

ABORTION, MEDICAL LEGAL AND MORAL ISSUES - TO BE
PRESENTED AT MEDICO - LEGAL SEMINAR - 5TH JUNE 1994

The issue of "abortion and its attendant "medical" "legal" and "moral" problems represent a formidable social dilemma which has stimulated widespread discussion in different societies over many centuries. Much has been written in support of and against abortion. The views expressed have been diverse, passionate, and often times strident, and have ranged from those posited by the protagonists of abortion on demand, to those absolutely opposed to abortion, except perhaps if it is necessary to save the life of the mother.

The fact that we are here today reaffirms my contention that the debate is far from over, and that we, as human beings, are still pursuing and seeking solutions to this difficult and emotive problem which impacts so profoundly on the very genesis of human life and the eventual product, the baby who is born, and who if permitted, becomes the sentient child and adult.

Considerable research was involved in order to enable me to synthesise and articulate what I hope is a reasonably comprehensive and coherent paper which will assist in high-lighting the material issues, and sensitise the audience to the difficult questions that arise in dealing with this important subject. I also hope that this paper will help to promote active audience participation and a cross-fertilisation of ideas between the medical and legal professions. It is to be stated at the outset, that this paper is concerned with "abortion deliberately induced and not with spontaneous abortion which may occur in the pregnant woman, perhaps because of some physiological disability or genetic incompatibility which causes the pregnant woman to spontaneously miscarry, and the death of the foetus results.

In order to facilitate a structured and lucid presentation,

profound reverence for life in general and human life in particular.

I could not possibly condone or lend my support to the wanton and frivolous destruction of human life. I do not agree with the views espoused by those women who assert that an abortion should be permitted "on demand" as long as the woman herself wants it, that the pregnant woman's body is hers to do with as she pleases, that she should have complete freedom of choice to abort the living foetus within her for whatever reason, no matter how spurious, whenever she chooses so to do.

My opinions are not cast in stone. I recognise that there will be instances when an abortion is necessary if not morally justifiable. I am against the abuse of the procedure as a post-pregnancy form of contraception, or as a means of population control, or as a means of controlling the quality of life of those in existence, or those to be born, "the practice of Eugenics".

This will be dealt with more fully in the sub-title moral issues.

MEDICAL ISSUES Clyde L Randall in his article on abortion published in Professor Cantor's work entitled TRAUMATIC MEDICINE AND SURGERY FOR THE ATTORNEY 1961, Volume 5 p 1 defines an abortion as follows "Abortion is considered to have occurred with an expulsion or removal of the products of conception from the uterus before the foetus is viable. The test of viability, that is the capacity of the foetus to maintain a separate existence from the mother, was formerly decided in the United States of America, by the medical profession, on the basis of the weight of the infant. Infants below the weight of 3 lbs 5 ozs. in weight were considered non-viable.

With the tremendous advances made in medical science and in the care of the immature infant, and the consequent reduction in the mortality rate of the immature infant, infants who weigh much less than 3 lbs 5 ozs. are now considered viable and capable of

the classification as to viability referred to above. The standard classification is now according to the period of gestation. If the foetus is aborted before the 16th week of gestation, that is referred to as an early abortion. If the foetus is aborted between the 16th and 20th week of gestation that is referred to as a late abortion.

It is my opinion, non-medical, in spite of the fact that I am a frustrated doctor, turned lawyer, that neither classification by weight, nor classification by determining the period of gestation appears to be fool-proof in arriving at an absolutely accurate diagnosis as to the "viability" of the foetus, and based on that conclusion, the appropriateness, medically, of the abortion procedure in any given circumstance.

In the light of the obvious problems in being able to determine accurately the viability or otherwise of the foetus Cantor's text at p 7 suggests a definition of abortion which takes into account both classifications predicated above. The same author Clyde L Randall classifies abortion as, "the interruption of the pregnancy before (a) the 22nd week of gestation (b) when the foetus weighs less than 500 grams. It is my opinion that this classification is disjunctive and not conjunctive. In other words, either test will suffice to determine the viability of the foetus.

I understand that the standard procedure in inducing abortions employed by doctors is that of dilation of the cervix (or neck of the womb) and curettage of the womb, that is scraping of the womb with an instrument designed for that purpose. This is what is commonly referred to as a D & C in colloquial medical parlance. Clyde L Randall, the expert on whom I acknowledge I rely heavily in this section of my paper, apart from referring to the D & C procedure, also itemises three other methods that are used by doctors to effect

of the said text he adds the methods of (a)

the ovaries.

In the footnotes at the said p. 22 of the text, he explains oxytocic effect as being "stimulation of the contraction of the uterus produced by drugs or hormones, and the chorionolytic effect as "splitting of the chorion." one of the membranes surrounding the developing child in the womb.

I do not here deal with the methods to induce an abortion employed by those persons who are not qualified medical practitioners and who utilise all sorts of dangerous procedures in their quest to effect an abortion.

It is an established scientific fact that the longer the period of gestation that exists prior to the attempt to induce the abortion, the greater is the danger to the health and life of the pregnant woman. That to produce the most efficacious results and minimise the risk to the woman, the earlier in the pregnancy the abortion is performed, the better are the chances of a completely successful surgical procedure without any post-operative problems.

Neither pregnancy allowed to go to full term, and subsequent childbirth, nor the surgical procedure of abortion are without risk and possible complications which may lead to the death of the mother. However, if performed under strict clinical conditions and by a competent medical doctor, before the 22nd week of gestation, the risk of an abortion to the health or life of the mother is considered minimal owing to the treatment that is now available to eliminate possible infection or post-operative trauma such as excessive blood loss and shock.

The possibility of such occurrences no matter how slight, are real, and must be guarded against by the doctor on each occasion that the procedure is performed. In spite of the many advances made by medical science in dramatically reducing the risks to the life and health of the mother if an abortion is performed on her, it is

the uterus and its surrounding physical environs which warrants the immediate surgical removal of the uterus, thereby effectively preventing the woman from ever becoming pregnant again.

Psychologically, some women suffer deep feelings of guilt after having an abortion, feelings which may be so severe that they may persist for years, thereby disturbing their mental equilibrium, and may even cause prolonged depression. Perhaps, it would be wise if all women who seek an abortion are given counselling by qualified persons who would advise them fully of the pros and cons of the procedure so that each woman may make an informed and considered decision as to whether or not she should subject herself to an abortion.

Having looked at standard abortion procedure and what it involves, it is my duty also to examine two procedures which are essentially abortion with a variance. The first is known as selective abortion, that is one in which the foetus is aborted because it is defective, or perhaps even because it is female. This entails pre-natal diagnosis as to its sex, or as to the defect.

The second is known as selective reduction. This procedure has come about owing to the developments in medical science in treating sterile women and enabling them to have children. Fertilisation of the ovum is effected "in vitro" and "ex utero". The fertilised ovum is then transferred into the woman, where it is hoped that it will affix itself to the uterine wall and so develop into a successful pregnancy. The problem with this method of creating a pregnancy is that the greater the number of fertilised ova transferred to the woman, the greater the chances are of a successful pregnancy developing and a live birth ensuing. As a consequence, sometimes four or even five or perhaps more fertilised ova are transferred into the sterile woman thus increasing the chances of a successful pregnancy developing. But it has happened, that the four or five ova develop into a success-

required expertise can kill two of the fetuses in utero, and permit the other fetuses to grow to full term. "In Holland it is reported that, this has been done by puncturing the hearts of the fetuses whom it is desired to kill, with a spinal needle, thus causing the hearts to stop. In England, the hearts of the fetuses have been stopped by "injecting a solution of potassium chloride into the sac surrounding the fetus" Please see article by David P.J. Price, published in the Criminal Law Review, 1988, and entitled "Selective Reduction and Feticide, The Parameters of Abortion"

I find both procedures repugnant. They pose a deep moral dilemma to doctors who will be asked to determine, which fetus should be permitted to die, and which to live. That is a heavy responsibility indeed, a responsibility which cannot be discharged by the medical profession only, but who must be assisted by the rest of society with the establishment of guidelines under which these procedures may be performed, guidelines which have been evaluated on a sound moral basis and extensive scientific research. The intrinsic immorality of the procedures, and the possibility for extensive and uncontrolled abuse cause me grave disquiet. It is the preservation of life and not its destruction that we should all strive for.

I now move to the sub title. "The Law"

THE LAW. In the majority Judgment of the Supreme Court of the United States Roe v Wade, argued on December 13th 1971, and decided on January 22nd 1973 having been re-argued on October 11th 1972, in its majority Judgment, delivered by Mr. Justice Blackmun, the Court deals with ancient attitudes to abortion at page 13 and I quote therefrom." "Ancient Attitudes." These are not capable of precise determination, we are told that at the time of the Persian Empire abortifacients were known and that criminal abortions were severely punished, we are also told that abortion was practised in Greek times as well as in the Roman era, and that it was resorted to without

upon this standard, he felt the procedure advisable. If abortion was prosecuted in some places, it seems to have been based on a concept of a violation of a father's right to his off spring. Ancient religion did not bar abortion."

At the said page 13 of the Judgment the Learned Judge refers to "Hippocrates" who has been described as "The Father of Medicine, the wisest and the greatest practitioner of his art" and the most important and most complete medical personality of antiquity who dominated the medical schools of his time, and who typified the sum of the medical knowledge of the past". The Hippocratic oath to which doctors are supposed to adhere goes substantively like this "I will give no deadly medicine to anyone if asked, nor suggest any such Counsel, and in like manner I will not give to a woman a pessary to produce abortion or I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortion remedy" pp. 13 and 14 of Roe v Wade.

The oath according to Mr. Justice Blackmun "represents the apex of the development of strict ethical concepts in medicine and its influence endures to this day". He continues "the oath was not uncontested even in Hippocrates' day; only the Pythagorean school of philosophers frowned upon the related act of suicide. Most greek thinkers on the other hand, commended abortion, at least prior to viability.... For the Pythagoreans however it was a matter of dogma. For them the embryo was animate from the moment of conception and abortion meant the destruction of a living being. The abortion clause of the oath therefore echoes Pythagorean doctrines and in no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity." The Pythagorean doctrines represented only a small section of the opinion as to abortion in ancient Greek Society, but they had a critical or important influence

Christian religious philosophy, opinion moved away from the less restricted approach of ancient times, as it related to suicide and abortion and resistance against suicide and abortion became common place" (pp. 14 of Roe v Wade.)

As stated before, the majority of Greek Thinkers recognised the right to have an abortion before "quickening" "that is before the first recognisable movement of the foetus in utero," p 15 as above. This ancient attitude had an effect on the early development of the common law as it was not an indictable offence to induce an abortion prior to "quickening" of the foetus in utero". Nor is it clear that it was an offence at all to induce an abortion prior to and subsequent to quickening. But with the increased influence of the Christian religion, and with the, passage of time, a more rigid moral philosophy predominated, and abortion whether before or after quickening became severly proscribed and was condemned with criminal sanctions.

THE ENGLISH OFFENCES AGAINST THE PERSON ACT OF 1861

In 1861, the above Act, by section 58 made it a criminal offence to procure an abortion and section 59 made it an offence to procure drugs or other implements to cause an abortion. Section 58 reads as follows "Every woman, being with child, who with intent to procure her own miscarriage shall unlawfully administer to herself any poison or other noxious thing or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with like intent, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life."

Section 59 of the said Act makes it an offence to procure drugs, etc to cause an abortion and reads as follows "whosoever shall

shall be liable to be kept in penal servitude", Under section 58 of the Act, either the woman or anyone else guilty of the acts stated under the section may be charged with this offence. It is to be noted, that the emphasis is placed on the word miscarriage, that is an expulsion of the foetus from the uterus as a consequence of the unlawful introduction of the instrument or noxious thing. This distinction becomes of considerable importance in relation to the procedure of selective reduction, as it has been argued, that since in such a procedure there is no expulsion of the foetal remains from the uterus, there has been no miscarriage and so no abortion, and no criminal offence committed under the Law. I will return to that issue at an opportune time.

Section 59 of the Act is a less serious offence than that created in section 58

These exact offences were imported into the Jamaican Law by sections 72 and 73 of the offences against the Person Act of 1864. Section 72 repeats section 58 of the English Offences Against the Person Act, and, section 73 repeats section 59 of the said Act.

Whatever the de facto situation may be with regards to the carrying out of abortions in Jamaica, it is still an offence to do so, whether the abortion is conducted by a medical doctor or not. There is no statute in Jamaica legalising abortions whether before viability of the foetus or after viability of the foetus. This situation has been alleviated, by the English Common Law first instance decision of the King v. Bourne reported at 1939 1 King's Bench p.687. A criminal charge was brought under section 58 of the Offences against the Person Act against one Dr. Bourne, an obstetrical surgeon at St. Mary's Hospital who had performed an abortion on a young girl of 14 years who had become pregnant consequent on her having been a victim of rape.

The trial took place before Mr. Justice McNaghten and a

performed the operation" in good faith for the purpose only of preserving the life of the mother, and if in the opinion of the jury the burden was not discharged, the accused is entitled to a verdict of acquittal. He went on to add that "the word preserving the life of the mother must be construed in a reasonable sense." They are not limited to a case of saving the mother from violent death. They include the case when the continuance of the pregnancy would make her a physical or mental wreck".

The defence put forward in the within case had been that the act of inducing the abortion had not been unlawful, in other words the abortion had been induced to prevent the mother from becoming a "physical or mental wreck" . The learned Attorney General who prosecuted had argued in favour of a very restricted interpretation of the words "for the purpose of preserving the life, of the mother." Learned Counsel for the defence had argued in favour of a "wide and liberal" interpretation of those words. The learned judge preferred the view that the words should be given a "reasonable interpretation" and so directed the jury. Dr. Bourne, based on the above directions in law, was acquitted of the charge.

It is important to note here, that in seeking to elucidate the meaning of the word "unlawful" in section 58 of the offences Against the Person Act, the learned judge made reference to the provisions of the English Infant Life (Preservation) Act 1929. We do not have that piece of legislation in our laws. This Act made it a criminal offence to destroy the life of a child before or at birth, and was essentially aimed at the protection of the life of those children who were capable of being born alive or put another way were in fact "viable" section (1) of the said Act reads as follows." Subject as hereinafter in this subsection provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence

of an offence under this section unless it is proved that the act which caused the death was not done in good faith for the purpose only of preserving the life of the mother". The learned judge used the material words in the proviso to this Act. "Not done in good faith for the purpose only of preserving the life of the mother," to construe the word "unlawful" in section 58 and to give it the meaning intended by the legislature see page 691 of the said report of R v Bourne.

I think it important for me to refer to some comments made by the learned judge at page 693 of the report when he touches on the issue of "abortion on demand" as well as the right to perform an abortion in certain circumstances. He opines thus. "Here let me diverge for one moment to touch on a matter that has been mentioned to you, the various views which are held with regards to this operation. Apparently there is a great difference of opinion even in the medical profession itself. Some there may be, for all I know who hold the view that the fact that a woman desires the operation to be performed is a sufficient justification for it, well that is not the law, the desire of a woman to be relieved of her pregnancy is no justification at all for performing the operation. On the other hand there are people, who from what are said to be religious reasons object to the operation being performed under any circumstances That is not the law either. On the contrary, a person who holds such an opinion ought not to be an obstetrical surgeon, for if a case arose where the life of the woman could be saved by performing the operation and the doctor refused to perform it because of his religious opinions and the woman died, he would be in grave peril of being brought before this Court on a charge of manslaughter by negligence." To summarise the law in Jamaica, it is as it stood at the time of the case of R v Bourne. There is no Act in Jamaica permitting the performance of lawful abortion by a qualified medical practitioner.

caused the death of the mother.

In the light of the fact that the laws in relation to abortion need reform, I wish to now examine, the English Abortion Act of 1967, and then also analyse The United States Supreme Court decision of Roe v Wade.

THE ENGLISH ABORTION ACT of 1967 This Act is described as an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners. Section (1) reads as follows, "Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner, if two registered medical practitioners are of the opinion formed in good faith

(a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman, or any existing children of her family, greater than if the pregnancy were terminated or (b) That there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of the pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

The Act provides for the specific conditions under which the abortion is to be performed. That is, it is to be performed in a hospital vested in the Minister of Health or the Secretary of State, under the National Health Service or in a place approved for the purposes of this section by the Minister of Health or the Secretary of State. There is also provision in the Act permitting the termination of a pregnancy on an opinion formed in good faith, by one registered medical practitioner, where he is of the opinion that the "termination is immediately necessary to save the life or to prevent grave health of the mother."

affect the provisions of the Infant Life (Preservation) Act of 1929. Presumably the effect of this clause would mean that all pregnancies which are terminated after the foetus is capable of being born alive would have to be terminated in keeping with the Infant Life (Preservation) Act and "the proviso thereto. Section 5 (2) specifically states" for the purposes of the law relating to abortion anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section (1) of this Act. If an abortion is carried out within the provisions of the Abortion Act 1967, no offence is committed under sections 58 or 59 of the Offences Against the Person Act 1861. All those participating in the procedure, for example the nurse, are protected by the Act. Section 4 of the Abortion Act reads "Subject to subsection (2) of this section, no person shall be under any duty whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection. Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it. Subsection 4 (2) states, "Nothing in subsection (1) of this Act shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of the woman."

I wish to make some comments on the English Act. First of all, it is to be noted that the case of R v Bourne, did not demand that the abortion be carried out by a registered medical practitioner. It therefore constricts or narrows the law as it existed at the time R v Bourne was decided in 1939. It requires that the abortion be performed at certain recognised venues only, no doubt with very good reason.

It gives considerable latitude to the performance of abortions and a possible indiscriminate use of the process. It requires the two

I do not approve of section (1) (1) (b) dealing with the termination of a pregnancy if there were a substantial risk that, if the child were born, it would suffer from physical or mental abnormalities as to be seriously handicapped." This essentially is the practice of Eugenics where based on the quality of the off-spring that will be produced, a decision is taken by the mother, or mother and father acting on the diagnosis of the doctor as to the possible handicap of the child to be born, whether or not to terminate the pregnancy. In other words this is a section which authorises the killing of the handicapped and abnormal and the propagation of fine and healthy off-spring. Let me state that while I recognise that there may be need for the Reform of our own Abortion Law, I am not proposing an adoption of the English Act of 1967. I do not pretend to have the solutions, to a very very difficult problem.

ROE V WADE. I have already referred to this case, but I wish to do a review of the decision, to demonstrate the approach of the highest Court in the United States of America to the issue of abortion. The opinion delivered was a majority opinion Justices Rehnquist and White dissenting. The essence or substance of this suit is that" a pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life p (2) of judgment. Roe claimed that the Texas penal statutes as they related to abortion were "unconstitutionally vague and that they abridged her right of personal privacy protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments" of the United States Constitution p 7.

Article 1191 of the Texas Statutes reads as follows:

"If any person shall designedly administer to a pregnant woman, or knowingly procure to be administered with her consent, any drug or medicine, or shall use towards her any violence or means whatever

or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused." p (5). A proviso to the foregoing Article states "Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." This proviso, is rather similar, in substance, to the direction given in the R v Bourne which I have already examined.

A three judge district Court declared the statutes "as vague and overbroadly infringing the plaintiffs' Ninth and Fourteenth Amendment Right "pp. 28 but refused to grant the injunctive relief sought by Roe. The plaintiff Roe then appealed to the United States Supreme Court against the failure of the District Court to grant the injunctive relief sought.

On the merits, the District Court had held that the "fundamental right of single women and married persons to choose whether to have children is protected by the Ninth to the Fourteenth Amendments of the United States Constitution" p. 8. After full arguments, and in what I consider a comprehensive an erudite opinion, the Supreme Court made the following findings at p. 35 of the opinion of Mr. Justice Blackmun.

(1) A state criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf the mother, without regard to pregnancy stage and without the recognition of the other interests involved is violative of the due Process Clause of the Fourteenth Amendment.

(a) For the stage prior to approximately the end of the first trimester the abortion decision must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the state, in promoting its interest in the health of the mother may if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the state in promoting its

(2) The state may define the term "physician as it has been employed in the preceding paragraphs of this opinion to mean only a physician currently licensed by the state, and may proscribe any abortion by a person who is not a physician as so defined.

It is clear that the opinion reflects the approach of the medical Profession in the United States in defining abortion with reliance being placed on viability, and the period of gestation. It is reasonable to conclude that abortion is readily available "on demand" to all women who seek to have one prior to the expiry of the first trimester of pregnancy and before viability. After viability of the foetus, the Court gives the right to the state to "intervene to protect the life of the foetus and to protect its interest in promoting the potentiality of human life." The woman's right to an abortion, acting on the advice of her doctor, is limited only to the first trimester of pregnancy. After that the question of the preservation of the life or health of the mother is introduced, appropriate medical advice having been given. It is interesting to note how laws and attitudes transcend political, and social boundaries when one compares the influence of the English Common Law on the statutes and Judicial decisions of the United State of America.

I now return to the question of the legality or otherwise of the procedure of selective reduction to which I had already referred at page (5). In his essay entitled "Selective Reduction and Feticide" published in the Criminal Law Review 1988 p 1991 David T. Price is firmly of the view that selective reduction is a form of abortion or feticide even though there may be no expulsion of the foetal remains from the uterus, or the pregnancy may continue because it is a multiple pregnancy and only one or two of the foetuses is killed. He refutes the arguments put forward by some persons that the procedure is not unlawful and no criminal sanctions flow from its performance as there has been no "miscarriage within the meaning of section 58 of the

procedure is carried out contrary to the terms of the Abortion Act 1967.

Please see pages 202 - 204. It is his opinion that the essence of an abortion is the death of the foetus and not whether the foetus is expelled from the uterus, or the pregnancy continues owing to the presence of other live foetuses.

It is, if one accepts his analysis of section 58 of the Offences Against the Person Act, section (72) of the Jamaican Offences Against the Person Act, a crime to perform selective reduction procedure in Jamaica if the circumstances of R v Bourne are not complied with, that is the procedure is performed for the sole purpose of preserving the life of the mother.

MORAL ISSUES The Oxford illustrated dictionary defines the adjective moral as "that concerned with the distinction between right and wrong." I would therefore define morals as a set of principles which seek to determine and promote that which is right and to eschew that which is wrong. The morals in any given society are usually founded on a variety of contributive factors such as the religious philosophy, social attitudes, culture and even myths and folklore. Moral philosophical concepts are not static, but are dynamic and usually reflect the prevailing opinions of the time and the social development of the society.

A system of sound moral principles is extremely important to the orderly functioning of any society. The laws that regulate the society should reflect its moral tenets. If the purported morals are in fact immoral, then immoral laws will result. An outstanding example of this consequence, was the web of laws that regulated and preserved "apartheid" in Southern Africa, a system of Laws which fed on the immoral philosophy of one race being superior to another, thereby giving one race the right to subjugate, dehumanise and oppress the other.

moral premises.

In Jamaica we are supposed to be a Christian society in which our morals have been greatly influenced by the Christian ethic. The Sixth Commandment in the Old Testament is "Thou shalt not Kill". The Criminal offence of murder if proven, is punished with severe penalties. The essence of the Christian philosophy is that if the Christian adheres to its beliefs and obeys its injunctions here on earth, the reward for such obedience and adherence is not death but "eternal life". That is the importance which we as a society sanctimoniously attach to life.

How then do we reconcile these beliefs with the procedure of abortion and seek to justify it with all sorts of reasons including why it should be made available "on demand", worse still that it is perfectly moral to determine the life of those foetuses which are defective in one form or another. What gives us the right to determine who should live and who should die, and by what moral authority do we accord unto ourselves the right to decide who should be born and who should not be permitted to be born? Why do we so-called normal persons think that the mentally or physically handicapped foetuses have no right to life?

Let me state my own position I find the abortion procedure essentially immoral. I am totally against these arguments which seek to Justify it on the basis that it is perfectly all right as,

- (a) the foetus up to a certain stage in development is not a human being.
- (b) the foetus is not viable up to a certain stage in its development.
- (c) It is the woman's body and she should be allowed to do with it as she pleases.
- (d) It is best for the human race if population growth is

and published in the text "Moral Problems of Medicine" the Second Edition p. 345 First of all, the Zygote and early embryonic stages are clearly alive. They metabolize, respire and respond to changes in the environment. They grow and divide. Second though not yet organised into distinctive parts or organs, the blastocyst is an organic whole, self-developing, genetically unique and distinct from the egg whose union marked the beginning of its career of a discrete unfolding being For after fertilisation there exists a new individual with its unique genetic identity fully potent for the self-initiated development into a mature human being if the circumstances are co-operative." Every single one of us here today was at that stage of development. Whatever the arguments that may be put forward to support the abortion procedure, it is the rare occasion on which it may be morally justifiable.

The basis on which an abortion may be legally carried out under section (1) (1) (b) of the English Abortion Act (defective foetuses) has no moral justification and has the possibility of dangerous extensions. Imagine the scenario, of the categories of defective foetuses being extended to include all Jews or all persons of Black African descent. In times past, and even in the present day, Scientists in countries which have created and practiced racism have been at pains to discover, and demonstrate the genetic inferiority of the black race as compared with the Caucasian race. Each alleged scientific theory in that regard, has been subsequently found to have no basis in scientific fact, but if abortion procedures were as advanced then as they are today, who knows how many little black foetuses, (because of their alleged inferiority) would have been put to death.

You may consider my examples, extreme I do not think they are. What they do show, most graphically, is how the procedure can be misused and abused and how the strong with the support of a false rationale, which is in substance gross immorality, can destroy the weak.

are really social reasons and have no moral foundation.

Karen A. Lebacqz in an extremely wide ranging and searching essay, entitled "Prenatal Diagnosis and Selective Abortion." reprinted in the American Text "Ethics in Medicine" spoke about the problems confronting the medical profession, of "drawing the line," that is determining which foetus was so defective as to warrant the procedure of selective abortion. She discussed at length the ethical problems with which the doctor has to deal and said this at page 384. "Now clearly, many of those same problems have arisen in the general debate on abortion, and are not unique to selective abortion. In a sense one could say that selective abortion gives a prismatic view of the implications of abortion in general - of the problems of extension of logic, the threats to human rights and to medical practice. Both abortion in general and selective abortion involve the assignment of relative rather than absolute value to human life on the basis of some social criteria, hence both establish precedents which violate fundamental principles of justice as one understands them in Western Society."

The moral dilemmas that abortion poses have not been resolved. The passage of laws will not make moral, that which to me is basically immoral, and which is indeed the taking of a life. If the law relating to abortion in Jamaica is reformed it will not be because it is moral to legalise it, but perhaps because the social conditions demand that it be made legal in certain circumstances. I cannot and have provided no solutions to the moral issues involved. In the final analysis morality is a personal standard. I have merely sought to show that the subject is a complex one, to which due moral consideration must be given, and we are in danger of replacing, and indeed in some countries, we have replaced morality with social expedience and rationales of cost effectiveness.

In closing, I wish to acknowledge my indebtedness to all those authors who have increased my knowledge and awareness of the subject and whose erudition and incisive analyses have assisted me in writing this paper. In re-affirming my own moral position I wish to again refer to the essay of Karen Lebacqz when she says this at p. 385. "If indeed the strength of a people can be measured by their attitude toward the weak, the defenseless and the outcast, then selective abortion points to the weaknesses in our society and in ourselves it seems important to close therefore with a word of warning offered by Ralph Porter, " when a foetus is aborted no one asks for whom the bell tolls. No bell is tolled. But do not feel indifferent and secure. The foetus symbolises you and me and our tenuous hold on a future here at the mercy of our fellow men."

Dated the 1st day of June 1994.

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DICTIONARY OF WORDS USED IN PAPER - MEANINGS
TAKEN FROM BLAKESTON'S NEW GOULD DICTIONARY - FIRST EDITION

1. ABORTIFACIENT (A-BOR-TI-FAY-SHUNT) - drug or agent inducing abortion.
2. BLASTOCYST - The modified mammalian blastula consisting of trophoblast, inner cell mass, and blastocoele.
3. BLASTULA - a spherical mass consisting of a central cavity surrounded by a single layer of cells produced by cleavage of the ovum frequently modified by the presence of yolk.
4. CHORION - skin, membrane that encloses the foetus - the outermost of the foetal membranes.
5. EX-UTERO - outside the uterus .
6. IN VITRO - In glass..referring to a process of reaction carried out in a culture dish, test tube etc. as opposed to IN VIVO.
7. IN VIVO - In the living organism.
8. OXYTOCIC - a drug that hastens parturition.
9. TRIMESTER - A stage or period of three months.
10. ZYGOTE - An organism produced by the union of two gametes.
11. GAMETE - A male or female reproductive cell capable of entering into union with another in the process of fertilisation or conjugation in humans, the egg and the sperm.