

Senate Commences Hearings on "Human Life"

Congressional anti-abortionists are pushing for law giving constitutional protection to embryos

Some may have thought the United States got to the roots of the abortion question when the Supreme Court ruled in 1973 (*Roe v. Wade*) that anti-abortion laws violate the constitutional right to privacy. But the matter is evidently a hardy perennial, and it has come into especially virulent bloom this spring.

Having failed to get enough support for a constitutional amendment prohibiting abortion, members of the Right to Life movement have instead thrown their energies behind a bill, sponsored by Senator Jesse Helms (R-N.C.) and Representative Henry J. Hyde (R-Ill.), which would declare that human life begins at conception and that fetuses are therefore "persons" whose lives are protected under the 14th Amendment to the Constitution.*

Legal scholars are virtually unanimous in their opinion that the bill, S. 158, is unconstitutional because Congress does not have the authority to overturn the Supreme Court decision. Nonetheless, a subcommittee of the Senate Judiciary Committee has plunged ahead with what promises to be a grueling and extended series of hearings. Senator John East (R-N.C.), chairman of the subcommittee on separation of powers, had initially planned two sets of hearings, one to clarify the medical issues and one on legal and constitutional issues. But by the end of 2 days of medical hearings he announced that the matter was so complex that he would take whatever time is necessary to "exhaust this issue thoroughly," including its ethical, social, economic, and philosophical aspects.

East, in his anxiety to avoid conflict, narrowed the subject of the first hearings to an examination of "when life begins," and rounded up eight witnesses, seven of whom are opposed to abortion. It is not clear what East felt he could learn from such a one-sided list of witnesses. George Ryan, president-elect of the American College of Obstetrics and Gy-

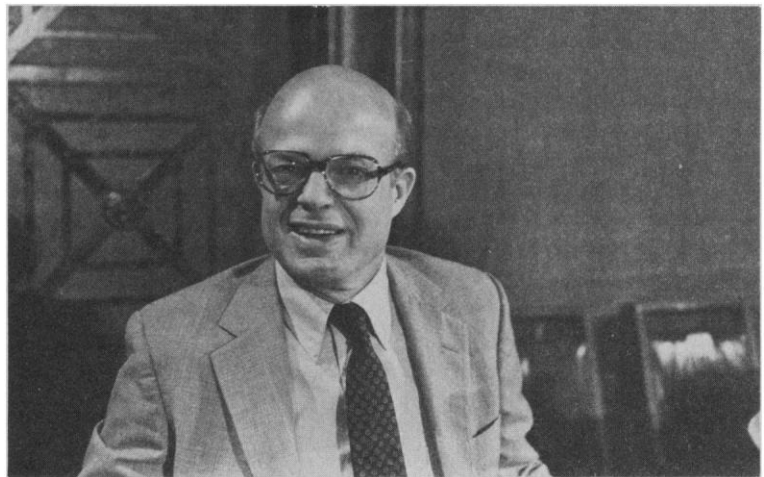
necology, gave up the idea of testifying after the committee staff told him he could not testify on behalf of ACOG and that his testimony would have to be submitted and approved in advance.

Senator Orrin Hatch (R-Utah), also on the Judiciary Committee, was apparently a little unhappy with the witness list. He withdrew his Constitution subcommittee from cosponsorship of the hearings, let-

ting it be known through his press secretary that he thought it was a "stacked deck." But then he showed up briefly at the hearings, explaining he had some doubts about the constitutionality of the bill and assuring the audience he is second to no one in opposing abortion.

that was about as silly as doubting the species of a cattle zygote. "I have never heard of anyone questioning 'cattleness' or when 'cattleization' was achieved," he said.

The next day the discussion became a little more sophisticated, thanks to the testimony of Leon Rosenberg, chairman of human genetics at Yale University School of Medicine and the only witness who was not an avowed foe of abortion. Rosenberg said, "I know of no scientific evidence which bears on the question of when 'actual human life' [the term used in the bill] exists." Rosenberg said he preferred passage of a constitutional amendment outlawing abortion to the bill under consideration "... but don't ask science or medicine to help justify that course because they cannot." He said the answer lay instead in the domain of each individual's conscience, a statement that met with prolonged applause from the visitors in the full hearing room. Rosenberg said he felt the scientists who



Senator John East

Constance Holden

Selected scientists opposed to abortion to furnish the definitive word on when life begins.

*"The Congress finds that present-day scientific evidence indicates a significant likelihood that actual human life exists from conception" reads the bill. The 14th Amendment is then re-interpreted to cover all human life, and "human life shall be deemed to exist from conception, without regard to race, sex, age, health, defect, or condition of dependency." The bill would also prevent lower federal courts from tampering with any state or local law that prohibits or limits abortions.

had testified had "failed to distinguish between their moral or religious positions and their professional judgments," a contention denied by Alfred Bongiovanni of the University of Pennsylvania. Bongiovanni said, "I am no more prepared to say that these early stages represent an incomplete human being than I would be to say that the child prior to . . . puberty . . . is not a human being."

All in all, it was 2 days of failing to come to grips with the central issue, which is whether or not a fetus is a "person." At a press conference on 22 April, the day before the hearings started, a number of civil rights, religious, population and pro-choice groups con-

sophistry to argue . . . that *Roe v. Wade* . . . can be nullified by the simple device of a legislative declaration" contradicting a holding of the Supreme Court.

Basic legal, medical and religious questions aside, sponsors of the human life bill have not yet even begun to examine the practical effects their proposal could have, effects that go way beyond the matter of whether or not people are entitled to abortions. Critics from religious, health, labor, and civil rights groups envisage a vast multitude of problems if the bill becomes law:

Medicine and public health. A sharp rise in deaths from abortion. Averaging 222 a year in 1963 to 1967, they have been reduced to a small handful since

kinds of litigation could be opened up. The American Civil Liberties Union foresees "fetal guardians" setting themselves up to protect the rights of the unborn (as has actually happened in Texas). It also raises the possibility of regular government inspections of women to see if they are harboring a "person" they don't want to bring into the world; perhaps even a "Federal Bureau of Pregnancy Investigation." Miscarriages might be investigated as possible "negligent homicides."

Economic consequences. These would include the cost of caring for botched abortion attempts, prenatal care, delivery, and welfare costs for unwanted children, not to mention long-term societal costs for increasing the number of disadvantaged, alienated or non-self-sufficient people in the country. Some idea of costs can be gained from New York City's claim that legalized abortion saved it \$50 million a year in health costs.

Social ramifications. Christopher Tietze of the Population Council estimates there are 1.5 million unwanted pregnancies each year. Absent legal abortion, that would translate into about 750,000 illegal abortions and 750,000 unwanted babies to care for each year. Labor organizations are also deeply concerned that the raised status of a fetus could be used as an excuse to keep pregnant women out of physically demanding but higher paying jobs; one spokeswoman described the strategy as one to "maintain women as a marginal, expendable workforce."

Research. A national human life law would spell the end of in vitro fertilizations and would curtail much fertility research. Such a law would mean that only those eggs could be fertilized outside the womb that were destined for successful implantation. Since that occurs with only 2 to 5 percent of such eggs, the whole procedure would have to be abandoned.

There is no modern precedent in light of which to evaluate the Helms-Hyde bill. Romania is the only modern country to reverse a lenient abortion policy, but the motive for banning abortions was a desire to increase the population, not reverence for human life.

Abortion, like gun control, is an issue that is being debated as though it were rational when in fact the reasons underlying certain stands are highly complex and emotional, and by no means made explicit in public debate. Now, as the controversy thickens, it will be interesting to see if any new arguments emerge.—CONSTANCE HOLDEN



Yale geneticist Leon Rosenberg

Constance Holden

"I know of no scientific evidence which bears on the question of when actual human life begins."

tended that "personhood" lies in realms other than science. Kenneth Wogaman, dean of Wesley Seminary in Washington, decried any attempt by biologists to have the last word, saying "when the purely physical is given such value, it devalues the spiritual."

Opponents of S. 158 are so far relying primarily on the law for their arguments. Rhonda Copelon, a lawyer with the Center for Constitutional Rights in New York claimed that no legal theory of "life" supports S. 158, and that her research on the history of the 14th Amendment (which protects life, liberty, and property) "does not suggest any prenatal right to life." She noted that old anti-abortion statutes were primarily intended for protection of the life of the pregnant woman. She also said that a Rhode Island law very like S. 158 was struck down as unconstitutional in 1974, at which time a court said "the law has never recognized a fetus as a person in the whole sense . . ." and "it is sheer

1973. The doctor-patient relationship would be completely altered, with doctors fearing criminal prosecution if any medical treatment to a mother endangers the fetus, as it might in treatments for cancer, kidney disease, diabetes, hypertension, and other disorders. Ectopic (tubal) pregnancies could pose problems. A treatment that would require premature delivery might be ruled out. If a woman came to her doctor after a botched abortion attempt he might have to turn her over to the authorities.

Birth control. Intrauterine devices could be made illegal, as could some birth control pills, which prevent implantation after conception.

Genetic screening. Amniocentesis would probably be abandoned except for cases where fetal disorders can be treated in utero. Couples could no longer abort a fetus afflicted with Down's syndrome, Tay-Sachs disease, sickle cell anemia, or spina bifida.

Legal complications. A world of new