

The recent much-publicized case of an Arizona mother who, having taken the drug thalidomide and fearing the results on her unborn child and having been refused a legal abortion in a Phoenix hospital, flew to Stockholm, Sweden where the operation was legally performed has somewhat dramatically drawn attention to one of the oldest and knottiest of human problems. This is to the good insofar as it has made for open discussion of a subject all too often hidden and shunned. It has forced a re-evaluation of opinion, caused some religious bodies to modify their position in a more liberal direction, and added weight to the long expressed <sup>on the part of</sup> wish ~~from~~ many in the legal and medical professions that something be done to up-date our laws relative to abortion. A bill providing for some liberalization is now before the California State legislature, and there is report of some like bill being sub-  
mitted <sup>in the near future</sup> to the Minnesota State legislature.

A few countries have gone a considerable way in making legal abortion possible. Most open in the matter is post-war Japan, where, incidentally the Arizona mother was first headed before deciding on Sweden. There a woman merely needs to state that she wants an abortion and she can get it from any one of thousands of physicians who are specially licensed to perform the operation for a very modest fee. There is no requirement of outside consultation or of judgement being made of her request, and abortion is allowed up to the eighth month of pregnancy. The result is that Japan not only has

the highest legal abortion rate in the world, but abortion coupled with increased contraception has brought about a remarkable decline in the birth rate, such as no other country shows. Official authorization in modern Japan of such wide-open legal abortion stems almost solely from a concern about population pressure. Such concern has been the oldest and the most widespread of all justifications for abortion. Even Plato and Aristotle approved abortion for this purpose, and abortion today is not unrelated to the number of mouths to be fed in a family and to governmental population policy.

The first country, since antiquity, to authorize abortion was the Soviet Union. This was done in 1920, soon after the revolution and it was a surprising development insofar as Marxists had always branded abortion as a product of unhealthy economic systems. The women, however, insisted on being allowed to interrupt unwanted pregnancies and abortion was authorized, on condition that it be performed by a doctor in a public hospital. Some looked upon this as a great landmark in sexual history, a recognition of a woman's right to her own body, but the official explanation given was solely in terms of public-health. Illegal abortion did much injury and resulted in many deaths. Therefore it was better to make abortion legal, under competent medical care, and thus make for greater general health. In 1936 the legalization of abortion was revoked, except where continued pregnancy constituted

a serious threat to the life or health of the mother, or where serious transmissible disease was present in either parent. The argument again was in terms of public health, that abortions were harmful, but the real motivation behind the switch in governmental policy appears to have been an attempt to boost the low birth rate and to enlarge the population. And this occurred. Following upon the death of Stalin, however, there was a return to the former policy. Today in the Soviet Union, women have a general legal right to interrupt pregnancy, but unlike the situation in Japan where the operation may be and many times is performed in the home or the doctor's office, in the Soviet Union it must be done in a public clinic properly equipped for the purpose and extending after-care.

As added background contrast to the situation in the United States, a word or two should be said about the policies and practices in the Scandinavian countries. They are very much alike in this regard, Norway, Denmark, Sweden, and also Finland which may or may not be classified as a Scandinavian country, but let us take Sweden for specific mention. There the basic law goes back to 1938, motivated not by a concern about population pressure or the lack of such pressure, but rather out of concern about the increasing rate of illegal abortions and the vast amount of physical damage, including death, and mental anguish that resulted from them. The legalization of abortions, with qualified medical care, would be much more preferable to the anguish

and misery, damage and death, so closely related to self-induced and outside-  
~~criminally~~  
induced abortion. Still the Swedish government, like the other Scandinavian  
governments, was not willing to give a "go" sign to any and every woman who  
merely requested it. Certain conditions ~~had to be met and certain proce-~~  
~~dures had~~  
~~to be followed.~~ The conditions for abortion were first those of  
disease, bodily ~~affix~~ defect, or weakness whereby the woman through child-  
birth would be gravely endangered; <sup>and</sup> second those criminally imposed, such as  
through rape or incest; and third those of eugenic indication, where probably  
the mother or father of the expected child would transmit to the offspring  
some hereditary mental disease or deficiency, or serious illness or defect.  
And in 1946 there was added indication of a sociomedical nature, according  
to which interruption of pregnancy should be granted when under the condi-  
tions of life of the woman, and other circumstances, it could be assumed  
that her physical or mental strength would be seriously reduced by the birth  
and care of the child. This new indication is generally called interruption  
for "anticipated weakness". These four categories allow considerable lati-  
tude, but they do serve to establish boundaries between the permitted and  
the prohibited. Abortion on the ground, say, that childbirth would detract  
from the mother's appearance would be prohibited.

Application for legal abortion must be made by the woman herself, <sup>or, if</sup> ~~or~~ she  
lacks legal capacity, by some guardian. The application goes before a spe-

cial committee of the Royal Medical Board, made up of one physician, usually an obstetrician, and one layman, preferably a woman, both appointed by the Government, and the Chief of the Bureau for Social Psychiatry of the Medical Board. If eugenic indications are involved then a specialist in genetics must be added to the committee. This committee does not see the applicant in person, making its decision solely from gathered information. If the decision is favorable the operation must be performed in a hospital by an authorized surgeon, and interruption of pregnancy must be carried out before the end of the twentieth week of gestation, although exceptional circumstances may permit up to through the twentyfourth week. In some circumstances, such as pregnancy resulting from rape, two physicians, one of these being a properly appointed Medical Officer, and the other the surgeon who will perform the operation, may decide the matter, but they must supply a special certificate and report on the operation to the medical Board.

Here in the United States the state laws on abortion are lamentably far from uniform, but they all add up to the prevailing rule that abortion is illegal unless necessary to preserve the life of the mother. Most states have statutes that would punish even the attempt to procure abortion or ~~miscarriage~~, whether or not an abortion is, in fact, effected. 27 states require that the woman be pregnant, but 16 states and the District of Columbia do not even require actual pregnancy. Just the intent to procure an

abortion makes one liable to penalty. True, there are very few prosecutions under such laws, intent being invariably hidden or else not allowed as self-incriminating evidence, but nevertheless the laws remain, reflecting a basic opposition to abortion. Other laws provide penalties of one and another for anyone who actually produces an abortion, but again very few illegal abortionists, of whom there are many, are prosecuted because illegal abortion is a highly secret affair and even those aborted with damaging results are reluctant, out of fear and shame, to offer evidence. The laws do allow for therapeutic abortions, abortions necessary to preserve the life of the mother, but with exceptions of unmistakable clarity having to do with illness and malignancy, the situation remains ambiguous and causes most physicians to be wary about performing even therapeutic abortions. Thus, at a conference on Abortion in the United States held in New York City in 1955 it was pointed out that if a mother contracts rubella (German measles) and even though medical opinion agrees there may be a 20 per cent chance that the child will be born with a congenital abnormality of some sort, still abortion in this situation might be held to be illegal because the mother's life as such was not necessarily in danger. It was likewise pointed out that the United States is almost the sole major country where neither rape nor incest, even on a very young girl, nor any other humanitarian or socio-economic reason is ground for abortion. Because of the abortion laws, which have not undergone any appreciable changes since they were first written,

the Arizona mother was turned down for an abortion in her own state, and even without the publicity given to her case, would undoubtedly have been turned down in every other state. The operation could have been done just as capably in a Phoenix hospital as in a Stockholm hospital, but the administrative-medical staff of the Phoenix hospital ~~where~~ application was first made, didn't dare take a chance with the law or with public opinion.

All this does not keep abortions from being done. It is estimated that up to a million abortions are being done each year in the United States. What does result from the present laws is ~~for~~ <sup>that qualified</sup> doctors ~~to~~ do the smallest possible number of therapeutic abortions and the vast majority of abortions falls into the hands of illegal operators, many of whom are incapable, working under far from health-saving conditions. The anxieties, subterfuges, miseries, financial gougings, and unnecessary deaths resulting from this kind of illegal traffic exceed comprehension and even imagining.

<sup>1/16/55</sup> Out of this general situation, long existent, far more than out of the publicised special case of the Arizona mother, there has come a growing pressure for the liberalizing of our abortion laws. Thus, at the 1955 conference on ~~Abertion~~ <sup>Abortion</sup> in the United States, Dr. Theodore Lidz, Professor of Psychiatry at Yale School of Medicine, said in the final discussion:

"I think we should specifically comment that the indications for therapeutic abortion currently resorted to are increasingly psychi-

atric, and that, under the current laws, the psychiatrists have  
in most cases virtually no valid grounds for recommending abor-  
tions. Also, not only that the law cannot be properly enforced,  
but that it foments crime~~xx~~ by bringing the underworld...into  
what should be a medical problem, and that it also fosters un-  
ethical practices by physicians in circumventing the law. For  
these reasons, we believe the abortion laws should be changed."

One way to liberalize the abortion laws, and the way ~~being~~ most naturally  
<sup>being</sup> followed, is to advocate an added number of medical, eugenic, psychiatric,  
and social considerations as "therapeutic indications" for abortion. This  
would provide the opportunity for many more individuals to have legal abor-  
tions if they so desired, and would save them from having recourse to the  
dangers of the illegal abortion racket. There is unavoidable necessity of  
going this way since these added considerations constitute the framework  
of what is wanted and required. Still, as Dr. Thomas Szasz of the State  
Medical Center of the State University of New York in Syracuse, New York  
points out in latest issue of the Antioch Review, this approach is not with-  
out inadequacies. For one thing, however needed and welcome <sup>such added considerations</sup> it would be, ~~it~~  
<sup>the remedy</sup> still places a premium on being sick or disabled. "If a woman is healthy and  
pregnant, she must bear her child whether she likes to do so or not. Only  
if she can get herself defined as sick, incapable, or threatened with dama-  
ging consequences may she avail herself of a legal abortion. But is this

denial ) to  
fair. Is it not a ~~permissibility~~ the healthy and the well of what is proposed  
for the sick and the weak? Is it right and just that only the ill may find  
legal escape from the physiological and other consequences of pregnancy?

Again the current efforts to liberalize abortion, according to Dr. Szasz,  
would increase rather than diminish the covert ethical conflict between med-  
ical and self-willed abortion. For, "implicit in all such reforms is the  
thesis that it is all right for medical and psychiatric experts to decide  
whether or not a woman should bear a child she does not want, but it is not  
all  
right for her to do so. In other words, abortion justified on medical and  
psychiatric grounds, as opposed to self-willed abortion, makes medical and  
psychiatric experts, rather than adult, self-reliant citizens, responsible  
for determining whether (the physiological chain-reaction initiated with the  
sexual act and culminating in <sup>pregnancy</sup> delivery) should be interrupted or not."

Dr. Szasz, who himself is associated with the teaching and practice of psy-  
choanalysis, dislikes and disapproves of our current abortion laws. He par-  
ticularly dislikes the subterfuge of "helping " patients by "pleading in-  
safety " for them. But the line of his thought is that just to liberalize  
the abortion laws by providing a broader spectrum of medical and psychiatric  
justifications for <sup>the procedure</sup> it can likewise be discriminatory. And he presses for  
consideration of the right of any woman not only to ask for abortion but  
to have it if that <sup>legal</sup> be her settled wish.

Most Protestants and Jews have come to accept therapeutic abortion, and up

10

to varying points they would undoubtedly support a liberalizing of the abortion laws. That a great many would go as far as Dr. Szasz in recognition of the right of a woman to her own body is, ~~is~~ doubtful, and one Lutheran body ~~group~~ has just recently stated that it could not endorse abortion in the situation of a deformed child being feared. ~~and the Roman Catholic Church, however,~~ It is from the Roman Catholic Church, however, that the strongest and most consistent opposition to abortion stems and the crucial starting point has to do with the question when does a fertilized ovum become a human being? The point is important not only for Catholic doctrine, but also in the thought and feelings of many others, for the thought of killing a human being through abortion takes on quite a different connotation than the removal of a not yet become-human growth. ~~It is~~ was a matter of ancient speculation, with many believing that the fetus did not begin to live until some time after conception had taken place. As to the exact time, they were not agreed, any more perhaps than we are agreed. Aristotle put it at about 40 days after conception for the male fetus, and about 90 days for the female. Hippocrates put the two periods at 30 and 42 days respectively. The Stoics thought that the fetus did not become animate till it breathed at birth. The Catholic canonists were uncertain about the matter, St. Augustine saying that no human power could say when the time was, St. Thomas Aquinas echoing Aristotle's fortieth day for the male and ~~ninety~~ ~~thirtieth~~ day for the female. Aquinas also made the point that life is shown principally by two actions, knowledge and movement, and the latter indication of manhood

11

was taken over into English ~~xxxxxx~~ law, whereby down until 1803 the legal prohibition of induced abortion was confined to the period after the fetus had quickened in the mother's womb. Bracton said that the ~~quick~~ killing of the fetus after quickening was murder; Coke, however held it to be a misdemeanour. Abortion before quickening was no crime. After 1803 abortion before quickening did become a crime, but not punishable so severely as abortion after quickening.

The Roman Catholic moralists, however, since the time of Pope Innocent XI, who in the seventeenth century condemned any distinction between an unformed and a formed embryo, have asserted the view that there is a human life or as they are more likely to phrase it a human soul at stake from the first second of impregnation. And therefrom they hold to the position that abortion performed at any point in a pregnancy is murder, and therefore abortion of any kind, including therapeutic abortion, must be opposed. This is a basic position of the Roman Catholic Church, and there is <sup>no</sup> likelihood <sup>whatsoever</sup>, that it will give <sup>any</sup> support to a liberalizing of the abortion laws. <sup>Quite the contrary.</sup> It will oppose and oppose as strenuously as possible, which is its democratic right, any legalization of abortion.

Even so, the Roman Catholic Church is not wholly without an ethical problem on the matter of abortion. Glanville Williams, dealing with the subject in his excellent volume "The Sanctity of Life and The Criminal Law" refers

to a reaffirmation of the prohibition of therapeutic abortion that appeared in an encyclical of October 29, 1951. This again made it clear that abortion, even to save the life of the mother, was not morally permissible. The reaffirmation occasioned many adverse comments in the non-Catholic press, and, on November 28, the then Pope issued a further statement which sought to explain that the prohibition was confined to a "direct killing". In, he said, the saving of the future mother's life, independently of her pregnant state, should urgently require a surgical act or other therapeutic treatment which would have as an accessory consequence, in no way desired or intended, but inevitable, the death of the fetus, "such an act could no longer be called a direct attempt on an innocent life." This distinction, as Williams says, was not a new concession but a well-recognized application of the Catholic rule of "double effect" or "indirect killing." What is done to the mother, ~~say~~ as in the surgical removal of a pregnant uterus for malignant ovarian tumor, can be justified (so it is said) without reference to the pregnancy. The permission does not apply to the common case where the danger to the mother arises purely and simply because of her pregnancy: here the Catholic obstetric surgeon must allow the mother to die, if that is otherwise unavoidable, and must pin his hopes on being able to rescue the child, either before or after the death of the mother, perhaps by Caesarian section.

This latter situation, in itself, is open to at least a difference of opinion. For if the fetus has a right to life, so has the mother. The Catholic preference of doing nothing to assist the mother amounts in fact to a preference of the fetus over its mother, if not to a sentence of death for both. The other preference of the mother over the fetus would appear to be much more ~~preferable~~ <sup>human</sup> insofar as the mother is a conscious knowing human being, whereas the fetus is not, and she may be much needed and wanted ~~as~~ in what would otherwise be a seriously broken and heavily saddened family.

Something of the difficulty of making the doctrine of double effect logically stick is to be found in the attempted application of the doctrine to the situation where a fetus grows in the ovary or abdominal cavity or the fallopian tubes, instead of in the womb. ~~Without~~ Unless there is a termination of such a pregnancy it is almost certain that both mother and child will die. Yet in 1902 the Congregation of the Holy Office ruled that the surgical removal of a nonviable ectopic fetus was not lawful. "Such a removal" ~~he~~ <sup>it</sup> said "is a direct killing of the fetus and is therefore forbidden." This ruling which would have allowed wives and mothers to go to completely useless deaths was too much even for the most rigid religious conformism and operation upon a tubal pregnancy was allowed, on the ground that the killing is not direct but indirect. As explained, a tubal pregnancy causes haemorrhage; this can and should be stopped, not by attacking the fetus but

blocking the cause of the haemorrhage, by clamping the arteries. The fetus will die but as the indirect result of interrupting the blood supply to stop the hemorrhage. Then the tube and the dead fetus should be removed."

Here the doctrine of double effect becomes a verbal escape mechanism from a former prohibited action to a now permitted one, and even the present explanation is lacking in consistency with the pontifical pronouncement of 1951. For admission that the haemorrhage is caused by the pregnancy scarcely squares with the 1951 pronouncement which said that an operation on a pregnant woman which kills the fetus is justifiable only where the pathological condition is independent of the pregnant state."

The doctrine of double effect allows for a seeming unswerving position on the part of the Roman Catholic Church against abortion, but in some few instances at least its permitted practice is indistinguishable from abortion. For many of us it is pretty ~~hard to~~ difficult to see the attempted line drawn between direct and indirect killing.

As for the view that human personality begins with the fertilization of the microscopic ovum, this is something that cannot be refuted, but neither can it be proved. Most of the early great figures of the Roman Catholic Church set the time later, and it was a wholly arbitrary decision when the time was set back to the point of fertilization. Just as arbitrarily, perhaps, but just as justifiably the time could be set at six months, when the

13

fetus becomes viable, or even at the time of delivery. Taking either of these as the time would mean there could be no such thing as murder of a non-viable fetus. From the point of view of human feeling and release from the unproven charge of murder, the setting of the time at a later point would appear to be more humane and more conducive to a sense of justified action in the case of therapeutic abortion. And as Williams points out,

"It may help to correct exaggerated sentiments as to the beginning of human personality if one points out that abortion often occurs spontaneously during the early months, and the woman may not even realize that it has taken place. This is sometimes because of lethal genes, so that spontaneous abortion has in part a eugenic effect. The "deaths" of these embryos pass without public notice or obsequies; they do not go into the statistics of infant mortality, and our sentiments are not engaged to any marked degree. The mother may naturally feel grief, but it is over the loss of the prospect of a child-- not over the loss of a child. Evidently we do not regard a miscarriage, when it occurs naturally as the death of a human being-- even as an accidental death."

Williams, himself, suggests that the time of viability, fixed say at the twenty-eighth week of pregnancy, might well be established as the point

beneath which abortion would not be considered a criminal or immoral act.

"Whatever arguments may be used" he says, "many people will continue to regard abortion as abhorrent because of the sanctity of the young life that is destroyed. That there is weight in this view cannot be denied. The humane, ethical, and parental feeling of the plain man leads him to wish to extend the protection of the criminal law not only to the newly born child but to the viable child before birth. The protection need not, however, be extended beyond viability. In the words of Lord Riddell 'the destruction of a full-grown child is a revolting affair, whereas the abortion of an early fetus differs but little from the removal of a uterine tumour.'"

No one with any regard for human well-being can look upon abortion as a particularly good thing. It would be far better if no abortion were ever needed and no abortion <sup>but for</sup> were ever performed, if there were no illnesses that threatened the pregnant woman and no transmissible traits or ~~xxx~~ thalidomide drugs that would damage and deform the unborn child, if there were no unwanted pregnancies among "worn-out" mothers, and no rape and incest against young girls. And some of these factors that related to the whole matter of abortion could be and need to be attacked with a whole battery of economic and social and medical correctives. But it is inconceivable that there will not be continuing need, possibly even increased need, for abortion on therapeutic, humanitarian, socio-economic, and anticipated weakness

grounds. If such is not made legal, extended into our statutes and our thinking, then it will go where it has always gone into the illegal market, there to be done by unqualified practitioners under demaging and degrading circumstances. If abortion is an evil, the traffic in illegal abortion is a vastly greater evil. Tightening the laws against it is almost wholly ineffective, even if that were presumed to be intended for the good. Abortion should be brought into the open, should be legalized and liberalized, should be combined with sex education, contraceptive information, social and psychiatric counseling and aid. The end sought is not to make abortion easy, but as far as possible to make it unnecessary, and where necessary to have it done under the best conditions. If we were to move in this direction, through our legislation and through other agencies, we could lessen a considerable amount of the anguish and misery that is now so much a part

of abortion. <sup>But</sup> Could we go beyond <sup>another</sup> to a removal of any burden of legal proof required of a woman in obtaining an abortion? Would we vote for the resolution at our forthcoming General Assembly that would leave final decisions to the woman herself?