

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

In the last few years legislatures all over the country have taken note of one of the most persistent but emotionally charged issues of our time, that of the reform of laws forbidding abortion. Lawmakers have gradually become aware of the tremendous social and medical problems and of the gross violations of individual rights perpetuated by the present abortion laws. A rapidly growing public sentiment is demanding that something be done to bring the old laws into line with the sweeping legal, medical, moral and social changes of the last half century, and in many states the first steps toward this end have already been taken.

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

The Union appreciates the depth of the emotions generated by the prospect that prohibitions on abortion will be removed. Many people believe profoundly that to destroy a fetus at any stage of its development is no less than outright murder. Others fear that when abortion is freely available youthful promiscuity will be encouraged and the moral fabric of society will be seriously weakened. We believe, however, that the civil liberties concerns that arise from the abortion question can be satisfied by means other than the grossly repressive legal prohibitions against abortion which prevail today. Our study has led us to the conviction that there is an answer consistent both with the demands of the spirit and principle of civil liberties and with the need for an amelioration of the social and medical problems created by today's laws.

The American Civil Liberties Union asserts that a woman has a right to have an abortion -- that is, a termination of pregnancy prior to the viability of the fetus -- and that a licensed physician has a right to perform an abortion, without the threat of criminal sanctions. In pursuit of this right the Union asks that state legislatures abolish all laws imposing criminal penalties for abortions performed, for whatever reason, by a licensed physician. The effect of this step would be that any woman could ask a doctor to terminate a pregnancy up to the time that the fetus becomes viable. (The exact moment at which this happens is not known, but the medical profession does agree that a fetus could not possibly live apart from the mother until sometime after the twentieth week, and as a practical matter, even with the best medical care now available, not until several weeks later.) In his turn, a doctor could accede to the woman's request in accordance with his professional judgment without fear of criminal prosecution. Thus, the decision whether or not to continue a pregnancy would become one of the woman's personal discretion and the doctor's medical opinion. Both would be free to follow their private consciences in determining whether their religious or moral standards were being violated. No fear of criminal punishment would enter into the decision.

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

The discriminatory effect of this prohibition of abortion involves another area of civil liberties interest, that of equality. At a time when our nation is ever more deeply intent upon narrowing the gap between the rich and poor and removing the obstacles which prevent the poor from exercising their fundamental rights as citizens, we should not perpetuate the kind of inequality that the abortion laws have produced. The rich can violate the law with impunity, but the poor are at the law's mercy. Any sanction which operates in this manner is not acceptable under civil liberties standards of equal protection of the laws. Moreover, the very fact that a law is so arbitrarily applied and enforced and so universally ignored itself weakens the principle of the rule of law which is the backbone of civil liberties.

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

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

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

- 1) They deprive women of the liberty to decide whether and when their bodies are to be used for procreation, without due process of law.

2) They are unconstitutionally vague.

3) They deny to women in the lower economic groups the equal protection of the laws guaranteed by the Fourteenth Amendment, since abortions are now freely available to the rich but unobtainable by the poor.

4) They infringe upon the right to decide whether and when to have a child, as well as the marital right of privacy.

5) They impair the right of physicians to practice in accordance with their professional obligations in that they require doctors not to perform a necessary medical procedure. In many cases their failure to perform this medical procedure because of the statutory prohibitions on abortion, would amount to malpractice.