

November 1967

Liberal Abortion Laws: The Antithesis of the Practice of Medicine

Edward J. Lauth

Follow this and additional works at: <http://epublications.marquette.edu/lnq>

Recommended Citation

Lauth, Edward J. (1967) "Liberal Abortion Laws: The Antithesis of the Practice of Medicine," *The Linacre Quarterly*: Vol. 34 : No. 4 , Article 14.

Available at: <http://epublications.marquette.edu/lnq/vol34/iss4/14>

Liberal Abortion Laws

The Antithesis of the Practice of Medicine

EDWARD J. LAUTH, JR., M.D.

In May of 1966, the House of Delegates of the Florida Medical Association approved a committee recommendation that a revised abortion law, utilizing the principles approved in a modified law by the American Bar Association, be introduced into the 1967 session of the Florida Legislature. As a member of the Florida Medical Association, I have expressed the very strongest of opposition to this resolution, and I have actively urged the Legislature to defeat this liberalization of abortion laws in the State of Florida. This defeat was finally accomplished due to the strenuous efforts of many individuals, both inside and outside of our Association.

It has always been the duty and obligation of the physician from time immemorial to do all that he can to preserve life and never to take an innocent life. I, of course, recognize that there are those amongst us, in the medical profession, who feel that under certain rigid circumstances, this obligation is to be set aside. They reason that, as a matter of fact, a human being is not present until a "certain" stage of development of the embryo. I do not wish at this point to debate that particular issue, but I will comment later on in this report upon the reasoning behind that particular statement. I do not deny these physicians their opinion; however,

I believe that a careful study of the situation reveals, aside from the obvious moral problem involved, a defeatist attitude on the part of the physician and in those segments of organized medicine which supports them.

For example, let us assume a theoretical case where an early pregnancy really threatens the life of the mother. In my opinion, it is the obligation of the attending physician to conduct himself as a physician, as a healer, and do all that he can to save both lives, utilizing all of his own skills and those of his colleagues in so doing. On the other hand, he could solve the problem by aborting the fetus—a rather simple way out, a quick way out, one that does not tax his skills and one that does not involve a lot of his time and effort on his part through the long months ahead. But it is also an approach which involves a deliberate attack upon an innocent human life, with intent to kill. This is, of course, according to many of us, an immoral approach. It is certainly not the best of medical practice, and it does really smack of a defeatist attitude amongst those who propose such action.

Let us look for a moment at what has been proposed. The present law states that an abortion may be performed only when the life of the mother is in grave danger. The new

law would carry this further. Instead of just the grave danger to the life of the mother, they would allow now that an abortion be performed where there is risk to the health and mental well-being of the mother; they would allow it in cases of rape and incest; and in the situations where the child might be born with a grave mental or physical defect. This proposed law is the most loosely written and vague document ever proposed by supposedly intelligent individuals. First of all, nowhere in the law are the constitutional or civil rights of the child considered at all. It is on this basis that I most strenuously object to its enactment. I am not a lawyer, of course, nor are most of the members of the medical profession; but I *do* know that the unborn has been recognized in the past, under numerous instances in law, to have legal rights from the moment of conception.¹

For example, this has been so decided in inheritance cases, and more recently in negligence cases where a woman involved in an accident while pregnant can, and very often does, claim compensation for injuries that might be suffered by her child. I would also like to point out that, in the law as proposed, and in our present law, the child is actually recognized as a person, for the term "manslaughter" is used here and in all of the laws dealing with abortion. Therefore, whether or not we, as physicians, might recognize the unborn fetus in the early stages as a human being, the law actually does recognize the fetus as a human being. After all, you cannot com-

mit manslaughter against a thing or an appendage! What we are talking about, then, is the killing of an innocent human being.

There are problems arising also with informed consent in this proposal. There are very poor definitions in the law, or actually, no definitions at all. What is, for example, a *grave* risk to the physical and mental health of the mother? What is the possibility of *grave* physical or mental defect to the child? Who, in all honesty, is really competent to decide? Any two physicians?

We all know that there is a law in the State of Florida which permits the performance of an abortion where the life of the mother is threatened. I think it is not worthy that no physician practicing in a recognized hospital has been prosecuted in the State of Florida for performing an abortion, even when acting under the spirit of the law. We have heard doctors testify before various committees and say that so-called therapeutic abortions are being done now, and yet we see that there are no prosecutions in *these* cases! This is not only true in the State of Florida, but it is true throughout the United States where there have been no physicians prosecuted in the past 25 years, practicing under similar circumstances. It is obvious, therefore, that the spirit of the law is being observed by the lawyers and district attorneys. It seems clear that present obstetrical practice has been in accordance with the spirit of the law as it is interpreted today. In written form, the laws are to be considered a general guide line for what is permissible,

rather than rules adaptable to year to year changes in obstetrical practice. I submit that it is preferable to keep the responsibility governing abortion in the legal profession, which is somewhat removed from the pressures inherent in the patient-doctor relationship than it is to yield the burden to the physician on the firing line. It seems to me that the most pertinent reason given for the liberalization of the law is that doctors do not feel "comfortable" performing abortions now, since they are not according to the exact letter of the present law. I submit that whether the physician is comfortable or not is entirely irrelevant if the law is being written for the protection of some common good. As a matter of fact, the destruction of the unborn should never be a comfortable matter!

Proponents for this particular type of legislation, which is based upon a portion of the uniform code proposed by the American Law Institute, would have you believe that such a law will solve the problem of the illegal abortionists and rid us of these undesirable practitioners in our midst. It does not take more than a cursory reading of this law to show that nowhere does the law permit abortions to be done *carte blanche* on young ladies who conceive out of wedlock, or even married women who simply do not want more children. These cases would, in fact, continue to seek the services of an illegal practitioner as would others. In fact, one of the arguments that has been used in public for the necessity of passing this present proposal is that it

would rid us of the vicious illegal abortionists who prey upon women in trouble. There is little doubt that these men are vultures, and that they are an evil which society must not tolerate; but even the proponents of this bill do not feel that its passage would rid us of the vicious illegal abortionist. Historically, we have some concrete evidence that the abortionist does not disappear from the scene. As a matter of fact, in Japan, Hungary and Sweden where abortions are very easy, the incidence of illegal abortion has risen out of proportion to that of legal abortion—so much so that each of these countries is now concerned about reverting to their former laws and a more rigid interpretation and making other efforts to get rid of the illegal abortionist.

There is one particular set of figures that bears close scrutiny, as was pointed out by Dr. Andre Hellegers of Johns Hopkins.² It has been repeatedly stated that there are 1,200,000 illegal abortions in the United States each year, and 10,000 women die as a result of them. This means that one in eighty patients who walk into an abortionist's office is going to die! If this were true, then it seems to me that the modern abortionist should have been out of business in no time. Therefore, I think we had better look closely at the derivation of these figures. We find that they come from a study done back in 1934! This study was based upon case histories taken from 10,000 women attending a birth control clinic in New York City between the years of 1925 and

1929. This particular group was not even a representative group when compared to the general population of the United States. According to this study, one illegal abortion was recorded for every 3.55 births. We know today that there are now 4 million live births in the United States annually; therefore, there must be 1,200,000 illegal abortions! I doubt that any first year student in high school statistics would pass the course if he attempted to draw conclusions about the United States from such a sample, and yet this is the figure that is being constantly bandied about in the press regarding illegal abortions. The 10,000 deaths that are recorded are derived in an even more questionable and ridiculous fashion. A study back in 1936 used the data from the birth control clinic in New York City and combined them with figures from 81 *country* doctors. By doing so, the authors arrived at a total of 681,000 abortions in the United States against 2.4 million live births. This again yielded the familiar 1,200,000 illegal abortions for the present 4 million live births. Then they used a "guessed at" mortality rate of 1.2 deaths per hundred abortions based upon an equally questionable German study, and by mathematical maneuvers arrived at 8,000 deaths from abortions per year. Next, they capped this with the sentence, "A maximum of 10,000 abortion deaths in this country is nearer the truth."

If these studies were a wonder in themselves, it is even more remarkable that the figures are still being used today. Finally, the vast majority

of deaths from abortion are due to infection, and these studies were done at a time long before antibiotics were available.

I would also like to point out the results of the Florida Maternal Mortality Survey 1964-65, in which it was stated that although the legislation is important "it will not solve the problem of criminal abortion. — The primary function that the medical profession must provide is the means by which these women who will subsequently feel the need to seek a criminal abortion can prevent pregnancy in the first place."³

Now, let's look at the first group of cases that would come under this new proposal — that is, the cases in which the mother's mental health would be endangered. This particular group would open up a whole "Pandora's box" of cases and could lead to a situation where with very subtle change in emphasis from the physical to the mental health of the mother, we are faced with a situation in which the legal indications change subtly from the preservation of life to the preservation of happiness! We have a choice in the case of rape-induced pregnancy: We can either kill the child, or we can direct all of our efforts and ingenuity toward smoothing the way for both the distressed mother and the child. It might even be advantageous to pass a law whereby the State would supply funds to take care of the products of such a union and see that this child is born under favorable conditions, adopted and raised, if necessary with the aid of State funds. The case of incest should be handled in much the same way.

This certainly is a much more humane solution, and we are all seeking the humane solution. For some of us, however, the purposeful destruction of an innocent human life as the means of accomplishing a desirable social end, can never be truly human or moral, and this is what we are faced with. The proponents of the liberalized abortion laws are, in fact, asking doctors to solve social problems by performing abortions. We physicians were not brought up to do this; it was not part of our ideals when we entered the profession of medicine; and I do not think that physicians should be put upon to perform abortions in order to solve social problems. I think that physicians should conduct themselves as physicians and healers. Most certainly, abortions will not remove the *cause* of rape, of incest, of mental disorder or of deformed babies. Besides, I understand that it is perfectly good acceptable medical practice for a girl who is raped to present herself to a physician immediately. The physician will then take her to a hospital where a D & C can be done. The few cases where pregnancy does occur, I believe, were probably not handled properly in the first place. It certainly would seem to me that any girl who was raped should have the benefit of good medical care immediately. This would permit the performance of a uterine scraping and any other procedure the doctor felt advisable — and it would be well within our existing laws.

Now, let's look at the final category — that is, where there is a

good possibility that the child will be born with a grave physical or mental defect. Here, again, I am of the opinion that these cases are best handled by allowing them to go to term. If there is overwhelming expense involved, a law could be passed allowing the State to supply funds to take care of babies who are so deformed or mentally defective. There is little that science can ever learn about defects produced by disease, drugs, or trauma, if we are continually killing these babies *in utero*. Much more can be learned by a protracted scientific study of these cases during and after pregnancy. Etiology and positive therapeutic approaches have always been found in this manner. The indication for abortion in the possibly deformed baby case, is more frightening, because it is, in fact, a recommendation for eugenic abortion — that is, the prenatal destruction of a child on the prognosis that he will be physically or mentally disadvantaged. As a New York State legislator recently said, this is really reverse euthanasia.

There is another aspect to the case that I think we must all recognize and admit: No physician whom I know is omnipotent. Certainly all of our judgments and decisions are fraught with some possibility of human error. It is impossible to say in any given case where a mother has, for example, contracted German measles prior to the third month of her pregnancy that the particular baby she carries will, in fact, be deformed. We must recognize and admit the fact that 85% of them are *not* deformed and most

of the deformities are now correctable. The same is true in the drug-induced deformities. We do not know early enough, with certainty, which cases will be deformed babies. As one physician suggested, we could always wait until they are born and then, if they are deformed or mentally defective, go ahead and kill them. This sounds barbarous, but the matter is purely a delay of perhaps days or weeks. Furthermore, the answers to these cases will be found in the near future and the law will be obsolete.

The question of whether or not a human being does exist at the moment of conception has been raised frequently in discussion of abortion. It is obvious to many of us from the biological evidence available that a human being does, in fact, exist at this very early stage—not recognizable as such, and a little later on in development perhaps somewhat freakish in appearance, but nevertheless, biologically, a human being. I do recognize the fact that there is doubt and debate as to when a human being does actually come into existence. We find in these discussions, however, that we are no longer in the field of science or medicine, but are, in fact, in the field of philosophy, and perhaps it is better to have the philosophers answer this. If we turn to the philosophers, we find that there are variations of opinion amongst the philosophers also. Where does that leave us? It leaves us in the situation of a man out hunting for deer. Far off in the bush he sees a movement. He does not know whether this is another hunter, or perhaps

the deer which he is hunting. May he shoot without knowledge as to which it is? The answer is obvious. It would be incumbent upon him *not* to shoot until he is certain. He must accept the fact that there is a doubt and not take such violent action until he is certain that the movement in the bush is not a human life. This, I believe, is the case against abortion when argued on this point. I, for one, feel that a human life is present from the moment of conception, but I recognize that others will disagree and that there is no positive answer, except in law, at the present time. Action against the unborn on this principle, when there is doubt, would be wrong, and the burden of proof is on the proponents of this legislation to prove a human life is not present.

It seems strange and perplexing to me that as our government is striving to inaugurate the Great Society, with its emphasis on rights, we have some members of our medical profession now moving for the liberalization of abortion which is the absolute denial of the very basic right to life. There is something wrong in a culture, civilization and society, when the rights that flow from life become more important than the right to life itself. The very sacredness of the right to life must be understood, accepted, appreciated, and followed because it is basic and fundamental to civilization. In fact, it is the right to life respected by a cultured civilization which differentiates it from the life of the jungle, where assault and murder are characteristic modes of

living. The right to life must not be restricted merely to the living, to the strong, to the independent who in some manner can protect themselves from assault and safeguard themselves. This right must also be accorded to the unborn, who is just as much a person and an individual with rights, as is the living, but who happens to be weak, helpless, and unable to protect himself against the assaults of others. He depends for his continued existence, development, and birth on the charity and solitudes of his mother and her physician.

Once a state grants a *right to kill* the unborn, it is only a short step to the position where the state could *order* the killing of the unborn and a shorter step to the *commanding of the death* of living defectives and then of healthy individuals. Once abortion has been liberalized, the State can move very rapidly in the direction of having the power to decide who is to be born and who is to be aborted, who is to live, and who is to die. That is a right which the State must never have. The wedge must not be inserted which would give the State the right to take an innocent life. We were all appalled by the genocide practiced in Germany in the concentration camps. We were outraged and we attempted to bring justice at the Nurenberg trials to those who were responsible for these deaths either directly or by willful toleration. We,

as a nation, felt that the basic rights to life were violated, and we called to heaven for vengeance! If we respect the basic fundamental right of one who has *been* born, we must also be consistent and respect the life of one who is a person and is subject to rights even though he has not yet been born.

It has been most distressing to find oneself in public opposition to his own Medical Association and to colleagues whom he respects. The difficulties and arguments propounded were actually legal and constitutional ones, and what we were all speaking about were socioeconomic problems, and not about real obstetrical and medical problems. The stand of our parent organization, the AMA, is even more distressing because it shows how far astray organized medicine has been led by an emotional campaign from its primary duty to preserve the life and health of all — the sick, the deformed, and even the unprotected, innocent unborn.

REFERENCES

- 1 Fitzgerald, Joseph M. and Horkan, Thomas A. Jr., "Legal Brief on Proposed Liberalized Abortion Bill," April 17, 1967.
- 2 Hellegers, Andre E., "Abortion, the Law and the Common Good," *Medical Opinion and Review*, pp. 85-89, May 1967.
- 3 Mixson, William T., "Florida Maternal Mortality Survey, 1964-65."

Dr. Lauth a past contributor to this journal is the founder and former president of the Catholic Physicians' Guild of Miami.