The Catholic Lawyer

Volume 15 | Number 2 Article 7

December 2016

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IN THIS PAPER I should like to present five points often neglected or obscured in the presentation to legislatures of arguments bearing on the amendment of statutes on abortion. These five points are: the present status of medical research on the child in the womb; the present teaching of tort law in regard to such a child; relevant constitutional law in regard to such a child; the statistical data on deaths from abortion; and the nature of the issue you have to resolve. In presenting this material I intend to contrast the old and the new in medical research and tort law, and the alleged and the accurate as to statistics, and to show how these contrasts relate to the constitutional question and the question of changes in the abortion law.

I

The Status of Medical Research on the Child in the Womb

The Old View

The ancient view of the child in the womb was that he was a part of his mother. This view was enshrined in the Roman law.[1] It survived into the twentieth century and was stated as good medicine and good law by the highest court of the state of New York as comparatively recently as 1921: "When justice or convenience requires, the child in the womb is dealt with as a human being, although physiologically it is a part of the mother", Justice Pound wrote

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[1] JUSTINIAN, DIGEST 25.4.1.1.

for the Court with Justice Cardozo dissenting in *Drobner v. Peters*.[2]

The New View

Enormous scientific developments have enabled modern men to put aside the unscientific notion which the Roman law relied on and which the Court of Appeals in good faith accepted. The new data is well set out in the report of a woman doctor, H. M. I. Liley, who, with her husband, A. William Liley, was a pioneer in developing techniques for blood transfusions to the baby in the womb. The work of these two outstanding fetologists made it possible for the statement to be made in 1967:

> Because the fetus is benignly protected, warmed and nourished within the womb, it was long thought that the unborn must have the nature of a plant, static in habit and growing only in size. Recently through modern techniques of diagnosing and treating the unborn baby, we have discovered that little could be further from the truth.
>
> The fluid that surrounds the human fetus at 3, 4, 5 and 6 months is essential to both its growth and its grace. The unborn's structure at this early stage is highly liquid, and although his organs have developed, he does not have the same relative bodily proportions that a newborn baby has. The head, housing the miraculous brain, is quite large in proportion to the remainder of the body and the limbs are still relatively small. Within his watery world, however (where we have been able to observe him in his natural state by closed circuit x-ray television set), he is quite beautiful and perfect in his fashion, active and graceful. He is neither an acquiescent vegetable nor a witless tadpole as some have conceived him to be in the past, but rather a tiny human being as independent as though he were lying in a crib with a blanket wrapped around him instead of his mother.[3]

The evidence accumulated by the new science of fetology converges with the understanding of mental growth that has been made possible by intensive study of the early life of the child. Here the testimony of Dr. Arnold Gesell, founder of the Clinic of Child Development at Yale University, is of particular significance. In a chapter entitled "The Nature of Mental Growth", Dr. Gesell points out that from the point of view of a psychologist, "mental growth is a process of behavior patterning." He continues:

> [e]ven in the limb bud stage, when the embryo is only four weeks old, there is evidence of behavior patterning: the heart beats. In two more weeks slow back and forth movements of arms and limbs appear. Before the twelfth week of uterine life the fingers flex in reflex grasps.[4]

All of this development, detectable as early as the fourth week, is, in Gesell's professional view, "mental growth". In other words mental growth is the organization of nerve cells into patterns of responsiveness or into what can be called reaction systems. From the studies of the child psychologists it can be said that

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[2] 232 N.Y. 220, 133 N.E. 567 (1921).

[3] H.H.I. LILEY, MODERN MOTHERHOOD 26-27 (1967).

[4] GESELL, THE FIRST FIVE YEARS OF LIFE 11 (1940).

this process of mental development which characterizes the ten-year-old child, or the one-year-old child, also characterizes the embryo who is only one month old.

II

The Status of the Child in Tort Law

The Old Law

The common law of torts was set out in a classic statement by Justice Oliver Wendell Holmes holding that there could be no recovery for the wrongful death of the child because of injuries inflicted in the womb—in other words, no recovery for an abortion.[5]

It was this classic statement that Justice Pound followed in the *Drobner* case, where he said, "In the mother's womb he [the infant] had no separate existence of his own. He carried the injuries out into the world with him. His full rights as a human being sprang into existence with his birth." [6] The child's action for negligence resulting in prenatal injury was dismissed. Only Justice Cardozo prophetically dissented.

The New Law

In 1951 the Court of Appeals decided that it should no longer follow the *Drobner* case. It held that an infant might sue for injuries inflicted upon him as a child in the womb.[7]

The reversal of *Drobner* in 1951 was only part of what has been aptly called "the most spectacularly abrupt reversal of a well settled rule in the whole history of the law of torts".[8] That development occurred in response to the new medical evidence and in response to the criticisms of legal writers who said there was no longer any sense in treating the child in the womb as a part of the mother.

This development is taken as a prime example of the effect of scientific development on law in the instructive book of Professor Edwin W. Patterson of Columbia University Law School. He concludes "the meaning and scope of even such a basic term as 'legal person' can be modified by reason of changes in scientific facts—the unborn child has been recognized as a legal person even in the law of torts".[9]

The change in the tort law left undecided whether the child had to be viable to recover for his injuries and whether the child had to be born alive in order to maintain a suit. Here the courts have not been unanimous, but the modern trend is clear.

As to viability, the majority of courts hold that the child need not be viable at the time of the injury.[10] In a leading Pennsylvania case Justice Curtis Bok observed, "[v]iability has little to do with the basic right to recover". He went on to say, "[t]he real catalyst of the problem is the current state of medical knowledge

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[5] Dietrich v. Inhabitants of Northampton, 138 Mass. 14 (1884).

[6] Drobner v. Peters, 232 N.Y. at 223, 133 N.E. at 568 (1921).

[7] Woods v. Lancet, 303 N.Y. 349, 102 N.E.2d 691 (1951).

[8] PROSSER, TORTS § 56 at 356 (1964).

[9] PATTERSON, LAW IN A SCIENTIFIC AGE 35 (1963).

[10] PROSSER, *supra* note 8.

as to the separate existence of a fetus". Holding that this question of separate existence was the key to the problem, Justice Bok, speaking for the Supreme Court of Pennsylvania, allowed recovery for injury to a fetus who was one month old at the time of injury.[11]

There are additional reasons for not making "viability" the dividing line in the treatment of the child in the womb as a person. One is that the perfection of artificial incubation may make the fetus viable at any time: it may be removed and artificially sustained. Experiments with animals already show that such a procedure is possible.[12] This hypothetical extreme case relates to an actual difficulty: there is considerable elasticity to the idea of viability. Mere length of life is not an exact measure. The viability of the fetus depends on the extent of its anatomical and functional development.[13] The weight and length of the fetus are better guides to the state of its development than age, but weight and length vary.[14] Moreover, different racial groups have different ages at which their fetuses are viable. Some evidence, for example, suggests that Negro fetuses mature more quickly than Caucasian fetuses.[15] If viability is the norm, the standard would vary with race and with many individual circumstances.

The second question where there is still a split of authority is whether an action may be brought for the wrongful death of the child in the womb—in other words, whether a suit may be brought for causing an abortion, whether intentionally or negligently. Here there is some variation depending on the wrongful death statute involved. The Court of Appeals has held that an action could not be brought for the wrongful death of two twins, stillborn at the age of seven months due to the negligence of the defendant.[16] The court noted that the Decedent Estate Law had been first enacted in 1847, and that at this time the legislature would not have intended to include an unborn fetus within the term "decedent" in wrongful actions. The court declined to extend *Woods*, on the ground that the fetus who was killed was not faced with the prospect of impaired mental or physical health, and so did not need compensation. Payment to the mother who could already recover for her suffering as a result of the still birth was characterized as "an unmerited bounty". The court added that proof of causation and damages would be "vague". Judges Burke and Keating made a vigorous dissent.

In contrast to the decision of the Court of Appeals is the decision by an equally distinguished court in the case of *Torri-*

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[11] Sinkler v. Kneale, 401 Pa. 267, 164 A.2d 93 (1960).

[12] Brinster & Thompson, *Development of Eight-Cell Mouse Embryos in Vitro*, 42 EXPERIMENTAL CELL RESEARCH 308 (1966).

[13] J. MORISON, FETAL & NEONATAL PATHOLOGY 99-100 (1963).

[14] Gruenwald, *Growth of the Human Fetus*, 94 AM. J. OF OBSTETRICS & GYNECOLOGY 1112 (1966).

[15] MORISON, *supra* note 13 at 101.

[16] Endrescz v. Friedberg, — N.Y.2d —, — N.E.2d —, — N.Y.S.2d — (1969).

gian v. Watertown News Co.[17] In this case the intestate was a child 3½ months from the time of conception. He was killed by a truck negligently striking his mother. As the court put it, "[t]here was medical testimony that the accident of January 2 was the adequate cause of the premature birth, and that the cause of death was prematurity." [18] Death was thus caused by one of the classic methods of abortion—forced premature delivery of a nonviable fetus, albeit abortion by motor vehicle is not a classic method. The court had to decide whether an action in tort lay for such death. Chief Justice Wilkins remarked, "[w]e are not impressed with the soundness of the arguments against recovery. They should not prevail against logic and justice." The court held that an action would lie for the abortion of the child which had been negligently caused by the defendant.

If one accepts the trend of modern tort cases, one is led to conclude, in the words of the writers summarized by Prosser, "the unborn child in the path of an automobile is as much a person in the street as the mother".[19]

If one does not accept the modern trend entirely, but takes the position that the child must survive in order to bring suit, the requirement of survival to birth says nothing as to the rights which the civil law is protecting before birth. The argument has been made that, because of the survival requirement, no injury is recognized by law prior to birth. A comparison with other common-law rules shows that this argument is fallacious.

The common law, before the enactment of wrongful death acts, was that if a person were tortiously killed, no suit could be brought to vindicate his death by civil damages because "the tort died with him".[20] No one ever asserted that the law did not recognize adult beings as persons because at common law they had to survive in order to sue. No one ever said that an injury was not done by destroying an adult because the law precluded recovery for the wrong.

It is plain that, in recognizing a cause of action for injury inflicted before birth, a legal interest and personality are recognized as protected before birth. The birth itself is not an event which, suddenly and retroactively, endows the newborn with rights which a negligent motorist could have invaded five months before the child had them. If the child in the womb is a person in the path of the automobile, it is because he is a person at the prenatal moment when the automobile or other agency of injury or death strikes him.

III

The Status of the Child in Constitutional Law

The Old Law

There are, so far as I know, no old cases where the constitutional rights of the child in the womb were balanced

[17] 352 Mass. 447, 225 N.E.2d 926 (1967).
[18] *Id.* at 448, 225 N.E.2d at 926.
[19] PROSSER, *supra* note 8, § 56 at 355.
[20] *Id.* at § 121 at 923.

against the freedom of the mother to exercise her choice and her conscience.

The New Law

Within the last decade the issue of whether a mother has the right to take a course of action, in obedience to her conscience, which will result in the abortion of the child, has been litigated in two cases. In each, a hospital sought to give a blood transfusion to the mother necessary to preserve the life of the child in the womb, and the mother, as a matter of religious belief, preferred to let the child die rather than permit the blood transfusion.

In the first of these cases, *In re Application of President of Georgetown University Hospital,*[21] Judge J. Skelly Wright declared,

> The State as *parens patriae* will not allow a parent to abandon a child and so it should not allow this most ultimate of voluntary abandonments. The mother had a responsibility to the community to care for her infant.[22]

The second case arose in New Jersey and again set one of the most fundamental of constitutional rights of the mother, the right to practice her religious belief, against the life of the child. The New Jersey court compared the case to one it had earlier decided where the blood transfusion was given after the birth of the baby. The court composed of Chief Justice Weintraub and Justices Jacobs, Francis, Hall, Schettino, and Hanneman found no difference between this case and the case now presented of a fetus likely to be aborted if denied blood. It declared in a unanimous *per curiam* opinion, "[w]e are satisfied that the unborn child is entitled to the law's protection. . . . We have no difficulty in so deciding with respect to the infant child." [23]

It is noteworthy that in both cases the Supreme Court of the United States declined to review the decision denying the mother's right to permit the abortion of her child.

It seems to be evident that if the courts hold that the interest in the life of the child is above that of even the right of a woman to practice her religion, the right of the child is above every other right of the mother except her right to life itself. In the case where a choice must be made between the life of the mother and the life of the child, the state is incapable of forcing the choice, and the ordinary rules of self-defense come into play. Where the interest of the mother is less than that of life, the child's fundamental right to life has been respected.

Given this recognition of the constitutional right of the child in the womb to protection, it seems established by analogy that to remove the protection of the criminal law from the child in the womb would be itself an unconstitutional act. The civil rights cases have established that for the government to fail to protect

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[21] 331 F.2d 1000 (D.C. Cir.), *cert. denied,* 337 U.S. 978 (1964).
[22] *Id.* at 1008.
[23] Raleigh Fitkin-Paul Mem. Hosp. v. Anderson, 42 N.J. 421, 201 A.2d 537, *cert. denied,* 377 U.S. 985 (1964).

a class is itself an unconstitutional denial of civil rights. As the Fifth Circuit said, "[t]here was a time when the denial of equal protection of the laws was confined to affirmative acts, but the law now is that culpable official inaction will constitute a denial of equal protection." [24]

The child in the womb is capable of having only one civil right—the right to life itself. To deny that right by depriving him of safeguards against those who would take it from him is an unconstitutional invasion of his right. As the Supreme Court of the United States declared in holding unconstitutional a statute which permitted the permanent sterilization of certain persons, "[t]here is no redemption for the individual whom the law touches." [25] If the civil right of the child in the womb is stripped from him, there is no redemption for him if his destruction is then effected.

IV

Statistics

Much of the argument for a change in the abortion laws—and by implication much of the constitutional justification for such a change—is that the present laws produce a high maternal mortality and that the present laws are contrary to the practices of a large part of the community. It is assumed or stated that a change in the abortion laws would substantially reduce maternal mortality and would substantially reduce the number of acts of abortion performed in defiance of community standards as determined by law. Both of these arguments rest on some statistics. I should like to examine this data.

Alleged Statistics on Maternal Mortality

In California two years ago, in the drive to induce the California Legislature to change its law, the most popular pamphlet used by the proponents for change was entitled "Must Ten Thousand Women Die Each Year?" The implication of this title was that every year in the United States 10,000 women died as a result of criminal abortions. This figure was quoted often in newspaper editorials in California in support of the campaign for change. The figure of 10,000 survived as recently as September of 1967, as it was quoted in an editorial in *The Washington Post* of September 2 urging change in the American abortion laws in order to reduce maternal mortality of this drastic kind.

Mr. Zad Leavy was active in the campaign for the changes in California in association with his partner, Senator Beilenson. Now, in a brief presented to the Supreme Court of California in the pending case of *People v. Belous*, he has presented a brief in which the authority he cites estimates that 5,000 women die each year from criminal abortions.[26] In this same brief Mr. Leavy declares,

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[24] Lynch v. United States, 189 F.2d 476, 479 (5th Cir. 1951).

[25] Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

[26] Brief on behalf of certain doctors as Amicus Curiae at 11, People v. Belous, Criminal No. 12739.

> It is no less than shocking to realize that every week of every month of every year approximately ten women lose their lives in California because these anachronistic laws drive them away from surgically safe procedures and into the hands of criminals to avoid giving birth to unwanted children.[27]

Accurate Statistics

Is there any basis for these statistics —for the 10,000 a year figure so often popularly used, or the figure Mr. Leavy quotes of 5,000 or the 500 a year he says is true of California? The person who is in the best position to answer that question is Dr. Christopher Tietze, Associate Medical Director of the Biomedical Division of the Population Council, the world authority on the statistics of abortion in all parts of the world, and himself an advocate of some forms of abortion. Referring to the enormous figures of 10,000 and 5,000, Dr. Tietze has declared without qualification that such figures for the United States are "unmitigated nonsense." [28]

How many maternal deaths are actually caused by any form of abortion? The known number of deaths per year is about 250. At the most, Dr. Tietze says, there may be 500 maternal deaths each year due to abortion.

There is something wrong with an argument, I suggest, where the alleged statistics needed to make it's point have been increased by 2,000 percent above what the experts say are the best estimates.

The same observation may be made of the California statistics as to which Mr. Leavy professed his shock that every week of every month ten women lose their lives due to criminal abortionists. Actually, an exhaustive study of the total number of maternal deaths over a period of recent years in California established that the number of maternal deaths from all abortions, legal and criminal, was on the average of 30 per year.[29] Here again in behalf of his argument Mr. Leavy had presented statistics which had been increased almost 2,000 percent above the best estimates of the experts.

Alleged Statistics on the Number of Criminal Abortions

The number of abortions that criminally occur in the United States or in a particular state has been the subject of much mystification. How many criminal abortions actually occur annually in the United States or in the state of New York? The only answer that seems to me that can be reasonably given is, "[w]e do not know how many occur." The act is not only criminal, but, unlike crimes such as larceny, its perpetration is secret and, if it is successful, its accomplishment remains a secret. It is not easily subject to statistical survey. It becomes a matter of guesswork and extrapolation from very fragmentary bits of information.

A conference held in 1958 under the sponsorship of the Planned Parenthood Association of America gathered experts on abortion and asked them to make their estimates of the number of criminal abortions in America. The range of

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[27] *Id.*

[28] N.Y. Times, Sept. 7, 1967, at 38, col. 1.

[29] FOX, *Abortion Deaths in California*, 98 AM. J. OF OBSTETRICS & GYNECOLOGY 645 (1967).

guesses by the experts was from 200,000 to 1,000,000 abortions annually.[30] When you are in doubt by a magnitude of 600 percent, you do not know the answer.

An estimate of abortions under the unamended English law was made by an English expert on the basis of figures of known maternal mortality. Assuming that abortion was a serious operation as a result of which there would be inevitably a certain percentage of maternal deaths from its performance, he was able to form an estimate of the number of actual criminal abortions in England. The figure he reached was that of 10,000 criminal abortions a year.[31] If the English experience is a good guide to American experience, there might, then, be between 40,000 and 50,000 criminal abortions annually in the United States.

Is there any rational basis by which one can choose between 40,000 annual abortions or 200,000 or 1,000,000 as the correct figures for the United States? I have not seen any evidence or method proposed by which a rational choice could be made between these conflicting guesses.

The Significance of the Argument from Statistics

One stated or implicit argument of those relying on the maternal death statistics is that a change in the abortion laws would reduce the number of maternal deaths. It might be felt that if even 250 maternal deaths in the United States are caused by criminal abortions, that is too many. There is, however, no certainty that any change in the abortion laws would reduce this sort of death. The figures sometimes cited from the Communist countries of Eastern Europe depend on an attitude toward abortion and techniques which might not be acceptable in the United States. If we take the attitude toward abortion prevailing in a democratic society such as Sweden which accepts licensed abortion, abortion is a serious operation which is regulated by the State. If we look at the Swedish experience, which represents the best example of state controlled abortion in a Western democratic society, the maternal death rate over a period of 20 years from licensed abortions in Swedish hospitals has been *slightly higher* than the death rate from actual delivery of a child.[32] As Swedish medicine is not inferior to American medicine, there is little reason to suppose that procedures in American hospitals would be more successful in reducing maternal mortality than procedures in Swedish hospitals.

The other argument based on statistics is that the number of abortions criminally performed show a rejection of the law by large segments of the community. To that argument there are two answers:

1. If the law is as ineffective as claimed, there would not now be such strong pressure by those who disagree with the law, to effect its repeal.

2. The laws against theft were violated in 1966 by 762,352 cases of larceny of amounts over $50 known to the police

[30] M. CALDERON, ABORTIONS IN THE UNITED STATES 186 (1958).

[31] Goodhart, *The Frequency of Illegal Abortion*, 55 EUGENICS REV. 199 (1964).

[32] Klintsog, *Operationsriskerna vid legal abort*, 1954 ABORTFRAGEN 30 (1954).

and 486,568 cases of auto theft known to the police.[33]

Unlike the case of abortion where we are guessing with an enormous range in the guesses, we have a known pattern of behavior which has produced criminal acts of which the police are aware: 1,248,920 violations of the laws against theft. Does anyone argue from this enormous number of violations that there is something wrong with our laws on larceny, that the real trouble is with the victims whose property is taken, that we should reform the laws on larceny to accommodate contemporary moral standards?

It seems fair to say that the only time that persons use statistics of law violations to urge the repeal of the law is when for very different reasons they have already rejected the values preserved and protected by the law.

Finally, on the significance of statistics, it is well to point out that the Swedish experience did show that unless one repealed all the abortion laws there would be no substantial reduction in the number of abortions. In Sweden, which has the longest experience in regulated abortions in Western Europe, there is no evidence that the criminal abortions, estimated at 20,000 a year when the 1938 act was passed, have been substantially reduced by the Swedish laws licensing abortion in a number of circumstances.[34]

[33] U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 149 (1967).

[34] Uhrus, *Some Aspects of the Swedish Law Governing Termination of Pregnancy*, THE LANCET 1292 (1964).

V

The Nature of the Issue

Presented with testimony from several sides, a choice has to be made to reject all requests for change, to adopt a radical change, or to compromise. In the nature of the political process, one may well be inclined to compromise on a set of modest changes. It seems to me that this course, however appealing in the ordinary case where political or economic interests are at stake, is not possible where this kind of legislation involving basic civil rights including the right to life, is involved.

If a law is adopted which is tailored to meet the cases that have the most emotional appeal when they are presented by themselves without reference to the larger problems—the cases of rape, incest, and mental instability—a major step has been taken towards abandoning the state's right to protect the fetus. This is no mere logical fear; it is actually what is now happening in California. I should like to quote again from the brief of Mr. Leavy in the *Belous* case attacking the constitutionality of *any* state regulation of abortion:

> In the Therapeutic Abortion Act of 1967, the State demonstrated that it was not concerned with protecting the embryo. In this Act, the State recognizes the woman's interest as overriding any interest in the embryo, for it allows a woman to terminate a pregnancy which will cause her great social and psychological distress. Health & Safety Code § 25951 (abortion for rape or incest). With the incest provision, the State allows a woman to abort a pregnancy that occurred through her voluntary sexual activity, for if it were not voluntary the

> rape provision would govern the case. Under these provisions, then, the State disclaims its interest in the "life" of the embryo and allows the woman and her doctor to determine whether she shall have an abortion.[35]

Mr. Leavy concludes his argument by saying, "[t]he statute denies equal protection of the laws" to all those women who cannot get abortions at their will. Half measures place a state in the same position that Mr. Leavy contends the State of California has placed itself.

The choice, then, is between resisting the pressure for any change or, alternatively, permitting, in one guise or another, abortion on demand. If you choose the second course, you will have added one more serious, divisive tension to a community which is already riven by deep lines of division. You will have stripped, in part or in whole, protection from beings which a substantial number of citizens consider as entitled to the protection of the laws as they themselves are. Indeed, a survey of opinion of those engaged in public health work professionally has shown that half of this small professional group believe that the child before birth is a human being.[36] You will have taken from the child in the womb a protection which other human beings claim as the most basic of civil rights.

Those who accept the essential humanity of the fetus cannot sit back and say this is a case where each one can follow his conscience or do his own thing. Accepting the fact that what is involved is the life of a child, they must regard it as their duty to prevent other people from destroying the child, even if those other people are the ones who brought the child into existence. The child is not the property of his parents.

The attitude of peacefully accepting the destruction of the rights of others has been much criticized in regard to the attitude of many persons in Germany under the Nazi regime and many persons in America in regard to civil rights for Negroes in earlier times. The lesson one must draw from those historical experiences is that those who see the civil rights of others being destroyed by withdrawal of protection of the laws have the strongest of civic obligations to insist that every part of the community is entitled to the protection of the laws. The issue is a fighting one. By that I mean, that there can be no compromise, no tolerance, no easy acceptance of legislation which destroys the most basic of human and civil rights for a class of children.

If you choose to resist all pleas and pressures for change, you will have the consciousness that you are acting in accordance with what is the converging testimony of those who have studied the life of the child in the womb both physiologically and psychologically. You will have the consciousness that you are keeping the protection afforded by the criminal law in harmony with the newly-emergent protection now given by the law of torts. You will have the consciousness

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[35] *See* brief *supra* note. 26.

[36] Knutson, *When Does a Human Life Begin: Viewpoint of Public Health Professionals*, 57 AM. J. OF PUB. HEALTH 2167 (1967).

of following the path indicated by those courts which have considered the constitutional rights of the mother in relation to the constitutional right of the child to live.

Finally, you will be conscious that you are acting not only in harmony with the great body of recent medical and legal data, but in harmony with informed world opinion. Only ten years ago the United Nations adopted a "Declaration of the Rights of the Child" which supplemented the United Nations' statement entitled the "Universal Declaration of Human Rights". One reason for this supplementary declaration was stated in its Preamble as being because "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".[37] Thus the representatives of most of the civilized nations of the world recognized that the being *before birth* deserved recognition as a "child". They further recognized that a child, so defined, needed legal protection. The committee report on this declaration noted that "representatives of the most diametrically-opposed social systems find common ideals and aspirations in discussing the privileges of childhood".[38] The committee thus underlined that the rights asserted by the United Nations as applicable to the fetus represented a commitment which had commended itself to all of the various social systems represented within that worldwide body.

Thus, the civilized world has treated the child before birth in the same way as the child after birth. In enumerating the 10 principles which constituted the rights of the child including the child in the womb, the United Nations declared, "[t]he child shall in all circumstances be among the first to receive protection and relief" (Principle 8). The United Nations further said, "[t]he child shall be protected against all forms of neglect, cruelty and exploitation" (Principle 9). Above all, the United Nations affirmed that the child "shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and postnatal care" (Principle 4). If the child is to be "among the first", if the child is not to be subjected to neglect or to cruelty, if the child is to receive prenatal care, then the child's life cannot be taken at the will of the child's mother.

The present law of New York which protects by the criminal sanctions of homicide the "unborn child" of six months or more,[39] became effective September 1, 1967. It protects the unborn child under six months by the "related offense" of abortion.[40] There is no reason in either contemporary law or medicine to change these modern protections established to defend the right to life of the child in the womb.

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[37] General Assembly of the United Nations, *Declaration of the Rights of the Child*, adopted unanimously in the plenary meeting of Nov. 20, 1959. 14 U.N. Gen. Assembly Off. Record 19-20 (1959).

[38] Rept. of the Third Comm. of the Gen. Assembly, 14 U.N. Gen. Assembly Off. Record 593.

[39] N.Y. PENAL LAW § 125.00 (McKinney Supp. 1968).

[40] *Id.* at § 125.05.