

CHAPTER 1

The Ethics of Abortion

INTRODUCTION

The battle over abortion was the political fight of the 1980s, and it continues as the most divisive issue confronting American society since the days of slavery. In its cover story, *Time* magazine reports, "The language of the debate is so passionate and polemical, and the conflicting, irreconcilable values so deeply felt, that the issue could well test the foundations of a pluralistic system designed to accommodate deep-rooted moral differences."¹

The contest is between the advocates of "life" and "choice." The "right to life" movement has emerged as "the most powerful single-issue force in American politics,"² with a following of several million members drawn from New Right groups, and a coalition of fundamentalist Protestants and Roman Catholics. They brand legalized abortion as genocide and murder. In the long run they campaign for a "Human Life Amendment" to the Constitution that would safeguard the life of the unborn from the moment of conception. In the short run they seek legislation that would cut off funds for abortion both on the local level and on the federal level through Medicaid.

Leading the "pro-choice" group is the nation's oldest and largest family-planning organization, Planned Parenthood. Through 177 affiliates and 850 clinics in forty-six states, it annually serves over 3 million people with prenatal care and infertility counseling.³ For fourteen years Planned Parenthood was led by Faye Wattleton. Her position was always "If we can't preserve the privacy of our right to procreate, I can't imagine what rights we will be able to protect."⁴ Following 1992, Pamela Maraldo has assumed the leadership of Planned Parenthood. She is currently eager to present her ideas to the Clinton administration. Although she has no plans to relax the pro-choice emphasis of her predecessor, she recognizes that a single issue does not serve an organiza-

tion well. Therefore under Maraldo's presidency we can expect Planned Parenthood to create a broader health and social policy agenda, giving priority to health care reform in addition to guarding a woman's reproductive freedom.

On both sides of the issue passions are high because abortion raises questions that touch on life, liberty, and the connections between religion, morality, and law. In the absence of open debate on the levels of religion and morality, the issues are reduced to questions of law.

The current battle over abortion is being fought in the political arena. At issue is what interest the government has in a woman's decision to terminate her pregnancy, whether abortion should be criminalized, and whether funds should be made available to poor women wanting abortions. Legislators debating these hot issues find themselves plunged into "the middle of a war zone."

THE CONSTITUTIONAL ISSUE

These were the sort of issues which the Supreme Court tried to settle in its controversial decision in the abortion case *Roe v. Wade*, 410 U.S. 113 (1973). As noted by Lawrence M. Friedman of Stanford Law School, the decision "sent shock waves through the country, affecting every aspect of political life."⁵ "In one bold, cataclysmic move the Court undid about a century of legislative action. It swept away every abortion law in the country. . . ." ⁶

The Supreme Court is the final arbiter in cases involving interpretation of provisions in the U.S. Constitution. It would be instructive, therefore, to analyze *Roe v. Wade* in some detail to determine precisely what the Court held and the grounds for its holding.

Jane Roe (a pseudonym) was an unmarried pregnant woman who wished to terminate her pregnancy by abortion. She brought an action in the U.S. District Court for the Northern District of Texas seeking, among other things, a declaratory judgment that the Texas criminal abortion statute was unconstitutional.

The Texas law made abortion a crime except when done "for the purpose of saving the life of the mother." A three-judge district court held that the statute was unconstitutional. On a direct appeal, the U.S. Supreme Court affirmed in a 7 to 2 decision (Justices Byron R. White and William H. Rehnquist dissenting).

The majority opinion, written by Justice Harry A. Blackmun, starts by acknowledging the Court's awareness of the sensitive and emotional nature of the abortion controversy.⁷ It reviews at some length the historic, medical, and legal background. Particularly, it notes that restrictive abortion laws, such as that in Texas, are not of ancient origin nor even part of the English common law that was received in this country.⁸ Rather they came about by legislative enactments mostly in the latter half of the nineteenth century.

The Court then proceeds to the constitutional question. It starts by noting that the right of privacy is not explicitly mentioned in the Constitution. However, in a long line of cases, the Court has recognized as implicit in various provisions in the Constitution the existence of a right of personal privacy or zones of privacy, protected against state intrusion. These are personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty." They have been extended to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education.

The Court finds in the Fourteenth Amendment's⁹ concept of personal liberty and restrictions upon state action a right of privacy that "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.¹⁰

Where "fundamental rights" are involved the Court had previously established in a number of cases that a state regulation limiting such a right may be justified only by a "compelling state interest." The Court then proceeded to consider whether the Texas statute met this test.

Texas had argued that life begins at conception and is present throughout pregnancy and that therefore the state has a compelling interest in protecting that life from and after conception. The Court responded that it need not resolve the question of when life begins. "When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."¹¹

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until birth. This was the belief of the Stoics. It appears to be the predominant, though not unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family. As we have noted, the common law found greater significance in quickening. Physicians and their scientific colleagues have regarded that event with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes "viable," that is, potentially able to live outside the mother's womb, albeit with artificial aid. Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. The Aristotelian theory of "mediate animation," that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be the official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those in the Church who would recognize the existence of life from the moment of conception. The latter is now, of course, the official belief of the Catholic Church. As one of the briefs amicus discloses, this is a view strongly held by many non-Catholics as well, and by many physicians. Substantial problems for precise definition of this view are posed, however, by new embryological data that purport to indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs.¹²

The Court also noted that the law has traditionally been reluctant to recognize the unborn as "persons in the whole sense."

In view of all these considerations, the Court held that Texas, by adopting one theory of the commencement of life, could not override the right of the pregnant woman to decide whether or not to abort.

However, that right is not absolute. The state still has “an important and legitimate interest in protecting the health of the pregnant woman” and in “protecting the potentiality of human life.” These are separate interests, and each “grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes ‘compelling.’”¹³

With respect to the state’s interest in the woman’s health, the “compelling point” is at the end of the first trimester. This is based on the medical evidence that until that point mortality in abortion may be less than in normal childbirth. After the first trimester, the state may regulate the abortion procedure covering matters relevant to maternal health, such as the qualifications of the person who is to perform the abortion and the type of facility in which the procedure is to be performed. Prior to this “compelling point” the woman in consultation with her physician is free to determine whether her pregnancy is to be terminated, free of interference by the state.

With respect to the state’s “important and legitimate interest in potential life,” the compelling point is at viability: “This is so because the fetus then presumably has the capability of meaningful life outside the mother’s womb.”¹⁴ After viability, the state may even proscribe abortion except when it is necessary to preserve the life or health of the mother.

Thus, the law of the land, as established in *Roe v. Wade*, is the following:

- (a) During the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the woman’s attending physician, free of state interference.
- (b) After the first trimester, the state may regulate the abortion procedure in ways that are reasonably related to maternal health.
- (c) After viability the state may regulate, and even proscribe, abortion except where necessary to preserve the life or health of the mother.¹⁵

This 1973 legislation legalizing abortion almost suffered a reversal on July 3, 1989, when in a series of votes, many of them 5 to 4, the justices of the High Court restored key provisions of a Missouri law that a lower court had invalidated for unduly interfering with the constitutional right to abortion. Significantly, the Court appeared to invite further challenges to its 1973 decision, prompting an angry dissent from its author, Justice Harry A. Blackmun, but exultation from antiabortion activists. The Associated Press reported the following: "In his dissenting opinion, Blackmun said: 'For today, at least, the law of abortion stands undisturbed. For today, the women of this nation will retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows.'"¹⁶

Two key points stand out in the Court's 78-page decision on abortion. States may:

- (a) ban any public employee—doctor, nurse, or other health care provider—from performing or assisting an abortion not necessary to save a woman's life;
- (b) ban the use of any public hospital or other facility for performing abortions not necessary to save life.¹⁷

Essentially, *Roe v. Wade* survived, though weakened. The new situation was reflected in the reactions of opposition leaders to the Supreme Court decision. Molly Yard, president of the National Organization for Women said, "Pretty soon nothing much will be left for a woman in controlling her reproductive life." John Wilke, president of the National Right to Life Committee, was jubilant: "We are smiling. We are thumbs up all the way."¹⁸

The mood on both sides changed sharply when the U.S. Supreme Court took up the challenge to Pennsylvania's restrictive abortion laws. On June 29, 1992, by a 5 to 4 vote, the Court barred states from flatly outlawing abortion, but upheld limits in a Pennsylvania law that gives states sweeping new power to make it more difficult for women to terminate their pregnancies. The majority decision was controlled by three conservative justices: Sandra Day O'Connor, Anthony M. Kennedy, and David H. Souter. In surprising language, the three wrote the following:

Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a

pregnancy. . . . Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.¹⁹

With that declaration, the three justices got to the crux of the matter: a woman's right to reproductive freedom. In general principle, the framers of the Constitution spoke of the right to "the pursuit of happiness." The justices upheld that right of individual freedom in this uplifting way:

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. . . . The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.²⁰

Justice Harry A. Blackmun said of the ruling: "Now, just when so many expected the darkness to fall, the flame has grown bright."

However, it was not all brightness and joy for the supporters of *Roe*. Although the Court did strike down Pennsylvania's requirement that married women tell their husbands about their plans for an abortion, it upheld the following restrictions in the Pennsylvania law:

- Women seeking abortions must be told about fetal development and abortion alternatives.
- Women must wait at least 24 hours after receiving that information to have an abortion.
- Doctors are required to keep detailed records, subject to public disclosure, on each abortion.
- Unmarried girls under eighteen and not supporting themselves are required to get parental consent or the permission of the judge.²¹

Following the Pennsylvania case, the Supreme Court refused to hear the Guam case. This does not mean that the abortion rights issue will vanish from American national politics, but only that it will now be fought out in state capitals as opponents of abortion rights attempt to legislate restrictions that will conform to the standard set by the Pennsylvania ruling.

The election of President Bill Clinton promises to change the lineup of the Supreme Court justices. He has declared that he

intends to appoint justices who share his view on abortion rights. On the twentieth anniversary of *Roe*, Clinton overturned a series of abortion restrictions imposed by his Republican predecessors. Stating that “we must free science and medicine from the grasp of politics,” the president signed orders on January 22, 1993 that did the following:

- Lifted the tight restrictions on abortion counseling at federally supported clinics
- Overturned prohibitions against research using fetal tissues from abortion
- Ended a ban on abortions at military hospitals and funding for overseas population control programs
- Ordered a review of the ban on imports of RU-486, the French abortion pill.²²

THE MORAL ISSUE

Although the constitutional question has thus been determined, the question of the morality of abortion still remains. Essentially, in *Wade* the Court was determining the extent to which the state could exercise its power to regulate abortion under the Fourteenth Amendment, not its morality.²³ The pregnant woman who is considering abortion, or any other person pondering the question, must make a personal judgment on whether or not abortion is morally justifiable.

As noted by the Court, there is a wide divergence of views on the nature of fetal life and when life begins. One’s view on these questions to a large extent determines one’s judgment about the morality of abortion. These indeed are matters of life and death, and yet there is a certain sadness to the present situation because the complexity of the issues place in stark relief the emotional simplicity of the responses made by the contestants and crusaders in this battle royal. Jonathan Glover sums it well:

Emotionalism and simplification lead to implausible claims on both sides. Some take it to be an obvious fact that an abortion is just something done to a woman’s body, comparable to the removal of an appendix. Others take it to be an obvious fact that a newly fertilized egg is as much a person as any teen-ager or adult. Opponents on either side are accused of supporting either the oppression of women or murder. It is sad that the

debate is like this, since its outcome will affect even larger issues than the ones now seen to be at stake.²⁴

THE HINDU PERSPECTIVES

The present study will attempt to shed new light on aspects of the abortion issue from the perspective of the Hindu tradition. It is basically a religio-philosophical exploration based on classical texts, with no pretensions to any sociological claims.

The most important texts for our purpose are the medical manuals of Caraka and Suśruta which date from the beginning of the Christian era. The medical science they represent was known as *Āyurveda*, which has had a new lease on life in our own day. Semantically the word is significant for our study because the first term (*āyur*) defines the purpose of classical Indian medicine as the *prolongation* and *preservation* of life, and second term (*veda*) anchors the science within the religious tradition of the Hindus. *Āyurveda* was designated as a secondary science (*upānga*) linked to the Atharvaveda. This means that it looks upon science as collaborative with religion so that the cultivation of a sound body and mind is seen as ensuring the welfare of the soul.

From ancient times, the tradition out of which the medical manuals speak placed the highest premium on life in the womb. Feticide was killing. Correspondingly, there developed a system of supportive values, buttressed by rewards and punishments in this life and the next. Pregnant women were subjects of solicitude and were treated with kindness and care.

Before we examine the tradition, we shall be spared some confusion by noting, as Julius Lipner points out in his seminal article on abortion, “the distinction implied in the Sanskrit between the terms for abortion (*garbha-*, *bhrūṇa-*: *hatyā*, *vadha*) and those for (involuntary) miscarriage. The former terms assume that a morally reprehensible killing (*hatyā*) has taken place, rather than an ethically neutral evacuation, dislodging, or excision, for example, while . . . the standard Sanskrit words for miscarriage refer simply to a falling or emission (of the embryo).”²⁵

The Śruti Literature

The earliest Vedic literature provides us with an attitudinal framework, plus certain specific injunctions, that give us definite clues to Vedic views on abortion.

The Āyurvedic ideal of longevity is a predominant value of Āryan society. The Vedic sages want people to escape the pitfalls of premature death and to live to the optimum period of life, set at one hundred years. A vibrant “will to life” is resounded in numerous prayers. Although there is the recognition that men are mortal, there is hope through the “gift to men” of biological immortality—“life succeeding life.”²⁶ A father prays: “May I be immortal through my children.”²⁷ Since Āryan society was patriarchal, it is to be expected that genealogical continuity was sought through the birth of many sons,²⁸ though it would be incorrect to limit all references to progeny to apply only to sons. “As in the Veda *putra* means “a male child” as well as “a child” (e.g., *putra* for the child in the womb), one has to refer to the context to find out which of the two meanings is intended. (Śayana represents the attitude of later ages in interpreting *putra* in every context as a “male child.”)²⁹

This quest for earthly immortality is reflected in positive attitudes toward women, marriage, and parenthood. The poet brings it all together in “The Wedding” hymn:

Behold the comely forms of Sūryā!
her border-cloth and her headwear,
and her garment triply parted,
these the priest has sanctified.

I take thy hand for good fortune, that thou
mayst attain old age with me thy husband. Devas—
Bhaga, Aryaman, Saviṭri, Purandhi—
have given thee to be my house-hold’s mistress.

Pushan, arouse her, the most blissful one;
through whom a new generation will spring to life.
She, in the ardour of her love, will meet me,
and I, ardently loving, will meet her.

For thee at first they escorted
Sūryā with her bridal train;
Give the wife, Agni, to the husband
and also give her progeny.

Agni has given him the wife
with long life and brilliance;
long-lived be he who is her husband,
may he live a hundred autumns.

Soma gave her to the Gandharva,
the Gandharva gave her to Agni,
And Agni has given her to me
granting me wealth and sons.³⁰

In the Yajurveda the womb is mystically exalted as the place in which *Purusha* (the Supreme Being) takes birth:

He is the Deity who pervades all regions,
born at first, he is also within the womb.
Verily, he who is born and is to be born,
meets his offspring facing him on all sides.³¹

The womb is here a metaphor of creation, denoting the manifestation of Deity as a continuous process, repeated from birth to birth, and encompassing the past, present, and the future. The womb is hallowed as the creative center of the universe and as the point of intersection of divine-human activity which unites all creatures with the “Lord of life.”³²

A unique feature of the Vedic hymns is their natural blending of spiritual and moral values with physical well-being—a note that is fully orchestrated in later *Āyurveda*. Longevity is not simply valued in terms of duration, but by the quality of life. The Vedic code of life does not tolerate distinctions based on spirit and matter, as in later periods, but displays the groundwork of a vision of life in which full biological growth—from womb to tomb—is a spiritual quest. Vigor, virility, valor and virtue are parts of a single mosaic. The ideal of brave warriors living for a hundred years has embryonic beginnings in fine offspring, and it is for such progeny that the seers pray.

Earth, Ether, Sky!
May we be proud possessors of fine children,
proud possessors of fine heroes,
and be well nourished by fine food.³³

The above verse is one of many which illustrates the biological purpose of marriage in which *Prajāpati* (Lord of Creation) brings forth children through the coupling of husband and wife.³⁴

We now move from the three earlier Vedas to the fourth Veda within the orthodox corpus, called the *Atharvaveda* (Veda of

knowledge of magic formulas). It dates from 900 to 600 B.C. and is closely associated with the science of Āyurveda.

A. C. Bose rightly observes that in the address of the bridegroom to the bride—"I am song, thou art verse, I am Heaven, thou art Earth, we two together shall live here becoming parents of children"³⁵—is a sacred formula that lifts "the biology of human reproduction to a spiritual plane."³⁶ Indeed, the formula was continued in later literature.

The Āyurvedic connection is systemically apparent in the Atharvaveda's preoccupation with the preservation and prolongation of human life. The sage sings:

For a hundred autumns, may we see,
 For a hundred autumns, may we live,
 For a hundred autumns, may we know,
 For a hundred autumns, may we rise,
 For a hundred autumns, may we thrive,
 For a hundred autumns, may we be,
 For a hundred autumns, may we become,
 Aye, and even more than a hundred autumns.³⁷

To preserve and prolong life, the union of body and spirit is the *sine qua non* of health—"May all my limbs be uninjured and my soul remain unconquered."³⁸ A healthy couple marries, and the "good fortune" of "ten sons" is sought from "bounteous Indra."³⁹ "Bearing sons," the wife becomes "queen of the home."⁴⁰

Certain charms prevent miscarriage: that the "embryo be held fast, to produce a child after pregnancy!"⁴¹ Defensive charms are employed against fiends of disease that produce abortions, such as Kanva, "the blood-sucking demon," "the devourer of our offspring."⁴² There are charms also for easy parturition: that "the gods who created the embryo" may "open her, that she shall bring forth!"⁴³

Given the values of the Atharvaveda, where life is construed as longevity, happiness as health, and boys as bounty, it follows that abortion is to be treated as a heinous crime, bearing the greatest guilt. In two hymns Pushan is invoked to wipe off "the misdeeds upon him that practiseth abortion!"⁴⁴ As the commentator explains, in a pyramid of evil, abortion is deemed the basest crime.⁴⁵

Abortion as a crime is repeated in the Brāhmanas (1000–700 B.C.), which constitute the second major body of Vedic literature. The Brāhmanas are mainly ritual texts. The priests show little interest in questions of right and wrong, their imagination having run riot with the theory and practice of ritualism. The allusions to abortion are therefore significant.

In the Śatapatha Brāhmaṇa abortion is used as a criminal yardstick to illustrate the despicable character of ritualistic sins and their punitive consequences. One passage conjures up the fate of an abortionist in order to evoke the hell awaiting a person who has violated the sacred prohibition against eating the flesh of an ox or a cow. “Such a one indeed would be likely to be born (again) as a strange being, (as one of whom there is) evil report, such as ‘he has expelled an embryo from a woman,’ ‘he has committed a sin’; let him therefore not eat (the flesh) of the cow and the ox.”⁴⁶

Another passage, aimed at enforcing the carrying of the sacred fire around the neck of the sacrificer during the time of his initiation, warns: “Surely, he who kills a human embryo, is despised, how much more then he who kills him (Agni), for he is a god: ‘Let no one become an officiating priest for an (Agni) who has not been carried about for a year,’ said Vatsya, ‘lest he should be a participator in the killing of this, a god’s seed!’”⁴⁷

More important than the textual evidence is the emergence, during the period of the Brāhmanas, of a new set of ethical values which make a permanent contribution to Hinduism’s attitude toward the procreation and preservation of progeny. The need arose in Āryan society to strengthen the community and to safeguard its cultural heritage. The response was the introduction of the concept of *obligation* in the doctrine of *ṛna* (indebtedness). It was held that all Āryans were born with three binding duties: to the gods, to the sages, and to the ancestors. The first duty was discharged by the performance of sacrifices; the second, through the study of the Vedas; and the third, which interests us here, by producing sons, and thus ensuring the survival of the family. In time it was deemed a sin to seek liberation before the fulfilment of these values.

The Upaniṣads (700–500 B.C.) shed Vedic ceremonialism for the supreme quest of self-realization. *Brahman*, ultimate Reality, objectively perceived, is none other than *Ātman* in the depths of

the self. *Tat tvam asi*: "That art thou." Liberation is the discovery of one's identity with the Supreme. To be sure, the Upaniṣads subscribe to a variety of metaphysical views, but the dominant belief in the unity of life has profound bearing on the status of the unborn and the taking of life. Given the monistic outlook of some Upaniṣads, it is a natural corollary that abortion is regarded as gravely evil.

This attitude is evident in two passages. The Bṛihadāraṇyaka Upaniṣad, describing the soul in the trance state—a state of deep, dreamless sleep—points out that the state is so much out of this world that deepest distinctions are erased, so that "the destroyer of an embryo becomes not the destroyer of an embryo," just as a father is not a father, and a mother is not a mother.⁴⁸ In the Kaushītaki Upaniṣad we learn that the liberated soul, having realized his unity with the Ātman, is freed from his good and evil deeds because these deeds belong to the individual existence, now seen as illusory. In the following passage, Indra, declaring that knowledge of him is the greatest boon to men, says: "So he who understands me—by no deed whatsoever of his is his world injured, not by stealing, not by killing an embryo, not by the murder of his mother, not by the murder of his father; if he has done any evil (*pāpa*), the dark color departs from his face."⁴⁹ In both passages, the Upaniṣads assume that abortion is among the most deplorable evils, subject to consequences that karmically affect both this life and the next, and that only through enlightenment is one delivered from its malevolent force.

The Smṛti Literature

We now examine the data from the Sūtra and epic periods found in the *smṛti* literature (that which is remembered), covering the period 500 B.C. to A.D. 300. *Smṛti* incorporates all authoritative texts outside the Vedas. The most important works for our purpose are the Dharma Sūtras, Dharma Śāstras, and the two epics.

The Dharma Sūtras are aphoristic codes (*sūtras*, threads) that impart general principles of moral law (*dharma*). Their sanctions for ethical behavior are religious, not judicial. The treatment of law is not systematic, and their teachings on civil and criminal law are scarce. The most significant of these early lawbooks are the Dharma Sūtras of Gautama, Baudhāyana, Vasiṣṭha, and

Āpastamba. They date approximately from the sixth to the second centuries B.C.

The Dharma Śāstras date later than the Dharma Sūtras and are more precise and complete. Like the early lawbooks, the Dharma Śāstras are not as concerned with legal distinctions and technical definitions as with moral duties. The most authoritative text on the subject of *dharma*, professing divine origin, is the Laws of Manu. It is claimed: "What Manu says is medicine." The date of its composition is sometime between the first century B.C. and the second century A.D.

The Mahābhārata and Rāmāyaṇa are the two most cherished works of popular Hinduism. The epics are splendid illustrations of the evolutionary character of Hindu thought, having undergone successive accretions and transformations over a period of four to five centuries.

The general picture that emerges from this vast literature is that life begins at conception, feticide is a major sin, progeny is a great good, women are worthy of respect and care, and pregnant women are especially to be protected and granted concessions.

Yājñavalkya presents a view of embryology in which the soul takes form at conception and is progressively invested with all elements for human development.⁵⁰

According to Manu, the process of hominization begins at conception, whereby, through the act of impregnation, the husband takes birth as the fetus in the womb of his wife. The wife is therefore called *Jāyā*, "inasmuch as the husband is again born in her."⁵¹

The assiduous protection that is enjoined for the wife does not appear to be so much for the woman's sake as for the purity of progeny, because, as stated above, it is the man who has impregnated her that is reborn. This seems to suggest that in the act of conception there is the implantation of the seeds of personhood.⁵² From day one, pregnancy is a particular man in the making. Gestation is the development of a specific human who enters the womb at conception.

This view of what takes place in the moment of conception is reflected in the fixing of the dates for the *samskāras* (sacraments) by counting from the time of conception, and *not from the day of birth*. For instance, Yājñavalkya decrees that the Upanayanam ceremony of a Brahmin must be in the eighth year, calculated from conception.⁵³

The belief that fetal existence is elementally human provides the basis for branding the “killing of an embryo” as mortal sin, to be redressed by severe penances and punishments. It is classified as one of the five *mahāpātakas* or atrocious acts. Several authorities aver that the procurer of abortions is a *mahāpātakīn*. Gautama equates abortion with Brahmanicide, punishable by the “deprivation of the rights and privileges of a Brahmana, and a degraded status in the next world.”⁵⁴ Similarly, Vasiṣṭha categorizes the *bhrūnahan* as the slayer of a learned Brahmin or a destroyer of an embryo.⁵⁵ Such a comparison can only mean the personalization of the embryo. Manu enjoins the same expiatory penance, even when a fetus is *unwillingly* killed, as for the sin of “Brāhmaṇa-killing.”⁵⁶ Yājñavalkya places “destruction of the fetus” on par with a woman’s slaying her husband, and therefore subject to identical ostracism.⁵⁷ The personal factor that makes feticide a *mahāpātaka* similarly accounts for the celebration of progeny as a great good.

A father is expected to give his daughter in marriage upon attainment of puberty in order that she may be fruitful. Should the girl menstruate before she marries, the father is guilty of the sin of abortion and becomes degraded.⁵⁸ Vasiṣṭha endorses this teaching of Vyāsa and adds: “As often as are the menstrual courses of a maiden, who is desirous of, and is solicited in marriage by, a qualified bridegroom of the same caste, so often her father and mother are guilty of [the crime of] killing an embryo: such is the sacred law.”⁵⁹ Viṣṇu goes one step further and permits a maiden who has “passed three monthly courses” to “choose a husband on the expiry of her third menstrual period.” Otherwise she lives in disgrace. He also states that a suitor “commits no sin, by carrying her away (from the custody of her guardians).”⁶⁰

Once married, procreation is paramount. “He who does not visit his wife on the day of her menstrual ablution becomes certainly guilty of the dreadful sin of faeticide [sic].”⁶¹

Given its patriarchal structure, the procreation of sons is especially coveted, partly for economic and social reasons, but mostly for religious reasons. The *śrāddha* ceremony is a religious rite performed for deceased ancestors. It is believed to have the power to avert the sins of omission and commission of the parents which are visited upon their family. The rite also assists the admission of

the deceased father into the company of the forefathers. It follows that a father not having a son to effectuate his passage into the assembly of the *pitr*, through *śrāddha* offerings, is indeed cursed.

This need for many sons accounts for the old Hindu law's recognition of twelve kinds of sons. Yājñavalkya describes one type of offspring (*kshetraja*) of a wife by a kinsman duly appointed to raise up issue to the husband.⁶²

Because of their vital role in bringing sons into the world, pregnant women are accorded care and concessions. Yājñavalkya urges all indulgence: "By not giving what a woman, in pregnancy, wishes for, the embryo meets with some shortcomings, either [in the shape of] disfigurement or death. Therefore what is liked by [a pregnant] woman must be gratified."⁶³ Likewise Vishṇu exempts pregnant women from having to pay toll;⁶⁴ and Manu enjoins that the needs of the pregnant woman in the home must take precedence over those of the *atithis* (chance guests).⁶⁵ Again, the reason for Manu's insistence that the wife should be "assiduously protected" is that the husband takes birth within her womb, and "for the purity of his progeny. . . ." ⁶⁶

Female protection does not seem to be based on caste. Life is at stake, and hence all women have a right to protection. Yājñavalkya enjoins punishment upon one "who destroys the embryo of a female servant."⁶⁷ Killing any woman in her menses or who is pregnant is "equal to that of killing a Brahmana."⁶⁸

From the time of conception, and thereafter as the child develops and grows, certain Vedic rites are called for to purify the individual both in this life and the next. Manu: "By means of the Vedic rites of consecration of the womb, post-natal purification, tonsure, and initiation with the thread, the sin of the twice-born ones, pertaining to the seed and womb (of their parents) is absolved."⁶⁹ Likewise, Yājñavalkya states that with the performance of the prescribed rites "the sin begotten of semen and blood, is dissipated. . . ." ⁷⁰ This expiatory function of prenatal rites attributes a personal character to the unborn; otherwise it would make no sense to claim the mystical removal of sin.

The common themes of the legal literature—identifying abortion as a heinous sin, rejoicing in many sons, deference to pregnant women, and the practice of *niyoga* (levirate marriage)—are all present in the Mahābhārata and need not be repeated. They collectively affirm the ancient view that life in the womb is not tis-

sue of the mother's body, but a separate life bearing the essential marks of humanity from the time of conception.

The value that cradles this view of the unborn is *ahimsā* (non-violence). It is present in the rules of hospitality, gentleness, care for the young and aged, and kindness to the land, birds, insects, animals; above all, it is the birthright of that most vulnerable form of all existence—a child in the womb. And so it is that Kṛṣṇa informs Arjuna that among the endowments of those who are born with the divine nature, the first is nonviolence.⁷¹

The Āyurveda

Āyurveda (the science of life) is a branch of the Vedas. Over the centuries, it has shaped the ancient ideas along the lines of medical, scientific, and rational investigation. It treats the person as a psychosomatic unity, with due regard for constitutional differences among individuals. It is a natural system that promotes a total style of life aimed at happiness and longevity. In the context of this study, Āyurveda is concerned with the promotion of fertility and the preservation of progeny. From among the numerous collections, the best-known texts that have come down to us are those of Caraka, Suśruta, and Vāgbhaṭa. The first has known the greatest popularity, and has been commented upon by notable scholars.

We now explore the various concepts and theories in the Caraka Saṃhitā to ascertain its line of thinking on the subject of abortion. The relevant section is Śarīrasthānam (study of the human body).

We start with the concepts of *person* and *nature*. Both the human individual and the natural world are seen as manifestations of the eternal Brahman. The person and nature are constituted of six elements—earth, water, fire, air, ether, and the spirit or self in the person and Brahman in the universe. Thus “person is equal to the universe.”⁷² Man is a microcosmos of the macrocosmos, which means that spirit and matter are not alien or opposite, but parts of an integral whole.

In addition to the five *mahābhūtas* (gross elements) and the *ātman* (self), the individual is invested with *buddhi* (intelligence) and *ahankāra* (ego).⁷³ The ego is separable from the body and is made up of action, the fruit of action, reincarnation, and memory.⁷⁴ Conscious perception is brought about in the individual by

the agency of the *Puruṣa* (transcendent self) which integrates the *ātman*, mind, senses, and sense objects.⁷⁵

There cannot be light, darkness, truth, falsehood, scripture, auspicious and inauspicious actions if there be not the active and intelligent person. There would be no substratum (body), happiness, misery, going and coming, speech, understanding, treatises, life and death, knowledge and emancipation if the person were not there. That is why the person is recognised as the cause by the experts in (theory) of causation. If there be no self, light, etc., would be causeless; they cannot be perceived nor can they serve any purpose.⁷⁶

Thus according to Caraka's theory of causality, the agent behind all happenings, including birth and death, the continuity of life, pleasure and pain, knowledge and ignorance, morality and immorality, is the everlasting, all-pervading, and changeless *Puruṣa*.

Life comes into being by the "conjunction" of body, mind, senses, and the self (*ātman*). Caraka uses the figure of the "tripod" to illustrate the vital combination of the body, mind, and the self.⁷⁷ Life vanishes when any one part is missing.

Turning to the subject of the development of the fetus, Caraka delineates the factors from which the embryo is originated, the definition of the embryo, the factors producing the embryo, and the order of its development.

Embryo is originated by the aggregate of these entities—mother, father, self, suitability, nutrition and psyche. . . .

The combination of sperm, ovum and life-principle implanted in the womb is known as embryo.

Embryo is the product of *ākāśa*, *vāyu*, *tejas*, *ap* and *prthvī* being the seat of consciousness. Thus, embryo is the aggregate of the five mahabhutas being the seat of the consciousness which is regarded as the sixth constituent of embryo.

Now the order in which the embryo is formed is explained. After the accumulated menstrual blood is discharged and the new one is situated, the woman having cleanly bathed and with undamaged genital passage, ovum and uterus is called as having opportune period. When the man having undamaged sperms cohabits with such a woman, his semen, the essence of all the *śarīradhātus*, is extracted from the whole body impelled by orgasm. Thus being impelled by the self in the form of orgasm and also seated by him, the semen having potentiality of a seed,

is ejaculated from the man's body and through the proper track enters into the uterus and combines with the ovum.⁷⁸

Thus conception occurs when the male semen (sperm cell) and the female ovum (germ cell), having come together in the act of intercourse, are united with the spirit which, in association with the mind, "descends into the zygote situated in the uterus," and "the embryo is formed."⁷⁹ "The entire process of receiving the qualities (of mahābhūtas by uniting with them) is completed within a subtle measure of time."⁸⁰

It is important to note that the spirit is an original and necessary constituent of embryonic existence. It abides as the embodied soul, and provides the unborn life with spiritual continuity. The embryo is called "the self" precisely because it is the spirit that has entered the uterus, and having combined with the sperm and ovum, produces itself in the form of the embryo.⁸¹

Caraka has many interesting observations pertaining to heredity and embryonic growth, but significant for our purpose is the notion that it is the past karma of the individual, carried into the present embodiment, that imparts to the newborn child its special features, in addition to the contributions made by its parents.⁸²

By virtue of its karmic inheritance, the unborn is invested with moral qualities, and as such is the object of medical care and protection. Similar care is extended to the mother. "The pregnant woman has to be managed very cautiously like one carrying a vessel full of oil without agitating it."⁸³

On the basis of the evidence before us, Caraka Saṃhitā is allied with the earlier tradition found in the Śruti and Smṛti texts in opposing abortion as morally evil. It does so on the assumption that spirit is present in matter from the moment of conception, and is the causal agent in its progressive development. This creative manifestation of the spirit in the microcosmos is similar to the process of creation in the macrocosmos. On the human side, the moral character of the individual is also given in conception. Karma is carried over from one life to the next. Together, the spiritual and moral constituents of the individual make for the production of a person through a continuous process that is developmental but not disjunctive. It is therefore pointless to discriminate between different degrees of human potentiality in terms of "ensoulment," "viability," and "brain waves." The new life is an