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Symposium: Abortion and the Law

Editor's Preface

In 1965, when the movement to liberalize the nation's abortion laws had yet to achieve its first tangible results, the *Western Reserve Law Review* published a symposium dealing with abortion and the law.¹ That symposium, in its entirety, was published subsequently by the Western Reserve University Press.² Together, this book and the original symposium have proved helpful to a great number of people involved in abortion-related issues. Today, some 7 years after the original publication, the level of public concern with these issues is as great as it has ever been. For this reason, the *Law Review* — again in collaboration with the University Press³ — is devoting most of the present issue to a second symposium on the problems of abortion and the law.

The need for a completely new treatment of the subject matter is apparent. The original effort, which is still the most comprehensive treatment available, is largely dated. Changes in statutory law have been many, and judicial decisions, essentially nonexistent in 1965, are now quite numerous. Moreover, there has been a continual emergence of entirely novel problems, problems that were either unforeseeable in 1965 or too remote then to warrant attention. The operation of abortion counselling services and referral agencies, for example, has posed practical, ethical, and legal problems that were of little or no consequence a short time ago. Yet the most radical changes have probably arisen from medicine. The possibility of using fetal tissue for medical purposes has made the fetus a potentially valuable byproduct of legal abortions, but has also raised a host of problems as sensitive as the original abortion question itself.⁴ And the development of various drugs may com-

¹ This symposium appeared in volume 17 of the *Western Reserve Law Review* (the predecessor of the *Case Western Reserve Law Review*).

² ABORTION AND THE LAW (D. Smith ed. 1967).

³ Later this year, the Case Western Reserve University Press will publish the second edition of *Abortion and the Law*. The book will include all the articles appearing in the present symposium and some seven or eight other ones as well.

⁴ Two uses for fetal tissue are reported in *TIME*, Feb. 28, 1972, at 54. The first is

pletely transform the abortion issue. If a woman is capable of chemically inducing any period that is more than a few days late, she can achieve a general regulation of her menstrual cycle. But at the same time, unbeknown even to herself, her monthly regulatory effort may constitute an abortion rather than the mere inducement of the belated period.⁵

Partly because of these complex new problems, the public's interest in abortion is certain to remain intense for the foreseeable future. If the United States Supreme Court eventually upholds most of the conservative abortion laws,⁶ public debate would continue undaunted as legislative reform and litigation based on state constitutions became the primary points of attention. And even if the Court broadly condemns statutory restrictions on a woman's access to abortion, many of the legal and practical issues would remain of concern. A wide array of subsidiary issues would have to be resolved in creating new legislative schemes, including such questions as whether pregnant minors would be obliged to obtain parental consent prior to abortion, whether abortion referral agencies would be permitted to operate, and where and from whom abortions could be obtained. Moreover, one could very likely expect a movement for a constitutional amendment to overturn any very liberal Supreme Court decision, which would, of course, keep the issues very much alive for some time.

It is with this belief that abortion will continue in importance to lawyers, legislators, and the public alike that the *Law Review* and the University Press have undertaken the present effort. B. James George, Jr., one of only two of the current authors who were also represented in the original symposium, provides a comprehensive summary of every significant aspect of the statutory and decisional law governing abortions. His article should be helpful for anyone interested in the topic, from the layman to the legislator. Alan Guttmacher, a nestor of the abortion reform movement, relates his

the transplantation of the thymus gland from an aborted fetus to a child born without a thymus. Since the transplanted thymus must come from a fetus of from 14 to 20 weeks old, one might wonder if doctors will begin to encourage women to delay their abortions. The other involved the use of fetal tissue to make vaccine.

⁵ See Guttmacher, *The Genesis of Liberalized Abortion in New York: A Personal Insight*, 23 CASE W. RES. L. REV. 756, 773 (1972).

⁶ Abortion cases have been pending on the Supreme Court docket for some time, and a decision is expected during the next term. These cases are *Doe v. Bolton*, and *Roe v. Wade, jurisdiction postponed*, 402 U.S. 941 (1971) (Nos. 971, 808, 1970 Term; renumbered Nos. 70-40, 70-18, 1971 Term, respectively). Both of these cases will be redocketed in the 1972 Term since they have just been ordered for reargument. 40 U.S.L.W. 3617 (U.S. June 27, 1972).

experiences over the years and explains why he developed the liberal attitudes he presently maintains. He discusses the New York experience with its repeal law, from preenactment to the present, and concludes with a summary of the medical advances that have occurred in relation to the inducement of abortions. Harriet Pilpel and Ruth Zuckerman coauthor an article that analyzes the subsidiary problems of a minor's right to an abortion. Gerald Messerman then discusses the many legal questions encountered by the abortion counselling services and referral agencies, which so far have received virtually no attention in the legal literature and only scant attention in the courts. Richard Schwartz then presents a complete analysis of the psychiatric implications of permitting abortion on request. His primary thesis is that the potential for improving the nation's overall mental health picture is, by itself, adequate justification for allowing abortion on request. And finally, Kenneth Niswander, the other author also represented in the 1965 symposium, discusses the contemporary indications for therapeutic abortions and the current legal abortion practices in the United States.