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by Luke T. Lee
and
John M. Paxman

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Pregnancy and Abortion in Adolescence: A Comparative Legal Survey and Proposals for Reform*

By
Luke T. Lee** and John M. Paxman***

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I. INTRODUCTION

(1) 18-year old single girl; lives with brother. On admission claimed to be nulliparous and to be menstruating. Admitted with TETANUS. On examination by gynecologist sixth day of hospital stay, her breasts were active, os uteri patulous, uterus not bulky. Died eighth day; autopsy confirmed abortion.

(4) 15-year old single girl lived with father. Procurement with oral drugs from chemists and relations. No tetanus. On admission Anaemic ++; T. 99.6 to 102.2°F. High vaginal swab; pus cells ++, occasional Gram + cocci. Culture (anaerobic and aerobic) sterile. Died within 24 hours. Autopsy confirmation.

(12) 16-year old housewife lived with father. Admitted with Tetanus due to attempt to procure abortion at 26 weeks; had injections from a nurse 4 days before, and died within 24 hours of admission. Autopsy: male foetus, crown-rump length 21.4 cm.

These are three case summaries of eighteen deaths attributed to procured abortion among 161 patients aged 12-20 admitted the Lagos University Teaching Hospital in the 1963-67 period.¹ The high mortality rate of 11.2% in one of the best staffed and equipped hospitals in Nigeria bespeaks the serious health hazard posed by teen-age pregnancy and abortion in that West African country.

From another continent, with another perspective, we find a recent study showing that 55% of nonvirgin adolescents interviewed in the United States confessed that neither they nor their partners used any birth control method, nor did they do anything else to reduce the risk of pregnancy at the time of first sexual intercourse. Of this same group of girls, 19% indicated as a regular birth control method: "I just trusted to luck that I wouldn't become pregnant;" Eight percent stated: "I didn't think about whether or not I might become pregnant." The resultant pregnancy rates of 11% for nonvirgin girls aged 13-15 and 28% for those aged 16-19 should have come as no surprise.² Every year, more than 200,000 girls aged 17 and under—one in ten—give

1. See Akingba and Gbajimo, *Procured Abortion: Counting the Cost*, 7 JOURNAL OF THE NIGERIA MEDICAL ASSOCIATION, No. 3, at 17, 26 (1970).

2. Sorensen and Hendin, *Adolescent Sexuality in Contemporary America: A Survey of Teenage Attitudes and Practices*, Boston Globe, Feb. 18, 1973 (Magazine), at 6-10. Adapted from THE SORENSEN REPORT: ADOLESCENT SEXUALITY IN CONTEMPORARY AMERICA (1973).

birth, and the divorce rate among teenagers is three times the national average.³

The modern version of "Madame Butterfly" as teen-age "temporary wives" of servicemen stationed overseas presents another dimension of the adolescent pregnancy problem. Often abandoned to overcrowded orphanages, the offspring grow up physically conspicuous and emotionally disturbed amidst the taunts of their schoolmates, whether in Europe or in Asia. According to a recent study made in West Germany, a country which until recently had a restrictive abortion law,⁴ 65% of some 8,000 children of half-black parentage are growing up psychologically retarded, shy and inhibited.⁵ In racially monolithic Japan, only a handful of half-black children have broken through the high walls of prejudice, winding up mainly in the entertainment field.⁶ Similar stigmas attach to children whose fathers are Caucasian. Even under the Confucian concept of tightly knit families, South Korea's "half-castes" are considered "outcasts," and their presence reminds many Koreans of the shame of widespread prostitution.⁷

Dissimilar though the above situations may seem, as far as adolescents are concerned, they share a common theme: a lack of concern for basic human rights. Specifically, the following rights as set out in United Nations documents were ignored:

- (a) the right to adequate education and information on family planning;⁸
- (b) the right of access to the means of practicing family planning;⁹ and,
- (c) the right of children, whether born in or out of wedlock, to equal status under the law and to adequate support from natural parents.¹⁰

It should be noted that human rights, by definition, "attach to all human beings equally, whatever their nationality,"¹¹ and, as such, impose not only a

3. N.Y. Times, May 5, 1974, § 4, at 5, col. 2. See also, Cohn and Lieberman, *Family Planning and Health. Congruent Objectives of Malthus and Spock*, 64 AM. J. PUB. HEALTH 225-229 (1974).

4. According to reports, the lower house of the West German Parliament recently approved a bill which would legalize abortion during the first three months of pregnancy thus superseding the former century-old statute. Washington Post, Apr. 27, 1974, at A24, col. 1. However, the application of the new law was suspended at the request of the Lord of Baden-Württemberg by the Constitutional Court at Karlsruhe on June 21, 1974. The application of Baden-Württemberg is based on Article 2 of the Constitution which provides that: "Every person has the right to life and to physical integrity."

5. *The Abandoned*, NEWSWEEK MAGAZINE, Feb. 13, 1967, at 50.

6. *Id.* The estimates of the number of mixed bloods fathered during the post-war American occupation of Japan range from the low Japanese official figure 4,000 to 50,000.

7. *Confucius' Outcasts. South Korea*, TIME MAGAZINE, Dec. 10, 1965, at 43.

8. Proclamation of Teheran, Final Act of the International Conference on Human Rights, para. 16, and Resolution XVIII (1968) on the Human Rights Aspects of Family Planning, adopted by the Conference on Human Rights at Teheran on 12 May 1968.

9. U.N. Declaration on Social Progress and Development, Art. 22(b), G.A. Res. 2542, 24 U.N. GAOR, Supp. 18, at 45, U.N. Doc. A/7388 (1969).

10. Declaration of the Rights of the Child, Principle I, G.A. Res. 1386, 14 U.N. GAOR, Supp. 16, at 19, U.N. Doc. A/4354 (1959).

11. Waldo, *Human Rights in Contemporary International Law and the Significance of the European Convention*, 11 INT'L AND COMP. L.Q. 3 (Supp. 1965).

moral, but also a legal responsibility upon states "to see to it that laws and policies contradictory to this right should be amended or abolished, and new ones adopted in conformity with and in promotion of this right."¹² Cast in such a light several important questions arise:

What are the consequences of the denial of such rights, especially to adolescents to whom society necessarily owes a greater duty of protection than it does to adults?

How does law affect the rights of adolescents in matters which concern pregnancy and abortion?

What role should law assume in protecting the rights of minors?

What paramount interests are we seeking to protect?

Lastly, what corrective reform measures should be undertaken?

It should be noted at the outset that no universal legal model exists for dealing with adolescent pregnancy and abortion. The law of each jurisdiction is a function of national and cultural preferences and varies accordingly. There is, however, a common thread which runs through the laws of the various jurisdictions—human rights, especially the rights of the child—whose potential for contributing to the solution of the problem of adolescent pregnancy and abortion deserves to be explored.

The purpose of this paper is thus to define the various legal issues which are relevant to the problem of adolescent pregnancy and abortion, particularly from the viewpoint of human rights.

II. THE LEGAL STATUS OF ADOLESCENTS

A. *Definition of "Adolescents"*

There is no consensus with respect to the definition of "minors" or "adolescents." Legal minimum ages vary not only according to sex, but also according to purposes, such as marriage, civil majority, criminal responsibility, voting right, military service, alcoholic beverages, etc.¹³ For each of the purposes, the ages differ from country to country and, in a federal structure, such as that of the United States, from state to state.

For the purposes of this paper, therefore, the terms "minor," "adolescent," and "teenager" are used interchangeably to denote a person who, by the laws of her country, is below the age at which she is judged competent in reaching independent decisions on specified matters otherwise allowed to adults.

12. Letter by Vicente Abad Santos, Secretary of Justice of the Philippines, to Dean Irene Cortes of the University of the Philippines, College of Law, March 16, 1972.

13. See App. I for a compilation, covering 48 countries, of the ages at which various rights attach.

B. *Status in Civil Matters*

Historically, the legal status of minors in *civil* matters has been quite different from that of adults. The law universally bestows a protective civil status upon minors which insulates them from the flightiness of their decisions and from outside coercion on the theory that they "lack the capacity to act because their physical, mental and moral development is incomplete."¹⁴ The rationale which underlies this essentially paternalistic view was reiterated in a court decision rendered in the United States a little more than a decade ago:

At common law infants (under 21) do not possess the power to exercise the same legal rights as adults. The disabilities are really privileges, which the law gives them, and which they may exercise for their own benefit, the object of the law being to secure infants from damaging themselves or their property by their own improvident acts or prevent them from being imposed on others.¹⁵

This special legal status cuts two ways. On one hand, it sponsors an attitude which gives minors special protections that are not available to adults. For example, a minor may void at his option most contracts he has entered into. It was in the area of child employment that some of the first "protective" laws regarding minors were passed in the United States. After repeated attempts to quell the practice of employing youths in hazardous industries, the passage of the Fair Labor Standards Act of 1938^{15a} triggered a wealth of state legislation aimed at prohibiting the employment of youths under 18 in hazardous industries and limiting the hours that youths under 16 could work.¹⁶ The simultaneous enactment of compulsory education laws acted as a means of protecting minors by ensuring that a child would not be sent to work before a certain age.

On the other hand, many of the benefits available to adults through the exercise of choice are not available to minors without parental consent. This is particularly true in the area of medical treatment where the paternalistic concern for the welfare of the minor and the standards governing the tort liability of medical personnel come together to generally bar medical treatment absent parental consent, except in emergency cases. To a certain extent, then, minors are held hostage to the will of their parents or guardians.

It is in fact the law relating to medical treatment of minors that most directly affects the problems of adolescent pregnancy and abortion. Until recently, the near-universal rule has been that minors must have the consent of their parents before they receive medical treatment. In the absence

14. J. PORRAS GARCÍA, PROTECCIÓN DE MENORES EN MATERIA CIVIL 23 (Mexico, 1964).

15. *Dixon v. United States*, 197 F. Supp. 803 (W.D.S.C., 1961).

15a. P.L. 87-30, 75 Stat. 65.

16. U.S. DEPT OF LABOR, 3 THE CHILD 17-18 (1938).

thereof, the actions of the medical practitioner in treating a minor may constitute an assault and battery.

This rule is increasingly being made subject to exceptions. First, the "emancipated minor rule" now recognizes that a minor who is emancipated from parental control—married minors or those who live separately from their parents, earn their own living, and make their own decisions on important matters—can consent to medical treatment. Second, a mature minor rule has also been established which permits minors of sufficiently advanced maturity and knowledge to do the same.¹⁷ Third, in the face of problems related to venereal disease, drug abuse and teenage pregnancy, a few countries have legislated into existence general "health services to minors acts" which permit underaged persons to seek and consent to medical help without parental consent.¹⁸ Though these inroads have been slight to date, there is a trend in the direction of granting more decision-making power to minors where medical treatment is involved.

There is also a body of law which is slowly growing out of situations where the minor is in need of medical intervention and the parents refuse to permit such treatment.¹⁹ The necessity of performing blood transfusions, amputations, and other types of corrective surgery have given rise to a series of cases in which courts have exercised their *parens patriae* power and have stepped in to determine that the best interest of the child dictates that the treatment be authorized. This type of judicial intervention is often narrowly circumscribed, but courts will use their authority to authorize treatment if the facts support the need.

C. Status Under Criminal Law

Despite the fact that minors had traditionally been treated differently in civil matters, it was only at the beginning of the twentieth century that recognition was given to the concept that as far as the criminal law was concerned minors also differed from adults. On the basis of their mental, physical and emotional differences, it was argued that the interests of all would best be served if minors were given specialized treatment for violations of the criminal law. Prior to the twentieth century, courts with criminal jurisdiction had dealt with juvenile and adult offenders under the same set of rules and punishment. There is one English case, for example, which shows that as late as 1852, two children, one age two, the other age six, were haled

17. The "mature minor" rule has yet to gain universal acceptance.

18. MISS. CODE ANN. §§ 7129-81 *et. seq.* (Supp. 1966).

19. An example of the former reluctance of courts to intervene is shown by the decision *In re Hudson*, 13 Wash. 2d 673, 126 P.2d 765 (Sup. Ct. 1942) (parental refusal to permit amputation of a club arm). But in *In re Rotkowitz*, a New York Court declared a child, who needed surgery to correct a deformed leg but whose parents split on consent, neglected and ordered the operation performed. 175 Misc. 948, 25 N.Y.S. 2d 624 (Dom. Rel. Ct. 1941).

into court for "laying snares" to trap game. They were fined and told that if they failed to pay they would be imprisoned for 30 days.²⁰ Other examples of rigorous treatment can be found. In 1828, 13-year-old boy was hanged for murder in New Jersey.²¹ During the mid-nineteenth century, signs of the shift in theory were made apparent by legislation in several countries which began to afford specialized treatment for the criminal acts of minors. This change came into widespread acceptance in the early 1900's, when juvenile courts or other institutions, such as the child welfare boards which specialized in treating minors, were first established.²² It was then that the theory and practice of treating minors became one of protection and rehabilitation rather than punishment through imprisonment, the basis being that a minor differs in intellectual and emotional maturity from an adult. As a result, the notion persists that minors should not be stigmatized for what would otherwise be criminal acts.

While attempts to provide successful rehabilitative treatment to minors have produced uneven results, the distinctive treatment between adults and minors is now virtually universal. Under the recently revised Penal Code of the German Democratic Republic, youths aged 14 to 18 are given sentences with special care taken to shape their development in a "positive direction" and help them gain a sense of "social responsibility" to the end that they become "useful" citizens.²³ The so-called special legal status of a minor under criminal law was evidenced also by an observation made in an opinion of the Supreme Court of Ghana regarding the sentencing of a 15-year-old girl who had been convicted of procuring an abortion. The Court said that "by reason of the age of the girl," the trial court was precluded from imposing the prison sentence required under the statute.²⁴ It is of interest to note, however, that the girl was tried in a criminal court under the Offences Against the Person Act, which makes no distinctions for age or legal status.²⁵

While it can be seen that the law, both civil and criminal, affords to minors a "privileged" status by acknowledging their right to proper care, education, employment protection, and special guidance and rehabilitation for illegal acts, the reality is sometimes quite different. Under the guise of protective legal status, minors have been denied many of the most fundamental of rights. For example, in the United States, juveniles were long denied

20. 2 THE CHILD AND THE STATE 328 (G. Abbot ed. 1947).

21. Hofmann and Pilpel, *The Legal Rights of Minors*, 20 PEDIATRIC CLINICS OF NORTH AMERICA 991 (1973).

22. O. NYQUIST, JUVENILE JUSTICE 138-142 (1960).

23. Penal Code of the German Democratic Republic, Jan. 12, 1968, Art. 65.

24. Boateng v. The State, 1964 Ghana Law Reports 602, 604 (1964).

25. The public debate which surrounded the trial of Marie Clair Chevalier in Bobigny, France, is suggestive of this dilemma. The 16-year old girl was tried along with her mother for having arranged for an abortion after refusing to bear the child. Marie Clair was acquitted by the judge but the mother was convicted and given a suspended fine as punishment, despite the strict French law. See *Boston Globe*, Nov. 24, 1972, at 52 col. 1.

the constitutional rights of persons accused of crimes, such as the right to counsel. As seen above, under the law requiring parental consent to medical treatment, adolescents are often thwarted in their attempts to seek help. Lastly, while in many countries the social welfare benefits are available to minors and adults alike, in other countries the rights of minors are unclear. In sum, the trenchant observation made by Justice Fortas of the United States Supreme Court may have correctly characterized the legal limbo in which minors are found. He wrote:

[T]here may be grounds for concern that the child [juvenile] receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.²⁶

It would seem fitting that attempts be made to review and clarify the legal status of minors vis-à-vis the subject matter of pregnancy and abortion.

III. LAWS AFFECTING PREGNANCY AND ABORTIONS IN ADOLESCENCE

A. *Sex Education and Information*

Reference was made at the beginning of this paper to the high mortality rate connected with abortion during adolescence at the Lagos University Teaching Hospital. It is significant to note that one of the two remedies proposed for preventing unwanted pregnancies lay in the dissemination of sex information to parents and teachers, as well as young people.²⁷ Similar recommendations have appeared elsewhere. The so-called Lane Report, published in the United Kingdom in 1974, emphasized in broad terms the role that sex education should play in the prevention of unwanted pregnancies and thus the tendency to seek out abortions:

A public educated to a more mature and responsible attitude toward sexual behaviour and to contraception will be the most sure guarantee that recourse is made less often to therapeutic abortion of unwanted pregnancies.²⁸

It would seem fair to assert that most of the educational systems in the world permit some form of instruction in the curriculum concerning human reproduction. Many countries have laws or regulations similar to those in

26. *Kent v. United States*, 383 U.S. 541, 546 (1966).

27. Akingba and Gbajimo, *supra* note 1 at 28.

28. Report of the Committee on the Working of the Abortion Act, Cmnd. No. 5579, p. 185 (1974).

effect in Costa Rica, which establish a policy that the curriculum should include sex education not only on the physiological and biological aspects, but also on the psychological, ethical and religious perspectives.²⁹ What is less certain is whether such instruction includes specific mention of contraception. In some instances, discussion of contraception within the structure of the school curriculum may be barred by other legislation which relates specifically to the dissemination of all types of information on that subject. The prime example of this type of legislation is the French Law of July 31, 1920. While no longer the law in France, many francophone African countries have retained the law even upon attaining independence by enacting "reception" statutes which took over in whole or in part in the former French law.³⁰ In Chad, Section 3 of the French Law of July 31, 1920, was lifted, almost *in toto*, and made part of Article 98 of the Chad Law No. 28 of December 29, 1965.³¹ Drawing its inspiration from the early French statute, Article 98, paragraph 2 of the Chad law makes the dissemination of "contraceptive or anti-natalist propaganda" through speeches in public places, or by placing in "public channels" books, written material, drawings, pictures or posters a criminal offense punishable by imprisonment of from one to six months and a fine of from 24,000 to 1,200,000 francs.

Dissemination of birth control information was banned in Italy under Section 553 of the Penal Code until 1971, when the Italian Constitutional Court declared the law unconstitutional in the *de Marchi* case. The Court decision stated in part:

. . . the problem of family planning has, at the present period of history, become so important socially and concerns such a broad scope of interests, that in the light of the public awareness and of the gradual widening of health education it can no longer be considered an offense to public morals to discuss various aspects of the problem publicly, to disseminate information concerning it, or to promote contraceptive practices.³²

In a small but growing number of countries sex education is being made compulsory. Such is the case in Sweden where information on contraception is provided in school to pupils between the ages of 14 and 16.³³ The recent

29. Exec. Decree No. 26 (March 18, 1970). Courses on sex education and hygiene are to be given during the first three years of secondary school. CÓDIGO SANITARIO, Art. 219.

30. Here we cite as examples the laws of Cameroon, Chad, Congo-Brazzaville, Central African Republic, Guinea, Niger and Upper Volta.

31. JOURNAL OFFICIEL DE LA RÉPUBLIQUE DE TCHAD, Jan. 1, 1966, at 13.

32. Corte Costituzionale, Sentenza No. 49, at 5 (March 16, 1971).

33. B. LINNÉR, SEX AND SOCIETY IN SWEDEN, App. D, at 142-145 (1967). A recent Danish law has also made sex education compulsory but it has been reported that the law is being challenged before the European Commission on Human Rights. SEICUS Report, No. 5, at 6 (1973).

interest in decreasing the high number of abortions in Hungary has led the Government there to require that sex education, including instruction on contraception, be included in the school curriculum as of September 1974.³⁴ The new Philippine Constitution places the responsibility for population control squarely on the shoulders of the Government.³⁵ The Population Act of 1971³⁶ has made contraception a national policy, and schools have been ordered to cooperate in disseminating birth control information,³⁷ despite the lack of a special law on sex education. Thus, contraception information is given at the secondary school level. In furtherance of the national policy, the Philippine municipality of Tiwi, Albay has enacted an ordinance which requires that before a marriage license is issued to a couple they must present a certificate from the municipal health officer to the effect that they have completed a family planning orientation course.³⁸

Many countries have no laws, regulations or decisions which address the issue of sex education and contraception. This is so irrespective of whether a country has a pro-natalist or anti-natalist population policy, though admittedly more interest tends to be shown in contraception where anti-natalist policies exist. In their absence Governments have had to grope for ways to fill the void. Though Kenya has adopted a general policy as part of its Development Plan of 1970-74 aimed at reducing its rate of population growth, the Government has yet to take formal action as to sex education in the schools. What sex education there has been to date is provided by the Family Planning Association. The practice has been for the Association to approach secondary schools and colleges with offers to give lectures on family planning. In this manner some sex education is being given to adolescents.³⁹

It is apparent from a survey of the literature that sex education is at once a sensitive and controversial subject. The nature of public opinion has often inhibited the implementation of an organized program of sex education in many countries, not the least among them the United States and the United Kingdom. The surge of public sensitivity to sex education is more often than not affected by cultural and religious factors. In Pakistan, where under Article 2 of the Constitution, Islam is declared the state religion, nothing which is offensive to Islamic religious principles can be taught in the schools. In the absence of an agreement on the part of Islamic scholars as to the compatibility

34. Decision No. 1040/1973/X.18 of the Council of Ministers, *Magyar Közlöny*, Oct. 18, 1973, No. 71, Sec. 11/A, para. 1; Sec. III, paras. 1-6.

35. Art. XV, § 10.

36. Republic Act. No. 6365, as revised by Pres. Decrees No. 69 and 79 (1972).

37. General Order 18 of December 1972.

38. Resolution No. 37, Ordinance No. 5 (March 13, 1973).

39. This information was provided by Professor U. U. Uche of the Faculty of Law, University of Nairobi, for an on-going study entitled THE WORLD'S LAWS ON SEX EDUCATION, which has been undertaken by Edmund H. Kellogg, Jan Stepan and David Kline at the request at SEICUS.

of sex education for minors with Islam, any attempt to teach contraception would of necessity have to be undertaken with caution.⁴⁰

Though as noted above, French law has typically reflected the attitude that information regarding contraception not be disseminated,⁴¹ recent recognition of the need for a freer flow of this type of information, particularly to teenagers, has provided the impetus for a change in French policy and law. The proposal for a Higher Council on Sex Education, Birth Control and Family Planning made in Law No. 73-639 of July 11, 1973, was implemented by a decree issued on January 5, 1974. Among other things the Council is charged with ensuring that the youth receives suitable sex education. But rather than make sex education mandatory, France has taken a middle course. Under the scheme, sex education, including instruction on contraception and ethical matters, will be provided outside of a compulsory school time in special groups which will meet with parental consent.⁴²

The critical reader will note that the foregoing discussion presupposes the existence of two conditions, neither of which necessarily exists in all countries: (1) that education is available to all adolescents, and (2) that the majority of adolescents remain in school until a time when sex education, especially pertaining to contraception, is given—normally during the secondary years as the students enter adolescence. Nonfulfillment of these conditions is evident in information from Mexico. While primary education is obligatory in Mexico, it is estimated that from 13 to 18% of the youths there do not attend school at all,⁴³ and of those who go to school, only 44% finish the primary grades. This type of statistic serves to emphasize the uneven opportunity afforded to adolescents to obtain information regarding human sexuality in general and contraception specifically.

The laws and policies governing education affect adolescents in two other important ways. First, until very recently, it was the policy in the United States to force pregnant teenagers to give up their schooling, at least until the baby was born. As noted recently, "[p]regnancy is a major reason for dropping out of school. Most school systems do not permit pregnant students to continue attending regular classes."⁴⁴ In many cases the rationale which is cited to support enforcement of the rule is based on the idea that it is not proper for teenagers to see a pregnant peer. There is reason to believe that little consideration is given as to what policy would really best serve the interests of the student. Similar rules are in effect in many other countries and have an obvious impact on a young girl's decision regarding what to do

40. Country tabulation for Pakistan in study mentioned in note 39 *supra*.

41. See text accompanying notes 29-31 *supra*.

42. MINISTERE DE L'EDUCATION NATIONALE, INFORMATION SEXUELLE A L'ECOLE 5 (1974) (brochure prepared for parents).

43. G. CORNEJO, A. KELLER, S. LERNER, L. AZUARA, LEY Y POBLACION EN MEXICO 84 (1974).

44. Foltz, *Pregnancy and Special Education*, 62 AM. J. PUB. HEALTH 1612 (1972).

about pregnancy. For example, there is a decision of the Supreme Court of Ghana in which a young school girl was prosecuted for seeking an abortion. The recitation of the facts in the case revealed that she sought the abortion because of her desire to "finish her school."⁴⁵ In a later study made in Ghana of females who procured abortions because of unwanted pregnancies it was found that only 13% knew about contraception.⁴⁶

The current and widespread practice of expelling pupils who become pregnant runs counter to the concept of helping adolescents. Aside from the fact that these rules provide a high inducement for seeking an abortion, it contradicts a concern for human rights.⁴⁷ Therefore, such practices should be reviewed.

Second, by providing increased educational opportunities, the status of women is enhanced in the long run and tends to lead to widening job opportunities for them and increasing their role outside the home. This in turn would have the effect of delaying marriage and reducing the number of children in view of the inverse relationship between educational level and fertility.⁴⁸ The importance of laws in this field is summed up in the Pakistan Second Five Year Plan:

Educated women can comprehend the possibilities of family planning more readily; gainfully employed women tend to marry later and to have fewer children. . . . The motivation for fewer children and more abundant life is more important than more dissemination of knowledge of the means of contraception.⁴⁹

In sum, it is important that legislation, regulations and policies governing education and dissemination of contraceptive information be re-examined

45. *Boateng v. The State*, 1964 Ghana Law Reports 602, 609 (1964). In Nigeria the desire to complete school training which necessarily gives rise to the fear of dismissal from school or from business was found to be the principal motivating rationale for inducing abortion. In a study made of 71 cases of induced abortion, 68% cited fear of dismissal as the reason why they sought abortions. Akingba and Gbajumo, *supra* note 1. As a cultural insight it is interesting to note that in many African countries what is generally called the "bride price" is directly proportional to the amount of education that a woman has received. J. B. AKINGBA, *THE PROBLEM OF UNWANTED PREGNANCIES IN NIGERIA TODAY* 102-103 (1971).

46. D. A. Ampofo, *The Dynamics of Induced Abortion and the Social Implication for Ghana*, 9 GHANA MEDICAL JOURNAL 295 (1970).

47. The IPPF Conference on the Medical and Social Aspects of Abortion in Africa (1973) made similar observations. For a brief report of the Conference see ABORTION RESEARCH NOTES, Supp. No. 8 (Feb. 1974).

48. It has been estimated that in Pakistan if no woman married below the age of 18 the fertility rate would be reduced by 15% due to the fact that at present more than half of the women have three or more children before reaching 20. F. Rahman and Lee, *Pakistan*, in POPULATION AND LAW (L. T. Lee and A. Larson, eds. 1971), (hereinafter Lee/Larson). See also E. DRIVER, *DIFFERENTIAL FERTILITY IN INDIA* (1963); D. KLINE AND W. McCANN, *LAW EDUCATION AND POPULATION* 12-16 (Paper presented at the UNESCO Workshop on the Teaching of Population Dynamics in Law Schools, Paris, Feb. 18-22, 1974).

49. GOVERNMENT OF PAKISTAN, *SECOND FIVE-YEAR PLAN (1960-1965)* at 334-35 (1960).

in light of the resolution unanimously adopted at the UN Conference on Human Rights in Tehran: namely, that couples have the right to be sufficiently instructed and informed on family planning.⁵⁰

B. Contraception

That access to contraceptives by adolescents as well as the probability of contraceptive failures is directly relevant to pregnancy and abortion is self-evident. However, the laws governing all aspects of contraception, *e.g.*, importation, distribution, sale, advertisement, and prescription or insertion of contraceptives, are in a state of utter disarray.⁵¹ For example, advertisement of contraceptives is prohibited in Eire,⁵² but vasectomy is legal in Dublin; while in Stockholm, contraceptives are aggressively advertised, but vasectomy is allowed only on narrow grounds.⁵³

In India, the pill is not available in the government program, although abortion and sterilization are legal; however, in Malaysia the reverse is true. In Japan, abortion is widely used but the pill is illegal for contraceptive purposes and IUD's severely restricted in their use.⁵⁴

Also, sale of contraceptives is prohibited in Spain, as it is in Eire⁵⁵ or was in France (except in the case of condoms) prior to the law of 1967.⁵⁶

50. We are not insensitive to arguments which would narrowly interpret "couples" and "family planning" so as to exclude adolescents, or at least unmarried ones. We see such views as unnecessarily restrictive and have chosen to adopt a more liberal interpretation.

51. To emphasize the contradictions which exist in the law in this and related areas, we point to the laws of the State of New York. There a person can buy contraceptives at age 16, but one cannot consent to intercourse until age 17. Moreover, one cannot get married without parental consent until age 18. One is almost forced to ask quizzically what minors do with the contraceptives during the year they wait to become 17. N.Y. EDUC. LAW, § 6811(8) (McKinney Supp. 1971); N.Y. PENAL LAW, § 130.05(3) (9) (McKinney 1967); N.Y. DOM. REL. LAW, § 15 (McKinney Cum. Supp. 1971).

52. See Criminal Law Amendment Act, 1935, § 17, Censorship of Publications Act of 1929, §§ 16, 17 (1) and Censorship of Publications Act of 1946, §§ 7(b) and 9(b). The Irish Supreme Court decided on December 19, 1973 in the *McGee* case that the ban on imports of contraceptives for private use was unconstitutional. See *The Times* (London), Dec. 20, 1973, p. 4, col. 1.

53. Swedish Association for Sex Education, *Sweden* in Lee/Larson, *supra* note 49, at 181-187.

54. M. POTTS, HEALTH RELATED LEGISLATION AND FAMILY PLANNING I (Background paper prepared for UNESCO Workshop on Teaching of Population Dynamics in Law Schools, Paris, February 1974). According to information received from Dr. Minoru Muramatsu of the Institute of Public Health in Tokyo by the Transnational Research Institute, the IUD was approved by the Japanese Government "as a valid contraceptive" in August 1974.

55. Spain: Penal Code, § 416, para. 3 bans sale of all "objects which are able to avoid pregnancy." Eire: Criminal Law Amendment Act, 1935 makes it a criminal offense "to sell, or expose, offer, advertise or keep for sale . . . any contraceptive." The law in Eire is evaded by giving the contraceptives away free of charge. Two family planning groups were recently acquitted of charges of violating this law because they mailed information and contraceptives to two young girls. The court found that these mailings did not violate the law because they did not constitute a sale as specified under the law.

56. Law 67-1176, § 3, para. 5; § 7/11(1a).

Sweden⁵⁷ and China,⁵⁸ by contrast, actually require pharmacists to maintain stocks of contraceptives. Until July 1970, Massachusetts laws had prohibited the sale of "any drug, medicine, instrument or article whatever for the prevention of conception"—except in the case of married persons to whom registered physicians could prescribe, and registered pharmacists could provide, such drugs or articles for contraception.⁵⁹ In fact, until 1965, the State of Connecticut had even prohibited the *use* of contraceptives.⁶⁰

The laws of many countries not only restrict the insertion of IUD's or prescription of oral pills to medical doctors,⁶¹ but, in addition, prohibit the latter from providing such services to minors without parental consent.⁶² Under the provisions of the 1967 French law, unmarried minors must have the consent of one of their parents before they can acquire contraceptives.⁶³

Though some countries are updating their laws concerning contraceptives, many laws are still vestiges of "legal imperialism" reflective of bygone pronatalist policies of erstwhile colonial powers.⁶⁴ These laws continue to hold sway in many developing countries long after they attain independence, despite the fact that even some of the former colonial powers have already changed their own laws because of their incompatibility with human rights and the realities which spring from human behavior.

The picture painted is at best bleak and confusing. While events are moving rapidly toward granting wider access to contraceptives, most adolescents who are sexually active are forced to go without the protections afforded to adults.⁶⁵ This ought not to be the case. Reason dictated that steps be taken

57. *Sueden*, in Lee-Larson, *supra* note 48, at 181-84.

58. *Lee, Law and Family Planning*, 2 STUDIES IN FAMILY PLANNING, No. 4, at 83 (1971).

59. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

60. *Griswold v. Connecticut*, 381 U.S. 475 (1965).

61. *Stepan and Kellogg, The World's Laws on Contraceptives*, 22 AM. J. COMP. L. 615 (1974).

62. *Id.* at 642.

63. The French Assembly recently passed by an overwhelming margin a law which authorizes general distribution of contraceptives. The requirement of parental and medical consent has been abolished under the act because the lack of birth control among young girls had caused a great number of social tragedies and illegal abortions. *N.Y. Times*, June 29, 1974, p. 3, col. 1. Final approval of the bill was given in late November, with the cost of making contraceptives widely available to be absorbed by the Social Security system. *N.Y. Times*, Nov. 28, 1974, p. 2, col. 4.

64. Laws in francophone Africa exemplify this tendency. *See generally* WOLF, ANTI-CONTRACEPTION LAWS IN SUB-SAHARAN FRANCOPHONE AFRICA: SOURCES AND RAMIFICATIONS (Laws and Population Monograph No. 15, 1973).

65. Practices in one urban area of the United States highlight the absurdity and the lack of sensitivity to the problems under discussion here. As late as 1970, the health service agencies in the District of Columbia refused to give birth control information to girls under 18—even with parental consent—unless they had already had a baby, an abortion or a miscarriage. D. Bazelon, *Beyond Control of the Juvenile Court*, 21 JUVENILE COURT JUDGES 42 (1972). Similar "stunning indications" to the effect that as many as 56% of the teenagers surveyed in New York were seeking pregnancy tests or abortions have provided the impetus for the creation of a multi-million

to protect those active teenagers from the greater dangers—physical as well as psychological—associated with pregnancy and abortion. Special attention should be given to the establishment of programs which offer counseling and assistance to teenagers regarding contraception.

C. *Minimum Age of Marriage*

For the purpose of marriage—another subject relevant to pregnancy and abortion—the minimum ages usually make a distinction between minor boys and minor girls. For example, the most universally used ages are 18 and 16 for boys and girls, respectively. Such minimum ages of marriage are in force in Algeria, Australia, Bangladesh, Brazil, Egypt, Ivory Coast, Jamaica, Japan, South Korea, the Netherlands, Norway, and the U.S.S.R. But the ages are set as low as 14 and 12 in Chile, Spain, Venezuela, and parts of Canada, and as high as 21 and 18 in Niger and parts of the United States.⁶⁶

However, what the law may stipulate as the minimum age of marriage is no guarantee as to reality. The effectiveness of the law depends upon a number of forces—social custom, religion, status of women, economic condition, educational and employment opportunities, as well as enforcement machinery. The last refers to the existence not only of a group of dedicated and efficient judicial and administrative cadres, but also supportive legislation without which the minimum marriage age law would prove illusory. For example, how could the minimum age be ascertained in the absence of a compulsory registration of births? What motivation is there to comply with the minimum marriage age requirement without an effective compulsory education and minimum age for child labor? What kind of self-enforcement incentive exists in the citizenry, such as its sense of patriotism and concern for the common good?

Depending upon the make-up of these forces, the average age of marriage may fall below or exceed the minimum marriage age. Thus, despite the 1929 Child Marriage Restraint Act, as amended in 1949, and the 1955 Hindu Marriage Act, both of which set the minimum age at 18 for boys and 15 for girls, the Indian statutes were not generally enforced because of the lack of marriage and birth registration, as well as mild punishment or penalty for violation.⁶⁷ Notwithstanding the passage of the Muslim Family Laws Ordinance in 1961, raising the minimum marriage age for girls to 16, the estimated marriage age, according to a report in 1968, was only 13.5 in

dollar program to provide birth-control information and devices to teenagers there. *N.Y. Times*, July 23, 1974, p. 33, col. 1. The American College of Obstetricians and Gynecologists in recommending that legal barriers to contraceptives for minors be removed has taken the position that pregnancy should not be the price that a minor must pay for contraception. (Adopted May 1971.)

66. For a more complete listing of the minimum marriage ages throughout the world, see Patrikios, *Why?*, UNESCO COURIER, October 1973, pp. 24, 26-27.

67. Singh, *India*, in Lee/Larson, *supra* note 48, at 115.

Dacca⁶⁸ and 14.9 in East Pakistan (now Bangladesh) as a whole.⁶⁹ And the practice of child marriage continues, though now to a lesser extent than before.⁷⁰

In the case of China, however, intensification of campaigns stressing the virtues of late marriages—men should not marry before reaching 28 and women not before 25—has apparently brought the actual marriage age considerably above the official minimum ages of 20 and 18, respectively, as stipulated in the 1950 marriage law.⁷¹

Whether reform of the laws governing minimum age of marriage alone will lessen the problems related to teenage pregnancy and abortions is subject to considerable doubt. Several countries are presently advocating revising the minimum age upward. But it would seem that if these reforms are not preceded or accompanied by other changes, such as widespread informational campaigns and the provision of better educational and occupational alternatives for teenagers, they are doomed to failure. In societies where social customs in favor of early marriage are deeply ingrained, it will take more than a mere change in legislation to alter community attitudes. In any event, societies which cannot count on the tool of mass mobilization of resources in this area will also have trouble inculcating new attitudes among the people.

D. *Family Allowances*

Among the factors influencing the decision of a minor to seek abortion or permit the pregnancy to run its course is the availability of family or child allowances. By 1967, 64 countries had instituted programs providing such allowances.⁷²

Following the depression of the 1930's, many governments assumed a greater responsibility for the economic and social well-being of their people, and the introduction of family allowance programs became widespread in the post-war period. The United States and Japan are now the only two industrialized nations without a general family allowance program.

Eligibility for a family allowance is determined in most cases by age and order of birth. Thus, some countries only start payments for the second or third child born, and a few countries have imposed an upper limit on the number of children within any one family for whom the allowances will be granted. Some countries vary the amount of the allowance as the number or

68. Reported in the Morning News Dacca of December 9, 1968.

69. Rahman and Lee, *Pakistan* in Lee/Larson, *supra* note 48, at 141.

70. See generally, B. N. Sampath, *Child Marriage: Revision of Marriageable Age and its Effective Implementation*, 3 LAWASIA 387 (1972).

71. HUANG YU-CHAN, CHUNG-KUNG CHIH-YU YUNG-TUNG (Birth Control in Communist China) 130 (1967).

72. MEASURES, POLICIES AND PROGRAMMES AFFECTING FERTILITY, WITH PARTICULAR REFERENCE TO NATIONAL FAMILY PLANNING PROGRAMMES, U.N. Doc. No. ST/SOA/Series A/51 at 17-26 (1972), (hereinafter U.N. MEASURES).

age of children increases or grant supplementary allowances while the children are attending school. In some countries the system of family allowances is related to employment, by means of a payroll tax, which may have a depressing effect on wages or an inflationary effect on prices. If marriage grants may be analogized to family allowances, we may also mention here outright grants on the occasion of marriage, as in the case of Portugal, or interest free loans that are increased if the bride gives up her employment or are partially cancelled with the birth of each child, as in the case of Spain. Because of the great variety of possible systems it is statistically difficult to make useful comparisons of allowances paid and their impact on the decision of a pregnant minor to give birth to a child.

A comparative study of birth rates in Sweden and Norway after the last war suggested that the evidence concerning Sweden did not "exclude the possibility that family allowances have had some [positive] effect upon fertility in young marriages." Such effect was not present in Norway, where payments begin only with the second child and are not part of a comprehensive family program as they are in Sweden.⁷³

It may be safely stated, however, that the impact of family allowances on minors' decisions to bear children would depend on the size of the payments per child. Where the size of payment exceeds or approximates the actual cost of bringing forth, rearing, and educating a child, it may act as a stimulant to fertility, as is reputed to be the case in post-war France, especially in increasing the frequency of births of second and third parity. On the other hand, if the payment is only nominal, the causal relationship between family allowances and fertility may be tenuous at best, as seems to be the case in most of the developing countries.

Since France has consciously resorted to family allowances as a means of stimulating its fertility rate, it is useful to study its system and development.⁷⁴ The French system had its roots in the late 19th century when employers took the initiative of giving maternal assistance to families. In 1932 legislation came into being which made it mandatory for employers to pay contributions to an "employer's compensation bank" to support the payment of bonuses to employees. The *décret-loi* of July 29, 1939, succeeded in altering the concept of family allowances from that of bonuses and made them available to everyone except independent workers. The Law of August 27, 1946, brought the control of the allowance fund under the central government as part of the social security system, and the allowances were based on number of children, ages, working status, etc. The payments take the form of straight family

73. Gille, *Scandinavian Family Allowances: Demographic Aspects*, 1 *EUGENICS QUARTERLY* 188-89 (1954); U.N. MEASURES, *supra* note 72, at 36.

74. The information in the text is drawn from Jacques Doublet and Hubert de Villedary, *LAW AND POPULATION GROWTH IN FRANCE* 34-35 (Law and Population Monograph Series No. 12, 1973).

allowances, which lessen economic pressures of children in the homes, and "sole support" allowances, which are designed to keep the mother at home. Included in the overall allowance program are payments for maternity and prenatal care. The maternity allowance is made for the purpose of encouraging fertility and thus specifically preventing abortion. The prenatal allowances are made prior to the birth of the child. The Law of January 3, 1972, increased the "sole support" allowance to enable the mother to remain at home if she chooses. That law also established a new allowance for child care expenses.

Under the Civil Service Statute in Costa Rica, employees of the government whose monthly income does not exceed ₡300 (colones) are entitled to an allowance of ₡15 for each child.⁷⁵ Because the family allowance scheme in the Soviet Union has remained unchanged since 1947, despite rising wages, benefits paid to unmarried mothers upon the birth of the first child and to married mothers beginning with the fourth child, are thought to be of little significance.⁷⁶ On the other hand, Romania and Bulgaria have in the past few years sharply increased the benefits available for the first few children in an attempt to increase the birth rate in those countries.⁷⁷ By Decree No. 61 of the Council of Ministers of 28 December 1967 the lump sum payments in Bulgaria were revised as follows: \$10 for the first child; \$100 for the second; and \$250 for the third. In addition, monthly child allowances are paid to all eligible families as follows: \$2.50 for the first child; \$7.50 for second; and \$17.30 for third. Mothers of "illegitimate" children receive \$5 per month for the first child, with payments for subsequent children equal to those of other families. These payments continue until the child reaches 16 years of age. In Romania, each family receives a salary supplement of 130 lei per month (about \$7.15) for each child under 15.

A recent comparative study seems to suggest that the impact of family allowances on the birth rate in Bulgaria was not overwhelming. Part of the difficulty in trying to assess the impact arises from the fact that changes in the abortion law coincided with increases in family allowances. However, there appears to be some correlation between higher monetary incentives and increases in fertility in the urban areas. But in rural Bulgaria the birth rates have fallen steadily since 1969. The cause of the rise in fertility in Romania is equally difficult to determine. Though the crude birth rate in 1972 was 18.8—more than four points above the 1966 rate when abortion laws were made more restrictive and family allowances increased—it is unlikely that the

75. Universidad de Costa Rica, *Proyecto Derecho y Poblacion* in *EL DERECHO Y LA POBLACION EN COSTA RICA* 14-15 (1973).

76. B. Q. Madison, *SOCIAL WELFARE IN THE SOVIET UNION* 208-09 (1968).

77. H. P. David, *FAMILY PLANNING AND ABORTION IN THE SOCIALIST COUNTRIES OF CENTRAL AND EASTERN EUROPE* 65, 132 (1970).

monetary incentives have played a significant role in the slight long-term increase.⁷⁸

In the United Kingdom,⁷⁹ upon satisfaction of the National Insurance contribution conditions by the mother or father, a lump sum payment of £25 is paid for each child that lives for at least 12 hours after birth. As the payment is linked to birth of the child, it covers all children. Where contribution requirements are not satisfied, the assistance may still be given but may vary depending upon the circumstances of the family or unwed mother. Family allowances are available on a weekly basis but only for the second and subsequent children.

The family allowance schemes are to a certain extent a luxury participated in by the developed countries. Of the 35 countries surveyed in the mid-1960's, 17 spent more than 1% of their national income on family allowance payments. Of the 17, only Chile could be classified as a developing country.⁸⁰ In Chad, Dahomey and Gabon, the influence of the French family allowance system and pronatalist policies can be seen but the scope of the family allowance protection is very limited. For example, in Dahomey only 5% of the children eligible for payments are protected by the system.⁸¹ Thus, in many of the countries the monetary incentives for carrying a child full term are minimal and would appear to have little impact.

A recent comparison of family allowance programs done by Jacques Doublet for the International Labour Organisation illustrates how a family allowance scheme's impact on fertility is subject to the vagaries of the situation in each country. According to Doublet, a comparison between the birth rate of Ghana, a country which has an active family planning program but no family allowance system, and the Ivory Coast, where a family allowance program has been in effect for years, leads to a rather unexpected result: the Ivory Coast has a birth rate and natural growth rate slightly lower than that of Ghana.⁸²

Both maternity benefits and income tax exemptions for dependent children may be considered as forms of family allowances, hence factors in minors' decisions regarding pregnancy and abortion. Such manipulations of maternity benefits as changing the amount of birth grants, delivery or hospital

78. For a detailed discussion of the effect of monetary incentives on the birth rates in these countries see R. J. MCINTYRE, *PRONATALIST PROGRAMS IN EASTERN EUROPE 12-16* (paper presented at the annual meeting of the Population Association of America, New York, Apr. 20, 1974).

79. D. M. KLOSS and B. L. RAISBECK, *LAW AND POPULATION GROWTH IN THE UNITED KINGDOM*, 39 (Law and Population Monograph Series No. 11, 1973).

80. U.N. MEASURES, *supra* note 72, at 21, Table 1.

81. *Id.* at 23, Table 3.

82. A summary of the study may be found in a short article by Max Wilde, *Family Allowances and Fertility* in 1 *PEOPLE*, No. 3, at 24-25 (1974).

costs.⁸³ provisions of pre- and post-natal care, and length of maternity leave with pay, may have some influence on minors' decisions in bearing children.

The maternity leave policy under the civil service scheme in Nigeria in theory grants three months' leave with pay to pregnant employees. But the policy is evidently applied unevenly. According to Akingba, the methods of granting payment vary without reason. Some employees get the leave with full pay; others at only half. Those women employed by quasi-governmental institutions (corporations, universities) forfeit their annual leave for the period they are out on maternity leave. Some government agencies demand proof of a marriage certificate before leave will be granted. The application of the policy seems to be subject to the vagaries of individual preference. Those who are employed in Nigeria's private sector are far worse off. Many of the employers are reluctant to grant leave with pay. Some have strongly stated policies against pregnancy among employees, at least until they have worked for a year. There is at least one case reported where the mother had to be treated for a severe case of tetanus which resulted from an abortion she acquired in order to keep her employment.⁸⁴

A recent amendment to the Philippine Woman and Child Labor Law requires that maternity leave be granted to "any pregnant woman employee" who has worked for an employer for at least six months out of the past twelve. The leave, with full pay, takes effect two weeks before delivery and continues until four weeks after. The amendment also empowered the Secretary of Labor to formulate a regulation requiring employers to establish nurseries at the place of work for the benefit of the working women.⁸⁵

As for income tax exemptions, many countries provide some system of easing the financial burden of persons who must make additional expenditures resulting from having more children. Tax exemptions are, however, a less perceptible addition to the family wealth than family allowances. For example, exemption per child up to four children under the Income Tax Act, 1973 in Kenya is 180 shillings. As the shilling is worth only 14 cents (U.S dollars), that would put the annual exemption at \$25. Uche has attempted to assess the impact of such tax breaks on fertility. His study, based on interviews with 350 selected adults in 1973-74, showed the following relationships between tax relief and fertility behavior.⁸⁶

83. Since 1969 Singapore has been assessing an *accouchement* fee at Government Maternity Hospitals on women with the delivery of the third child. SINGAPORE FAMILY PLANNING AND POPULATION BOARD, FOURTH ANNUAL REPORT, 1969 3.

84. A short discussion of the policies in effect in Nigeria can be found in J. B. AKINGBA, THE PROBLEM OF UNWANTED PREGNANCIES IN NIGERIA TODAY 107-14 (1971).

85. Presidential Decree No. 148, March 26, 1973. The essence of this decree became part of the Labor Code, Art. 131 by a decree issued May 1, 1974.

86. U. U. UCHE, LAW AND POPULATION GROWTH IN KENYA 28, Table 7 (Law and Population Monograph Series No. 22, 1974). The monograph is derived from a larger two-volume study, THE LAW RELATING TO THE GROWTH AND CONTROL OF POPULATION IN KENYA,

| Questions | Yes % | No % | No Opin- ion % | Refused Comment % | Other % |
|--|----------|---------|-------------------------|-------------------------|------------|
| Do you consider the relief provisions in deciding your family size | 25.4 | 61.7 | 5.1 | 7.1 | .6 |
| Would you consider having more children if the level of relief was higher than it is | 32.3 | 41.7 | 10.3 | 14.6 | 1.1 |
| Would you limit your family size if the Act had no relief provisions | 20.3 | 52.9 | 8.0 | 16.6 | 2.3 |

While the levels of the exemptions are so low as to be somewhat neutral in their present effect, the responses of the survey seem to suggest that an increase in the tax exemption for children would have a positive effect on the decision to increase family size.

In assessing the effect of family allowances, maternity benefits and income tax exemptions upon minors' decisions to have or not to have children, it is important to note that: (1) family allowances are effectively available only in the developed countries and only if they constitute substantial and meaningful sums; (2) maternity benefits are most commonly available to persons in civil service, and at present most minors do not have access to those types of jobs; and (3) tax exemptions cannot be taken advantage of in most developing countries since minimum taxable income is already far above the average *per capita* income.

E. Out-of-Wedlock Births

If the opportunity to marry is not available to the pregnant adolescent, and abortion is not a viable option, she will invariably carry the child to term and give birth to a so-called "illegitimate" child. In the United States such births represent a large portion of the total births to teenagers. Of the 600,000 children born to women under 20 years of age in 1968, 160,000 were born out-of-wedlock—a figure which represents nearly 50% of the total number of "illegitimate" births.⁸⁷ As adolescents have become more sexually active, the number of illegitimate births for that age group has risen. According to Zelnick and Kantner, during 1965-68 the illegitimacy rate among girls 15-19 rose by 18%.⁸⁸

prepared by Uche under a grant from the Interdisciplinary Communications Program of the Smithsonian Institution.

87. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 50, Table 58 (1970).

88. D. Hardin, *Recent Trends in Illegitimacy—Implications for Practice*, 49 CHILD WELFARE 375 (1970).

Under English common law, the child of an unwed mother was the child of no one and had no rights of inheritance.⁸⁹ This view has been maintained by many states in the United States, although the laws vary from state to state. Though a few of the states have adopted laws which give the "illegitimate" child rights (support, inheritance, etc.) similar to those of "legitimate" children, in many others the former is the subject of discrimination insofar as legal protection is concerned.

Since the adoption of the Declaration of the Rights of the Child in 1959,⁹⁰ which calls for the elimination of discrimination against children born out-of-wedlock, there has been a gradual movement toward a complete equality of children born in and out of wedlock. In the United States, for example, the 1965 amendments to the Social Security Act contained provisions for children born out-of-wedlock to receive social security benefits.⁹¹ Many of the services provided under the Act are given federal funding only if they are available without regard to status, age or parenthood. And the Aid to Families with Dependent Children (AFDC) program distributes cash to unwed mothers and their dependent children.⁹² Recently, the Commission on Population Growth and the American Future included among its recommendations the revision of state laws and practices so as to insure that "all children, regardless of the circumstances of their birth, be accorded fair and equal status socially, morally and legally." The inequality in treatment has at least in part been caused by the unfounded belief that by penalizing the out-of-wedlock births, such births would decrease, illicit sex would be discouraged, and the traditional family institution would be strengthened. However, such causal relationships have not been borne out by fact, even in countries which have removed discrimination against out-of-wedlock births.⁹³

For example, the law in Norway was altered in 1915 so as to afford to the "illegitimate" children rights nearly equal to those of the "legitimate."⁹⁴ The law included a provision whereby every child would have the benefit of establishing paternity. Neither the giving of equal rights to "illegitimate" children nor the subsequent extension of medical, social and financial benefits to unwed mothers after 1915 have brought about the doom of the family institution or increased "illegitimacy."

89. 10 AM. JUR. 2D *Bastards* § 62 (1963).

90. See note 10 *supra*. The fundamental law in West Germany with regard to illegitimacy predated the thrust of the U.N. declaration by stating that: Illegitimate children shall be provided by legislation with the same opportunities for their physical and spiritual development and their position in society as are enjoyed by legitimate children. Basic Law of the Federal Republic of Germany of 23 May 1949, BGBI, Part 1, at 1, Art. 6, para. 5 (1949).

91. Social Security Act, 42 U.S.C. §§ 416(H)(3) (1965).

92. Cutright, *AFDC, Family Allowances and Illegitimacy*, 2 FAMILY PLANNING PERSPECTIVES, No. 4, at 4 (1970).

93. See generally, V. SAARIO, *STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK* (1967).

94. For a lengthy discussion of the Norwegian experience, see H. D. KRAUSE, *ILLEGITIMACY: LAW AND SOCIAL POLICY* (1971).

This comports with what Phillips Cutright has observed: a lack of correlation between the rates of "illegitimacy" and the percentage of GNP devoted to social security costs (health insurance, family allowances, pensions, unemployment benefits, etc.). Among the countries studied, West Germany and Czechoslovakia—with the highest percentage of GNP devoted to social security expenditures—had only the average rates of "illegitimacy." Of Spain, Japan, Portugal and the United States—countries which expended the lowest percentage of GNP on social security costs—the first two had only average "illegitimacy" rates, the latter two above average.⁹⁵

With respect to the treatment given under the law to children born in and out of wedlock, the Costa Rican Constitution⁹⁶ requires the parents to give the latter equal treatment. Moreover, the Constitution confers upon everyone the right to know who their parents are and prohibits any differentiation based on filiation. Thus, the legal distinction and discrimination present in other countries between children born in and out of wedlock has been eliminated. A regulation of the Ministry of Labor and Social Welfare recently assigned the duty of ensuring equal treatment under the law to the Department of Family Social Services.

While the legal machinery and theory are present in Costa Rica to protect the rights of the "illegitimate" child, the reality of the situation is another matter. Paternity petitions are seldom granted and there are apparently enormous problems in enforcing the legal provisions. In 1970, for example, 6,500 "illegitimate" births were registered but only 27 paternity investigations were initiated. Even more revealing is the fact that during the period of 1949-1967, the Court of Cassation granted only 60 paternity petitions. Professor Elizabeth Odio concludes therefore that the constitutionally protected right is illusory and of little practical meaning.⁹⁷

Prior to January 3, 1972, French law made a distinction between the rights of "legitimate" and "illegitimate" children. The pre-1972 situation dated back to the Civil Code of 1804, but had slowly been evolving to its present position of equality of treatment. The Law of November 16, 1912, made it easier to establish paternity and thus to receive maintenance. And while children who were born of adulterous or incestuous relationships could not have access to the courts to establish paternity, they were entitled to receive maintenance under the Law of July 15, 1955. The 1972 law drastically changed the "illegitimacy" law by stressing equality of treatment for all children. Under that law the new Article 334 of the Civil Code now states:

95. Cutright, *Illegitimacy: Myths, Causes, Cures*, 3 FAMILY PLANNING PERSPECTIVES, No. 1, at 29 (1971).

96. Arts. 53-54. For further discussion, see EL DERECHO Y LA POBLACION EN COSTA RICA, *supra* note 75, at 37-38.

97. E. Odio, *Law and Population in Costa Rica*, in POPULATION AND THE ROLE OF LAW IN THE AMERICAS 39 (Law and Population Monograph Series No. 18, 1974).

The illegitimate child has in general the same rights and the same duties as the legitimate child.

Even if the paternal filiation is not established under Article 342, the new child has a cause of action to demand support "from the man who had relations with his mother during the legal period of conception."⁹⁸

"Illegitimacy" has assumed serious proportions in the United Kingdom⁹⁹ where the percentage of out-of-wedlock births has nearly doubled in the past twenty years. According to the First Report of the Select Committee on Science and Technology (1971), fully 8.3% of all births were "illegitimate." This despite the relaxation of laws governing abortion and contraception. The financial problems of a mother of an "illegitimate" child have been reduced somewhat by the aid given by voluntary agencies and the state. The unwed mother is now able to receive the same benefits as other mothers. A goodly number of unwed mothers in the United Kingdom place their babies "in care." Over 3,000 "illegitimate" children born in 1967 were placed under the jurisdiction of the state for care and keeping. This indicates either a desire of the mother not to be burdened by the child or an inadequacy of the system of aid given to unwed mothers. It is most likely occasioned by a combination of the two factors.

F. Adoption

The decision of minors to resort to abortion or to carry the pregnancy to term may hinge upon the availability of adoption and the ease of the adoption procedures under the law. That adoption may serve as a possible alternative to abortion was underscored in a recent study by the Council of Europe, citing the fact that in France only 4,500 adoption applications can be met out of 30,000 each year.¹⁰⁰

A recently enacted state abortion statute in the United States has taken a unique approach to this situation. The law, while setting forth that no abortion may be performed without the woman's "voluntary and informed written consent," establishes that the standard for "informed" is that she be given, among other information, the names and addresses of two adoption agencies.¹⁰¹ This is apparently done in an attempt to educate the woman as to the alternatives to abortion.

On the whole, adoption is governed entirely by statutes, with the best

98. For a fuller discussion of these laws see Doublet and Villedary, *supra* note 74, at 37-42.

99. Kloss and Reisbeck, *supra* note 79.

100. See COUNCIL OF EUROPE, POPULATION AND VOCATIONAL TRAINING DIVISION, WORKING PARTY OF DEMOGRAPHIC EXPERTS—FERTILITY, LEGISLATION DIRECTLY OR INDIRECTLY AFFECTING FERTILITY IN EUROPE. (Report on the Conclusions and Recommendations of the meeting held in Strasbourg, 5-7 December 1973), Doc. GT/DEM/Fecundite (74) 1, at 15.

101. Bill No. H30, signed into law in Utah on Feb. 14, 1974. For a brief discussion of the new Utah law see 3 FAMILY PLANNING/POPULATION REPORTER, No. 3, at 56 (1974).

interests of the child controlling, but lacking in uniformity. Usually, the consent of the natural parent or parents, as well as adopting parents, is required.

To facilitate adoption across national boundaries, the United Nations is in the throes of deciding whether to convene a "United Nations Conference for an International Convention on Adoption Law."¹⁰² As a prelude, the Social Development Division is presently preparing a study titled, "Comparative Analysis of Adoption Laws" which will survey the existing legislation or the lack thereof, and the differences in the existing laws now in force throughout the world.

G. Abortion

1. Introduction

The clear trend toward younger and childless women selecting abortion as a method of dealing with pregnancy, especially in Eastern Europe, was noted by Mehlan as early as 1965.¹⁰³ With few exceptions, the more recent data support this observation as to the world-wide increase in younger women seeking abortion.

According to Dr. Egon Szabady, Deputy President of the Central Statistical Office and Chairman of the Demographic Committee of the Hungarian Academy of Sciences, the 1956 regulations sparked what he termed an "abortion epidemic,"¹⁰⁴ which has brought about the tightening of the law governing abortion procedures there in 1973. In 1970 of the 192,300 abortions performed, 195 were done on elementary school girls (14 and under) and 18,000 were performed on high school girls (15-19). During that same year a study showed that 7,063 young women between the ages of 15-19 filed applications with the abortion committee in Budapest. That figure represents 3.5% of female population of high school age. By 1972 the percentage of abortions performed on women under 20 years of age had jumped to 14.4%.¹⁰⁵ The experience in the United States has been similar. Statistics kept by a physician who performed abortions over a 30-year period indicate that between 1955-1964 the percentage of young women between the ages of 15 and 19 on whom he performed abortions rose from 9% of the total to 19%.¹⁰⁶

102. General Assembly Resolution 3028 (XXVII).

103. K. H. Mehlan, *Reducing the Abortion Rate and Increasing Fertility by Social Policy in the German Democratic Republic*, 2 PROCEEDINGS OF THE WORLD POPULATION CONFERENCE, Belgrade, 1965, 226, § 11 (1967).

104. Nepszava (Newspaper), Dec. 31, 1973.

105. C. Tietze and D. Dawson, *Induced Abortion: A Factbook*, 14 REPORTS ON POPULATION/FAMILY PLANNING 18, Table 4 (1973).

106. R. Spenser, *The Performance of Non-Hospital Abortions*, 1 ABORTION IN A CHANGING WORLD 222 (R. Hall ed. 1970) (hereinafter Hall).

Even before abortion in the State of New York was made free of its legal restraints, fully 25% of the legal abortions in 1970-71, at 60 teaching hospitals and 6 free clinics were performed on women who were less than 20.¹⁰⁷ During 1967-69 of the abortions in California under the therapeutic abortion law, 4,515 were performed on girls 19 and under—a figure which represented fully 30% of all such abortions.¹⁰⁸

The rise in the number of abortions granted to young and unmarried women in Sweden is one of the major elements in the rise of the total number of abortions. Since 1956 the total number of abortions performed on women of the 15-19 age group has quadrupled, and after 1964 the shift has been toward abortions for young women. In 1960 only 10.7% of the abortions legally performed in Sweden were on women 19 or less. By 1972 the percentage had increased to 23.5%. A study of abortions in Ankara, Turkey, in 1967 revealed that of the 1,385 women admitted for post-abortion treatment, 16.8% were less than 20.¹⁰⁹

Of the criminal abortions (246) treated in Siriraj Hospital (Thailand) in 1971, 17.8% of the patients were under 20, and two-thirds of those were single.¹¹⁰

Though Tietze and Dawson have noted the rise in teenage abortions, they also observe that there is a correlation between that rise and the increase of teenagers in the population. But even when the data are computed on an age-specific basis, those abortions obtained by women under 20 showed the greatest increase.¹¹¹

But not all countries have experienced this marked increase in teenage abortion, at least those which were legally performed and for which there are statistics available. In Japan, where abortion is readily available, abortions performed on teenagers dropped from 17,022 in 1950 to 12,217 in 1964, and teenage abortion dropped from 2.1% of the total number in 1968 to 1.9% in 1972. The fact is most likely traceable to the increase in use of contraceptives among teenagers. But while the number of teenage abortions was declining, the number of abortions per 1,000 live births for that age group was increasing from 302 in 1950 to 745 a decade later. This shows an increasing tendency for the young woman to use abortion as a back-up method during that period of time. This trend has since stabilized itself.¹¹²

107. C. Tietze and S. Lowit, *Early Medical Complications of Legal Abortion: Highlights of the Joint Program for the Study of Abortion in ABORTION AND THE LAW* (J. Butler ed. 1972).

108. C. Tietze and D. Dawson, *supra* note 105, at 18.

109. I. Nazer, *Abortion in the Near East*, in Hall, *supra* note 106, at 271-72, particularly Table 3. Nazer was citing a study made by Erenus titled *PROVOKED ABORTION* (1967).

110. S. Koesawang, *Investigation of Illegal Abortion Cases Admitted to Siriraj Hospital (Bangkok) in STERILIZATION AND ABORTION PROCEDURES* 43 (Proceedings of the First Meeting of the IGCC Expert Group Working Committee on Sterilization and Abortion, Pancing, Malaysia, Jan. 3-5, 1973).

111. Tietze and Dawson, *supra* note 105, at 19-20, Table 5.

112. D. CALLAHAN, *ABORTION: LAW, CHOICE AND MORALITY* 286, Table 21 (1970).

In some societies the problem of teenage abortion is relatively insignificant. In Taiwan only 1.3% of the induced abortions occurred among young women under 19.¹¹³ Just 2.7% of the abortions done in Singapore in 1972 were on women 19 or less.¹¹⁴

In a 1965 study by Fournier of 596 women admitted for abortion treatment at social security and public welfare hospitals in Mexico, 280 were treated for provoked (induced) abortion. But only 10 out of the entire study sample were teenagers.¹¹⁵ The annual percentage of abortions in the USSR among teenagers runs below 2%.¹¹⁶

The statistical data available on the subject of marital status of teenagers who seek abortions indicates the extent to which unmarried teenagers opt to have abortions. While there are some variances between countries, there is a tendency for married teenagers not to select the abortion alternative as a method of handling pregnancy.

| | Percentage of total abortions for ages 19 or less ¹¹⁷ | Percentage of ages 19 or less single at time of abortion ¹¹⁸ |
|-------------------------|--|---|
| Czechoslovakia, 1971 | 8.5 | 81.2 |
| Denmark, 1969 | 16.6 | 96.4 |
| England and Wales, 1971 | 22.1 | 97.1 |
| Hungary, 1971 | 9.0 | 74.3 |
| United States, 1970/71 | 29.4 | 93.3 |

2. Legal Provisions Governing Recourse to Abortion

Even the most cursory examination of the abortion laws presently in force throughout the world will reveal the tremendous differences that exist. In Belgium, Ireland, the Philippines, some countries of Latin America and in many countries which were formerly under British rule, abortion is a criminal offense for which there are no exceptions. Many countries—Algeria, Malaysia, and Paraguay, among these—permit abortion only when it is necessary to save the life of the pregnant woman. Others, such as Cameroon, Thailand, and El Salvador, permit abortion where there is evidence that the pregnancy is the result of rape, incest, or other illicit intercourse. A growing number of countries, particularly in Scandinavia and Eastern Europe, permit abortion

113. L. P. Chow, *Abortion in Taiwan*, in I Hall, *supra* note 106, at 254, Table 2.

114. Tietze and Dawson, *supra* note 105, at 18.

115. M. M. Fournier, *El Aborto Criminal Como Problema Social: Su Prevencion*, 1 PLANEACION FAMILIAR 4-5 (1967).

116. *Induced Abortion as a Public Health Problem in Europe*, 27 WHO CHRONICLE, 525-30 (1973).

117. Tietze and Dawson, *supra* note 105, at 18-19, Table 4.

118. *Id.* at 28, Table 11. For a succinct review of some of the statistical aspects of abortion among teenagers, see J. VAN DER TAK, *ABORTION, FERTILITY AND CHANGING LEGISLATION: AN INTERNATIONAL REVIEW* 97-101 (1974).

for a wide variety of socio-medical reasons. A handful of countries have authorized abortion where a young woman is below a certain age. Still fewer have made abortion available virtually on demand. These various grounds for abortion will be discussed separately: abortion on request, medical-eugenic indications, socio-economic indications and humanitarian indications.

(a) *Abortion on Request*

The terms "abortion on request" or "abortion on demand" are actually misnomers for there are invariably certain conditions, formalities or procedures to be observed or fees to be paid. It is generally taken to mean the elimination of the need to specify any ground for abortion within a specified period of gestation.¹¹⁹

The restrictive abortion law in the Soviet Union was amended and relaxed on September 2, 1954, when a decree of the Presidium of the Supreme Soviet abolished criminal penalties for women who consented to the interruption of pregnancy. Under a further decree of November 23, 1955, abortions were permitted if done by qualified personnel in medical facilities. The commentary accompanying the decree notes "in order to give women the possibility of deciding by themselves the question of motherhood" the Presidium of the Supreme Soviet "has decided to repeal the previous law on abortions." The abortion on request nature of the Soviet decree was limited somewhat when a Ministry of Health Instruction on December 28, 1955, provided a list of "contraindications," under which no abortion may be performed, including:

- (i) acute or chronic gonorrhoea;
- (ii) acute or chronic inflammatory conditions of the sexual organs;
- (iii) purulent foci, irrespective of localization;
- (iv) acute infectious diseases; and
- (v) a previous abortion within the preceding six months.

In the Soviet Union, legal abortions for whatever reason are now free for employed women and cost 5 rubles for non-employed women (U.S. \$6.67).¹²⁰ Special permissions are required if pregnancies are more than 12 weeks old. Abortions are now subject to penalties only when performed in unauthorized institutions, in unsanitary conditions, or by unauthorized persons.

The People's Republic of China now not only permits abortion on request, but also provides abortion as a free public service, thus implementing in full the 1969 United Nations Declaration on Social Progress and

119. WHO, ABORTION LAWS: A SURVEY OF CURRENT WORLD LEGISLATION 10 (1971).

120. According to up-dated version of Henry David's FAMILY PLANNING AND ABORTION IN THE SOCIALIST COUNTRIES OF CENTRAL AND EASTERN EUROPE (now in press).

Development calling on U.N. members to provide the people with not only the knowledge, but also the "means necessary to enable them to exercise their right to determine freely and responsibly the number and spacing of their children."¹²¹

While the texts of Chinese laws or regulations on abortion are not available, the major official central government statements were made in 1954 when abortion was first permitted under restrictive conditions and in 1957 when many of these restrictions were lifted.

According to reports received at that time restrictions pertaining to age, number of children and administrative procedures on applications for abortion were to be removed.¹²² Later instructions have included the following:

[Abortion] may be performed when contraceptive measures have failed or *when the woman is pregnant without taking these measures but is unfit to give birth (for various reasons, such as too frequent intervals between births, multiple pregnancies, economic conditions and relationships of work)*. Generally it should not be carried out if the pregnancy exceeds two months.¹²³

A recent report by Faundes and Luukkainen confirmed that induced abortion is performed free on request in the People's Republic of China. They described the procedure as follows:

As soon as a woman realizes that she is missing a period, she attends the clinic. . . . If a positive diagnosis is made on the first visit and the patient declares that she does not want to have the baby, she is immediately taken to the appropriate ward where she waits for her turn to have an abortion. . . .¹²⁴

Due to the landmark decision in *Roe v. Wade*,^{124a} which involved the issue of the constitutionality of a Texas statute forbidding abortion except to save the woman's life, the abortion laws in the United States were altered to permit abortion on request during the first trimester. The decision was based on the essential fact that the decision to have an abortion during the first three months of pregnancy "lies with the woman and her doctor."

In Denmark, a law which authorizes free abortion until the twelfth week of gestation was adopted in 1973. The decision whether to have an abortion is left entirely up to the woman. One of the important new features of the

121. G. A. Res. 2542, 24 U.N. GAOR, Suppl. 18, at 45, U.N. Doc. A/7388 (1969).

122. *Special Report from Peking*, Wen-hui Pao, Shanghai, Apr. 12, 1957.

123. *Planning Childbirth and Promoting Late Marriage*, 5 MEDICAL AND HEALTH DATA, (1970) (emphasis added).

124. A. Faundes and T. Luukkainen, *Health and Family Planning Services in the Chinese People's Republic*, 3 STUDIES IN FAMILY PLANNING, No. 7, at 173 (Supp. 1972).

124a. 410 U.S. 113 (1973).

Danish law is the provision which permits women who are less than 18 years of age to consent to the abortion.¹²⁵ This makes an inroad into the customary practice of having the parents consent before medical treatment can be given to minors.

The Tunisian Government recently liberalized its abortion law to allow the artificial interruption of pregnancy if "performed during the first three months in a hospital, a health center, in an authorized clinic by a duly authorized practitioner."¹²⁶ The German Democratic Republic and Austria also have legislation which leaves decision about abortion during the first three months of pregnancy entirely up to the woman.¹²⁷

(b) *Medical-Eugenic Indications*

A survey of the laws governing abortion practice indicates a vast difference in both the explicitness and the types of medical indications which are considered to support the performance of an abortion. The Czech ordinance, for example, sets forth in great detail the list of pathological conditions which can be considered to create a hazard to the life of the woman if pregnancy is permitted to continue.¹²⁸ In Sri Lanka (Ceylon) an exception from criminal liability is made where the miscarriage was brought about "in good faith for the purpose of saving the life of the woman."¹²⁹

Until 1972, the Indian Criminal Law permitted abortion on the same extremely narrow ground of saving the life of the mother. But the Medical Termination of Pregnancy Bill of 1971 has nullified the provisions of the Penal Code as they pertained to doctors, thus making it possible for a registered

125. Law on Abortion, June 13, 1973, No. 350, *Lovtidende A*, 1973-NR. XXXII, p. 993. A similar law has just been passed in Sweden to become effective Jan. 1, 1975. Law of July 9, 1974 [1974] SFS 596. Under the law until the twelfth week a woman may request an abortion and the decision is solely hers to make. Medical personnel are prevented from influencing her decision, except on narrowly defined medical grounds. (§ 1) A doctor's refusal to perform an abortion during this time without notifying the State Directorate of Health and Welfare of the reasons is punishable by up to six months imprisonment (§ 9). Between the 13th to the 18th week, permission of the medical authorities will have to be obtained (§ 3). LIBRARY OF CONGRESS, EUROPEAN LAW DIVISION, REPORT: ABORTION LEGISLATION IN DENMARK AND SWEDEN 13-16 (1974).

126. Decret-loi No. 73-2, Sept. 26, 1973. As Tunisia was the first country under French influence to liberalize its law, it will be interesting to see what impact the recent French National Assembly's approval of a liberal abortion law will have on the other former French colonies. The law, which will most probably go into effect in early 1975, in essence will allow any permanent resident who is "distressed" by a pregnancy to have an abortion during the first ten weeks. N.Y. Times, Nov. 28, 1974, p. 1, col. 4.

127. German Democratic Republic: *Gestzblatt der Deutscher Demokratischen Republik*, Part 1, 15 March 1972, No. 5, pp. 89-90. Austria: Kalis and David, *Abortion Legislation: A Summary International Classification, 1974*, in *ABORTION RESEARCH: INTERNATIONAL EXPERIENCE* 16 (David ed. 1974).

128. Appendix to Instruction of Ministry of Health No. 72/1962 Sb. NV. A copy of the list may be found in Lee/Larson, *supra* note 48, at 254-61.

129. Penal Code, § 303.

medical practitioner to perform an abortion if, in good faith, he comes to the conclusion that:

- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
- (ii) 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.¹³⁰

Under the Turkish Regulations of 12 June 1967, among the indications authorizing therapeutic abortions is the consideration of whether there is a substantial risk of fetal deformity or danger to succeeding generations. Specifically, an abortion may be performed if: (1) the means used to treat a disease during pregnancy—use of cortisone—is likely to prejudice the development of the fetus; (2) if X-ray or radioisotope treatment is liable to affect the embryo or fetus; (3) if either the father or the mother have hereditary mental diseases; (4) if parents have already had children with mental retardation due to chromosomal defect; (5) if, during the first three months of pregnancy the mother had rubella, viral hepatitis, toxoplasmos, varicella or other serious viral infections.¹³¹

Many countries which were once under British rule have statutes patterned after Section 58 of the Offences Against the Persons Act, 1861, which allowed no specific exceptions for therapeutic abortion. The Jamaican law makes it a crime to give a pregnant woman "any poison or other noxious thing" or use "any means whatsoever" to procure a miscarriage.¹³² That statute and others of its type presently in force in Guyana, Barbados, and Trinidad and Tobago do not provide any specific exceptions for such medical intervention as therapeutic abortion. The no-exception aspects of these statutes have been affected somewhat by the decision in *Rex v. Bourne*,¹³³ the first reported case in which the early abortion statute was judicially interpreted. The decision forms the foundation upon which rests the generally accepted legality of therapeutic abortion in the United Kingdom, and hence in former British colonies. The case arose as a test case in 1938, when a prominent gynecologist performed an abortion on a 14-year-old girl who had been raped by several soldiers and had consequently become pregnant. The operation was performed openly, with the consent of the girl's parents and with notice to the prosecuting authorities. Bourne felt at the time that if the pregnancy were allowed to continue, it would severely endanger the mental

130. Medical Termination of Pregnancy Bill, § 32(b) (1971).

131. Decision No. 6/8305 of 12 June 1967 of Council of Ministers, Annex I. See also WHO, *supra* note 113, at 43.

132. Offences Against the Person Act, Arts. 65-66 (1861), as amended (1969).

133. [1938] 3 All E.R. 615; [1939] 1 K.B. 687.

health of the girl. While taking notice of the absence of any statutory exemptions in favor of abortion, Judge Macnaghten ruled that such an exemption was implied by the word "unlawfully" in the statute in that one who was qualified could "lawfully" act to induce a miscarriage. In his remarks to the jury, Macnaghten stated that where the doctor is of the opinion that "the probable consequences of the pregnancy will make the woman a physical or mental wreck,"¹³⁴ the jury could find a good faith defense. Bourne was acquitted and consequently the legal justification for therapeutic abortion was established in the United Kingdom.

The law in some countries allows an abortion to be performed if it is necessary to preserve the health of the woman. For example, Section 86 of the Penal Code of Argentina was amended in 1967 permitting a licensed physician to induce an abortion if the woman consents and if there is a serious danger to the life or health of the woman and no other measures will avert the danger.¹³⁵ Similarly, as a practical matter, in Iran a pregnancy may be terminated if three physicians certify that its continuance will endanger the woman's health.¹³⁶

(c) *Socio-Economic Indications*

An increasing number of countries are including provisions within the laws governing abortion which permit the persons who have authority to grant abortions the power to weigh the impact of socio-economic factors in reaching their decision. The recent decision of the Hungarian Council of Ministers, Resolution No. 1040/1973/X.18, instituted as a ground for abortion the fact that the "woman is not living in a married state or has been living alone for at least six months." The authorities may also approve an application for abortion if the request was generated for "weighty social considerations." Such provisions give the people who screen abortion applications a great deal of latitude.¹³⁷

According to the Decree of 26 April 1969, abortion in Yugoslavia may be approved in cases where "it can be reasonably expected that the pregnant woman will find herself placed, as a result of the birth of the child, in difficult personal, family or material conditions,"¹³⁸ which cannot by other means be avoided. Under the Danish law, as recently adopted, after the twelfth week of

134. *Id.* at 619. A similar doctrine of necessity was read into the early German Penal Code. The case there involved the prosecution of a doctor who performed an abortion on a woman who threatened to commit suicide if she did not get an abortion. Decision of the Reichsgericht in Criminal Matters (I. Strafsenat) of March 11, 1927, g. Dr. St., 61 RGst. 242 (1928).

135. Law No. 17567 of Dec. 6, 1967.

136. Penal Code §§ 181-83 (1962 ed.).

137. Magyar Közlöny, Oct. 18, 1973, 774-78, paras. 2(1)(b) and 2(2)(d).

138. Section 4. See 20 INTERNATIONAL DIGEST OF HEALTH LEGISLATION 573 (1969) (hereinafter IDHL).

pregnancy an abortion may be authorized in cases where because of age (16 or less) or immaturity, the woman is for the time being incapable of caring properly for her child.¹³⁹

Also classified as socio-economic indications are grounds of a combined economic and health nature, with the former clearly predominant. The law in Japan is a case in point. Article 14(1) of the Eugenic Protection Law of 1948, as amended, authorizes a designated physician to perform an abortion "at his discretion" if a mother's "health may be affected seriously by the continuation of pregnancy or by delivery, from the physical or economic viewpoint." Although "economic" reasons alone would not, according to the letter of the law, constitute a sufficient ground for abortion, the difficulty or impossibility of proving conclusively their serious adverse effect upon health has resulted in such a liberal interpretation of the law that, in practice, even wealthy *and* healthy women may obtain abortions. Most of the operations for induced abortions have indeed been performed on this ground.¹⁴⁰

The United Kingdom Abortion Act of 1967 permits two registered medical practitioners to determine whether

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 woman or any existing children of her family, greater than if the pregnancy were terminated; . . .¹⁴¹

In addition to the fact that the health test is to be applied, the Act allows consideration of the pregnant woman's "actual or reasonably foreseeable environment." While this does not create a "social" ground for termination, since it requires the presence of health considerations—present or foreseeable—factors of a social or economic nature, including the woman's marital status and existing family size, may be taken into account in reaching the decision.

The Indian Medical Termination of Pregnancy Bill has a similar provision permitting social and economic factors to play a part in the decision. In addition, there is another interesting feature of the Indian legislation. Although the new Indian abortion law, which was passed in August 1971, and went into effect in April 1972, does not stipulate contraceptive failure explicitly as a ground for abortion, Explanation II to Article 3(2), which authorizes abortion if continued pregnancy would involve a risk of grave injury to the mental health of the woman, provides:

Where any pregnancy occurs as a result of failure of any device or

139. See note 120 *supra*, Chap. 1, para. 3.

140. M. MURAMATSU, SOME FACTS ABOUT FAMILY PLANNING IN JAPAN 9 (1955).

141. Laws of Great Britain, Eliz. 2, c. 87, § 1, para. 1(a) (1967); 19 IDHL, *supra* note 138, at 887 (1968).

method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Although on its face the legislative explanation applies only to married women, it is of significance to adolescents in India because child marriage is still prevalent.

(d) *Humanitarian Indications*

A number of countries permit abortion to be performed for what are deemed to be humanitarian reasons. Article 1 of the Swedish statute (prior to the 1974 reform), which represents the prototype of this category, has been described as authorizing abortion in cases where

. . . a woman has become pregnant as the result of rape, other criminal coercion or incestuous sexual intercourse . . .¹⁴²

Similar provisions exist in the laws governing interruption of pregnancy in at least 25 countries.

Under the Penal Code of Cameroon, in cases where the pregnancy has resulted from rape, an abortion performed by a medical practitioner does not violate the abortion law if the facts of the case have been verified by the public prosecutor's office.¹⁴³ As Professor Louis B. Schwartz has observed:

The rape justification . . . conforms to widely held moral views. It seems to many people intolerable that a woman who has been the victim of . . . assault should be compelled to bear the child of her ravisher.¹⁴⁴

Where a woman is below a certain statutory age, she is not legally capable, in view of her immaturity, of giving valid consent to intercourse. This gives rise to the concept of "statutory rape." Because of the potential usefulness of this legal fiction in dealing with teenage pregnancy, it is desirable to explore the implications of this approach. Section 203.2(3) of the American Law Institute's Model Penal Code proposed that a pregnancy could

142. NATIONAL BOARD OF HEALTH, SWEDISH LAWS ON STERILIZATION, ABORTION AND CASTRATION (Summary) (1963). Law No. 172 of March 20, 1964, amending Law No. 318 of June 17, 1938, 17 IDHL, *supra* note 138, at 117 (1966).

143. Penal Code, Art. 339; 20 IDHL, *supra* note 138, at 397-98. A recent IPPF Conference on Abortion in Africa suggested that "[c]onception due to contraceptive failure, rape, or conception in a minor—which is by implication the result of rape—might also be considered as reasons for abortion." ABORTION RESEARCH NOTES, Supp. No. 8 (Feb. 1974).

144. L.B. SCHWARTZ, THE TERRIBLE CHOICE: THE ABORTION DILEMMA 55 (1968).

be terminated where the pregnancy resulted from rape or other "felonious intercourse." The explanatory note to that section included the following:

An illicit intercourse with a girl below the age of 16 shall be deemed felonious for purposes of this subsection.

The legal presumption which accompanies this statement of policy is that the young girl lacks the capacity to fully comprehend the nature and long-range implications of sexual intercourse. This presumption has been challenged in some quarters by the argument that an under-age girl who is sexually active is likely to be both aware of the danger of pregnancy and familiar with the various methods of preventing that result.¹⁴⁵ But that notion, in turn, is contradicted by current research findings which show, among other things, that the type of knowledge which teenagers have concerning contraception and fertility is grossly inaccurate, and that there are considerable legal and practical barriers relating to their access to contraceptives.¹⁴⁶

It is important to remember that the criminal law sanctions for statutory rape have traditionally centered on vindicating society's apparent outrage at the violation of the minor's body. Cast in such a light the law has concerned itself only with the punishment of the violation. It has traditionally overlooked the fact that the act of statutory rape carries with it the possibility of later pregnancy. Therefore, an important dichotomy arises—one which should be ameliorated. Despite the overriding concern of the law in treating, rehabilitating minors and thus in minimizing the negative effects which are endemic to adolescent experience, in a majority of cases the girl who becomes pregnant does not get the protection from the law which should normally be forthcoming if the law's rationale for protecting minors were evenly applied. What normally happens is that the law treats the minor girl as "promiscuous" or "incorrigible" rather than treating her as a victim of her own immaturity and thus granting to her the type of protection that she really needs. The end product of this dichotomy is that the pregnant teenager, though she cannot legally consent to intercourse, must carry her baby to term and then be legally responsible for its care.¹⁴⁷

The rationale which supports the desirability of using the statutory rape theory as a basis for treatment of pregnant minors is premised on the same

145. Note, *Forcible and Statutory Rape*, 62 YALE L.J. 55, 78 (1952). It has been observed by an English judge that: "There are many girls under sixteen who know full well what it is all about and can properly consent." *R. v. Howard*, [1965] 3 All E.R. 684, 685 (C.C.A.). If this is so, and practically we must assume the fact, might there not be reason for believing that they can also consent to an abortion?

146. M. BAIZERMAN, C. SHEEHAN, D. ELLISON, *et. al.*, *PREGNANT ADOLESCENTS: A REVIEW OF LITERATURE WITH ABSTRACTS, 1960-1970* (1971).

147. Shopper, *Psychiatric and Legal Aspects of Statutory Rape, Pregnancy and Abortion*, 1 JOURNAL OF PSYCHIATRY AND LAW 273-95 (1973).

type of common-sense view which supports the rape justification for abortion among adult women as stated above. While there are differences between the rape of an adult woman and the statutory rape of a minor, they are only of degree.

There are at present a number of countries which have incorporated into their abortion laws provisions aimed at dealing with the problem of statutory rape. The Greek law on abortions approves them if there is evidence of either rape or the seduction of a girl under 16.¹⁴⁸ The Swedish¹⁴⁹ and Finnish¹⁵⁰ laws authorize abortion if the woman is under the ages of 15 and 16, respectively. In Thailand the statutory rape age is 13,¹⁵¹ and in such a case abortion is not a crime as long as it is performed by a "medical practitioner." Wider use of the statutory rape ground for abortion could provide a useful method for dealing with the adolescent pregnancy problem that is at once on sound legal footing and humane. It would be particularly useful in countries where the rape justification is one of but a few exceptions to the otherwise general prohibition against abortion.¹⁵²

Lastly, the laws of Jordan and Lebanon provide a rather unique humanitarian basis for abortion, though it may not be a basis for totally avoiding the criminal sanction. The abortion statutes in these countries extend the doctrine of mitigating circumstances to abortions which are undertaken to protect the woman's reputation or to protect her family's honor.¹⁵³

(c) *Consent*

The majority of the world's abortion laws are silent on the issue of the age at which a person can consent to have such an operation. For example, the Swiss law makes the consent of the pregnant woman an essential requirement of the abortion law, but does not stipulate the age for consent other than stating that if the woman is incapable of making judgment, the consent can be

148. Penal Code, Art. 304 (Law No. 1492, 1950).

149. See note 142 *supra* (1963).

150. Act on Induced Abortion, No. 239, Mar. 24, 1970, § 1. For an English translation of the law see 21 *IDDILL*, *supra* note 138, at 699-705 (1970).

151. Penal Code, § 305.

152. Presently available statistics reveal that in the past the rape criterion has not been relied on often as a ground to justify abortion. A 1965 national survey in Japan showed that only 0.3% of the induced abortions were performed because pregnancy resulted from rape. *JAPAN'S EXPERIENCE IN FAMILY PLANNING—PAST AND PRESENT* 71, 78 (M. Muramatsu ed. 1967). In Sweden during 1967 less than 1% of the abortions were based on the rape justification. Callahan, *supra*, note 112, at 195, Table 8. The lowness of the percentages may reflect the fact that the abortion procedures are so liberal in those two countries that the rape criterion is not used. But they also reflect the fact that pregnancy resulting from rape has a low incidence of occurrence. Such would not necessarily be the case where a minor becomes pregnant. Technically she has under law been raped, albeit "statutorily."

153. Jordan: Penal Code, Art. 318 (Law No. 85 of 1951); Lebanon: Penal Code, Art. 545 (Legislative Decree No. NL/340, Mar. 31, 1943).

given by her legal representative.¹⁵⁴ By an amendment in 1952, the Japanese law merely requires the consent of the woman or her spouse for an abortion to be performed.¹⁵⁵ Where laws do not specifically require consent, however, there is often a legal presumption that consent is required before an abortion can be performed. In most instances the rules governing consent for an abortion are found in legal principles from sources other than the abortion statutes. Only a few statutes specify the persons competent to give consent and, for the purposes of abortion among adolescents, the age under which parental or guardians' consent is required. The Bulgarian statute stipulates that if the young woman on whom an abortion is to be performed is less than 18 years of age the consent of the parents must be obtained.¹⁵⁶ The restrictive Moroccan law requires the consent of the spouse or, in his absence, a written notice from the chief medical officer of the prefecture or province certifying that treatment is necessary to safeguard the mother's health.¹⁵⁷ From its language, it is not clear whether this statute is contemplating the possibility of adolescent pregnancy and abortion. Under the governing regulations, therapeutic abortion for minors in Turkey cannot be performed unless the parents' consent has been given.¹⁵⁸ But if the delay in obtaining the consent will place the woman's health in jeopardy, the requirement can be dispensed with. The recently enacted statute in India indicates that:

- (a) No pregnancy of a woman, who has not attained the age of eighteen years, or who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.
- (b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.¹⁵⁹

The recently felt need of teenagers to obtain medical services, especially in terms of contraception and abortion in England and the United States has triggered several changes in the laws concerning treatment of minors and their ability to consent to the same. Under traditional legal theory minors are incapable of rendering an informed consent, and the common law permitted minors to receive medical treatment in the absence of parental consent in but few circumstances: in emergencies, and where the parent refused to consent to a medical treatment which was sorely needed to maintain the minor's

154. Penal Code, Art. 120.

155. Law No. 156 of July 13, 1948, *with amendments to* Apr. 21, 1966, 16 IDHL, *supra* note 138, at 69 (1965).

156. Council of Ministers Decree No. 61 of Dec. 28, 1967 and Ministry of Public Health and Social Welfare, Instruction No. 188 of Feb. 16, 1968, *as amended*, May 4, 1972.

157. Crown Decree No. 181-66 of July 1, 1967, *amending* Arts. 453 and 455 of the Penal Code, 19 IDHL, *supra* note 138, at 217 (1967).

158. *See* note 131 *supra*.

159. *See* note 130 *supra*, § 3 (4).

health.¹⁶⁰ This view has been sustained on the notion that minors as a class lack the knowledge, maturity and judgment necessary to satisfy the standards set for rendering consent. However, during this century courts began to fashion what has come to be known as the "mature minor" rule, as a response to the apparent arbitrariness of the earlier common law.¹⁶¹ This rule permits a minor near majority who has the mentality sufficient to understand the nature and import of the medical treatment he is about to undergo to give valid consent. The common law rules have been changed somewhat by recent legislation. While the age of majority in England is 18, through Section 8 of the Family Law Reform Act 1969, the "consent of a minor who has attained the age of sixteen years to any surgical . . . treatment . . . shall be as effective as it would be if he were of full age." Where a minor has consented to a treatment, the law states it is unnecessary to obtain the parent's consent before going forward with the procedure consented to.

Other inroads have been made into the traditional doctrine. Though therapeutic abortion legislation was passed in 1967 in California, it took four years to settle the question concerning whether the pregnant minor could consent to the operation. After much litigation the California Supreme Court, in *Ballard v. Anderson*, finally held that the statute authorized an unmarried minor who was "of sufficient maturity to give an informed consent" to give effective legal consent to a therapeutic abortion.¹⁶² The opinion in *Ballard* did emphasize nevertheless that the burden of convincing medical authorities that the consent is "informed" fell on the minor. If the teenager fails to convince medical personnel that she has the required "understanding and maturity," they may refuse to perform the therapeutic abortion.

A portion of the California statute governing medical treatment of minors presently reads:

[A]n unmarried pregnant minor may give consent to the furnishing of hospital, medical, or surgical care related to her pregnancy, and such consent shall not be subjected to disaffirmance because of minority.¹⁶³

Despite the broad language used in the statute in granting to minors the right to consent, a recent opinion from the Attorney General reiterated the fact that the consent must be "informed."¹⁶⁴ This is in accord with the legal principles which govern the subject of consent.

160. For short but excellent discussions of the common law backgrounds as well as recent statutory developments see Wadlington, *Minors and Health Care: The Age of Consent*, 11 OSGOODE HALL L.J. 115 (1973); Skegg, *Consent to Medical Procedures on Minors*, 30 MODERN L. REV. 370 (1973); Hoffman and Pilpel, *supra* note 21, at 989.

161. Wadlington, *supra* note 160, at 117-20.

162. *Ballard v. Anderson*, 4 Cal. 3d 873, 484 P.2d 1345, 95 Cal. Rptr. 1 (1971).

163. CAL. CIV. CODE § 34.6.

164. A brief synopsis of the opinion may be found in 3 FAMILY PLANNING/POPULATION REPORTER, No. 3, at 52 (1974).

In June of 1972 the State of New York put into effect a law which made it possible for certain young patients to consent to medical treatment. The statute sets the age for consenting at 18, unless the patient is married or a parent and dispenses with parental consent requirement if the attempts to secure the consent of the parents would increase the risk of the youth's life or health.¹⁶⁵ While the law does not specifically mention abortion, the New York City hospital rules allow not only females, 17 years of age and older, to consent to the operation, but also those teenagers who are "emancipated," that is, those who are self-supporting or living away from home and make most of their own decisions.¹⁶⁶

In *Roe v. Wade*,¹⁶⁷ the United States Supreme Court did not deal with the question of the capacity of minors to consent to abortion, although many of the medical treatment statutes in the United States specifically exclude abortion as one type of treatment to which minors can consent.¹⁶⁸ Nevertheless, the trend is toward the adoption of statutes allowing certain minors to consent to medical treatment under all conditions. As of 1972, thirteen states had passed the "comprehensive" type of statute. Under the liberal Alabama statute, for example, consent may be given to any legally authorized "medical" treatment by any person who is "fourteen or older . . . or is pregnant."¹⁶⁹

On the other hand, at least eighteen states have statutes which require parental consent for abortion in all or some cases involving minors. Recently, however, a three-judge federal panel declared that the parental consent requirement of the Florida abortion statute¹⁷⁰ was unconstitutional. While the panel took note of the fact that parental interests may be of a compelling nature, they also observed that the Florida statute gave parents the authority to withhold consent for abortions for no reason at all or for reasons that could be unrelated to the paramount interests of the pregnant teenager.¹⁷¹

The decision of the court was based on the principle enunciated in *Roe v. Wade* that the state has no authority to interfere with a woman's right of privacy during the first trimester of pregnancy. In its opinion, the court emphatically stated that

165. N.Y. PUB. HEALTH L. § 2504 (1) (Cum. Supp. 1972-73). See also Pilpel, *Minor's Rights to Medical Care*, 36 ALBANY L. REV., 462, 469 (1972).

166. Hoffman and Pilpel, *supra* note 21, at 990.

167. 410 U.S. 113, 165 n.67 (1973).

168. See, e.g., language of the new Indiana statute Bill No. S334 as cited in 2 FAMILY PLANNING/POPULATION REPORTER, No. 6, at 150 (1973).

169. ALA. CODE ANN., tit. 22, § 104 (15-17) (Cum. Supp. 1972).

170. 15A FLA. STAT. ANN. § 458.22(3)(b) (Cum. Supp. 1973).

171. The flip side of this formulation—the case where the parents attempt to force the minor to have an abortion—has also been litigated. After considering all of the traditional bases for parental control, a Maryland court held that the pregnant teenager had the right to bear her child full term even though such a course of action was contrary to the will of her parents. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972). In a similar vein, it has been held that the teenager's mother cannot offer her daughter's baby for adoption. The power to consent to adoption rests with the adolescent mother. Matter of Presler, 171 Misc. 559 (N.Y. Sup. Ct. 1939).

. . . pregnant women under 18 years of age cannot under law be distinguished from ones over 18 years of age in reference to "fundamental," "personal," constitutional rights.¹⁷²

3. *Illegal Abortions*

In many countries the pregnant teenager who elects to have an abortion is faced, due to the restrictive nature of the laws, with seeking an illegal abortion. Of an abortion performed on a 17-year-old Chilean woman, the following autobiographical account records the problems and dangers which confront the teenager in seeking out an abortionist and having it done in inferior conditions:

She dissolved some pills in lukewarm water in a lavatory, and then poured the water through the *sonda* into my womb. My impression is that this is supposed to dissolve the foetus inside the mother's womb. I always have had my abortions between one and two months of pregnancy. Never after that. . . . [Later] a friend came to my house and said, "You're shivering with cold." I said, "Throw a blanket over me because I'm dying of cold." Then my friend said, "Look, Cristina, I'm going to take you to the hospital because otherwise you're going to die here." I told her, "Let me stay here because by now I've had enough of this business, so many kids and so many problems that I don't know what to do." . . . My womb was so infected that the doctors couldn't touch me. One doctor wanted to treat me and the other didn't. One said to the other, "If you send her back home she'll die on the way." So they operated on me, scraping my womb clean, almost without anesthesia as a kind of punishment. They scraped and scraped as if they were cleaning the inside of a watermelon. Then they asked me who did this to me and I could tell them nothing. One must not talk in these situations, and I really wasn't lying because I didn't know where this woman lived nor did I ever see her again. This woman had no license, but I was desperate to find someone.

. . . 173

Despite the difficulty of measuring precisely the rates and risks of illegal abortion, the following estimates nevertheless reflect the magnitude of the

172. *Coe v. Gerstein*, Civ. No. 51-1250 (S.D. Fla., filed August 14, 1973). For a more elaborate discussion of the constitutional issues and rationales supporting the ability of minors to consent to abortion, see Pilpel and Zuckerman, *Abortion and the Rights of Minors*, 23 *CASE W. RES. L. REV.* 779, 792-806 (1973) and Note, *Implications of the Abortion Decisions: Post Roe and Doe Litigation and Legislation*, 74 *COLUM. L. REV.* 237, 242-47 (1974).

173. Gall, *Birth, Abortion and the Progress of Chile*, 19 *FIELDSTAFF REPORTS*, No. 2, at 7-8 (1972).

problem posed by illegal abortion. In Egypt, for example, it has been estimated that 40% of hospital admissions for deliveries and pregnancy complications were actually for abortions and their complications.¹⁷⁴ Recent records of two university hospitals suggest the existence of one abortion for every two births, notwithstanding the restrictive nature of the Egyptian Penal Code on abortion.¹⁷⁵ Reports from Turkey indicate that, during the late 1950's and early 1960's, there were 500,000 abortions and 10,000 deaths each year from abortion operations, few of which took place in hospitals because of their illegality.¹⁷⁶

In Italy, the annual number of interrupted pregnancies during the 1960's reportedly fluctuated around 150,000, a large number of which were illegal abortions.¹⁷⁷ Two other estimates have put the annual number of illegal abortions at a maximum of 500,000¹⁷⁸ and between 800,000 and 3,000,000,¹⁷⁹ respectively. High numbers of maternal deaths occur every year as a result of malpractices that run the gamut from the use of herbs to primitive, unsophisticated instruments.¹⁸⁰ In Chile, 8% of all hospital admissions have been for patients with post-abort complications; these patients have occupied one-fourth of all maternity beds in Maternal Health Service hospitals.¹⁸¹ The death rate in the late 1960's was estimated at 150-200 per 100,000 abortions, with most of the abortions being illegal.¹⁸² Indeed, it is estimated that 50% of pregnancies in Latin America are currently terminated by illegal abortions—resulting in the death of four times as many women as in countries where abortions are legal.¹⁸³

Of the numbers cited above, a statistically significant percentage must be assumed to be abortions performed on teenagers. In some countries, the percentage may run as high as 25%.¹⁸⁴

Even in countries which have liberal abortion laws the problem of illegal

174. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, *INDUCED ABORTIONS* 27 (1972) (hereinafter cited as IPPF).

175. El-Kammash and El-Kammash, in Lee/Larson, *supra* note 48, at 369.

176. See Dr. Nusret H. Fisek's statement, in 2 Hall, *supra* note 106, at 47.

177. G. FERRARI, REPORT ON ITALY 17 (Draft Working Paper for the International Union for the Scientific Study of Population's Committee on Legislation Directly or Indirectly Influencing Fertility in Europe; hereinafter cited as IUSSP Working Paper) (mimeo. 1972).

178. *Id.* at 19.

179. N.Y. Times, Jan. 16, 1973, at 30, col. 4. A recent study based on interviews with 558 31-year-old married women in low-income neighborhoods in Rome showed an incidence of 2 abortions for every 2 to 3 surviving children. *Id.*

180. Boston Globe, Jan. 20, 1973, at 2, col. 1.

181. H. ROMERO, *Chile*, in FAMILY PLANNING AND POPULATION PROGRAMS, A REVIEW OF WORLD DEVELOPMENTS 235-245 (1966); R. ROEMER, *Abortion Law: The Approaches of Different Nations*, 57 AM. J. PUB. HEALTH 1906 (1967).

182. IPPF, *supra* note 174, at 27.

183. See Dr. Edwin M. Gold's statement in 2 Hall, *supra* note 106, at 45.

184. Before the decisions in *Roe v. Wade* and *Doe v. Bolton*, it was estimated that the number of illegal abortions each year was between 200,000 and 1,200,000. Recent statistics have indicated that abortions performed on teenagers represent between 20 and 25 percent of the total number of abortions performed illegally in the United States.

abortions has not been totally alleviated. While the liberalization of abortion laws has brought about a noticeable decline in the rates of illegal abortions, the practice continues.¹⁸⁵ Some of this can be attributed to the cumbersome, institutionalized manner through which legal abortions are screened and approved. This is particularly true of the Swedish system. Some women will simply seek an illegal abortion rather than go through the obstacle course established by the abortion regulations. Glanville Williams has written:

. . . We are told that in Sweden the special hospital boards which hear applications for abortion allow only 40 percent of the applications. In addition to the 60 percent who are turned down, there is an unknown number of women who do not apply for legal abortions, either because they realize that their case does not fall within the rules, or because they cannot tolerate the formality and even humiliation of applying to a hospital board in a matter they regard as being uniquely their own affair. These are the women who go to illegal abortionists.¹⁸⁶

On the other hand, those women who are denied legal abortions may be compelled to go forward and give birth to an "unwanted child." In such cases the mother is faced with having to deal with what has recently been classified as a "compulsory pregnancy." A compulsory pregnancy is said to occur whenever a woman is compelled by external circumstances to carry to full term a pregnancy which is unequivocally unwanted.¹⁸⁷ The effects of such forced circumstances have equally negative long-range implications for both the mother and the child.

A number of reports have demonstrated the consequences of denied abortions upon the women, the children, and the society at large.¹⁸⁸ In a Swedish study 120 children born after refusal by the authorities to grant permission for abortion were compared to paired controls of the same sex born either in the same hospital or district to mothers who had not applied for abortion. After a close observation for 21 years, the former group of children were found to have higher incidences of psychiatric disorder, delinquency, criminal behavior, and alcoholism. They were more often recipients of public welfare assistance, were more unfit for military service, and received less schooling than those in the control group. The study concluded that the very fact that a woman applied for legal abortion indicates that the prospective

185. L. T. Lee, *International Status of Abortion Legalization*, in *THE ABORTION EXPERIENCE* 340-41 (H. Osofsky and J. Osofsky eds., 1973).

186. *The Legalization of Medical Abortion*, 56 *THE EUGENICS REV.* 24 (1964).

187. See generally, M. B. Beck, *The Destiny of the Unwanted Child: The Issue of Compulsory Pregnancy* in *ABORTION AND THE UNWANTED CHILD* (C. Reiterman ed. 1971).

188. See generally, G. Hardin, *Abortion and Human Dignity* in *CASE FOR LEGALIZED ABORTION NOW* 12-13 (A. Guttmacher ed. 1967).

child, if carried to term, will have a greater likelihood of social and mental problems than his peers.¹⁸⁹

From a psychiatric standpoint, we are told that single women in general, and students in particular, do better if they are allowed to have the abortion which they request. This was one of the conclusions made by a group of doctors, psychiatrists and sociologists in the United Kingdom. The study undertaken there revealed the somewhat surprising result that single girls still tended to perceive the use of contraceptives as being more immoral than the risking of an unwanted pregnancy and the possible consequences of abortion.¹⁹⁰

From the criminal law point of view it seems undesirable to prosecute the woman who is forced due to personal circumstances to seek out a clandestine abortion. Experience has shown that the abortion laws have been ineffective in curtailing the rate at which women seek abortions. Attempts to enforce the laws have been exercises in futility. While this alone is not sufficient reason to vacate present abortion laws, to subject a woman to criminal punishment for being compelled to participate in such acts is Draconian and counter-productive. This is particularly true in countries which have very strict abortion laws, yet do not permit ready access to contraceptives. There is, no doubt, reason for placing criminal sanctions on those who perform the abortions—based on the rationale that unregulated abortions increase maternal deaths due to the wretched conditions under which they are customarily performed—but much could be accomplished if the aura of criminality were removed from the head of the woman. There is presently a discernible shift in that direction. In France, long famous for its restrictive abortion statute, President Giscard d'Estaing recently instructed prosecuting authorities not to prosecute women who have "had themselves aborted in a way contrary to the 1920 law."¹⁹¹

189. Forssman and Thuwe, *One Hundred and Twenty Children Born After Application for Therapeutic Abortion Refused: Their Mental Health, Social Adjustment and Educational Level Up to the Age of 21*, 42 ACTA PSYCHIATRICA SCANDINAVIA 71-88 (1966). The Swedish study has been criticized for a number of reasons, not the least of which was the fact that 20 percent of the experimental group were born out of wedlock. The preliminary results of a ten-year Czechoslovakian study have recently been released. That study attempted to avoid the pitfalls of the Forssman/Thuwe study, particularly by having less than 5 percent of the experimental group born out of wedlock. Some two hundred children born to women who had been denied abortions twice during 1961-1963 were compared to an equal number of controls with regard to physical and psychological development. The data suggest that children unwanted at conception tend to have a higher incidence of sickness, somewhat lower grades in school and "worse integration in their peer group" than others. Z. Dytrych, Z. Matejcek, H. P. David and H. L. Friedman, *Children Born to Women Denied Abortions: Initial Findings of a Matched Control Study in Prague, Czechoslovakia*, (paper presented at the annual meeting of the Population Association of America, New York, April 18, 1974). For a synopsis of the paper see 3 FAMILY PLANNING DIGEST, No. 6, at 10 (1974).

190. See generally, EXPERIENCE WITH ABORTIONS: A CASE STUDY OF NORTHEAST SCOTLAND (Horobin ed. 1913); Shopper, *supra* note 141.

191. Boston Globe, July 26, 1974, at 31, col. 5. This was also the recommendation of the

II. *Menstrual Regulation*

The recent development of the menstrual regulation techniques will undoubtedly have an impact on the subject of adolescent pregnancy. These techniques which may be used as a post-conceptive means of regulating fertility carry with them the promise of simplifying both the legal and medical barriers to abortion. Basically, there are two means for inducing menstruation now available: (1) use of prostaglandins—a substance which is naturally present at menstruation and childbirth; (2) the use of a flexible polyethylene cannula aspirator. Aside from the simplicity and safety of the method, the value of this procedure is that it can be used to ensure a non-pregnant state prior to the medical determination that a woman is pregnant. Many proponents of the menstrual regulation procedure are urging that it be used during the two weeks immediately following a missed period. Thus, a teenager who suspects that she is pregnant can ask to have the procedure performed and afterward be guaranteed that she is not, because any embryo which may have begun formation will have been eliminated.

The use of the technique raises several legal issues. While there is little doubt that the technique can be utilized presently in countries with liberal and moderate abortion laws, it remains to be seen whether the technique is a violation of the abortion laws which are restrictive. There is some evidence that it will not be illegal in countries where statutes require evidence of a pre-existing pregnancy before a violation of the law takes place.¹⁹² Laws such as those now on the books in many countries of Latin America, in Egypt, Taiwan and Libya, among others, exact this requirement. Legislation which follows the French and earlier English models centers on the intent for which the technique is used. This fact will make it somewhat more difficult to use the method, free of threat of criminal prosecution, if it can be shown that the intent was to eliminate the "product of conception"¹⁹³ rather than to restore the menstrual cycle.

There is a probability that the menstrual regulators will become regarded as contraceptives rather than abortifacients, as has happened with the IUD and "morning after" pill. If this be so, then the procedure can be helpful in eliminating many of the symptoms which accompany abortion. Because most teenagers throughout the world do not have access to the traditional contraceptives, the menstrual regulation technique can be used to eliminate pregnancy among those young women who have conceived but have no desire to carry the pregnancy full term.

Symposium on Law and Population which was convened in Tunis, June 17-21, 1974. See Recommendations of the Symposium on Law and Population, at 21. As soon as the new French law goes into effect, the significance of this particular statement will be lessened.

192. L. T. Lee and J. M. Paxman, *THE LEGAL ASPECTS OF MENSTRUAL REGULATION* 21-25 (Law and Population Monograph Series No. 19, 1974).

193. *Id.* at 11-21.

IV. CONCLUSIONS

The legal problems concerning adolescent pregnancy and abortion having been discussed in the foregoing space, a few general comments and recommendations for legal reform may be noted.

In the first place, we should place adolescent pregnancy and abortion in quantitative perspective: over 70% of females between the ages of 15 and 20 were already married in Chad, India, Mali, Nepal, Niger, Bangladesh, Pakistan and Tanzania. On the average, about 40% of women 15-19 years old were married in the countries in Africa, 30% in Asia, 15% in the Americas and Oceania, 9% in the Soviet Union and 7% in Europe. Only in a number of European countries and in French Guiana, Guadeloupe, Hong Kong, Japan, South Korea, Macau, Martinique and the Ryukyu Islands were fewer than 5% of women married between the ages of 15 and 20.¹⁹⁴ In general, the pattern in Western industrialized societies has been one of delayed marriage (mid-20's) and a high proportion of singles (10-20%), whereas in the developing countries, early (mid to late teens) and universal (all but 1 or 2%) marriage for girls has been the rule.¹⁹⁵

The consequences of such early marriages are many, not the least of which are higher fertility rates and age gaps between males and females on entering marriage (8-10 years) than in the case of late marriage.¹⁹⁶ These will tend to accentuate the girls' already subordinate position in society—making the equality of the sexes more difficult.

In his background paper presented at the Second Asian Population Conference entitled "Law, Human Rights and Population: A Strategy for Action,"¹⁹⁷ one of the authors of the present study proposed the inclusion of the following fourteen human rights already embodied in the various United Nations instruments in a "Charter on Human Rights and Population:"

1. The right to adequate education and information on family planning.¹⁹⁸
2. The right of access to the means of practicing family planning.¹⁹⁹
3. The right to the equality of men and women.²⁰⁰

194. UN ECOSOC, STUDY ON THE INTERRELATIONSHIP OF THE STATUS OF WOMEN AND FAMILY PLANNING 71 (Report of the Special Rapporteur, Addendum, Doc. E/CN.6/575/Add. 1, Dec. 13, 1973).

195. *Id.* at 70.

196. *Id.* at 71.

197. UN Doc. POP/APC.2/BP/32; 12 VA. J. INT'L. L. 309 (1972).

198. Teheran Proclamation on Human Rights Resolution XVIII (1968).

199. U.N. Declaration on Social Progress and Development, Art. 22.

200. Universal Declaration of Human Rights, Art. 2; International Covenant on Civil and Political Rights, Art. 3; International Covenant on Economic, Social and Cultural Rights, Art. 3; and Declaration on the Elimination of Discrimination Against Women, Arts. 1, 4, 6, 9 and 10.

4. The right of children, whether born in or out of wedlock, to equal status under the law and to adequate support from natural parents.²⁰¹
5. The right to work.²⁰²
6. The right to an adequate social security system, including health and old-age insurance.²⁰³
7. The right to freedom from hunger.²⁰⁴
8. The right to an adequate standard of living.²⁰⁵
9. The right to environmental protection.²⁰⁶
10. The right to liberty of movement.²⁰⁷
11. The right to privacy.²⁰⁸
12. The right of conscience.²⁰⁹
13. The right to separation of Church from State, law from dogma.²¹⁰
14. The right to social, economic and legal reforms to conform with the above rights.²¹¹

Although much research remains to be done in terms of their legal implications, coordination and priority, the fourteen rights may nevertheless provide the basic considerations to which any attempt at legal reform in the area of adolescent, as well as adult, pregnancy and abortion should be directed.

As examples for the first five points, any review of laws affecting adolescent pregnancy and abortion should take into consideration the following:

(1) Are adolescents being adequately educated and informed on family planning in the present school system? (laws on education, obscenity, postal communication, etc.)

(2) Do they have access to the means (both services and contraceptives) of practicing family planning? (laws on public health, pharmacy, social security, etc.)

(3) Do female adolescents have the same legal status as that of males,

201. Declaration of the Rights of the Child, Principles 1, 4, 6, 9 and 10.

202. International Covenant on Economic, Social, and Cultural Rights, Art. 6.

203. *Id.* Art. 9.

204. *Id.* Art. 11(2).

205. *Id.* Art. 11(1).

206. *Id.* Art. 12(2)(b); Declaration of the U.N. Conference on the Human Environment, Principles 1, 8, 13, 15 and 16.

207. International Covenant on Civil and Political Rights, Art. 12.

208. *Id.* Art. 17.

209. *Id.* Art. 18(1).

210. *Id.* Arts. 18 and 26.

211. This right flows logically from the fact that human rights are *ipso facto* legal rights, entailing legal obligations on the part of governments to undertake the necessary reforms to conform with such rights.

particularly in the fields of education, job opportunity, remuneration and marriage and divorce? (laws on education, labor, family relations, etc.)

(4) Can adolescent parents in fact support adequately their children whether born in or out of wedlock? Are their children's rights adequately safeguarded where such support is not forthcoming? If not, what preventive measures or remedies? (laws on family or child allowances, adoption, bastardy, child-care centers, etc.)

(5) Are adolescent parents adequately prepared and trained to work? Would they have been better off to complete their schooling instead of being forced into the job market in order to support a family? What are the consequences to the society in terms of additional unskilled labor, unemployment or disguised unemployment? (laws on labor, vocational training, unemployment benefits, etc.)

The basis for providing adolescents with special and particularized treatment in the realm of pregnancy and abortion have already been enunciated, legally as well as medically. The law ostensibly seeks to ascertain the course of action that best serves the interests of the minor. Medicine has flatly asserted that the controlling premise is that "the youth's health is paramount to any other consideration."²¹² Neither discipline has been entirely consistent in the application of their own self-imposed standards as in many cases they have worsened the dilemma which confronts pregnant adolescents, rather than aided in the resolution.

It can be seen from the foregoing discussion that our exploration into the legal aspects of adolescent pregnancy and abortion leads us through a complicated maze of oft-conflicting legislation and government policies. All too frequently the laws have remained oblivious to the actual needs of adolescents and their basic human rights. This is regrettable since any attempt at implementing the human rights standard must *a fortiori* take into account the special status of adolescents, the safeguarding of whose rights deserves particular vigilance.

This rather broad review of the legal implications of adolescent pregnancy and abortion has led us to the conclusion that there is a need to undertake a systematic compilation and review of the existing laws which affect the issue. Moreover, further research should be undertaken into the definition and implications of unwanted pregnancy among minors.

212. American Medical Association, *News*, Apr. 17, 1967.

APPENDIX

Age Ladder of Rights and Obligations

| | Marriage | | Civil Majority | Criminal Responsibility | Vote |
|----------------------|--------------|-------|---------------------|----------------------------|-------|
| | Boys | Girls | | | |
| Algeria | 18 | 16 | 21 | 18 | 19 |
| Argentina | 18 | 18 | 21 | 21 | 21 |
| Australia | 18 | 16 | 21 | 18 | 18 |
| Bangladesh | 18 | 16 | 21 | 18 | 18 |
| Belgium | 18 | 15 | 21 | 18 | 21 |
| Brazil | 18 | 16 | 21 | 21 | 18 |
| Cameroon | 18 | 15 | 21 | 18 | 21 |
| Canada | 14/16 | 12/16 | 18/19 | 16/18 | 18/19 |
| Chile | 14 | 12 | 21 | 18 | 18 |
| Colombia | No Age Limit | | boys 21 girls 18 | 18 | 21 |
| Costa Rica | 15 | 15 | 21 | 21 | 18 |
| Czechoslovakia | 18 | 18 | 18 | 18 | 18 |
| Denmark | 20 | 18 | 20 | 15 | 20 |
| Egypt | 18 | 16 | 21 | 21 | 21 |
| Ethiopia | 18 | 15 | 18 | 18 | 21 |
| Finland | 18 | 17 | 20 | 18 | 20 |
| France | 18 | 15 | 21 | 18 | 21 |
| German Dem. Rep. | 16 | 16 | 18 | 18 | 18 |
| Germany Fed. Rep. | 21 | 16 | 21 | 21 | 18 |
| Ghana | 18 | 13 | 21 | 21 | 21 |
| Iran | 15 | 15 | 18 | 18 | 18 |
| Italy | 16 | 14 | 21 | 18 | 21 |
| Ivory Coast | 18 | 16 | 21 | 18 | 21 |
| Jamaica | 18 | 16 | 21 | 16 | 18 |
| Japan | 18 | 16 | 20 | 20 | 20 |
| Korea (Rep. of) | 18 | 16 | 20 | 14 | 20 |
| Laos | 18 | 15 | 18 | 16 | 18 |
| Madagascar | 17 | 14 | 21 | 21 | 18 |
| Mauritius | 18 | 15 | 21 | 21 | 21 |
| Mexico | 16 | 14 | 18 | 18 | 18 |
| Niger | 21 | 18 | 21 | 18 | 21 |
| Nigeria | 14/18 | 14/18 | 21 | 17 | 21 |
| Netherlands | 18 | 16 | 21 | 18 | 18 |
| New Zealand | 16 | 16 | 20 | 17 | 20 |
| Norway | 18 | 16 | 20 | 16 | 20 |
| Romania | 18 | 18 | 18 | 18 | 18 |
| Senegal | 20 | 16 | 21 | 18 | 21 |
| Singapore | 18 | 18 | 21 | 16 | 21 |
| Spain | 14 | 12 | 21 | 16 | 21 |
| Switzerland | 20 | 18 | 20 | 20 | 20 |
| Tanzania | 18 | 15 | 18 | 18 | 18 |
| Turkey | 17 | 15 | 18 | 18 | 20 |

APPENDIX (Continued)

Age Ladder of Rights and Obligations

| | Marriage | | Civil Majority | Criminal Responsibility | Vote |
|----------------|----------|-------|-------------------|----------------------------|------|
| | Boys | Girls | | | |
| United Kingdom | 16 | 16 | 18 | 17 | 18 |
| U.S.A. | 14/21 | 12/18 | 18/21 | 18/17/16 | 18 |
| U.S.S.R. | 18 | 16/18 | 18 | 18 | 18 |
| Venezuela | 14 | 12 | 21 | 21 | 18 |
| Yugoslavia | 18 | 18 | 18 | 13 | 18 |
| Zaire | 18 | 18 | 21 | 21 | 18 |

Source: Patrikios, *Marriage Age 16, Civil Majority 18, Voting Age 21—Why?* UNESCO Courier, October 1973, pp. 26-27.

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