PUBLIC HEALTH AND THE LAW

Presidential Morality, Abortion, and Federal-State Law

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During early April, President Richard M. Nixon took two significant personal actions as Commander in Chief of the Armed Forces and as Chief Executive of the United States. The most spectacular was his intervention in the Calley case, first in ordering him released from prison confinement and the second in the announcement that he would personally review the conviction after it has passed through all regular avenues of appeal.

The second action taken by the President did not receive as much public notice, but it was nevertheless an important and far-reaching move. The President revoked an administrative order of the Armed Forces hospitals issued on July 1, 1970, concerning abortions performed in service hospitals. The directive allowed abortions on a liberal basis depending upon the clinical determination of attending physicians and the request of the patient. The order had been interpreted in at least some hospitals as allowing "abortions on demand." The President revoked the directive indicating he was morally opposed to such abortions as a means of population control. He ordered the hospitals to follow the law of the state in which they are located. The effect of the order was to reinstate the generally stricter laws of the local jurisdictions in all but the few states which have substantially revised their law to allow abortion on the request of the patient.

The implications of the presidential action are quite widespread. The application of presidential morality can cut a number of ways. Both the Calley case and the abortion order are examples of situations where reasonable men can and do differ very substantially on where morality lies. The last pronouncement on presidential morality on a medical-moral issue was President Eisenhower's indication that he would not approve federal programs in support of birth control. President Eisenhower was certainly the current president's model; he would seem to be following in his footsteps.

President Nixon's announcement that he was against the abortion practice in service hospitals as a means of population control is subject to some question since it is doubtful that population control, used in a technical sense, was the intention of the directive. There was no indication that the services were concerned with the general problem of population control in issuing their order.

From a legal standpoint, the action of the President has other implications. The previous directive was not merely canceled. Also, no new procedure was ordered for all service institutions. The President ordered them to follow local state law. Following state law in at least some states, particularly New York, Hawaii, and Alaska where the Armed Forces have a great many service installations and hospitals, will sanction direct violation of Mr. Nixon's moral convictions as expressed in his order. On the other hand, will his morality be followed in these hospitals and strict abortion
rules be followed, despite the liberal state laws?

Such are the problems, not only of enforced presidential morality, but the confusion of state and federal laws in our country. In the early years of the Republic the federal courts attempted to develop a federal common law as a means of encouraging uniformity in the law of the growing nation. In 1938, however, in the famous case of Erie R.R. v. Thompkins, the Supreme Court reversed this trend and ordered the federal courts to follow the law of the states wherein their courts were located. Since that time, the courts and the federal government have been struggling with the delineation of any remaining areas of federal law where particular "federal functions" are performed which ought to be controlled by federal law rather than state law. One of these areas has concerned the Armed Forces and such matters as government-soldier relationships. In an important decision in 1947, the Supreme Court held that federal law should be applied to the government's right of recovery for injuries incurred to a service man in the negligent operation of a truck owned by a private corporation. The court asserted that the government's rights should not vary in accordance with the different law of the various states. Furthermore, many service hospitals are located on federal enclaves within the states wherein federal law rather than state law has generally been applied. We may not have heard the last of this presidential action. When Presidents step in to make ruling on morality in the United States of the 1970s, the follow-through and enforcement can be a pretty sticky wicket.

REFERENCES
1. 304 U.S. 64 (1938).

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