THE CONFLICT BETWEEN LAW AND MORALITY: A STUDY IN JURISPRUDENCE AND THE PHILOSOPHY OF LAW

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Man is so constituted by nature that his creative faculties are not fully absorbed or used up in his efforts to preserve his own life and reproduce new life. There is a reserve of excess energy in him, without which the great collective enterprise which we call human civilization would be impossible. If man's resources were exhausted in his struggle to find food and shelter, protect himself against the dangers of nature, and reproduce his kind, there would be no energy left for the higher-minded cultural activities which go beyond satisfying the bare, immediate necessities of life. It is this surplus strength flowing into cultural activity which distinguishes man from the lower species of life.

In this great endeavor to build a rich and satisfying civilization, the institution of law plays an important part. It assures that this surplus energy of man is channeled into the proper direction so that the civilization grows and develops in an orderly and peaceful manner. The beneficial effect of law upon society stems from the fact that it creates and maintains a sphere of security for the individual to live and work in. By not having to devote all of his time and energy to protecting his property and interests, man is free to develop his talents and intellect so that he may become the best possible person that he can be.

Along with the law, morality functions in society to ease relationships between men and encourage citizens to be considerate and thoughtful in their words and deeds, thereby, further promoting a
peaceful society and constructive civilization. It is necessary to have both law and morality at work in society as both function differently to control man's social behavior. The law deals with relationships and actions on a legal plane where the steps to an end are formalized in legislation and enforced by the state. Morality, on the other hand, functions on a smaller scale and regulates the daily activities of man and provides him with ethical guidelines to follow in his relationships with other members of the social community.

This paper is designed to examine the relationship between law and morality, and to observe how they both function in our complex society to control the activities and relationships of its members. The paper is divided into three parts, each important in providing a close examination of law and morality. The first part consists of a brief overview of the history of the philosophy of law and the changes which have occurred in the science of jurisprudence over the last two centuries. The second part of the paper contains a comparison and contrast of law and morality and discusses each as modes of social control, including their relationships to rights and duties. The third part of the paper takes up the topic of abortion and discusses how this prominent philosophical and legal issue illustrates the conflict between law and morality as each deal with the problem differently and arrive at different conclusions concerning the rights of the individual and the right to life.
In order to understand modern law and its application to today's society, one must take a look at the development of jurisprudential thought through the men and movements which made the science important. The best way to begin is to examine the meanings of jurisprudence and its function in the formulation and application of the law. Initially criticized for abstractness and leanings toward idealism, jurisprudential thought of today has developed into a science concerned with sociological considerations and the pragmatic issues and problems which come about in the many complicated relationships between members of our society.

According to Roscoe Pound, one of the foremost authorities in the field of jurisprudence, there are three plausible meanings of the word jurisprudence. It can be thought of as a comparative anatomy of developed systems of law, the course of decisions in the courts (contrasting it with legislation and doctrine), or a mere synonym for the word "law." However, as Pound notes, jurisprudence is basically the science of law. ¹

This science of law can be defined as an organized and controlled body of knowledge of legal institutions, legal precepts, and legal order. ² Incorporated in this science of law is the process of legal analysis by which the science functions. This process of analysis consists of three steps which are (1) distinguishing of cases superficially alike, (2) the seeking for and formulation of a principle behind that distinction, and (3) the working out of general legal conceptions. ³
The science of law has its roots in ancient Greek philosophy. These early thinkers in the field of jurisprudence were characterized by a love for the perfect or ideal and a tendency to deal in the abstract. To the Greek philosophers such as Socrates, Plato, and Aristotle, the end of law was an orderly maintenance of an idealized society or preservation of the social status quo. Right and law were synonymous and had their basis in a harmony or fitness involved in the nature of things. They were independent of human will and had universal validity. 4

The Stoics were a group of philosophers who also played an important part in the development of jurisprudence. Founded by a thinker of Semetic origin by the name of Zeno, the Stoics believed that the entire world consisted of one substance, and that substance was reason. This reason, as a universal force pervading the cosmos, was considered by the Stoics as the basis of law and justice. They, too, believed in the harmony involved in the nature of things and held that all men could live together in one great world community if they abided by this powerful entity of reason and accepted its guidance. 5

Cicero, the great Roman lawyer and statesman, was strongly influenced by the ideals of the Stoic philosophers. Like them, he was inclined to identify nature and reason and to assume that reason was the dominating force of the universe. In ascribing this "natural force" to the law, Cicero made it clear that the mind and reason of the intelligent man was the standard by which justice and injustice were to be measured. To Cicero, the sense of justice, though capable of growth and refinement,
was a universal possession of all reasonable men. Through the contributions of Cicero and the Stoics, it seemed as though the philosophy of law had evolved from an abstract science based on idealism to a concrete inquiry based on reason. However, with the onset of the Middle Ages, jurisprudence was to suffer a slight setback.  

In the Middle Ages, all Christians shared one common concept of the universe: that which had been laid down in the New Testament and in the teachings of the Fathers of the Church. Legal philosophy, like all other branches of science and thinking, was dominated by the church and its doctrines. But the heritage of antiquity was not lost; Plato, Aristotle, and the Stoics exercised an influence upon the minds of the Medieval Christian thinkers, even though the concepts and ideas which the philosophy of antiquity had produced were reinterpreted and revised in the light of the theology and doctrines of the Christian church.

St. Thomas Aquinas was the greatest of the scholastic philosophers of the Middle Ages, and his teachings may still be regarded as an authoritative expression of the theological, philosophical, and ethical convictions of Roman Catholicism. His system represented an ingenious synthesis of Christian scriptural dogma and Aristotelian philosophy. The influence of Aristotle reveals itself particularly in Aquinas' thinking on law and justice, but is adapted by him to the doctrines of the gospel and integrated into an imposing system of thought. Along with this influence by Aristotle, Aquinas' concept of justice was also affected by the teachings of Cicero discussed above.
In the law of the Middle Ages, theological philosophy was used to sustain authority in the enforcement of the legal code. There was believed to be a Supreme Being who dictated the laws of nature to man and demanded absolute conformity to those laws. This belief in an absolute system of laws incorporated in nature and the order of the universe is known as natural law. This particular concept of legal philosophy was predominant during the Middle Ages and was nurtured by the teachings of the Christian church. Law and the interpretation of justice was taken out of the hands of man and placed under the authority of God and His enforcer, the church. Therefore, the advancements toward humanized law made by Cicero and the Stoics were rendered useless during this time when the law and legal philosophy were under the control of the church.

In the 16th and 17th centuries, the philosophy of law was divorced from theology and the law was separated from the authority of the church. Therefore, jurists could no longer look to a divine entity for direction or support of their decisions. Because of these legal developments, the rationale of law had to be found in reason, and man was once again to play an important part in the formulation of the law and the interpretation of the legal codes by which he lived.⁹

According to Roscoe Pound, the next significant movement in the development of jurisprudence took place in the 19th century. At this time, legal philosophy was set apart from political philosophy and thought of as a separate science. The three most prominent schools of thought in the science of law during the 19th century's Age of Reason were the analytical school, the historical school and the philosophical school.
The analytical school was concerned with the pure fact of law and dealt only with developed legal systems. The law was considered by this group to be something consciously made by legislators and administrators. The analytical method of interpretation of the law was one of seeking fundamental principles of all law through analysis and comparison. The emphasis was placed upon the enforcements of the legal code, and for this school, the most typical sort of law was statute law. This was due to the fact that statute law was made consciously and enforced deliberately by the state.10

This view of law was something deliberately formulated and imposed by the state is known as legal or analytical positivism. This particular movement in the philosophy of law was foreshadowed by Jeremy Bentham, the great Utilitarian, but the development of the concept and the foundation of the analytical school is credited to John Austin. Like Bentham, Austin was an adherent of the Utilitarian philosophy of life. The principle of utility appeared to him to be the ultimate test of law. The end of law, to Austin, should be to produce the greatest amount of good for the greatest number of people. Austin's theory of law, although it remained unnoticed during his lifetime, later gained a great influence on the development of English jurisprudence.11 His view of law was a tool to be used in the organization of society and a key to the fulfillment of the individual in the social community served to further the sociological development of jurisprudence. The science was now one not only dealing in abstract methods and reasoning, but in practical interpretations and applications as well.
The historical school of jurisprudence pursued a comparative study of the origin and development of law, and then derived universal theories, concepts, and principles from their study. The consideration in this school was given to past law rather than present law, for their belief was that the law of the present was nothing more than a culmination of past legal developments. The historical jurist considered law to be something that could not be made consciously, but something existing independently from human will. Within the historical school, the law consisted of custom or those customary modes of decision-making that create a body of juristic tradition of case law. A good example of the historical method of interpretation of the law would be a judge making a decision on the basis of a precedent. If there had been a case decided previously that was similar to the one that he was trying, he would simply look to the previous decision for guidance in his deliberation of a verdict.

The most prominent thinkers in the historical school were Friedrich Carl von Savigny, a German writer, and Sir Henry Maine, the founder and chief exponent of this school in England. Maine was strongly influenced by Savigny and the historical approach to legal interpretation, but went beyond the work of Savigny in undertaking broad, comparative studies of the unfolding of legal institutions in primitive as well as progressive societies. These studies led him to the conviction that the legal history of peoples show patterns of evolution which recur in different social orders and in similar historical circumstances. These studies were just a part of the great contribution that Sir Henry Maine made to the science of jurisprudence, but it is his most important in the sense that it clearly illustrated the sociological importance
of the philosophy of law as a key to understanding the human community and how it functions.

The philosophical school of jurisprudence is concerned with the rationale behind law and the analysis of legal precepts and doctrines. In the past, the philosophical jurist studied the philosophical and ethical basis of law, and their main purpose was to work out the materials and methods for a sound critique of them. Today, he seeks to set off and criticize the ideal element in the body of law to give it definiteness and try it by philosophical considerations. The philosophical jurist is more concerned with what legal precepts ought to be than what they actually are. They seek to clarify, systemitize, and correct ideas concerning the end of law.\textsuperscript{14}

The philosophical jurist in the last century has come to agree with the historical jurist that the law is found and not made. They look at the ethical and moral basis of law rather than at its sanction. To them, the binding force of a legal precept is that it is a rule expressing a principle of right and justice in society.\textsuperscript{15} Again, this school is concerned with how the law works to promote and regulate relationships in society and its worth as a sociological force acting upon man in his daily life.

In the 19th century, the most prominent schools of thought under the heading of philosophical jurisprudence were the Kantians, the Hegelians, and the Krauseans. In the 20th century, the most prominent movements are the Social Utilitarian, the Neo-Kantian, and the Neo-Hegelian.
Social Utilitarianism was derived from English Utilitarianism, but it developed in a different direction from its English counterpart. The German jurist Rudolph von Jhering was the founder and leader of the Social Utilitarian movement. Prior to Jhering, the theory of law in operation had been one of abstract individualism. With him, there began a social-philosophical theory of law. He taught that legal rights were conferred by politically organized societies to secure interests which had a defacto extra-legal existence. Thus, in his opinion, law was something created in society whereby the individual found a means of securing his interests as far as society recognized them.16

Social Utilitarianism is an element in the thoughts of other social-philosophical schools rather than a method of a subsisting school. The Social Utilitarians were pioneers in social philosophical jurisprudence. Much of the thought of the present has built upon the work of Jhering, who has become more and more important within the last three decades as the science of sociology has developed and proven itself to be a viable method of examination in the study of society.17

According to Pound, there are essentially five contributions which the Social Utilitarian movement has made to the development of modern law. They are (1) the overthrow of the jurisprudence of conceptions as the one method of developing authoritative legal materials into grounds of decision-making and the one method of applying legal precepts, (2) the insistence upon the interests which the legal system secures rather than
upon the formal legal rights by which it secures them, (3) the theory of punishment as penal treatment to be adjusted to the criminal rather than the nature of the crime, (4) the bringing about of a due recognition of the imperative element in the legal order and the acknowledgement of the legislation behind legal authority, and (5) giving us a theory of the administrative element in the judicial process.\textsuperscript{18}

Along with the Social Utilitarian movement in current jurisprudential thought, the school referred to as the Neo-Kantians has also proven to be important. In fact, the Neo-Kantians are the most dominant thinkers in philosophical jurisprudence today. It has been the strength of this group that it is concerned with the problem of values in society, and this problem is definitely one of the most challenging in the modern science of law.\textsuperscript{19}

The founder and leading representative of the Neo-Kantian school is Rudolph Stammler. He began to write about jurisprudence and the philosophy of law in 1888 with an attack on the historical school and has undoubtedly been the strongest single influence in philosophical jurisprudence of the present century.\textsuperscript{20}

Although Stammler correlated his doctrines and beliefs with those of Kant, the contrast between the two thinkers is significant. Kant sought a universal critique of law-making, while Stammler sought a method of determining justice in a given situation or relationship. Stammler looked at legal institutions and precepts functionally with respect to the ideals society hoped to achieve. He geared his thinking
toward social ends rather than individual ends in the abstract. Kant conceived of justice as consisting of the reconciling of the will of each individual with the will of the community by some universal formula which would allow the greatest possible scope to each individual will. Stammler conceived that justice consisted in bringing about a harmony of individual ends or purposes, so that all possible ends of those who are legally bound are included. 21

Through his teachings and writings, Stammler brought about two necessary changes in philosophical jurisprudence. In the words of Roscoe Pound:

(1) He led us to see that the ideals to which we are to make the body of authoritative precepts and the application of them in the judicial process conform are the ideals of an epoch.

(2) He substituted social ideals for the ideal of the abstract individual as the criteria for achieving justice through law. 22

Stammler and the Neo-Kantians believed that the service that legal order could give to society was service given also the individual. Like the Social Utilitarians, the Neo-Kantians believed in the promotion of social ends rather than individual ends. In this school of thought, the well-adjusted society would inevitably provide for the well-adjusted individual, so in working for society, the individual was also working for himself. The Neo-Kantian movement once again illustrates the emphasis upon social considerations so characteristic of modern jurisprudence.

Like the Neo-Kantians, the Neo-Hegelians also deal in sociological considerations in their interpretation of the law and the philosophy.
supporting it. This group believes that the law is a product of the
civilization of a people and can be best understood through a comparative
study of the legal histories of the societies in which the laws operate.
They hold to the theory of sociological interpretation and application
of legal precepts and their method of formulating jural postulates
is relativistic, and it is dependent upon the civilization in a certain
time and in a certain place. The method of legal analysis in this
school of thought is both historical and social philosophical. The
leading representative of the Neo-Hegelians is Josef Kohler who was
influenced by both Savigny and Jhering. Kohler believes that law is a
product of the civilization of the past and that present law is a product
of the attempts to adjust the laws of the past to the civilization of
the present. 23

Kohler reflects the philosophy of Hegel by regarding law as
an expression of the ideas of civilization. However, where Hegel
held that these ideas could be reduced to a mere quest for liberty,
Kohler holds that the ideas of civilization are complex and entail
much more than just liberty. 24

Perhaps the most significant contribution which Kohler made to
the science of law was his method of the formulation of jural postulates
of the civilization of the time and place. He teaches that the civiliza-
tion of a people for the time being involves certain jural postulates.
These jural postulates are certain principles of right which are logically
assumed or expressed by a given civilization. It is the task of the jurist
to discover and to formulate these jural postulates. He must also
construct a critique and set up ideals to which law-making must conform
and by which the materials of a legal system may be developed and applied in juristic writing, teaching, and decision-making. The teachings of Kohler and the Neo-Hegelian school of philosophical jurisprudence effectively show the movement of the science of law toward sociological considerations in two ways. First of all, this school insists that the law is something at work in a civilization and is a mode of social control and regulation. Secondly, they advocate the theory of relativism in the interpretation and application of the law, as the school and Kohler hold that the time and place must be taken into consideration in the examination of the laws of the civilization.

From its beginnings in Greek philosophy, the science of law known as jurisprudence has grown into an important branch of study. The science has evolved from a loosely constructed, abstract philosophical inquiry into a tightly-knit, concrete sociological examination of society and the laws which govern it. The jurisprudence of today concerns itself with the problems which arise in society that make it necessary to draft laws and enforce them. It is a science which functions to study and clarify the laws and the rationale behind them. Jurisprudence is filled with social issues today as our modern society and its many components become more and more complicated with the passage of time. One of the most intriguing problems facing the jurisprudential thinker at this time is the conflict between law and morality. The problem is one which has dominated the science of law for many years and remained unresolved due to its difficulty and complication.
Due to the complexity of today's society, law and morality must work together to control man's behavior and insure peaceful relations between men in society. In order to understand how they work together in spite of their conflicts and differences, it will be necessary to examine each in detail and note how they compliment each other as modes of social control. This comparison and contrast between law and morality will be the subject of the next section of this paper.

The term "law" is employed in jurisprudence not in the sense of the abstract idea of order, but in that of the abstract idea of rules of conduct. However, a line must be drawn to divide these rules of conduct from morality and separate jurisprudential inquiry from ethical inquiry. According to T. E. Holland:

> Into the battles which are perpetually raging as to the essential quality of virtue in itself, and as to the faculty by which the virtuous quality of actions is discerned, is not the business of the jurist to enter.

Law and morality both at work in a society function as modes of control over the behavior of the members of the community. Although it may be stated that the two are closely related in several aspects, they are two separate sociological entities having as many differences as they do similarities.

According to H. L. A. Hart, a noted writer and lecturer in the field of jurisprudence, law and morals have a relationship which is quite complicated and which can be looked at from many angles. In his opinion, there are four basic questions which should be considered in
looking at that particular relationship.

The first is an historical and causal question: Has the development of law been influenced by morals? The answer to this first question is yes, but the converse is also true. Morals in certain societies have occasionally been influenced by the passage of various laws, although laws will normally follow the accepted morality of any given community.

The second question may be called an analytical or definitional one: Must some reference to morality enter into an adequate definition of law or legal system? Or is it just a contingent fact that law and morals often overlap and that they share a common vocabulary of rights, obligations, and duties? These are ponderous questions in the long history of the philosophy of law, but perhaps are not so important as the amount of time and ink expended upon them suggests. Two things have contributed to making a discussion of them seemingly interminable. The first is that the issue has been clouded by the use of grand but vague words like "Positivism" and "Natural Law." Banners have been waved and parties formed in a loud but often confused debate. Secondly, amid the shouting, too little has been said about the criteria for judging the adequacy of a definition of law. Perhaps an accurate description of the expression "law" or "legal system" would resolve the issue.

The third question raised by Hart concerns the possibility and the forms of moral criticism of the law. Is law open to moral criticism? Or does the admission that a rule is a valid legal rule preclude moral
criticism or condemnation of it by reference to moral standards or principles? It must be admitted that a law is valid whether or not it conflicts with a moral standard, and that disobeyance of the law would invite disciplinary action, even if the law was violated out of a deep moral conviction.

The fourth question concerns the legal enforcement of morality and has been formulated in several different ways: Is the fact that certain conduct is by common standards immoral sufficient to justify making that conduct punishable by law? Is it morally permissible to enforce morality as such? Ought immorality as such to be a crime?

To this question, John Stuart Mill gave an emphatic negative answer in his essay, On Liberty, and the famous sentence in which he framed this answer expresses the central doctrine of his essay:

The only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others.

The answers to all of these compelling questions can be seen through a discussion of law and morality, including the definition of each and a listing of their similarities and differences.

Webster's Dictionary defines the word law as being a rule established by authority, or a body of rules, the practice of which is authorized by a community or a state. Morality may be defined as actions conforming to a sense of right possessed by the individual or by the community. The word moral used to describe actions is synonymous with words like good, virtuous, or praiseworthy. The moral code used in
conjunction with the community would then mean a set of right or good acts, the definition of right or good being determined by the members of that social community.

Upon examination, the definitions of the words law and morality provide for a comparison of the two and a discussion of their similarities and differences. Both function as principles of conduct or imperatives, as they are established commands and prohibitions. However, their scopes of behavior regulation are not alike.

According to an influential theory, the distinction between law and morality is found in the fact that the law regulates the external relations of men, while morality governs their inner life and motivations. According to this view, law requires merely external compliance with existing rules and regulations, while morality appeals to the inner conscience of man. This theory was first announced by the philosopher Thomasius and subsequently elaborated upon by Kant; it is referred to as the Kantian Theory.

In his discussion of the Kantian Theory, Hart suggests that moral law demands that men act from praiseworthy motives and above all, from a sense of ethical duty. He observes that morality encourages man to strive after good for its own sake. He goes further to state that the law as a governing body in society demands an absolute subjection to its rules and commands, whether a particular individual approves of them or not. This type of law is characterized by the fact that it always applies the threat of physical compulsion. In this way, morality is autonomous, meaning coming from within, while the law is heteronomous, meaning being imposed on man from without.
Moral and legal rules are alike in that they are conceived of as binding independently of the individual bound and are supported by serious social pressure for conformity. In the opinion of Hart, compliance with both legal and moral obligations is regarded not as a matter for praise, but as a minimum contribution to social life to be taken as a matter of course. Further, both laws and morals include rules governing the behavior of individuals in situations constantly recurring throughout life, rather than special occasions or situations. Though both legal and moral codes may include much that is peculiar to the real or fancied needs of a particular society, both make demands which must obviously be satisfied by any group of human beings who attempt to live together successfully. 35

In spite of the similarities between laws and morals, there are certain characteristics which the two cannot share, though in the history of jurisprudence, these have proven most difficult to formulate.

Moral standards are maintained against the drive of strong passions they restrict and at the cost of sacrificing considerable personal interests. Again appealing to Hart, enforcement of the moral code entails serious forms of social pressure exerted not only to obtain conformity in individual cases, but to secure that moral standards are taught and communicated as a matter of course to all in society. Also, in the moral community, the general recognition is that if moral standards are not generally accepted, far-reaching and distasteful changes in the life of the individual will occur. 36

In contrast with morals, as Hart notes, the rules of deportment,
manners, dress, and some, though not all rules of law, occupy a relatively low place on the scale of serious importance. They may be tiresome to follow, but they do not demand great sacrifice. No great pressure is exerted to obtain conformity and no great alterations in other areas of social life would follow if they were not observed.

According to Hart, legal rules may correspond to moral rules in the sense of requiring or forbidding the same behavior. Those that do so are felt to be as important as their moral counterparts. Yet importance is not essential to the status of all legal rules as it is to that of morals. A legal rule may be generally thought unimportant to maintain; it may be generally agreed that it should be repealed. However, it remains a legal rule until it is in fact repealed. It would, on the other hand, be absurd to think of a rule as a part of the morality of a society if no one thought it any longer important or worth maintaining.

As Hart points out, it is characteristic of a legal system that new legal rules can be introduced and old ones changed or repealed by deliberate enactment, even though some laws may be protected from change by a written constitution limiting the competence of the supreme legislature. By contrast, moral rules or principles cannot be brought into being or changed or eliminated in this way. It is inconsistent with the part played by morality in the lives of individuals that moral rules, principles, or standards should be regarded, as laws are, as things capable of creation or change by a deliberate act. In the words of Hart:
Standards of conduct cannot be endowed with, or deprived of, moral status by human fiat, though the daily use of such concepts as enactment and repeal shows that the same is not true of law.39

Another difference between legal and moral codes can be observed in the element of intent involved in their violation. If a person whose action has violated moral rules or principles establishes that he did so unintentionally and in spite of every precaution it was possible for him to take, he is excused from moral responsibility, and to blame him under these circumstances would itself be considered morally objectionable. Moral blame is therefore excluded because he had done all that he could do. In any developed legal system, the same is true, but only up to a point. The general requirement of mens rea is an element in criminal responsibility designed to secure that those who offended without carelessness, unwittingly, or under conditions in which they lacked the bodily or mental capacity to conform to the law, should be excused.40 However, built into those same legal systems are certain rules and regulations which fall under the heading of strict liability. Violations of this nature are always punishable, regardless of the intent or disposition of the offender. Because of the nature of moral codes and the behavior which they regulate, "I could not help it" is always an adequate excuse. Plainly, the same is not the case in the operation of the law.

The types of punishments imposed for the violation of legal and moral codes is also an important feature to contrast in a discussion of laws and morals, as the punishments tend to differ as radically as
the codes themselves. With respect to the violation of laws, society imposes the threat of physical punishment, incarceration, or monetary retribution. Such is not the case with regard to the violation of the moral code at work in the community. Upon violation of a moral rule or norm, guilt and self-condemnation act upon the conscience of the offender, and often this sort of self-inflicted mental punishment proves to be far more damaging than the physical sort imposed by the state. The moral community compounds the self-punishment by exerting pressure upon the offender to conform to the moral code and compounds his guilt by exposing him to public condemnation and humiliation. Along with this, the retributive acts demanded by the two codes differ in that the offender of the law serves his time or receives his punishment, and his debt to society is paid once and for all. The moral offender, on the other hand, may never be able to completely absolve his debt to the moral community and could be forced to live with the social repercussions of this offense for the rest of his life.

To summarize, both legal and moral codes are concerned with social control and function to promote peaceful relations between members of the community. However, the two codes differ in the types of behavior they regulate, the way in which they regulate it, and the penalties which are imposed for the violation of each. It has been noted that the moral code of a society does indeed influence the legal code, but only up to a point. The legal code of a society will normally reflect the moral code by containing laws which correspond with moral
norms. Some laws contained in the legal code may even be identical to moral rules; for example, laws forbidding such offenses as assault, rape, and murder all have moral counterparts. Laws which regulate and control business practices, such as those pertaining to fair competition and product liability, have their roots in ethical codes and reflect the moral norms functioning in society. Yet in spite of this close relationship, moral and legal codes differ in their very nature and importance, in that the moral considerations which influence relationships and practices in society are often more compelling than the legal ones. This is not to say that the morality of the community weighs heavier in the minds of its members. It is merely a strong indication of the difference between the two as modes of social control.

In order for a society to function effectively, laws and morals must work together to control and regulate human action. The two must be complementary and keep a check on each other to assure that all aspects of activity in the community are dealt with by an authoritative entity, and that the members of that community are provided with two separate codes of behavior to which they can appeal for guidance in their relations with others and their decision-making. The two codes may also keep check on each other by controlling the power which each can exercise over the people. For example, a law which blatantly violated the community's moral code would never be allowed or obeyed by the people; it would, in fact, probably never be passed. Conversely, a moral norm which unfoundedly violated the law would be condemned and resisted by the state.
It is quite clear that having law and morality working together for the good of society is the most beneficial type of relationship for the two separate social entities to have. And it is also clear that the two must be kept separate. One code could not possibly cover all that it would need to in order for the society to function successfully. The community needs the objectivity in legislation and enforcement provided by its legal codes, and the subjectivity afforded by its moral code. Taken together, the community is able to enjoy the "best of both worlds" as far as behavior regulation is concerned.

The reason that societies are in need of behavior regulation is because all members of the society are endowed with certain rights. These rights can be moral or legal and undoubtedly differ in nature from one society to another. However, where members of a society have certain rights, their peers in the community have an obligation or duty to respect those rights and refrain from violating them whenever possible. Depending upon the nature of the rights, the members of society are continually bound to each other by moral or legal duties and obligations. No discussion of laws and morals is complete until the rights and duties involved in the legal and moral codes are dealt with. A good starting point is the formulation of definitions of rights and duties of both a legal and moral nature and a discussion of their importance as reference points in the conflict between laws and morals.

According to T. E. Holland, a right is one man's capacity of influencing the acts of another, by means not of his own strength,
but of the opinion or force of society. Holland continues by observing that a right is the name given to the advantage a person has when he is so circumstanced that a general feeling of approval results when he does or abstains from doing certain acts, and when other people act or forebear to act in accordance with his wishes.41

A member of society is generally in possession of both legal rights and moral rights. The difference between the two is found in the fact that one seems to have more strength than the other. Holland defined legal right as being the capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others. He states that the force lent to a right by the state is what gives a legal right validity.42 Holland goes so far as to say that the actual purpose of the law is to announce in what cases the state's objective support will be granted to an act, and the manner in which that support may be obtained. In his opinion, the law exists for the purpose of defining and protecting rights.43

Moral rights are characterized by Holland as having only the subjective support of the members of the moral community.44 However, for the reasons cited above in the discussion of legal and moral rules, moral rights may be more compelling and binding, even though they do not have the physical support of the state behind them, as do their legal counterparts. For example, a woman has the moral right to expect her husband to be faithful to her and abstain from participating in extramarital relationships. Although this right is not supported by the physical force of the state, as men who cheat on their wives are not
prosecuted for doing so, it is supported by the members of the moral community. These members can exert pressure upon the unfaithful husband to conform and have just as much power over his actions as the state would have if the right in question was a legal one.

Every right, whether moral or legal, implies the active or passive furtherance by others of the wishes of the party having the right. According to Holland, wherever anyone is entitled to such furtherance on the part of others, such furtherance on their part is said to be their duty. Where such furtherance is merely expected by public opinion, it is their moral duty. Where that furtherance will be enforced by the power of the state, to which they are amenable, it is their legal duty.45 For example, the unfaithful husband's duty to be true to his homely wife is a moral one, but his duty to support that wife and their thirteen children is a legal one. As stated above, if the husband is found in the arms of another woman, the wife may have grounds for divorce, but she would be unable to prosecute him. On the other hand, if her wayward husband decided to abandon her and the children in order to run away with his voluptuous concubine, the wife would then have cause to bring him before the Courts by suing him for alimony and child support.

Moral obligations, like most legal obligations, are within the capacity of any normal adult. Compliance with these moral rules, as with legal rules, is taken as a matter of course. If one breaches his moral or legal duty, he is immediately brought to justice, while conformity to legal and moral obligations, like obedience to the law, is not especially noteworthy. It is simply expected.46
In all communities, there is a partial overlap in content between legal and moral obligations, as there is in the content between legal and moral codes. However, the requirements of legal rules and obligations are more specific and deal with more varied aspects of human activity than do their moral counterparts. For example, each citizen has a legal duty to file and pay income taxes each year. This is a purely legal obligation imposed by the government and has no real bearing on the morality of the community or the disposition of the individual. It is simply a law which must be obeyed.

Moral and legal duties, like the rules and codes which foster them, deal with situations and relationships which constantly recur in society, not with special occasions or instances. Along with this, legal and moral duties usually entail the sacrifice of one party's desires for another. However, this sacrifice is necessary in order to secure a peaceful society.

The question may be asked in relation to legal and moral obligations: "How much must I sacrifice for the rights of another?" or on a larger scale, "How much must I sacrifice for the good of society?" Both of these questions are important in considering the contemporary issue of abortion and its legal and moral ramifications. This particular issue involves several ways of viewing rights and duties and encompasses much of the conflict between laws and morals as they work together in society. The problem of abortion and its illustration of the methods employed by the legalist and the moralist in interpreting man's behavior in society will be the subject of the last section of this paper.
A discussion of the legal and moral problems involved in the issue of abortion illustrates the conflict between law and morality and shows the necessity of having both work to control the behavior of man in society. The basic moral dilemma involved in the abortion issue deals with the right to life of the unborn fetus. This is the dilemma which the courts have had to deal with in formulating abortion laws and supporting them with sound reasoning. This portion of the paper will discuss the current ideas regarding abortion in three articles. Provided in each of these articles is a discussion of the rights of the unborn child as opposed to the rights of the mother and a characterization of the role that the law plays as arbitrator with respect to these two opposing rights.

In her article, "A Defense of Abortion," Thomson begins her discussion of the abortion issue by pointing out that in the past, much lip service has been given to the point at which a fetus is considered a viable human being with a serious right to life. She dismisses this point as a problem in her discussion by allowing that the fetus is a person from the moment of conception. She then proceeds to argue that even though the fetus is a person with a right to life similar to that of the mother, the woman carrying the child has the right to deny her responsibility to carry that child and have an abortion if she so desires.

Thomson continues by submitting that the mother's right to life is greater because her right preceded that of the fetus', and she has a right to say what will or will not happen within her and to her body. Thomson creates the example of the reader being "plugged in" to
an ailing violinist. This violinist needs the reader's blood flowing through his system because his own body cannot purify its own blood. Thomson then asks the question, "Must you remain plugged in to the violinist simply because he has a right to life and needs the use of your body to live?" She asserts that this hypothetical situation is much like that of a woman carrying an unwanted child. Should the mother be compelled to carry and deliver that child simply because it lives within her and requires the use of her body? 51

Along with this particular example, Thomson also discusses the element of innocence involved with the fetus, in that, the unborn child did not ask to be created, so shouldn't the mother take responsibility for it? Wasn't it she who partook of sexual intercourse? To this, Thomson answers that the mere participation in sexual intercourse, which always involves some chance of becoming pregnant, in spite of normal precautionary measures, should not automatically demand that the woman be willing to carry, deliver, and raise a child. To support this assertion, Thomson gives the reader two more examples to consider.

If you leave a window open and a burglar comes in and steals all of your possessions, Thomson holds that you should not prosecute him since you left the window open and should have been aware of the possibility of a burglar coming in. She asserts that if you attribute responsibility for pregnancy to all women who cautiously partake in intercourse, you then have to hold all persons who leave their windows open responsible if their house is burglarized. 52

Along these same lines, Thomson uses the example of "people
seeds" floating around in the air that enter houses through open windows and plant themselves in the houses of the unsuspecting. She asserts that if you leave your windows open, you are responsible for the consequences, in this case, people seeds growing throughout your house.

These illustrations may seem far-fetched, but the point that Thomson is trying to make is a good one. A woman should be free to exercise sexual freedom without an absolute responsibility for unwanted pregnancies imposed upon her. The fact that she exposes herself to the possibility of becoming pregnant should not demand that she be forced into motherhood.

At this point, Thomson focuses her argument on the concept of rights and how they should be interpreted with respect to the relationship between a mother and her unborn child. Again, she gives us a hypothetical situation that she is dying in a hospital, and the only thing that will save her life is "the cool hand of Henry Fonda upon my brow." She states that it would be terribly nice of him to fly in from the West Coast to save her life, but that he would be under no obligation to do so. She asserts that even if he only had to step across the hall to place his hand on her forehead and rescue her from death, he would still be under no duty or obligation to do so, and she would have no right to expect him to. Once again, she equates this example with the relationship between the mother and the unborn child. In Thomson's words:

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Nobody is morally required to make large sacrifices, of health, of all other interests and concerns, of all other duties and commitments, for nine years, or even nine months, in order to keep another person alive.53
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In concluding, Thomson remarks that just as abortion is not always wrong, it is not always right. She maintains that there are
certain moral standards below which society should never allow itself to fall. She holds that each individual case should be examined carefully, and that the ultimate decision concerning abortion should be left to the woman carrying the child and not to the state. 

I agree with Thomson. The decision to have a child is a very important one; it changes the life of the mother and should not be taken lightly. Having a child means taking on a responsibility which entails a great deal of sacrifice and devotion on the part of the mother. The commitment which she makes to her child not only spans nine months, but years as she raises that child and cares for it until the age of maturity. Even a decision to give up a child for adoption is a compelling one, as the mother must live with the knowledge that she has a child growing up somewhere without her love and guidance. Taking all of these things into consideration, it seems only logical that a woman should be given a choice in the matter of pregnancy and child rearing.

Thomson's argument assumed that the fetus was a human being from the moment of conception. She then proceeded to defend abortion on the grounds that the mother's right to life was greater than that of her unborn child. In her article, "On the Moral and Legal Status of Abortion," Mary Ann Warren makes no such allowance for the status of the fetus. She bases her argument on the contention that the fetus is not a human being in the full sense of the word, and therefore, does not possess a serious right to life.

In her argument, Warren puts forth five distinctive traits which she feels are central to the concept of personhood, and which
must be possessed by a being in order for it to be ascribed with a serious right to life. They are as follows:

1. consciousness (of objects and events external and/or internal to the being) and in particular, the capacity to feel pain;

2. reasoning (the developed capacity to solve new and relatively complex problems);

3. self-motivated activity (activity which is relatively independent of either genetic or direct external control);

4. the capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many topics;

5. the presence of self-concepts, and self-awareness, either individual, racial, or both.

Warren admits that there may be problems with her five traits in terms of definition and universal application, but she asserts that what is important is that it is obvious that a fetus possesses none of the traits she designates as necessary. Therefore, in her opinion, it is obvious that the unborn child cannot be considered a viable member of the moral community. And in her words:

To ascribe full moral rights to an entity which is not a person is as absurd as to ascribe moral obligations and responsibilities to such an entity.

Warren continues her article by discussing the element of potentiality involved in the problem of abortion. She asks the question, "Doesn't the fact that the fetus has the potential of becoming a human being call for its having at least some kind of right to life?" To this question, Warren answers maybe, and yet she states that even if the fetus has a limited right to life because it is a "potential person,"
that right is easily outweighed by the rights of the mother, who is already a person and viable member of the moral community.\textsuperscript{58}

To illustrate her point concerning potential personhood, Warren uses the example of a kidnapped space explorer who finds himself in the hands of aliens who wish to dismember him in order to create a hundred thousand human beings identical to him. Warren submits that even though these duplicates will someday be bona fide human beings, the space explorer should try to escape and save his own life. She asserts that he has every right to attempt to escape, although in doing so, he will rob all of these "potential people" of their limited right to life. In her opinion, the actual person's right to life far outweighs that potential for life of even one hundred thousand persons that could be created from him.\textsuperscript{59}

Warren's point is well taken and can be readily applied to the situation in which the unwilling mother finds herself in considering the potential for human beingness possessed by the fetus. In Warren's words:

\begin{quote}
In the absence of any overwhelming social need for every possible child, the laws which restrict the right to obtain an abortion, or limit the period of pregnancy during which an abortion may be performed, are a wholly unjustified violation of a woman's most basic moral and constitutional rights.\textsuperscript{60}
\end{quote}

As a concluding postscript to her article, Warren addresses herself to the problem of infanticide, which is consistent with her liberal view of abortion. She recognizes the fact that by condoning abortion in even the latest stages of pregnancy, she may be accused of condoning infanticide as well. Regarding this, she says that for her, infanticide is entirely different. This is so because after the child
is born, it no longer requires the use of the mother's body, and therefore, the mother has no right to take its life, even if she wanted to. She asserts that at birth, there is no longer a decision to be made about the rights of the mother and the child, as she can put her child up for adoption and be done with her responsibility.  

The article by Michael Tooley, entitled "A Defense of Abortion and Infanticide" follows along the same lines as the article by Warren, but goes a step further with the infanticide issue by stating that some infants may not have a right to life.

Like Warren, Tooley puts forth five requirements which he feels must be fulfilled by an organism in order for it to be labeled a person, and ascribed with a right to life. They are:

1. The capacity to envisage a future for oneself, and to have desires about one's future states.
2. The capacity to have a concept of self.
5. The capacity for self-consciousness.

Tooley claims that these requirements must be met before an entity can be described as a person and granted a right to life. He feels that these requirements are very basic ones and could be elaborated upon to make them stricter, and upon examination, it could still be seen that they are requirements that would need to be met in order for an entity to be a member of the moral community with a full right to life.

Tooley also discusses potentiality in his article, and like
Warren, he asserts that potentiality does not demand that the fetus be ascribed with a right to life. Tooley makes the argument that entities not born of man could possibly be altered to resemble a human being able to fulfill his five requirements, and this would not make it plausible to grant them a right to life. For example, he reminds us of the Frankenstein tale and states that the "human being" created by the mad scientist had the potential for human life, but would be considered by few to have had a serious right to life. He goes further to propose another possibility of medical science creating a technique by which a kitten could be injected with a chemical that would enable it to someday possess the mental capacity of a human being. It would, therefore, someday be able to fulfill the five requirements for personhood. Tooley asks, "Would it then be wrong to kill kittens since each and every one of them would have the potential of becoming a human being?" Should mere potentiality be the criteria for granting various entities an absolute right to life? 64

Like Thomson and Warren, Tooley may be extreme in his examples, but his point must be considered in terms of the morality of abortion. If potentiality is a part of the grounds upon which the anti-abortionist's claim rests, they must be willing to admit that fetuses are not the only entities which possess a potential for life. To take potentiality to its limits, every human cell would have to be protected, since each one could possibly generate life under controlled laboratory conditions. Every animal that could someday be injected with a chemical that would make it human-like in mental capacity would have to be preserved since they, too, would possess the potential for human personhood. Clearly, the element of potentiality is not strong enough to support the claim of the anti-abortionist since it is filled with problems that
cannot be dealt with or dismissed.

These moral questions which Thomson, Warren, and Tooley have to deal with are also ones which are put before the courts in their decision-making concerning abortion. The problem is not only a moral one, but a sociological one as well. In dealing with rights of the fetus and the mother, the issue deals with the rights ascribed to all citizens by the Constitution. Therefore, the problem is also a legal one. The most significant abortion decision passed down in the last decade was that delivered in the case of Roe v. Wade.65

In this 1973 decision, one of the plaintiffs was a pregnant single woman who sued under the fictitious name of Joe Roe to challenge the constitutionality of various Texas criminal statutes relating to abortion. The sections of the Texas Penal Code under attack read as follows:

1.) "Article 1191. Abortion
"If any person shall designedly administer to a pregnant woman, or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied and thereby, procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

"Article 1192. Punishing the means
"Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

"Article 1193. Attempt at abortion
"If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to procure abortion, provided it be known that such means were calculated to produce that result, and shall be fined not less than one hundred dollars, nor more than one thousand dollars.
"Article 1194. Murder in producing abortion
"If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder.

"Article 1196.
"Nothing in this chapter pertains to an abortion procured by or attempted by medical advice for the purpose of saving the life of the mother.

In her lawsuit, Jane Roe asked the federal district court for a declaratory judgment that the statutes were unconstitutional and for an injunction against their enforcement. She claimed that she was unable to secure a safe abortion performed by a competent physician under clinical conditions because her life was not threatened by the pregnancy. She also claimed that she lacked the funds to travel to another state where safe abortions for people such as herself were legal.66

Mr. Justice Blackmun delivered the opinion of the court, and he began by stating the three reasons cited in the past for the enactment of abortion legislation. They were as follows:

(1) the discouragement by the courts of illicit sexual conduct.

(2) inadequate medical techniques which posed a threat to the health of the mother.

(3) the state's concern for prenatal life.

With regard to the three reasons cited, Justice Blackmun noted that the first was a produce of a Victorian social concern, and could no longer be relied upon as a sound basis for prohibiting abortions. He noted that the second reason cited was no longer a valid one since medical science had improved upon abortion techniques, making it a relatively safe technique when done in the early stages of pregnancy.
The third reason cited was the one which Justice Blackmun asserted as the most compelling and difficult to dismiss. 67

Blackmun continued by stating that although a right to privacy was not explicitly dealt with in the Constitution, it was hinted at in the 9th and 14th amendments. He contended that it was broad enough to encompass a woman's decision as to whether or not to terminate her pregnancy. He continued, however, to state that this right was not absolute and was subject to some state regulation. 68

With regard to the state's interest in prenatal life, Blackmun held that the court simply could not determine the point at which life began. However, he stated that the point of viability was the one which the state designated as the time after which it had a compelling interest in the life of the unborn child. 69

In sum, the court held that the mother could procure an abortion within the first trimester of her pregnancy with no interference from the state. After this point, the state reserved the right to regulate the procedure in terms of the licensure of the performing physician and facility involved. It was again noted that the point of viability, which occurred approximately 24-28 weeks after conception, was the point at which the state could become protective of prenatal life. Blackmun noted that the court felt as though this point of demarcation was supported by both logical and biological justifications. 70

In his concurring remarks, Mr. Justice Douglass made several good points concerning the legitimacy of the court's decision. He pointed out that to say life was present at conception was to give recognition to the potential rather than the actual. This, he held, was something
that the law could not do. He stated that the law dealt in reality, not in obscurity or the unknown. He continued by stating that the phenomena of life took time to develop, and until it was actually present, it could not be destroyed. In his words:

Life's interruption prior to formation would hardly be homicide, and as we have seen, society does not regard it as such. The rites of Baptism are not performed and death certificates are not required when a miscarriage occurs. No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life. 71

Justices White and Rhenquist dissented in their opinions and stated that they felt the legalization of abortion to be an extravagant exercise of power by the court. Justice White remarked that he found nothing in the Constitution which supported their decision or the right of the mother to take the life of her unborn child out of whim or caprice. In his opinion, prenatal life was sacred, and he felt as though it should be preserved at all costs. 72

This decision concerning abortion was a difficult one because of the moral questions involved concerning the sanctity of life. The justices had to find a reasonable solution to a problem which contained controversial ethical implications, and yet had to be dealt with. This decision clearly illustrates the necessity of having both law and morality work in society.

Killing an unborn child is morally wrong under some moral codes which attribute personhood to the fetus. For in terms of morality, the sanctity of life is the paramount consideration in any given situation. However, pragmatically, some women are not prepared to become mothers; therefore, the law which protects them must provide some kind of solution
for unwanted pregnancies. Abortion laws may be morally objectionable to some, but legally, they are valid and necessary.

This issue of abortion also throws light on another aspect of the need for law and morality to both be controlling factors over human behavior. A strict moral code would prohibit pre-marital sexual relations, meaning that the moralist would not even have to deal with the problem of abortion, since no unwanted pregnancies of single women would occur if all the members of the community obeyed the moral laws. However, men and women do not abide by a strict moral code; consequently, the law must pick up where morality leaves off. It must practically deal with the consequences of the immoral acts of the members of the community, namely, unwanted pregnancies.

If the strict moralist would allow that men and women do stray from the path of righteousness, he would more than likely assert that the burden of an unwanted pregnancy would simply have to be born by the responsible man and woman. But once again, the law would have to intervene. Normally, a pregnancy is unwanted because the mother has neither the funds nor the capacity to deliver and raise a child. And more often than not, the father of the child is unwilling to accept his portion of the responsibility. Therefore, the law must intervene to either legally force him to support the child, or do so itself through state funding. Clearly, a moral community would not have the power or the monies to match the services provided by the state.

From the discussion above and the material contained in section three of this paper, it can be seen that law and morality generally deal with social problems in different ways. However, at this
point it is interesting to note that their handling of the abortion issue is more alike than it is different. Although the moral/ethical writers approached the problem in a different way and came to different conclusions, they considered many of the aspects of the abortion issue that were brought up in the court's decision in Roe v. Wade.

In her discussion of abortion, Thomson dealt with the problem of the point at which life actually begins. The same was considered by the courts in their handling of the abortion issue. Along the same lines, Tooley and Warren considered the status of the fetus as a person ascribed with a right to life in their respective articles. The courts did much the same thing in determining whether or not the fetus was offered protection under the laws and considered a viable member of the community with respect to the Constitution. The difference between the ethical thinker and the legal thinker lies in their conclusions.

Thomson, Tooley and Warren all agree that abortion is justifiable, but only in some cases. All three refuse to become trapped in the problems which arise in relation to late abortion and infanticide. Also, they shy away from drawing lines and determining points at which life begins. Like the majority of philosophers, these three thinkers refuse to be backed into a corner and trapped by their ethical stands. In other words, they wish to straddle the fence instead of choosing one side on which to stand.

The legalist or the jurist cannot afford to be so compromising in his opinions and decisions. He must make a decision, justify it, and enforce it, regardless of the repercussions. Because of the pragmatic nature of the law, the legalist must be willing to draw boundaries and
designate guidelines whenever necessary. As illustrated by the Court's decision in Roe v. Wade, the jurist must be willing to take his stand. In this decision, the court determined at what times abortions should and should not be allowed, and did so practically by using a rationale and reasoning which could be understood by the common layman. The court could not afford to dwell on the abstract concepts of life or personhood. It had to practically address itself to a problem chocked full of ethical and moral considerations, which it simply had to deal with in the best way possible. In my opinion, the court handled the issue well, as it dealt with the problem of unwanted pregnancies, while at the same time maintaining a respect for life and the rights of all those involved.

As was pointed out earlier, laws and morals differ in that, laws are easily changed and altered to fit the needs of a progressive society, while morals tend to be more resistant to change and more closely related to the traditions and the customs of the community. The legalist and the moralist differ in this way as well. The legalist must adapt his opinions and decisions to the practical needs of his society. The moralist, on the other hand, may remain in his ivory tower to philosophize about the rights and wrongs in the community. Unlike the legalist, his service to the community simply isn't that important in terms of practicality and daily life. From a pragmatic, sociological standpoint, the ethical thinker can afford to be years behind in this thinking and decision-making. He can afford to think in the abstract and the ideal. The legalist cannot.

A hundred years ago, the law did not need to deal with abortion, as the procedure was not well-developed and not used frequently
as a method of birth control. Unwanted pregnancies simply became unwanted children. However, as society has developed and medical science progressed, the need for abortion legislation has become greater and greater. Several things have contributed to the increases in the need. Premarital sex and teen-age pregnancies occur with greater frequency and the law must be equipped to deal with the resulting increased demand for safe abortion procedures. Also, the role of women has changed with the times and she no longer is forced to raise children as her life's work. Therefore, more women in school or on the job elect to have an abortion rather than a baby so that they may continue with their education or career without interruption. Also, abortions are less expensive today than they were years ago and more women can afford to obtain them. The law had to change to serve the women in the community. As illustrated by Roe v. Wade, the change was a relatively easy one. Morals and the thinking of the moralist are not so easily altered.

The abortion issue is just one example of the problems which arise in a society as complex as the one in which we live. It is only one illustration of the conflict between law and morality which is ever present in man's daily relationships and activities. But I believe that this particular problem also illustrates the need for laws and morals to both be influential factors in the lives of men. The legalist or jurist needs to be aware of the morals in the community and should possess a working respect for them. If he does not, the law is reduced to the declarations of an impersonal government, and I think everyone would agree that this is not what we want. We need the best of both
the legalist and moralist at work in the community so that we can have the best community possible from both the legal and ethical points of view.

In this paper, we have examined the history of jurisprudence and observed how the science of law has been transformed from an abstract theory of justice based on idealism into a well-developed system of testing and measuring the efficiency of law as it orders society by regulating the behavior of man. We have discussed law and morality in terms of their similarities and differences and seen how both work together to create a peaceful society and maintain the social status quo. Finally, the issue of abortion was discussed and used as an illustration of how both law and morality touch our lives by dealing with the problems which arise in a society as complicated as that in which we live.

It is made clear through the discussions and illustrations presented in this paper that man needs both law and morality to rely upon as he lives and works with his fellow man in the community. Perhaps thousands of years ago, a simple moral code, like that at work in the Middle Ages, was enough to control the behavior of man. But as society has developed and the activities and relationships of man have become more complex, the need for an efficient legal system and substantive moral code has become greater and greater. If the course of history is any indication, that need will continue to change and grow as the years pass.

Perhaps in the future, man will become so rational and logical that no legal or moral code will be needed. At that time, he may be able to rely on computerization or mechanization for his needs, wants,
and desires, and he will not longer have to interact so closely with his fellow man. But for the present, he must learn to function effectively in society. To do so, he must abide by the law and obey the moral norms. Either one by itself is not sufficient to insure peaceful relationships within the social structure, because man is a mischievious creature who must be taught and tamed by society. The law and the morality of society are the tools by which it molds and shapes its members. That molding and shaping becomes more difficult each day as man and his society are constantly striving for prosperity and perfection, and their means of attaining both become more and more complex; as complex as the man and the society themselves.
ENDNOTES


2 Pound, p. 16.

3 Ibid., pp. 31-34.

4 Ibid., p. 29.


6 Bodenheimer, pp. 18-20.

7 Ibid., p. 21.

8 Ibid., pp. 33-35.

9 Pound, pp. 49-51.

10 Ibid., pp. 71-77.

11 Bodenheimer, pp. 90-95.

12 Pound, pp. 80-87.

13 Bodenheimer, pp. 74-77.

14 Pound, pp. 87-89.

15 Ibid., p. 90.

16 Ibid., p. 138.

17 Ibid., p. 141.

18 Ibid., pp. 132-135.

19 Ibid., p. 144.

20 Ibid., p. 142.

21 Ibid., pp. 144-149.
22 Ibid., p. 147.
23 Ibid., p. 162.
24 Ibid., pp. 162-163.
25 Ibid., p. 168.
27 Holland, p. 29.
28 Ibid., p. 1
29 Ibid., p. 2.
30 Ibid., pp. 3-4.
31 Ibid., p. 4
33 Bodenheimer, p. 244.
34 Ibid.
36 Hart, p. 169.
37 Ibid.
38 Ibid., pp. 170-171.
39 Ibid., p. 171.
40 Ibid., pp. 173-174.
41 Holland, p. 82.
42 Ibid., p. 83.
43 Ibid., p. 87.
44 Ibid.
45 Ibid.
46 Hart, p. 167.
47 Ibid., p. 166.
48 Ibid.
50 Wasserstrom, p. 20.
51 Ibid., pp. 21-22.
52 Ibid., pp. 23-24.
53 Ibid., p. 31.
54 Ibid., p. 34.
55 Ibid., pp. 35-50.
56 Ibid., p. 45.
57 Ibid., p. 46.
58 Ibid., p. 49.
59 Ibid.
60 Ibid., p. 50.
61 Ibid.
63 Feinberg, pp. 59-60.
64 Ibid., p. 72.
66 Wasserstrom, pp. 1-2.
67 Ibid.
68 Ibid., pp. 3-4.
69 Ibid., p. 5.
70 Ibid., pp. 5-7.
71 Ibid., pp. 10-11.
72 Ibid., p. 16.


