

## ON THE MERITS OF THE ABORTION DEBATE

by Blu Greenberg

When people speak of *Roe v. Wade* they usually prefix it with the adjective "landmark". And rightly so for it legalized that which had for centuries been illegal. But equally important about *Roe* was that from that moment forward, the issue of abortion was placed squarely on the public operating table, never to return again to its private resting place.

That private resting place had been alternately comfortable and dangerous. Dangerous, for the victims of coat hanger horror; comfortable, for those who could deal with abortion in secrecy, with dispatch, and then look away; dangerous, for a young woman whose future was derailed because of a moment's abandon; comfortable, for interpreters of religious traditions who could brook no interference; dangerous, for families whose private shame, guilt and anger persisted into decades of family lore; and comfortable, for the large majority of Americans of every faith and belief who simply were not pressed into the issue.

But all of that changed with *Roe*. Abortion became a public agenda, under intense and ever-widening scrutiny. Political fortunes are now won and lost over it; Supreme Court justices are measured by their abortion proclivities. Millions of dollars are spent annually for and by organizations created specifically with an abortion platform; millions more on advertising campaigns of the "pro" positions. Abortion has occupied vast amounts of time and energy of religious authorities, has fomented internal strife in otherwise unified institutions, has been *the* identifying marker of the "religious right". It has remained at the top of the theoretical bioethics debate.

Oddly enough we are no closer to a resolution of the controversy than we were twenty years ago. Indeed, the original arguments are still very much with us. When does life begin? At fertilization? At 40 days? At ensoulment? At the end of the first trimester? At the moment of birth?

And who decides?—the scientist or the theologian? Is abortion murder—or is it at times a more ethical consideration for existing life? To

whom do we give primary consideration—the fetus or the mother? Is abortion a question of morality or of individual/civil rights?

Again who decides? Is it a matter of public principle, of religious faith, of individual conscience? How do public and private spheres intersect? Does a religious community have the right to impose its will upon a secular society? Who speaks for a particular religious community—the CCAR or the RCA, the American Jewish Congress or Agudah, the Pope or Catholics for a Free Choice?

And what about the original claim of feminists—that the whole issue should be reduced to the basic principle of a woman having control over her own body? Is this altogether narcissistic insofar as it totally ignores the other partner in procreation of life? And the other partner? In arrogating to women an undivided trust, does it not simultaneously confound its own ultimate goals—a shared responsibility for generativity and nurture? Or is this call for control over one's body but an infinitesimal wedge in righting the wrong of centuries of assault on women's bodies? Does the feminist argument here have far-reaching implications for rape, for pornography, for a thousand associated abuses women suffer when their bodies become object?

Besides all of the old unanswerables, new issues have been added to enlarge the debate, like a handful of new ingredients thrown into a roiling pot. The new questions come at us from all sides, far beyond the early parameters of personal morality or religious faith or gender politics, where abortion is most legitimately tested.

One broad issue now joined is the demographic one, with its implications for population control of overburdened nations. Are women to be perceived, fairly or unfairly, as demographic instruments?

Why are all parties of interest to abortion politics so intensely involved in preparations for the United Nations International Conference on Population and Development (Cairo, 1994)?

Or environmental issues. How are we to consider the argument that easy access to abortion will help to protect the planet? In the spate of new books on the environment, hardly a one ignores the abortion issue.

On public health policy. Will Clinton be carrying a monkey on his back as he tries to sell a new health plan encompassing a liberal abortion package?

Or race and class struggles. Is pro-choice a plot, as some would suggest, of whites against blacks to keep the latter's birthrate low? A design of middle-class adults against poor teenagers who have nothing else to call their own or love or belong to other than this out-of-wedlock infant? Is pro-life also race and class driven so as to control the number of white soldiers or workers this country should have?

Or issues of self worth. If unwanted pregnancy is correlated to low self-esteem (defined as the inability to think about oneself in the spontaneity of the moment or to take care of oneself in the desire to please another) then should not the termination of that pregnancy be seen as just the opposite—a second chance indicator of healthy self-esteem?

Or economics. How serious are the implications of abortion for gender ratios and pay scales in the workplace? Will women, unencumbered by unwanted children, shape their own destinies in ways that will affect the marketplace? Will unstigmatized abortion significantly affect the GNP over the course of the next generation? housing construction? educational institutions?

Or homosexuality. How are we to understand the confederation of gay rights and abortion activists. Is it about sharing the same political enemies or is there some basic unifying principle, such as freedom to choose a personal life style? Is such a principle appropriate to one issue and woefully inadequate to the other? Does pro-life wring its hands with glee in the knowledge that a merging of abortion politics with gay rights will only weaken its opposition? Does pro-choice take on an even less popular cause out of a sense of justice and compassion, or out of a need for cohorts and numbers in its own struggle?

Besides all of these new associated issues, some of the original ones are being looked at in more complex ways. One example is a woman's control over her own body. The question has now been broadened to encompass more general issues of moral judgement. It goes something like this: Does constricting women's right to choose imply that they are inadequate as ethicists, that they are simply biologically determined rather than autonomous moral agents? Or conversely, does that very right confer legitimacy upon women as shapers of value, fully up to the tasks of making moral decisions not only for themselves but for society at large?

Another example: For many Jews, the Holocaust was a determinative factor in taking early positions in the abortion on demand debate. On the

one hand, the numbing image of corpses piled high at Auschwitz, the mind-bending descriptions of infants and children shot along with their parents at the lip of a ravine by laughing Einsatzgruppen, the absolute cheapening of human life, and the incomprehensible numbers lost to the Jewish people all seemed to powerfully mitigate against cutting off potential life. But more recently, other images have begun to be looked at in different ways. We have long known that women who arrived at the camps with young children in tow were the most vulnerable of all. No consideration by the Nazis was given to factors of age, health, or beauty, factors that saved other women from immediate death. Those were simply overruled—the presence of a child was a death sentence. Women with children could not join the partisans or flee to the forests; and few abandoned their young ones in order to save themselves. Just as one can reason thus and so from heaps of dead bodies, so can one reason another way from images of women hurried off to the gas chambers with babies in their arms. Is it perverse to ask this question or is it only fair; if a woman's fate is determined by the powerful bonds, biological and otherwise, to her children, should she not legitimately be empowered to make a decision regarding the lifelong attachment and responsibility to a child?

The public versus private issues have also become more complicated of late. If abortion is a private matter, as the law allows, why should public funding be a condition? One who perceives abortion to be morally wrong should not be required to pay for this action through his/her taxes, the argument goes, in much the same way that a conscientious objector is released from army duty. But is it not also true that to cut off public funding is to discriminate against those most in need of abortion aid, those whose lives are already caught up in a spiral of poverty? Or to put it another way, will constitutional safeguards for one violate the inalienable rights of another to liberty and the pursuit of happiness?

The public is also taking a new look at activism. Are the Operation Rescue Impact Teams menacing hoodlums or are they good people with righteous indignation protesting an immorality? Are the pro-choice rallies examples of liberal orthodoxies, unchecked by weightier values, poisoning impressionable young minds or are they models of social concern for the beleaguered?

The new laws being promoted generate new questions themselves: Will parental consent laws make frightened teenagers do something more dras-

tic—such as using coat hangers or tossing infants in plastic bags into garbage bins—to avoid the wrath of shocked and angry parents; or will it prevent an irresponsible child from using facile abortion as birth control? Does the special consent law reinforce gender power struggles or does it protect the father of a fetus, a man who might be mature enough and willing enough to shoulder the nurturing enterprise? Will laws such as FACE (Freedom of Access Act) restore order to abortion clinics or will they generate a response more subtle or more sinister, such as the killing of abortion doctors?

Thus it would seem that after twenty years of debate, we are not only not closer to a resolution but further from it. The opposing sides are not running out of steam. The rift has widened, the issues augmented, the positions hardened, the fighters more deeply entrenched.

There are more abortion organizations—pro and con, more abortion clinics and more hostile protests in front of them, more laws that evoke reaction and counter reaction. More abortions are performed—1.6 million reported annually—than would seem to be morally acceptable. There are also more families suffering the indignities of deep poverty, more children born out of wedlock to teenage mothers, more news stories of children killed or abandoned, more child-support underpayment. And there is more violence: the killing of Dr. Gunn crossed a line. Likewise, exonerating statements of “justified killing” made by otherwise respectable citizens.

And yet. Violence excepted, rhetoric toned down several decibels, could it or should it be any other way? Or more precisely, would we want it to be any other way? Abortion is so highly complex an issue that there will never be a perfect answer, neither for the individual who contemplates an abortion nor for the human community at large. Likewise, the law. Each new law may inch us closer towards refinement, but no law will ever resolve the issue. Ideally, the attitude should be that for every answer there must be some equivocation, some tenuousness, a caveat or two. Every person engaged in the issue should have the feeling that each argument he/she advances is on a slippery slope. But that is not the way abortion politics have run their course these past two decades, nor I suppose the way impassioned people generally temper themselves. The nature of the abortion debate today is such that each side not only holds deeply to

its convictions but also lays claim to the whole truth. The other side is categorically dismissed as radical left or reactionary right.

But, in fact, each does hold important truths, not in the sense of one truth denying or obliterating the other but rather that these are ideas and values that must be held in continuous tension with each other. For abortion is not, as some frame it, a contest between morality and women's (or individual) rights. Rather, it is a pull between competing moralities, a dialectical tension in choosing between two very difficult and complex paths. It is not life versus choice, but rather life versus life—potential, unborn, precious, miraculous, replenishing versus existing life, equally precious and miraculous. It is also the reality of poverty, inadequate parenting, lack of dignity, abandonment, and possibly worse.

So each side has important things to say to the other, on every single issue. That is why it is vital to continue the debate rather than to mute it (though many in the center are already weary). The only time we shall have truly lost the battle is when one side totally drowns out the other.

Some examples of how the dialogue might run (with full awareness that with each statement I, too, am on shaky grounds):

On morality and the larger implications of abortion:

- Pro-life: The value of a potential life is infinite. Conception and birth are miracles that should not be treated as just another choice. Widespread, facile abortion will end up dehumanizing society. In the cosmic order of things, bringing new life into the world symbolizes order prevailing over chaos, good overcoming evil, life winning over death.
- Pro-choice: A woman who becomes unintentionally pregnant is not a sinner to be punished. She may be careless or weak or vulnerable or passionate or any combination thereof but she is not an evildoer with intent to harm another. When we speak of the freedom to choose a legal abortion, we speak not so much about the woman in a six-figure salaried family, two children in private school, two cars in the garage, and a Matisse sketch on the wall that could pay for a lifetime of nannies and boarding schools, nor about the single, 43 year-old executive who loves her job, for we know that these women will resolve the matter in their own best interest, *Roe v. Wade* or not. Rather, we are mindful of poor teenagers, closer to

birth than to adulthood, children who are so inadequate as decision makers that they can't take care of themselves, much less a child who needs continuous love and nurture. We are talking about the spiral of poverty; we are talking about divorced mothers who work in offices from nine to five and would want nothing more than to stay home and take care of three other children but cannot because the child support payments have long since stopped coming.

On identifying language:

- Pro-choice language should take care to rebalance itself so that it allows genuine choice, including the right of individuals and communities to articulate the other choice. Currently, the zeal with which it one-sidedly promotes the choice to terminate pregnancy and the pressure it mounts against anything that could legitimately slow down the process suggests that the change from "pro-abortion" to "pro-choice" was a change of name only.
- Pro-life's definition of life is too narrow. The mother's life, too, has great value and merits compassionate consideration. (Perhaps we should have called ourselves "pro-lives".) At the very least, a victim of rape or incest is no less worthy of special consideration than a fetus. And if pro-life is serious about the value of each and every life, it must take great care that its messages not be communicated in a manner that empowers or incites others to acts of violence. To test themselves for worthiness of the term pro-life, leaders of the movement should examine their positions on birth control, gun control, and on the death sentence.

On easy access:

- Many thousands of women—and perhaps millions in history—who would have aborted had it been easy, instead brought children into the world, gave and received love, and enhanced life on earth. How many have said in retrospect, "Thank God that abortion was not easily available when. . ." Abortion is a matter of such gravity that, at the very least, there should be a mandatory wait and informed consent period to help clarify the decision and allow all options to be seriously considered. Moreover, making abortion so easy to come by will end up in the abuse of abortion as a form of birth control.

- To be sure, the financial hardship of a 24 hour-waiting period for women who must travel and stay overnight will cause some to keep putting off the decision to terminate until later and later in the pregnancy. At the very least, some aid must be built in for poor women. The idea of having an abortion candidate view the fetus in its various states of development from conception to birth adds unnecessarily to the quiet trauma a woman undergoes in choosing to abort. In all likelihood, those most susceptible to a change of mind resulting from such a doll-like panorama set before them would also be those for whom an abortion would be most likely to help them go on with their lives—teenage girls from the underprivileged class. And to avoid use of abortion as birth control, pro-choice should mount a massive campaign for birth control, sex education, morning after detection and the like rather than its ostrich-like behavior of condemning wider availability and use of contraception.

#### On adoption:

- There are many infertile couples, as well as single women and men who would like to adopt a baby. Adoption should be encouraged by the pro-choice camp as compromise between encumbering a woman for life with an unwanted child and cutting off the gift of potential life to someone else who would cherish that life.
- Adoption may be a choice for some but certainly not for all. Some women, who are inadequate to nurture another human life (at least at that point in their lives), change their minds after birth, some even after giving up the baby for adoption. Adoption is a much more ambiguous matter. Some who do give up their babies continue to feel guilt and punishment for a lifetime, far greater than should be for the crime of lack of self control or the crime of aborting an early-stage fetus. Adoptive screening procedures are highly inadequate and prospective adoptive parents, in increasing numbers, are apprehensive about adopting babies with genetic defects such as crack and alcohol damage. Who will pick up the pieces—the parent, the religious communities, society at large?

These then are some of the ways the argument could be maintained, each side speaking authentically, reminding the other of the limitations in its

position, neither having a monopoly on the whole truth, a debate not in the simple sense of one winning but rather in the sense of continually broadening insights, checking excesses and keeping empty rhetoric to a minimum. Additionally, this kind of ongoing verbal confrontation would, I believe, help to prevent escalation of violence.

To some extent, we are already reaping the benefit of two decades of the abortion debate. We see this not so much in the active parties themselves but in the will of the average citizen. Social scientists' polls on abortion attitudes in this country show an interesting change. Whereas two decades ago the general population stacked up either in favor of or against abortion, today polls show that the majority of Americans, most of whom are not activists but onlookers, take a "permit but discourage" position. Abortion with sadness. Awareness of the necessity for making it legal, but feeling a measure of repugnance at the reality of ending a potential life.

We see the fruits of the debate as well in the most recent laws. In June of 1992 the Supreme Court upheld, with relatively minor modification, the Pennsylvania Abortion Control Law. The latter required a 24 hour-minimum waiting period during which the doctor must inform the patient of a) the medical risks of carrying to term and the risks of abortion at different stages of the pregnancy, b) the alternatives to abortion and 3) the current state of fetal development. The doctor must also inform her of the free materials available regarding the development of a fetus during the nine months of pregnancy, adoption resource agencies, medical assistance and obligations of the father for child support. If she requests it, the doctor must supply her with a packet of these materials. Among other things it includes realistic and true-to-size pictures of the growing fetus tracked at two-week intervals from fertilization to birth. Afterward the patient must sign a statement that she has been properly informed and desires to have an abortion.

In addition to informed consent of the woman, the law also requires parental consent for a minor (or a judge's permission) and consent of the spouse.

In upholding the Pennsylvania law the Supreme Court (*Planned Parenthood v. Casey*) affirmed the right of a state to establish its own parameters for a legal abortion. Interestingly, the court struck down the mandatory spousal notification laws. So as not to disregard the other partner in conception altogether, the Supreme Court required instead a statement by the

woman, signed before her doctor, acknowledging that she had informed her husband or that notifying him would put her in harm's way or that the husband was not the father of the baby, or could not be located or had raped her in a reported rape.

Not surprisingly both sides viewed the ruling as a major defeat (or at least trumpeted it as such). Pro-life had harbored the hope that the Supreme Court, with several new Bush appointees, would strike down Roe. Pro-choice was aghast by the informed consent clauses which it claimed was a coverup for slanting information against free choice and placing undue pressure on the vulnerable woman. But in a very real way the decision represented a victory not of either political group but of the debate between them. The language of the justices' opinions run back and forth like a sweeper mining good ideas from both camps: "women's right to make a decision" . . . "to control their reproductive lives" . . . "realms of personal liberty" . . . "the state must not impose substantial obstacles in the path of a woman seeking an abortion." On the other hand the state may express "profound respect for the life of the unborn" . . . "preference for childbirth over abortion" . . . "consideration of the effect upon the fetus" . . . "philosophic and social arguments . . . in favor of continuing pregnancy to full term." The state may fully inform her of adoption procedures, offer her child assistance, etc.

Casey is clearly a maturing law over previous ones. It allows the woman to choose in a deliberative manner, with full awareness of the implications of an abortion for her life and the possibilities of alternate options. The state may do what it deems necessary to ensure that her decision will be informed by the broader values regarding human life that society and culture may carry. The law maintains women's reproductive autonomy yet allows her decision to be made not in the narrow frame of her own immediate interests nor in the absence of time to reflect. It is a decision that incorporates a sense of the miracle and mystery of new life and an appreciation of the maturity of women to make their own reproductive decisions.

In sum, the two sides may appear not to have been listening to each other, but the people and the courts were.

Interestingly Jewish law is an excellent model for this kind of thinking, merit at the two ends of the debate, truths on both sides, a dialectical tension rather than a compromise position. Jewish law on abortion does not

deal with issues of rights and choice—these parameters do not generally figure in halachic formulation. Nevertheless, though at the surface it appears that halacha permits abortion only under a single circumstance—the threat to a mother's life—in many ways it arrives at positions somewhat akin to Casey.

The earliest formulation of abortion law appears in the Talmud: "If a woman is having a hard labor, and her life is in danger, then the fetus may be cut up and extracted limb by limb, for her life takes precedence over that of the fetus. But if the greater part of the fetus has already been born, one may not touch it, for the life of one person may not be taken for that of another." (Mishnah Oholoth 7:6).

The absence of debate or controversy here stands out in sharp contrast to the general style of rabbinic formulation. Indeed, half the Talmud is debate! Lengthy analysis or dispute took place on all matters, personal and otherwise. For example: the number of children with which to fulfill the commandment to procreate; the principles for which one must martyr oneself; the precedence of lifesaving over Sabbath observance; the responsibilities of parents to children. Even seemingly far less weighty matters such as the size of a piece of matzo (to fulfill the Passover obligations) or the color of menstrual stains (to determine when a couple could resume monthly sex relations) warranted pages and pages of discussion.

One can only conjecture why abortion, performed, we now know, in other cultures, claimed so little attention of Jewish moral authorities, the Rabbis: a) from start to finish, Judaism is a religion of life, in every instance affirming life over death, "And therefore choose life" (Deut. 30:19); b) children were considered the greatest gift, the greatest true wealth; c) the sense that each child born was a child of the whole community, not only of its biological parents. This is expressed in the *brit* ceremony, in which a child becomes a member of the entire covenantal community; d) the very nature of the covenantal claims of Judaism—an ongoing relationship between God and the Jewish people—depend on the birth of children and succeeding generations; e) and, finally, the social factors of infant mortality and shorter life spans as well as the demographic behavior patterns of all minority groups in Diaspora settings where children were perceived as symbols of permanence, of anchoring, of self worth, of value. For all of these reasons and many more, abortion

was an unlikely consideration for a family fortunate enough to produce live children.

And yet, in the development of *halacha*, which was often formulated through the case history method of the Responsa literature, we find a continuing conversation about abortion. In a very real sense, the abortion debate in Judaism was carried out vertically, across centuries, rather than horizontally in the lively juridical and philosophical debate of the House of Study of one generation and then again of another.

What the case study method reveals is the ongoing tension between a woman's claim on life and the fetus's. Strict and lenient positions develop, the strict reaffirming the indisputable value of potential life, the moral responsibility to protect the unborn. A measure of holiness, *kedushah*, is ascribed to the fetus, yet it goes hand in hand with a recognition of the different stages of fetal development. Its first 40 days are likened to water. The lenient position extended its understanding of a threat to a woman's life to include concern for her health, her psychological well-being, and even the demands on her in the raising of other children. In either case, abortion is never considered murder, never punishable by human hands. It is always something to be avoided, lamented, but always to be employed to save existing life. Moreover, the model of case study allows the input of an individual woman in the process, giving full weight to her subjective feelings.

The presence of those who care enough to invest great time and effort into abortion politics; those who want to examine on the narrow plane of morality and those who try to come closer to an understanding by casting about in a wider field before reeling it in again for microscopic analysis; the hearing and sensitivity of the masses who understand the truth of both sides; the growing sophistication of lawmakers who are not afraid to incorporate ambiguity and internal friction in their formulations; and the model of religious traditions that carry within them centuries of wisdom about human nature and the meaning of life—all of this bodes well for the future, for continuously coming closer to find answers to questions for which there are no perfect answers.