

AMERICAN CIVIL LIBERTIES UNION  
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September 10, 1969

POLICY STATEMENT OF AMERICAN CIVIL LIBERTIES UNION ON  
STATE LAWS PROHIBITING ABORTION

In the last few years legislatures all over the country have re-examined the emotionally charged policy of the criminal laws forbidding abortion. Lawmakers have gradually become aware of the tremendous social and medical problems and of the gross violations of individual rights perpetuated by the present abortion laws. A rapidly growing public sentiment is demanding that something be done to bring the old laws into line with the sweeping legal, medical, moral and social changes of the last half century, and in many states some amendments have been adopted.

The American Civil Liberties Union has watched these developments with keen interest. We have studied and debated the issue intensively for more than a year. Our discussion has touched on all aspects of the subject, including the social, medical, moral and theological, but our final conclusions rest solely on our desire to protect and advance civil liberties -- in particular, the rights of privacy and equality and the freedom of each woman to decide for what purposes her body should be used.

The American Civil Liberties Union asserts that a woman has a right to have an abortion -- that is, a termination of pregnancy prior to the viability of the fetus -- and that a licensed physician has a right to perform an abortion, without the threat of criminal sanctions. In pursuit of this right the Union asks that state legislatures abolish all laws imposing criminal penalties for abortions.\* The effect of this step would be that any woman could ask a doctor to terminate a pregnancy at any time.\*\* In his turn, a doctor could accede to the woman's request

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\* The termination of a pregnancy prior to the time when a fetus could live outside of the mother's body is what is medically defined as an abortion. The medical profession appears to agree that such independent viability could not occur until sometime after the twentieth week of pregnancy and, as a practical matter, even with the best medical care now available, not until several weeks later.

\*\* Caesarian sections -- the termination of a pregnancy after the fetus has become capable of living independently -- are not customarily regulated by the criminal laws.

in accordance with his professional judgment without fear of criminal prosecution. Thus, the decision of whether or not to continue a pregnancy would become one of the woman's personal discretion and the doctor's medical opinion. Both would be free to follow their private consciences in determining whether their religious or moral standards were being violated. No fear of criminal punishment would enter into the decision.

The ACLU holds that every woman, as a matter of her right to the enjoyment of life, liberty and privacy, should be free to determine whether and when to bear children. It is not a matter for the state to control. As long as criminal sanctions are attached to the performance of abortions, however, this freedom will not be realized. Even the recognition of special "hardship cases" -- danger to the life and mental or physical health of the mother, probable fatal deformity, pregnancy resulting from rape or incest -- falls short of protecting the rights we believe a woman should enjoy. Although a number of well-established religious and moral doctrines forbid abortion, we do not believe that the state may properly force these standards on the entire community. The Union itself offers no comment on the wisdom or the moral implications of abortion, believing that such judgments belong solely in the province of individual conscience and religion. We maintain that the penal sanctions of the state have no proper application to such matters.

The discriminatory effect of this prohibition of abortion involves another area of civil liberties interest, that of equality. At a time when our nation is ever more deeply intent upon narrowing the gap between the rich and the poor and removing the obstacles which prevent the poor from exercising fundamental rights, we should not perpetuate the kind of inequality that the abortion laws have produced. The rich can circumvent or violate the law with impunity, but the poor are at the law's mercy. This treatment is simply too unequal for civil libertarians to accept. Moreover, the very tendency of this law to be so arbitrarily applied and so widely ignored itself weakens the principle of the rule of law which is essential to the protection of civil liberties.

The violation of civil liberties inherent in the present abortion laws are sharply accentuated by the immense medical and social problems to which these laws have given rise. It is no secret that innumerable women secure abortions every year despite the prohibitions of the law. These women must either find doctors who are willing to stretch the technicalities of the law, or resort to frankly criminal abortions, most often at the hands of untrained incompetents. The physical, psychological and social costs of back-street abortions are too well known to require enumeration. No less tragic are the consequences to the woman who does not have the price of a quasi-legal or illegal abortion, to the unwanted child she later brings into the world, and to the rest of her family.

The current debate has revived the oft-heard contention that removal of criminal sanction on abortion will undermine the morality of our youth and open the door to promiscuity. This is an understandable concern, but the experiences of several European countries in which legal abortions are easily available has not borne out this fear. Moreover, the statistics and most reliable estimates on abortions now performed in this country indicate that the great majority of both legal and illegal abortions are sought by married women who already have several children and are pregnant by their own husbands. The primary impact of the laws would seem to fall not on the unmarried and potentially promiscuous teenager -- although they are indeed cruel in their impact upon the unmarried mother and her child -- but on the married woman with an established family.

Although the social and medical problems created by prohibition of abortion are without doubt extremely serious, in pressing for legislative abolition of the abortion laws the Union is guided by its desire to protect and promote the civil liberties of all citizens. We believe that the abortion laws violate civil liberties in the following specific ways:

1. They deprive women of the liberty to decide whether and when their bodies are to be used for procreation, without due process of law.
2. They infringe upon the right to decide whether and when to have a child, that is, the marital rights of privacy.
3. They deny to the women in the lower economic groups the equal protection of the laws guaranteed in the Fourteenth Amendment, since abortions are now freely available to the rich but unobtainable by the poor.
4. They are unconstitutionally vague.
5. They impair the right of physicians to practice in accordance with their professional obligations in that they forbid doctors to perform what their professional judgment may dictate is a necessary medical procedure. In many cases their failure to perform this medical procedure would, but for the statutory prohibitions on abortion, amount to malpractice.

Total repeal of all such laws will meet these civil liberties criteria.

Abortion. 1969 - 1970. TS Years of Expansion, 1950-1990: Series 3: Subject Files: Equality Before the Law, 1941-1987 Box 1145, Folder 13, Item 844. Mudd Library, Princeton University. American Civil Liberties Union Papers, 1912-1990, <http://tinyurl.gale.com/tinyurl/BpYmK8>. Accessed 3 Oct. 2019.