

*Criminal Code*

disagreement is found among doctors. Some doctors firmly state that the foetus is fully human right from the moment of conception. Others state that whereas its humanity develops as the foetus develops it is uncertain whether or not it is fully human in the early stages. If there is this division of opinion, I state that we should resolve any doubt in favour of the human being. We should not take chances if there is any doubt whatsoever that a human life is involved.

For that reason we say that this life can only be terminated for extremely serious reasons. The only reasons that we feel are acceptable are when the life of the mother is in danger or when her health will be seriously and directly impaired. We take this position for humanitarian and social reasons. Those who object to it and would like to deny any protection at all for the foetus state that the foetus does not deserve any protection whatsoever. They state that it is just a part of the woman's body and therefore, if she wishes to have it removed, she should have the right to have this done. In other words, they say that it is no different from her appendix or her kidneys.

● (5:20 p.m.)

I must say that the vast and overwhelming majority of the informed witnesses who came before our committee denied that contention. To begin with, none of these other organs develops into a baby. The foetus definitely and necessarily does. That alone would lead one to believe that it is not like any organ in the human body. Second, doctors, and especially Dr. Jack Walters, professor of obstetrics at St. Joseph's Hospital and the University of Western Ontario, put forward six tests for human life. These tests are: 1. Is there a heartbeat? 2. Is there blood pressure? 3. Is there maintenance of body temperature? 4. Is there production of carbon dioxide? 5. Is there utilization of oxygen? 6. Is there respiratory activity? These are the tests used habitually to determine whether there is human life. The witness stated that scientific tests he and other obstetricians had carried out showed that as early as nine weeks the foetus gave evidence of satisfying all these criteria. In other words, the foetus has met these tests used to determine whether human life is present. Dr. Walters concluded as follows, as found on page 559 of the evidence before the committee on January 30, 1968:

In discussion before this committee relative to changes in the abortion law for Canada, statements have been made that the foetus is a

"potential human", "not living" or a "protoplasmic mass". The foetus, on the contrary, is living, is human and this must be taken into consideration in modifying the abortion laws of this country.

This doctor did not reach these conclusions on theological grounds or on grounds of prejudice. He arrived at them following the evidence of six scientific tests which he and others had carried out.

Another doctor who appeared before the committee on the same day, Dr. de Veber, a pediatrician, has carried out operations on foetuses as early as 14 weeks after conception. He referred to cases where the foetus had been taken out of the womb, operated upon and replaced in the womb where it developed normally until born as a child in due term. His comment was that if the foetus is not a human being and does not deserve human rights at this early stage, what are its rights after it has been taken out of the body to be operated on in one of these operations? Does it acquire human rights when it is outside the womb, only to lose them again when it is put back?

I confess I approach this subject with certain ideas about it. But the law itself, over many long years, has also recognized that the foetus has human rights. I could cite many examples of the way in which the law has recognized this. For example, in those dark days when we retained capital punishment a woman was never executed while she was pregnant. The reason was that the state recognized that although the woman might have committed murder there was living inside her another person who was innocent and who should not be executed for the crime. Thus, whenever a convicted person was pregnant the execution was stayed.

There are many countries in which pregnant women are exempt from imprisonment because it is recognized that they must care for the human being developing inside them. In addition, civil law has recognized that an unborn child has certain civil rights. Such children are given rights to succession and inheritance from the time of conception, and a curator can be appointed by the courts to protect their financial interest. In other words, if a woman is pregnant the child within her body is considered to be human for succession purposes should the father, or some other person, die leaving legacies to the woman's children.

Civil law has also recognized that the foetus has a right of action for damage caused to it. This was illustrated in cases involving what