affirmative". (Supra 11, p. 259.)

The following series of quotations serve to show the contemporary trend of the law on this matter:

(a) "No violence is done to the ordinary processes of the rational mind by letting the word "child" include a human being immediately on conception". (Supra 11, p. 259.)

(b) "Legal separability should begin where there is biological separability... what we know (of the actual processes of conception and foetal development) makes it possible to demonstrate clearly that separability begins at conception. The mothers' biological contribution from conception on is nourishment and protection; but the foetus has become a separate organism and remains so throughout its life". (Supra 11, p. 263.)

(c) "Medical authorities have long recognised that a child is in existence from the moment of conception". (Supra 11, p. 264 (footnote).)

(d) "It is now settled that an unborn child's right to life and health is entitled to legal protection, even if it is not viable". (Supra 11, p. 267.)

In view of these statements selected from an extensive series of similar rulings - one is permitted a healthy scepticism of the amount of research undertaken by a leading Australian advocate of abortion law reform, Mr. John Bennett, who, in his pamphlet "Abortion Law Reform" gratuitously asserts: "The law does not regard the foetus as a human being". (J. Bennett: "Abortion Law Reform", p. 13.)

#### (v) THE WITNESS OF CONTEMPORARY MEDICINE

The attitude of contemporary medicine to the humanity of the foetus is clearly stated by Professor Ashley Montagu (Columbia University):

"The basic fact is simple: life begins, not at birth but at conception. This means that a developing child is alive, not only in the sense that he is composed of living tissue, but also in the sense that, from the moment of his conception, things happen to him, even though he may be only two weeks old and he looks more like a creature from another world than a human being... he reacts. In spite of his newness and his appearance, he is a living striving human being from the very beginning". (A. Montagu: "Life Before Birth", 1964, p. 265.)

Dr. J. S. Scott (Professor of Obstetrics and Gynaecology at Leeds University) offers a gynaecological viewpoint:

"The most important fact that gynaecologists know, and the most understandably suppressed is that performing an abortion at the time they are usually called upon to do so involves the destruction of a clearly recognizable human being". (The Abortion Law Reform Debate: U.K., 1966-1967 - "A Gynaecologist's Viewpoint". Social Science and Medicine, Vol. 1, 1968, p. 390.)

The traditional attitude of the medical profession is reflected in the Declaration of the Third General Assembly of the World Medical Association (Geneva, 1948) that doctors "should maintain the utmost respect for human life from the time of conception". In 1949, the World Medical Association published in London its International Code of Medical Ethics which states:

"A doctor must always bear in mind the importance of preserving life from the time of conception until death."

## SUMMARY

The major function of the criminal law is to protect the rights of each citizen against harm by another citizen or by a group of citizens. Where the right of the individual to continued existence is concerned, the truly liberal society is the one most conservative. Over the centuries, the most liberal societies have been those in which the law has acted as a bulwark against all attempts to deprive any of its citizens of the right to life or of those rights which are proper to the human person. The supreme test of this liberality has been the extent to which the law has been able to defend the rights of those who have not been able to defend themselves - the very young, the aged, the infirm in mind or body, those unable to speak on their own behalf, the numerical or political minorities. The law has operated to defend the "odd men out" against the "in-groups", the poor against the rich; citizen against king; serf against his master; the child against his parents.

In every area of civil law in which the matter has been raised, the foetus has been consistently acknowledged as a legal person, endowed with rights from the moment of conception. The toleration by our society of deliberate abortion in any circumstances whatsoever, represents a regression in an otherwise steady progression towards an explicit and consistent legal recognition of the foetus as a legal person, entitled to the same protection by the law as is guaranteed to any other person. The foetus is, of all human beings, the most immature. He is unseen, unable to speak on his own behalf, lacks political representation and is apparently at the present time outnumbered by the adult majority who consider their lives (or more often, their convenience) "more precious", (Phrase used by Judge McNaughton in the Bourne summing-up.) than his life. Once again we see a civilised society asked to reaffirm the basic principle on which its claim to civility is based: that all men - no matter what their colour or creed, their age or state of physical or mental health, their wealth or their social status - are equally guaranteed all the rights proper to the human person.

Laws against abortion are necessary because the basic right to life of a human being is not safe against the aggression of those who consider it expendable as a means to some personal advantage. Such laws hurt; they are often described as "ferocious" because the ends desired by the mother and her supporters are often highly desirable in themselves and appeal profoundly to our sympathy and compassion.

No matter how great the gains obtained, no society can claim to be civilised if it attempts to solve its social or economic problems by the deliberate sacrifice of innocent human beings, even if these human beings are only a few weeks old, unseen and unable to plead for themselves.

## ARGUMENTS IN FAVOUR OF EASIER ABORTION

The advocates of changes in the abortion laws do not form a homogeneous group. They fall roughly into three categories:

### 1. The "medical indications" group

Those who desire clarification of the law so that it will explicitly cover those situations in which doctors of good conscience consider abortion is medically necessary. They desire to see the law acknowledge that a doctor is not committing a crime if he performs an abortion which he considers, in good faith, is necessary to save the life of the mother; or to protect her from grave damage to her physical or mental health.

Some would include within this group the right to abort a woman if there is grave risk that her child will be seriously deformed. However, others would either exclude this indication or consider it highly controversial.

## 2. The "social and humanitarian" group

This group wish to include in their indications all of Group 1 but, in addition, they consider an abortion justifiable -

(a) to preserve the physical or mental health of other members of the family; and in cases where serious social or economic stress are caused by or aggravated by the pregnancy. (b) In cases where the pregnancy has resulted from rape or incest; or where the girl is under a certain age.

## 3. The "abortion on demand" group

This group wish the law to move completely out of the field and for society to acknowledge that the decision to have an abortion is a private one, of concern only to the woman herself. She should be able to make her decision and then have the abortion performed by a competent doctor in safe, hygienic circumstances. They argue that women continue to have abortions whether the law forbids it or not and that abortion on demand will eliminate the "backyard abortionist" and reduce the significant mortality and morbidity that follows such abortions.

## ARGUMENTS EVALUATED

These are the utilitarian indications on which the advocates of easier abortion argue their case. An attempt will be now made to evaluate each of the arguments offered.

### To save the life of the mother

It is acknowledged even by those people who are extremely keen to widen the indications for legalised abortion that the need to perform an abortion to save the life of the mother or to preserve her from grave damage to her physical health rarely arises. (K. J. Ryan, M.D., "Health Needs of Society" in "Abortion and the Law". D. T. Smith (Ed.), p. 67.) The last twenty five years have seen a dramatic fall in abortions based on this indication. Moreover, this situation is adequately covered by existing laws and is not under debate at the present time. To suggest that it is, is to be deliberately misleading.

### To prevent grave psychiatric damage

#### (a) Suicide

The first issue to consider in this context is the risk to the pregnant woman's life as a result of suicide, either during or after the pregnancy. The threat of a pregnant woman to commit suicide is sometimes offered as a powerful reason to terminate pregnancy. But what are the actual facts?

Threats to commit suicide are not uncommon during pregnancy and suicide attempts do occur. Usually about 5%-7% of cases of attempted suicide are pregnant.(Edwards and Whitlock, M.J.A., (1968), Vol. 1, p. 992)But, successful suicide during pregnancy is rare.

Dr. Howard C. Taylor, Jnr., Director of the Obstetrical and Gynaecological Service of the Columbia Presbyterian Medical Centre, New York, commented on the "subterfuges" employed to obtain abortions on psychiatric grounds and stated that he was "very much disturbed by the use of the indication of reactive depression with suicidal tendency" as an argument for abortion. "I have not in

my experience ever run across a suicide in pregnancy in a patient who was suffering from anxiety depression". ("Abortion in the U.S.A." A Symposium: Calderone (Ed.) (1958), p. 108.)

Dr. Theodore Lidz, Professor of Psychiatry at the Yale University School of Medicine has stated: "Let us be frank about this. When the psychiatrist says that there is a suicidal risk, in many instances he does not mean that at all, but feels that there are strong socio-economic grounds for a therapeutic abortion. Since the only grounds for abortion in many States is if it is felt there is a threat of death, suicidal risk is thus established as the only legal way out of the situation". (Ibid. p. 141.)

Dr. Myre Sim, a Birmingham psychiatrist reports that over a six year period, 120 women of child-bearing age committed suicide in the city of Birmingham (U.K.), not one was pregnant. Over a second six year period, one pregnant woman committed suicide, and in her case "abortion was not the answer and it could not have cured her mental illness". (M. Sim, quoted in Russell Shaw: "Abortion on Trial".)

#### (b) Abortion as Therapy in Psychiatric Disease

This is a highly complex subject justifying a monograph in its own right. The following conclusions would appear justifiable from the literature on the subject:

(i) The drastic fall in abortions for organic disease, has led to a relative increase in the proportion due to psychiatric disease. In some cases there has been an absolute increase in the numbers of abortions on psychiatric grounds. In others, although the proportion of such abortions has increased, the actual numbers have decreased. At Johns Hopkins Hospital, prior to 1950, one pregnancy in 1021 was terminated on psychiatric grounds. After 1950, the figure fell to 1 in 2,231. (A. E. Hellegers, "Law and the Common Good": Commonweal, June 30, 1967) This fall was almost certainly due to improvements in the treatment for psychiatric disease. So dramatic has this advance been, that Dr. Frank J. Ayd has commented: "Before too long most psychiatrists in most cases may have virtually no grounds for approving abortion". (F. J. Ayd (Jnr) quoted in R. Shaw, "Abortion on Trial".)

(ii) Evaluation of psychiatric grounds for an abortion is a highly complex problem. Dr. Rosen comments that the proportions of terminations based on psychiatric grounds is increasing "despite the fact that problems posed by the psychiatric evaluation of emotionally sick pregnant patients are so complex that at times clarification seems almost impossible. A psychiatrist like his medical confrere when examining patients who demand an abortion, not infrequently finds himself at an impasse". (D. T. Smith (Ed.): "Abortion and the Law". p. 78.)

(iii) The commonest type of case recommended for abortion on psychiatric grounds is that of a woman with inadequate personality reserves, already finding it difficult to cope with the stresses of everyday life, in whom pregnancy disrupts an already precarious equilibrium. Professor E. W. Anderson (University of Manchester) found two-thirds of his cases fell into this category.

From the U.S.A. Dr. Rosen agrees that whatever the stated reason for a psychiatric abortion "the actual indications are, for the most part socio-economic". (D. T. Smith (Ed.): "Abortion and the Law".) From East Germany, Professor Mehland asserts that 90-99% of legal abortions performed in European countries, are based on "social or personal reasons and the disparity between family size and the desire for a higher standard of living was an important factor". (Mehland: "World Medical Journal", Vol 18, p. 87.) From Stockholm, Professors Borrell and Engstrom indicate that in Sweden, abortion is sought, not so much by the poorer class of person, but by those who have reached a

rather higher social standard and fear that the arrival of a child would lower their social standing. (Mehland: "World Medical Journal", Vol. 13, p. 87.)

(iv) Abortion, even in these cases is not a guaranteed cure. Dr. Iago Galdston, executive Secretary of the Medical Information Bureau, New York Academy of Medicine strikes a sobering note: "If and when a so-called adult woman, a responsible female, seeks an abortion, unless the warrant for it is overwhelming - as in the case of rape or incest - we are in effect confronted both with a sick person and a sick situation. Furthermore, and I want strongly to underscore this point, neither the given person nor the given situation is likely to be remedied by the abortion qua abortion. It is, of course, true that both the person and the situation may be relieved and somewhat ameliorated by the abortion much as an individual suffering from a gangrenous foot may be relieved by an amputation of the affected member. But I would like to go on record that in numerous instances, both the individual and the situation are aggravated rather than remedied by the abortion. Bad as the situation was initially, it not infrequently becomes worse after the abortion has taken place". ("Abortion in the U.S.A.", A Symposium: Calderone (Ed.) (1958), p. 119.)

(v) When all these facts have been considered, it must be acknowledged that there are doctors of the highest repute who consider that there are occasions when they must, in conscience, perform an abortion on psychiatric grounds. We are entitled to disagree with their moral evaluation of the situation, but we must grant them full freedom to their conscientious beliefs. One can confidently predict that these men will continue to evaluate the effect of abortion on psychiatric grounds, and that they will eventually reject it as they have already rejected it for organic disease.

#### PSYCHIATRIC DISEASE - SOCIO-ECONOMIC FACTORS - ABORTION-ON-DEMAND

It is conceded, then, that certain doctors of the utmost integrity and good repute feel that, in certain cases, an abortion is necessary on psychiatric grounds. No one with any knowledge of psychiatry could deny that this decision must involve an evaluation of each patient in relationship to all the factors in her environment. Amongst these, social and economic factors are not the least important.

On the other hand, no informed doctor would deny that the greatest proportion of women demanding abortion in our society at the present time do so on the basis of socio-economic factors with a minimum of psychiatric upheaval.

It has been estimated that the overwhelming majority of those seeking abortion in our society have no serious organic or psychiatric disease, are not pregnant as a result of rape and are not afraid of bearing a deformed child. (H. Mayer "Abortion in Australia: Some Guesstimates", Union Recorder, June 13, 1968, p.107.) They demand an abortion because the birth of a child interferes with the way they want to run their life. The baby is an inconvenience and, as such, is unwanted.

Socio-economic factors are therefore a bridge connecting psychiatrically indicated abortion on one side with abortion of convenience on the other. There is a gradual transition from the sincere psychiatric case in which socio-economic factors are an important part of the picture, to the woman who desires an abortion on social and economic factors alone.

This means, in practice, that once abortion on psychiatric grounds is permitted, a demand is made that socio-economic factors be given full weight in the evaluation. In unscrupulous hands, this concession is soon taken to permit abortion on socio-economic grounds, camouflaged as abortion on psychiatric grounds. At this point, abortion-on-demand flourishes under the guise of psychiatrically indicated abortion.

Despite the intense propaganda of the abortion law reformers, every poll of the general public or of the medical profession has come out strongly against abortion-on-demand or abortion of convenience. It is as unpopular in the market place as is the suggestion that society outlaw abortion absolutely. The very real danger, however, is that our society will have abortion on demand foisted upon it under another guise.

This sequence of events has occurred in every country in which abortion law "reforms" have been effected. Even as early as the close of the first year of the English experience, it is obvious that the legal indications have been interpreted well beyond the limits intended by the legislators. Dr. T. L. T. Lewis, consultant obstetrician and gynaecologist, Guy's Hospital and Chelsea Hospital for Women, London, has written: "We did not approve of the clause permitting terminating of pregnancy for the sake of the existing children of her family, but, all in all, we did not expect a very great change in practice from that obtaining before the Act. We thought that there would be a slightly more liberal attitude to the problem, for that, after all, was the purpose of the new law. How wrong we were. I am afraid that we did not allow for the attitude of, firstly, the general public, and secondly, the general practitioners". (T. L. T. Lewis, B.M.J., Jan. 25, 1969, p. 242.)

Dr. Lewis then quotes figures which indicate that there were 22,256 abortions in the first eight months (about 1 to every 28 live births, a figure almost identical with the Swedish abortion rate). Of these, 55% were performed on single girls, widows, divorcees or women separated from their husbands, as against 45% on married women: "Since far more married women than single women became pregnant, it is difficult to understand how medical indications can be so much more frequent in women without husbands." It is relevant that of the 22,256 abortions, 15,961 were done in the interest of the women's physical or mental health.

The lesson is clear. If any law is introduced to clarify the doctors' right to perform an abortion on psychiatric grounds, any attempt to incorporate an explicit "social clause" must be vigorously opposed. It is a well accepted dictum of modern medicine that a doctor must consider the whole patient. This includes an evaluation of his social and economic environment. There is, therefore, no need to make this feature of a doctor's evaluation explicit. It can be confidently predicted that, if explicit reference is made to social and economic factors, this will be used as a cloak for what is virtually abortion-on-demand. The "social clause" is the method used by the advocates of abortion-on-demand to obtain in a concealed fashion a state of affairs which would be rejected strongly by society if presented in an open form.

#### TO REDUCE THE INCIDENCE OF ILLEGAL ABORTION

The commonest argument advocated in favour of legalised abortion is that it will reduce the number of illegally performed abortions, with a consequent reduction in maternal deaths and ill-health as a result of poorly performed abortions.

##### (a) The incidence of illegal abortions

All writers on this subject agree that, in any country, in any year the number of illegal abortions is largely a matter of guesswork. For Australia, figures ranging from 50,000 to 100,000 are suggested. 70,000 is a common figure quoted. (J. Bennett: "Abortion Law Reform", p. 4.)

There are serious reasons for doubting the accuracy of this figure: 70,000 abortions and 220,000 live births would suggest that 1 in every 4 conceptions end in an illegal abortion. Similar calculations would give figures of 1 in 5.8 (Sweden): 1 in 4.6 (Denmark); 1 in 3.7 (Yugo-Slavia); 1

in 2.1 (Japan). This would suggest that there are already more abortions in Australia than in Scandinavia (with a legal abortion rate of 6-7.5 per 100 live births) and even Yugo-Slavia (with reported abortions available at 37 per 100 live births). (Proceedings of the 5th World Congress of Obstetrics and Gynaecology, Sydney (Butterworth), pp. 803, 804, 806, 807.)

(b) Legalised abortion does not reduce the number of illegal abortions.

Experience in every country in which abortion has been legalised indicates that such legalisation does not reduce the incidence of illegal abortions.

In Sweden, following the legalisation of abortion in 1938, the number of legal abortions rose from 439 (with 107,380 live births) in 1939 to 3528 (with 112,800 live births) in 1963. It was estimated however, that in 1963 there were still at least 20,000 illegal abortions. (Proceedings of the 5th World Congress of Obstetrics and Gynaecology, Sydney (Butterworth), pp. 803, 804.) A Swedish delegate to the Planned Parenthood Conference in Tokyo in 1955 said that the number of criminal abortions had registered "a steady increase since the law came into force". In 1967, Professor Ingelman-Sundberg (Stockholm) reported that 25 years of legalised abortion in Sweden had not made the slightest difference in the criminal abortion rate. He used official Hungarian and Czechoslovakian figures to demonstrate a similar experience in these countries where abortion is available on demand. (Ingelman-Sundberg and Hultdt, Report of the Royal College of Obstetricians and Gynaecologists ( U.K. ), p. 784.)

In Denmark abortion was legalised in 1939. Each year there are about 80,000 live births and 4,000 legal abortions. The number of illegal abortions is estimated at 12,000-15,000. (Proceedings of the 5th World congress of Obstetrics and Gynaecology, p.804) Dr. Greenhill, one of America's leading Gynaecologists and editor of the Year Book of Obstetrics and Gynaecology visited Scandinavia in 1953 and concluded: "It is ominous and discouraging that in Sweden the frequency of abortion has risen instead of falling, and that in Denmark experiences have been disillusioning in this respect". (Year Book of Obstetrics and Gynaecology 1958-1954 series, p. 88, )

In the United Kingdom, Professor Keith Simpson, the Home Office pathologist is reported as saying that "the death rate from abortion has not been influenced by the new laws. It has been running at about 20 per year for some years. In the last eight months of 1968, 16 women had died from abortions - two of them from legal abortions". (Reported in London Daily Express.) The Secretary of State for Social Services told Parliament on the 19th May, 1969, that in the three-quarters of the statistical year during which abortion had been legalised, there were 34 deaths from abortion. Of these 8 were spontaneous, 7 were not specified as to the cause, 3 occurred in legally induced abortions and 16 in illegally induced abortions. There were, therefore, at least 19 deaths in the 9 months covered by the statistics. (B.M.J. 24/5/1969, p. 522.)

Even where abortion is available on demand, illegal abortion appears to continue: J. Lukas from Czechoslovakia states: "It is very gratifying that none of the women who underwent legal abortion in hospital died. However, even this law did not succeed in completely eliminating criminal abortions for which women paid with their lives." Examination of his statistics shows that the death rate from abortion was between 32-44 per year before legal abortion was made freely available. There are still 13-17 deaths from illegal abortion each year. (Lukas. "Sex and Human Relationships". Proceedings of the 4th conference of the Region for Europe, Near East and Africa - Excerpta Medica Foundation, p. 98.)

In Hungary where abortion is available on demand, Szabady and Miltenyi report a maternal mortality of 4.8 per 10,000 live births with abortion in all its varieties causing 1.9 deaths per 10,000 live births of which 0.5 per 10,000 live births were due to legal abortion and 1.4 per 10,000 were due to illegal abortion. (Szabady and Miltenyi, supra 44, p. 87.) Queensland figures for 1961-1965 show a maternal mortality of 4.5 per 10,000 live births, abortion being responsible for 0.56 per 10,000 of which illegal abortion caused 0.45 deaths per 10,000 live births. (Report of the Qld. Committee for the Study of Maternal Deaths (1961-1965), p.38.) These figures would suggest that Queensland, at least, would have nothing to gain by legalising abortion even to the point of abortion on demand.

Even in Japan where the approach to abortion has probably been as liberal as anywhere in the world, there were estimated to be 1,000,000 unreported abortions per year despite a legal abortion incidence of 1,000,000 per year. (R. Shaw: "Abortion on Trial", p. 127.)

Most authorities are agreed as to why legalised abortion does not decrease the illegal abortion rate. The Swedish delegate to the Planned Parenthood Conference in Tokyo stated: "this increase is due to the fact that the possibility of terminating pregnancy has become a topic of conversation with the result that the idea of abortion is generally accepted among our people". (Supra 37, pp. 803, 804.)

Gebhardt and his associates summarise world experience and conclude that legalised abortion does not, in fact, affect the illegal abortion pool at all, but creates a "new clientele" among a group of women who are "quite separate from those who would resort to illegal abortion". (Gebhardt et al.: "Pregnancy, Birth and Abortion" p. 224.) The idea of abortion has been described as "catching on from one woman to another". Professor Ingelman-Sundberg (Stockholm) sums up the Swedish experience: "The legislation of abortion alters the climate of opinion among the public and even the Courts of Law. The result is that abortion becomes less abhorrent. The public becomes abortion minded". (H. P. Dunn: What's Wrong with Abortion? (A.C.T.S. 1623), p. 21.)

#### (c) Some consequences of legalisation of abortion

(i) An increase in the total number of abortions both legal and illegal consequent upon the creation in society of an abortion mentality.

(ii) Increased numbers of abortions universally result in an increased impairment of both physical and mental health. Dr. Andras Klinger (Hungary) states: "induced abortion is one of the chief means of birth control. Its deleterious effect in health is sufficient reason to change the present day situation". (Andras Klinger, Ch. 39, "Abortion Programs. Family Planning and Population Programs", University of Chicago Press, 1965.) In Japan, the Ministry of Health has referred to abortion as an "evil practice" which is "eroding the physical and moral health of our nation". (Kabayashi: Proceedings of the 5th World Congress of Obstetrics and Gynaecology, Sydney (Butterworth), pp. 748, 749.) The ethical code of the health workers of Yugoslavia states: "A health worker should regard abortion as biologically, medically, psychologically and sociologically harmful". (J. Lulnas: "Sex and Human Relationships". Proceedings of the 4th Conference of the Region for Europe, Near East and Africa - Excerpta Medica Foundation, p. 9.)

(iii) Where abortion is legalised, the birth rate falls. Dr. Greenhill refers to the seriousness of the problem in the Scandinavian countries: "This is a serious problem in Sweden, just as it is in Denmark, particularly because the birth rate in Sweden, just as it is in Denmark, has been falling steadily since 1945. In that year there were 135,000 live births. In 1951 there were 110,000 ". (Year Book of Obstetrics and Gynaecology, 1953-1954 Series, p. 33.) In 1965, the number was only

85,600. The birth rate tends to be lowest where abortions are performed most frequently. Hungary, for example, with 140 abortions to each 100 live births has a birth rate of only 13. (Proceedings of the 5th World Congress of Obstetrics and Gynaecology, Sydney, Butterworth, p. 807.) In most of the countries where abortion has been legalised, there has been a noticeable swing towards discouraging abortion and encouraging women to carry their babies to term. There is a lesson here for Australia which in 1965-66 outlaid \$35,595,000 in bringing migrants to Australia. About 89,743 migrants entered Australia in 1966, in 1965 about 67,426. (Australian Year Book 1967, pp. 194, 785.) If the figure of 70,000 illegal abortions is correct, it would appear that the illegal abortionist is completely negating Australia's migration policy. It would seem a most short sighted policy to aggravate the position further by stimulating the desire for abortion by liberalised abortion laws.

## THE DEFORMED CHILD

Recent developments in medicine have disclosed certain factors which may cause physical or mental abnormality in the developing foetus and, in other cases, have made it possible to predict that such abnormalities actually do exist in a particular foetus. Infection with Rubella (German Measles) virus or the taking of certain drugs (such as thalidomide) in early pregnancy carry a definite risk of fetal abnormality. Certain chromosomal disorders (such as Mongolism) and certain inherited conditions are being predicted with increasing accuracy by a study of the amniotic fluid (which surrounds the foetus in the uterus).

These developments have led to a demand that abortion be permitted in these circumstances. The supporters of this view point offer various justifications for such intervention:

- (a) If there is a significant possibility of the child being born defective, the mother is exposed to the stress of waiting throughout pregnancy for a definite answer and then has the burdensome task of caring for the defective child throughout its lifetime.
- (b) If the child is going to be deformed, our sense of compassion urges us to terminate its life before it has developed any conscious experience of existence. It is argued that mere existence is nothing if the person is condemned to a life of suffering and is incapable of expressing his proper human potential.
- (c) Each defective human person, because of his inability to fend for himself and to contribute to the well-being of society limits the fulfilment of society and makes demands in finance and effort and time which would be better utilised in more positive activities.

Rubella infection (Cooper and Krugman "The Rubella Problem". Disease-A-Month, Feb, 1969.)

At the present time, the commonest situation in which abortion is demanded is when the pregnant woman has suffered an attack of Rubella in early pregnancy. Our present knowledge justifies the following statements:

- (a) Antibodies to the rubella virus can now be accurately identified by laboratory testing. Since there are many virus infections which can mimic rubella exactly, but which do not produce fetal deformity, laboratory confirmation of the diagnosis must be considered indispensable if valid conclusions are to be drawn.
- (b) At least 80% of the women in the community already possess antibodies to rubella virus and are therefore not susceptible to infection.

(c) The attack rate in the 1964 epidemic (a particularly severe outbreak) was 4 women in every 100 pregnant women. It is suggested that this is 10 to 100 times the incidence in non-epidemic times.

(d) When laboratory tests confirm that a woman did suffer from rubella in the first two months of pregnancy, there is a 60-90% likelihood of the foetus also being infected.

(e) The effects on the foetus are varied and unpredictable. Even when blood tests confirm infection in early pregnancy, a certain number of normal children will still be born. Moreover, not only can a doctor not predict whether a given baby will be involved, he is unable to predict what type of deformity will occur. Certain defects are correctable surgically. Other children, even though handicapped by their defect, are capable, with proper education, of living a satisfying life.

(f) Vaccines against rubella are now under trial, and present indications are that the rubella problem is on the verge of total solution.

#### Defective - but not unhappy

It is a popular, but incorrect, assumption that physical or mental defect implies unhappiness. Everyone with any significant experience of life know people who radiate happiness despite the most crippling handicaps. Every doctor knows of children who suffered from rubella infection during intra-uterine life, yet live contented, useful lives.

Recently a bill to legalise abortion was rejected in the New York Assembly, largely because of a dramatic speech by Martin Ginsberg, who has been severely crippled from an early age by poliomyelitis and walks with great difficulty with use of crutches and leg braces. He pointed out that such people as Toulouse Lautrec, Alec Templeton, Charles Steinmetz, Lord Byron and Helen Keller had all suffered from physical handicaps. During the debate over the "Abortion Bill" in the United Kingdom, the following letter was published in the "Daily Telegraph". It was written by three residents of an institution for the crippled:

"Sir, we were disabled from causes other than Thalidomide, the first of us having two useless arms and hands, the second two useless legs and the third, the use of neither arms or legs. We are fortunate only, it may seem, in having been allowed to live and we want to say with strong conviction, how thankful we are that no one took it upon themselves to destroy us as useless cripples. Here in the Thomas Delarve School for Spastics, we with have found worthwhile and happy lives and we face our future with confidence. Despite our disabilities, life still has much to offer and we are more than anxious - if only metaphorically - to reach out towards the future".

(Quoted in R. Shaw: "Abortion on Trial", p. 20.)

#### Defective - but not legally dispossessed

Performing an abortion out of compassion for the mother of a baby which is known to be, or else carries a high risk of being, deformed implies that we should, in our legal system, accept a scale of values in which the well-being of one person is considered more important than the life of another person. I would challenge anyone to bring forward one case in Anglo-American law where such a principle has been accepted as valid.

It is commonly implied, and sometimes stated explicitly, that if the foetus could have a choice, it would prefer an early abortion to a life of suffering. Legally this is irrelevant, for it is a basic principle of Anglo-American law that the consent of the victim is no defence against a charge of harm. Moreover, this aspect has been considered explicitly by the courts in certain cases in which

actions have been brought because a doctor refused to perform an abortion, when the woman had suffered from rubella in the early stages of pregnancy. The comments of the majority group of judges in one such American case are instructive:

"It is basic to the human condition to seek life and to hold on to it, however heavily burdened. If (this child) could have been asked as to whether his life should be snuffed out before his full term of gestation could run its course, our felt intuition of human nature tells us he would almost surely choose life with defects as against no life at all... The right to life is inalienable in our society.... Examples of famous persons who have had great achievements despite physical defects come readily to mind, and many of us can think of examples close to home. A child need not be perfect to have a worthwhile life". (Gleitman v. Cosgrove and Dolan. 49 N.J. 22, 227A, 2d 689 (1967), p.690.) (Emphasis added).

There is absolutely no justification in our legal tradition for any presumption that a foetus might think that there is no "vita" unless it is "la dolce vita".

Defective - but not useless

The famous authoress, Pearl Buck, has had personal knowledge of rearing a defective child suffering from phenylketonuria. Her witness on this matter is impressive:

"Could it have been possible for me to have had foreknowledge of her thwarted life, would I have wanted an abortion? Now, with full knowledge of anguish and despair, the answer is: NO, I would not. Even in full knowledge, I would have chosen life and this for two reasons: first, I fear the power of choice over life and death at human hands. I see no human being whom I could ever trust with such power- not myself nor any other. Human wisdom, human integrity are not great enough. Since the foetus is a creature already alive and in the process of development, to kill it is to choose death over life. At what point shall we allow this choice? For me the answer is at no point once life has begun. At no point, I repeat, either as life begins or as life ends; for we who are human beings cannot, for our own safety, be allowed to choose death, life being all we know. Beyond life lie only faith and surmise, but not knowledge. Where there is no knowledge except for life, decision for death is not safe to the human race... it can be summed up, perhaps, by saying that in this world where cruelty prevails in so many aspects of our life, I would not add this weight of choice to kill rather than to let live. A retarded child, a handicapped person brings its own gift to life, even to the life of normal human beings. That gift is comprehended in the lessons of patience, understanding and mercy, lessons which we all need to receive and to practice with one another whatever we are.

"For this gift bestowed upon me by a helpless child, I give my thanks". (Foreword to "The Terrible Choice: The Abortion Dilemma".)

Defective - a confrontation with Utopia

Man has always longed for a perfect society and for a life free from physical or mental inferiority, sickness, financial deprivation, class strife and war. In our times we have seen the emergence of the social engineers whose ambition is to create as perfect a society as possible by the application of scientific principles. A common element in most of their blueprints for the happy society is the early recognition and elimination of those who are so physically or mentally defective that they impose a heavy burden on their family and society. To such social manipulators, the defective human being is an ever present challenge, a sign of contradiction.

What degree of defect will be sufficient to warrant termination? Must the defect be actual, or is it enough that there be a strong possibility of defect? Is the blindness or deafness or correctable congenital heart disease enough? Or the absence of arms in a thalidomide baby? Or Mongolism or some other chromosomal defect?

If the principle is accepted, why should our eugenic efforts cease at the moment of birth? What is there to stop the social engineers hygienically disposing of such babies as slip through their pre-natal net and are found to be defective after birth? When the possibility of the birth of a defective child is only a matter of probability, why should we not wait until the babies are born, preserve the healthy ones and perform a post-natal abortion" on the others?

If such suggestions of infanticide create emotions of repugnance, recall that a Western court in Liege (Belgium) has already acquitted a mother and certain others, who killed a baby born with no arms as a result of the mother's taking thalidomide in early pregnancy. Not only was infanticide given a cloak of legality, but people danced in the streets to celebrate the acquittal of the defendants.

Recently, Dr. Francis Crick, a Nobel prizewinner and co-discoverer of the chemical of heredity, D.N.A., was reported as suggesting "under a new ethical system based on modern science", the possibility of considering a child legally alive from 48 hours after birth and for compulsory death at 80 years. (Daily Express Medical Reporter, 31/10/68.) We are naive if we feel that our society could not regress to an acceptance of infanticide as a suitable instrument for eugenic engineering.

#### THE "UNWANTED" CHILD

It is argued that if a child is born into the world to parents who do not desire him, his future emotional development will be seriously impeded with delinquency, a not uncommon result. In these arguments, the term "unwanted" is used almost as if it were a physical attribute of the child - "female, 6lb. 4ozs., blond, blue-eyed and unwanted." It is important to recognize that it is parents who "unwant" their child. Many successful and happy adults were initially conceived accidentally and engendered feelings of emotional antagonism in their parents. Many situations in life create a conflict between our emotional likes and dislikes and the obligations we have to accept our responsibilities. It is a mark of personal maturity that, in such conflicts, the objective demands of the situation win our response despite strong feelings of antagonism or even repugnance. In most cases, parents accept their responsibilities towards the "unwanted" child and work as well as they can towards its further development.

#### A woman's right

It is argued that it is every woman's right to determine for herself whether she will bring into existence at any given moment a particular child. There is an important truth contained in this statement. Bringing a child into the world, nurturing it and educating it, is a task of such magnitude that any woman who undertakes it should do so ideally by free choice. The end aimed at is therefore one which would receive unequivocal acceptance by all. But it is an end which the woman has the means to achieve by her conscious control over her own person and her voluntary surrender of herself in the act of sexual intercourse. The condemnation by the law of the act of rape is a protection of this right. However, it is well to recognise that no right is so absolute that we can justify any means to achieve it. For example, I have a right to life. But this right does not justify my taking the life of another person who has in no way harmed me but who represents a threat to my continued existence by the mere fact of his existence. By control over her own entry into sexual union and over the process of conception, a woman's right to full consent in the procreation of a

child can be adequately achieved without recourse to abortion. Is there any precedent in Anglo-American law which could justify the taking of an innocent human life to preserve another person's lesser right? It is the responsibility of the proponents of this argument to establish clearly and explicitly the foundation upon which they base the right of a woman to take an innocent life.

#### A private matter

It is often argued that the decision to have an abortion or not is a private matter to be decided by the woman alone. This assertion ignores completely that the law has always claimed competence to interfere wherever human life is threatened, whether this be in private or public. It makes little difference whether a murder is committed in the lounge room or on the public highway. Both matters come within the competence of the law. In fact the law is exquisitely sensitive in all matters pertaining to life and death. Since abortion involves the termination of human life, the law does not see fit to permit decisions in this area to be made by private individuals. Lawyers in many countries are extremely critical of the revised abortion codes which permit decision in a matter of life or death to be made by two doctors. It is argued that this in no way constitutes due process of law. When the two "judges" have a monetary interest in the proceedings then the incongruity seems even more marked.

#### Humanitarian indications

When pregnancy arises as a result of rape or incest, or when the girl is below a certain age or is mentally defective, we feel strong compassion for the innocent victim and desire to reduce her emotional distress to a minimum. It is widely urged that abortion should be legalised in these circumstances.

Such cases form a minute proportion of those desiring abortion. Moreover, they bristle with all types of legal difficulties. Rape is acknowledged as a crime easy to claim but extremely difficult to prove. No doctor desires to be put in the invidious position of making a quick decision in a case which may take months to arrive at a proper legal verdict. There can never be any absolute guarantee that the subsequent pregnancy was related to the act of rape, rather than to a preceding, or subsequent, act of voluntary intercourse. There is great danger that the doctor's decision may prejudice the defendant's position in a subsequent court case. Finally there is a strong possibility of the accusation of rape being raised to justify an abortion when, in fact, intercourse had been voluntarily performed. It is pertinent that, despite the liberal conditions of the U.K. Abortion Act, no provision was made for abortions of this type.

#### CONCLUSION

In the final scene of the film: "Judgement at Nuremberg" the German Judge Janning, referring to the millions of men, women and children who were executed in the Nazi gas chambers, pleads for understanding from the American Judge Haywood:

"I did not know it would come to that. You must believe it. You must believe it."

Haywood responds, almost as if reiterating a commonplace but forgotten lesson to a small child:

"Herr Janning, it came to that the first time you sentenced to death a man you knew to be innocent". (Mann, Abby, "Judgement at Nuremberg" New York: The New American Library (Signet), p. 136.)

For over a thousand years, the common law has been evolving the most refined, sensitive and humane moral construct of the value of an individual human life ever developed by a judicial

process. Within this tradition, the right to life of the innocent person is accorded absolute value. Respect for this value is the indispensable guarantee of the security of the individual person. On the foundation of this secure existence a man may unfold his life by the free and personal realisation of the possibilities open to him by virtue of his human nature.

"The first time you sentence to death a man you know to be innocent", the absolute value of each human life is denied. The life of any person then assumes relative importance and must compete for a position on a scale of values which include an almost infinite variety of highly desirable individual and social values. The position that any individual life will be accorded on this scale of values becomes a matter of opinion and, since in matters of opinion, majority rule tends to prevail, the life of the individual is arbitrarily subordinated to any or all of the values which appeal to that segment of society which possesses the greatest numerical, economic, political or even military power.

Judge Haywood implied that the boundary between the absolute and the relative is breached by even one exception. Inhumanity is not a matter of numbers but of a disordered set of values. The very first exception destroys the only principle which is capable of protecting the life of any man. With this exception, society chooses to reject human life as an end in itself and opts for a utilitarian evaluation in which human life is an expendable means to many arbitrarily determined individual or social goals. Man is no longer free, for he is no longer in control of his own destiny, but has become a pawn in a game in which the majority call the moves. Finally, if the principle is invalid for one man, it has no guaranteed validity for any number of men. The principle which sent millions of innocent Jews to death in the gas chambers was established when society, in the person of its legal representative, condoned the taking of an innocent human life.

Human life begins at conception. Society now finds itself in the identical position in which Judge Janning once stood, confronted by an innocent human being and asked to defend it against those Utopian social engineers who consider it expendable if its presence would inconvenience an existing individual or society as a whole. No civilisation can guarantee its continued existence unless each generation renews its commitments to the fundamental values on which it was built.

The right to life of each innocent person is a central pillar on which the edifice of western civilisation is erected. If we choose to tear this pillar down, that edifice may well crumble and eventually collapse. Our response to the claim of the foetus to life is indeed a matter of life and death, not merely of the individual foetus but even of western civilisation itself. Judge Haywood's words may well be the epitaph of a dead civilisation:

"It came to that the first time they condemned to death a man they knew to be innocent."

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