

*Criminal Code*

against the woman guilty of voluntary abortion, like death penalty, corporal punishment and temporary exile, because it would be outrageous for a woman to deprive her husband of the hope of a posterity with impunity.

In the Middle Ages, Christianity, from the outset, was hostile to abortion. Foetus, as soon as it is conceived, is an immortal being, to stop pregnancy would then be tantamount to killing him without baptism.

Then, there was the era of Saint Thomas Aquinas and his master, Albertus Magnus, who both maintained that the soul was directly created by God, and that it was infused into the embryo, not on the day of conception, but when the embryo was formed enough to receive it.

In the 13th century, Pope Innocent III, in his encyclical letter *Sicutex Litterarum*, termed abortion of an animated foetus a homicide, but there was no mention of a lifeless foetus. Pope Gregory XIV, in his encyclical letter *Sedes Apostolica*, also excommunicated only those who were found guilty of abortion of a foetus, after the first movements of life had been felt in the womb of the mother, which is supposed to be on the 116th day of pregnancy.

Saint Alphonse of Ligori said, and I quote:

Those who say that foetus is animated at the moment of conception are mistaken.

It seems that there were not only saints and popes who did not agree on the concept of life beginning at the moment of conception. Many pagans were also under the impression that life did not begin at the moment of conception.

Aristotle contended that the male or the man—this for those who would not understand—received a soul 40 days after conception, whereas the woman got one 80 days afterwards. I wonder why.

It was said that before such well-defined periods, there was only a kind of vegetative life. The Islamic law discriminated in the same way and stated that life began only 180 days after conception. A fine was the punishment for the provoked miscarriage of a non-viable foetus; the death penalty was the punishment for the expulsion of a viable foetus, whether it were alive or dead.

Let us recognize that current legislation is far from up to date.

Mr. Speaker, in the light of this historical review, we have realized that the question of abortion is not new, but has been a subject of public discussion since the most remote past.

[Mr. Isabelle.]

As far as we are concerned in Canada today, let us say that the most important provision of the Canadian legislation on this matter is section 237 of the Criminal Code, which reads as follows:

(1) Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and is liable to imprisonment for life.

(2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and is liable to imprisonment for two years.

(3) In this section, "means" includes

(a) the administration of a drug or other noxious thing,

(b) the use of an instrument, and

(c) manipulation of any kind.

The Criminal Code also imposes a penalty on whoever illegally provides or procures a drug or other noxious substance or an instrument to be used to provoke a miscarriage, when he is aware of this ultimate purpose. The Code goes even further and prohibits all publicity relating to such means, and I quote:

—commits an offence who knowingly, without lawful justification or excuse offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of preventing conception or causing abortion or miscarriage.

In addition to the abortion offence, described in section 236, the legislator has provided another provision which deems it to be a criminal offence to kill an unborn child. This text differs from section 237 in that the latter prohibits illegal intervention while section 209 provides for the punishment of a person convicted of destroying a foetus. It is to be noted, however, that in subsection 2 of section 209 the legislator enters a reservation in respect of the principle outlined in the first subsection. This reservation is most important since it opens the door to legal therapeutic abortion in certain cases.

In the Canadian legislation as it is now, the so-called legal abortion rests on two essential conditions: it must be practised in good faith, and only if the continuance of pregnancy is an immediate danger to the mother's life. But anyone can do that. Today, the same thing applies to planning: medicine is therefore responsible for these things.

For several years, however, Canadian and British courts have been interpreting the