

Nine Doctors Test Law

Abortions in Monstrous Pregnancies Are Viewed as Civil Disobedience

By Joshua Lederberg

THE LAW in California and many other states explicitly restricts the right and responsibility of a physician to practice therapeutic abortion. It condones the termination of pregnancy only when the life of the mother is at risk.

Nevertheless, many physicians have consulted their own consciences, together with their colleagues, to abort pregnancies which were under grave danger of monstrous malformation of the infant. As we have known for the past 25 years, the most common indication of this disaster is an infection of the mother by rubella virus (German measles) early in her pregnancy.

Until recently, state authorities have ignored this practice, which was hardly a secret, so long as it was associated with obvious discretion and a review by a responsible board of physicians at a reputable hospital. Under threat of possible prosecution, however, some hospitals have been more rigid than others in their interpretation of the law.

The Sherry Finkbine case was a widely publicized example where a lawful termination of a monstrous gestation (in this case a thalidomide tragedy) was not possible in the United States. Now, nine San Francisco physicians have been formally charged before the State Board of Medical Examiners with violation of the law. Plainly the issue must be faced squarely.

DR. EDMUND W. OVERSTREET, also of San Francisco, refers to a similar therapeutic abortion which proved to involve a microcephalic, virtually brainless fetus with no limbs at all. The mother's life was not at risk and the existing law, interpreted in the terms of present proceedings, would have insisted on the birth of this monster.

Dr. Overstreet has publicly announced his law-defying act, like those of the nine physicians, as a moral exercise of his professional judgment and his judgment of current public thought. This

is a classic example of civil disobedience which poses questions about social order which are as important as the substance of the law being defied.

Civil disobedience against unjust law has been applauded even by the President as an essential route to social reform, particularly in the attack on racial discrimination in the South. Having such sanction, it is also being threatened as a leverage for more and more trivial abuses, or imagined abuses.

We may well wonder whether a rule of law can survive the general acceptance of a right to civil disobedience. By what lawful procedure other than judicial appeal can any law be demonstrated just or unjust? Yet we all know how slowly the formal law changes in response to the actual social standards and mores of the time.

If civil disobedience erodes respect for law, anachronistic law is even worse. The above examples clarify a moral route of implementing change: the right to expose oneself to arrest and punishment for open and disinterested defiance of an immoral law. The bar of justice will then be the conscience of the people, which must be the ultimate foundation of law in a democratic society.

THERE IS, then, a difference between the kind of civil disobedience illustrated here and that in the Watts riot, even though the social grievances cannot be said to outrank one another. The defiance by these physicians is a contribution to a rule of law by virtue of their open acceptance of the risk of enforcement.

It has a worthy precedent in a famous case, *Rex v. Bourne*, 1938, which first established in English law that abortion might be justified after criminal assault. Their courage will surely be rewarded by the support of an overwhelming number of colleagues and fellow citizens, as is now being demonstrated by various polls.

Not long ago, I questioned a Swedish colleague about the moral problems posed by the more liberal abortion laws in his country. His wife answered that we were surely schizophrenic about the

moral purposes of the state. On the one hand, we promote innumerable personal tragedies by insisting on the absolute inviolability of the life even of a quasihuman not yet in being; on the other hand, we have invested the larger part of our national budget in machinery whose only exercise would be to extinguish the lives of most of the human race. The inhuman compulsions of the state may be necessary to preserve society in a real world; what place should they have in the enforcement of personal morality?

WHY IS this an issue of science as well as conscience? Because science tells us the probable consequences of rubella virus infection of a mother early in pregnancy. With that knowledge, we can no longer pretend innocence, even about the consequences of leaving that pregnancy unattended.

Science also gives us the technique for safely interrupting a pregnancy when therapeutic abortion is done with the aseptic precautions of the modern hospital. It is this knowledge that again gives man new power, and with it new responsibilities in the conduct of his own life.

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