



## Tagungsdokumentation

# Der Umgang mit vorgeburtlichem Leben in anderen Kulturen

Jahrestagung des Nationalen Ethikrates 2003

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Vorträge der Jahrestagung des Nationalen Ethikrates 2003

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Nationaler Ethikrat  
Tagungsdokumentation  
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## Der Umgang mit vorgeburtlichem Leben in anderen Kulturen

Thema der Jahrestagung ist „Der Umgang mit vorgeburtlichem Leben in anderen Kulturen“. Warum dieses Thema? Hintergrund sind die Prozesse der Globalisierung, durch die die Bedeutung von Entfernungen und nationalen Grenzen schwindet. Sie fordern uns dazu auf, uns damit zu befassen, wie in anderen Ländern und Kulturkreisen mit den ethischen und rechtlichen Fragen umgegangen wird, die durch neue biomedizinische Entwicklungen aufgeworfen werden.

Viele dieser Entwicklungen provozieren weitreichende Fragen an unser Menschenbild. Dies gilt insbesondere für Prozesse und Eingriffe, die den Beginn des menschlichen Lebens betreffen. Angesprochen sind hier nicht nur der Schwangerschaftsabbruch, sondern vor allem auch die modernen Techniken, wie beispielsweise die künstliche Befruchtung, sowie der Umgang mit menschlichen Embryonen.

Diese Fragen richten sich nicht nur auf die Voraussetzungen unserer physischen Existenz, sondern auch auf die Bedingungen unserer Individualität, auf unseren Ort im familiären und sozialen Gefüge, nach den Verbindungen zu vergangenen und zu kommenden Generationen, und auf das symbolische und normative System, das die Menschen eines Kulturkreises miteinander verbindet.

Die Techniken, von denen hier die Rede ist, wie beispielsweise die genetische Untersuchung von Embryonen, die ihre Selektion *in vitro* ermöglicht, das Klonen oder die Erzeugung von Stammzellen, versprechen einen hohen medizinischen Nutzen. Von daher werden sie nach ihrer Entwicklung schnell in verschiedenen Ländern aufgegriffen und eingesetzt. Besonders im ostasiatischen Raum hat sich in den letzten Jahren ein Biotechnologieboom entwickelt, der zu Forschungsbedingungen geführt hat, die auch für viele westliche Wissenschaftler äußerst attraktiv sind.

Die ethischen und rechtlichen Traditionen in diesen Ländern, aber auch die Rahmenbedingungen für einen öffentlichen Diskurs unterscheiden sich teilweise von denen in westlichen Ländern, was auch zu Unterschieden in der Regulierung der Biotechnologien geführt hat, bzw. deren Regulierung bislang verzögert hat. Von daher ist es relativ einfach, biotechnische Aktivitäten in solche Länder zu verlagern, wenn die Rahmenbedingungen im eigenen Land sich als ungünstig erweisen. Dies betrifft vor

allem Aktivitäten, die in westlichen Ländern unter Umständen problematisiert werden oder verboten sind.

Um dies an einem Beispiel zu verdeutlichen: Vor einigen Tagen wurde in der Zeitschrift NATURE (14. Oktober 2003) berichtet, dass ein amerikanischer Reproduktionsmediziner gemeinsam mit chinesischen Kollegen in China einen problematischen Versuch unternommen hat. Um eine Frau, bei der die künstliche Befruchtung versagt hatte, weil ihre Embryonen offensichtlich entwicklungsunfähig waren, zu behandeln, befruchtete das Team erneut einige Eizellen dieser Frau. Kurz danach wurden deren Zellkerne entnommen und in die befruchteten und entkernten Eizellen einer fruchtbaren Frau eingesetzt. Sie sollten – so die Hoffnung – helfen, die Entwicklungsstörung der Embryonen zu überwinden. Nach dem Transfer der auf diesem Wege erzeugten Embryonen in den Körper der Frau entwickelten sie sich auch für einige Wochen, starben danach aber ab.

Bemerkenswert an diesem Fall ist, dass eine Technik angewandt wurde, die dem Kerntransfer basierten Klonen sehr ähnlich ist. Zwar wurde hier kein erwachsener Mensch geklont, sondern neue Individuen erzeugt. Da es sich dabei jedoch um ein umstrittenes und für die Embryonen bzw. daraus entstehenden Kinder äußerst riskantes Verfahren handelt, wären diese Versuche in den USA kaum genehmigt worden. In China waren sie offensichtlich zu der Zeit, als sie durchgeführt wurden, noch möglich.

Allerdings hat auch China kein Interesse daran, zu einer – um es salopp auszudrücken – „ethischen *dumping site*“ zu werden und auf solche oder ähnliche Aktivitäten reagiert. Einer Meldung des *Asian Wall Street Journal* vom 13. Oktober 2003 zufolge wurde vor kurzem eine Richtlinie implementiert, die die reproduktionsmedizinische Forschung stärker regulieren soll und solche Versuche in Zukunft möglicherweise unterbindet.

Das Beispiel zeigt jedoch, dass Wissenschaftler oder auch Unternehmer sich angesichts solcher Regulierungsunterschiede in verschiedenen Ländern schnell als restriktiv empfundenen Regelungen oder einem kritischen Umfeld entziehen können, und in Länder mit keinen oder weniger strengen Regelungen ausweichen können.

Trotz dieser Herausforderungen und trotz der globalen Aktivitäten im biomedizinischen Bereich gibt es bislang keine Vereinbarungen, die die Anwendung der neuen Techniken auf internationaler Ebene verbindlich regeln. Zwar haben einige Länder spezifische Gesetze verabschiedet, aber angesichts der Reichweite, der Geschwindigkeit und der Globalität der Entwicklungen greifen nationale Regelungen nicht. Deshalb wird der Erarbeitung international verbindlicher rechtlicher Instrumente, wie es beispielsweise mit der Klonkonvention versucht wird, ein hoher Stellenwert eingeräumt.

Diese internationalen Bemühungen um eine gemeinsame Lösung sind jedoch mit großen Schwierigkeiten konfrontiert, die u. a. mit kulturellen Unterschieden erklärt werden. Anders als die Aussagen der Naturwissenschaften, die den Anspruch erheben,

universell gültig zu sein, sind ethisch-normative Vorstellungen, die das Empfinden und die Entscheidungen der Menschen prägen, zumindest teilweise „lokal“, d.h., durch die religiösen und säkularen Traditionen, Regeln und Praktiken der unterschiedlichen Kulturen beeinflusst. Diese verschiedenen Traditionen können sich in der Gesetzgebung der Länder niederschlagen und global gesehen in mehr oder weniger großen Unterschieden im Umgang mit bioethischen Fragen und Problemen resultieren.

Diese Unterschiede werden beispielsweise bei den Antworten auf die Frage deutlich, wann menschliches Leben bzw. schutzwürdiges menschliches Leben beginnt. Spätestens durch die Diskussionen um den Import embryonaler Stammzellen in Deutschland haben auch die Leser und Leserinnen von Tageszeitungen erfahren, dass beispielsweise in der jüdischen Religion die Vorstellung existiert, dass der sich entwickelnde Mensch erst nach 40 Tagen beseelt wird. Anders als im Christentum, wird der Embryo vor diesem Zeitpunkt nicht als menschliches Wesen angesehen. Wir werden später von Professor Steinberg und den anderen Referenten und Referentinnen mehr dazu hören.

Es ist jedoch wichtig, in diesem Zusammenhang daran zu erinnern, dass solche Unterschiede in der ethischen Bewertung menschlicher Entwicklungsstadien und der Gewichtung ethischer Kriterien und Argumente bei der Beurteilung von Eingriffen in diese Entwicklung nicht nur zwischen unterschiedlichen Kulturen, sondern auch innerhalb der Kulturkreise existieren. Bekanntermaßen gibt es ja nicht nur in Europa, sondern auch innerhalb Deutschlands sehr unterschiedliche Auffassungen hinsichtlich der Forschung an Embryonen und ihrer Verwendung zu anderen Zwecken als zu denen der Herstellung einer Schwangerschaft, und dies dürfte innerhalb anderer Kulturkreise nicht viel anders sein.

Diese Unterschiede in den Auffassungen innerhalb eines Landes oder zwischen unterschiedlichen Ländern können religiös begründet sein. Denn die modernen reproduktionsmedizinischen und genetischen Verfahren provozieren nicht nur grundlegende anthropologische, sondern auch spirituelle Fragen, die die Fundamente der menschlichen Existenz betreffen. Dennoch ist offen, wie weit die Entscheidungen der Menschen und die gesellschaftliche Praxis im Zusammenhang mit dem Schwangerschaftsabbruch, mit der *In-vitro*-Fertilisation oder mit der Verwendung menschlicher Embryonen zur Herstellung von Stammzellen von religiösen Vorstellungen und Normen beeinflusst sind. Denn diese Techniken schaffen zum einen neue Tatbestände, für deren Bewertung unter Umständen nicht einfach auf existierende Erfahrungen und Muster zurückgegriffen werden kann. Deshalb muss sorgfältig geprüft werden, ob eine Übertragung der existierenden Kriterien und Argumente auf die neuen Sachverhalte und die dadurch generierten Problemlagen angemessen ist.

Zum anderen wird der Umgang mit dem Ungeborenen, mit *in vitro* gezeugten Embryonen und isolierten Keimzellen nicht nur durch religiöse Anschauungen bestimmt. Vielmehr spielen auch soziale und ökonomische Faktoren eine enorm

wichtige Rolle bei der Entscheidung, ob beispielsweise Abtreibungen praktisch und rechtlich möglich sind, ob präferentiell weibliche Föten abgetrieben werden, ob *in vitro* gezeugte Embryonen für Forschungszwecke verwendet werden oder im Reagenzglas selektiert werden dürfen. Darüber hinaus spielen bei der Ausgestaltung des Umgangs mit vorgeburtlichem Leben gesellschaftliche Hierarchien, vor allem aber die Stellung der Frau in Familie und Gesellschaft sicher eine zentrale Rolle.

Weiterhin wäre zu fragen, welche Bedeutung beispielsweise die zunehmende Westlichung des Lebensstils in vielen Ländern für den Umgang mit den angesprochenen Fragen hat, und ob nicht im Rahmen dieses Prozesses eine Anpassung an westliche Normen und soziale Verhaltensweisen erfolgt.

Über die sozialen Faktoren hinaus, die die Regelung des Umgangs mit Embryonen und Föten beeinflussen, sehen viele Staaten beispielsweise in der Schaffung der Möglichkeit zur Herstellung menschlicher embryonaler Stammzellen auch einen Weg, den Anschluss an die moderne biotechnologische Entwicklung herzustellen und Kooperationsmöglichkeiten mit Wissenschaftlern oder potenten Geldgebern aus westlichen Ländern zu erschließen.

Die Antwort auf die Frage, auf welche Normen und Gesichtspunkte sich die Menschen bei ihren Entscheidungen beziehen und von welchen Faktoren die gesellschaftliche Praxis im Umgang mit Embryonen und Föten geleitet wird, ist also keineswegs einfach. Aber eine genaue Analyse könnte vielleicht nicht nur die vermeintlichen oder tatsächlichen Unterschiede zutage fördern, die zwischen den verschiedenen Religionen und Kulturen bestehen, sondern auch viele Gemeinsamkeiten, die sich in der Praxis der Menschen entwickelt und bewährt haben. Sie können ein Ausgangspunkt dafür sein, wenn auch keine vollständigen, so doch partielle Konsense zu finden, und Unterschiede dort, wo sie nicht überwindbar sind, gegenseitig zu respektieren. Dahinter steht auch die Frage nach den Bedingungen der Möglichkeit, aber auch die nach der prinzipiellen Wünschbarkeit einer kulturübergreifenden Bioethik, also eine zentrale ethisch-philosophische Frage.

So weit einige Überlegungen und Gründe, die uns dazu motiviert haben, uns auf unserer Jahrestagung mit den kulturellen Unterschieden–oder Gemeinsamkeiten–im Umgang mit dem Ungeborenen–genauer: mit Embryonen und Föten–zu befassen. Denn eines scheint klar: Angesichts der eingangs skizzierten Globalisierung und ihrer möglichen Folgen kann eine bioethische Debatte über diese Fragen kaum sinnvoll geführt werden, wenn sie Menschen nicht auch als Angehörige einer bestimmten Kultur zum Thema macht.

Wir werden im Laufe des Tages zu den religiösen Perspektiven und den gesellschaftlichen Praktiken in vier Kulturkreisen acht Vorträge hören. Ein volles Programm, an dessen Ende dann im Rahmen einer abschließenden Podiumsdiskussion die Frage nach den Perspektiven einer kulturübergreifenden Bioethik diskutiert werden soll.

## The attitudes of other cultures to prenatal life

The subject of the Annual Conference is “The attitudes of other cultures to prenatal life”. Why this choice of subject? The reason lies in the current processes of globalization, as a result of which distance and national boundaries are becoming increasingly insignificant. We are thereby called upon to consider how other countries and cultures deal with the ethical and legal issues raised by new biomedical developments.

Many of these developments give rise to profound questions concerning our image of man. This applies specifically to processes and actions that affect the beginning of human life. These include not only the termination of pregnancy, but also, and in particular, modern techniques such as artificial fertilization or procedures involving human embryos.

These questions relate not only to the very foundations of our physical existence, but also to the conditions of our individuality, our place in the fabric of the family and society, links with past and future generations, and the system of symbols and norms that binds the members of a given culture together.

The techniques at issue here, such as genetic screening of embryos with a view to *in vitro* selection, cloning, or the production of stem cells, hold out the prospect of important medical advances. For this reason, once developed, they are quickly taken up and implemented in different countries. The last few years have witnessed a biotechnology boom in the Far East in particular, resulting in research conditions that many Western scientists too find extremely attractive.

The ethical and legal traditions of these countries, as well as the conditions of public debate, differ in some respects from those of Western nations, with consequent divergences or delays in their regulation. It is therefore a relatively simple matter to transfer activities in the field of biotechnology to these countries if conditions at home prove unfavourable. This applies mainly to activities that are regarded as problematical or even banned in Western countries.

Let us illustrate this by an example. A recent report in the journal *Nature* (14 October 2003) described a problematical experiment undertaken by an American specialist in reproductive medicine together with Chinese colleagues in China. To treat



a woman in whom artificial fertilization had failed because her embryos were manifestly incapable of development, the team fertilized some more of her egg cells. Shortly afterwards the nuclei were extracted from these cells and introduced into a fertile woman's fertilized egg cells from which the pronuclei had been removed. It was hoped that these cells would help to overcome the embryos' developmental disorder. After the embryos produced in this way were transferred to the woman's body, they did develop for a few weeks, but then died.

What is noteworthy about this case is the use of a technique very similar to cloning, based on nuclear transfer. It is true that an adult was not cloned in this instance, the aim being to optimize assisted reproduction. However, since the procedure is controversial and carries a high risk both for the embryos and for any children arising from them, approval for these experiments is unlikely to have been forthcoming in the United States. At the time when they were conducted, they were manifestly still permissible in China.

Of course, China too has no interest in becoming, so to speak, the world's ethical dumping ground, and the country has reacted to these and similar activities. The *Asian Wall Street Journal* for 13 October 2003 reported the recent implementation of a directive intended to stiffen the regulation of research in reproductive medicine, under which such experiments may possibly be banned in the future.

Yet this example shows that, given such regulatory differences between countries, scientists or industrial enterprises can quickly remove themselves from the sphere of application of regulations felt to be too restrictive or from a critical environment, transferring their activities to countries with a laxer regulatory framework or none at all.

In spite of these challenges and the global scale of activity in the field of biomedicine, to date there are no agreements providing for the binding regulation of the application of new techniques at international level. Although some countries have adopted specific laws, national instruments are relatively powerless when confronted with the extent, pace and global nature of developments. For this reason, great importance attaches to the drafting of internationally binding legal instruments, as is being attempted, for example, with the convention on cloning.

However, these international efforts to arrive at a common solution face major hurdles, due in part to cultural diversity. Unlike the findings of the natural sciences, which lay claim to universal validity, the ethical and normative notions underlying people's feelings and decisions are, at least in part, "local" – that is to say, they are influenced by the religious and secular traditions, precepts and practices of individual cultures. These different traditions may be reflected in national legislations and, at global level, give rise to greater or lesser divergences in the treatment of bioethical issues and problems.

Such differences emerge, for instance, in answers to the question of when human life, or human life worthy of protection, commences. At the time of the debate on the import of embryonic stem cells in Germany, if not sooner, newspaper readers and others learned that the Jewish religion, for example, teaches that a developing human being acquires a soul only after 40 days. Unlike Christians, Jews do not regard an embryo as a human entity before this time. We shall hear more about this later from Professor Steinberg and the other speakers.

In this connection, however, it is important to remember that such differences in the ethical valuation of human developmental stages and in the relative weighting of ethical criteria and arguments in the assessment of procedures affecting prenatal development exist not only between different cultures but also within one and the same culture. As everyone knows, a huge diversity of views are expressed, not only in Europe but also within Germany, on embryo research and the use of embryos for purposes other than bringing about a pregnancy; and the same no doubt applies within other cultures too.

These divergent conceptions within a country or between different countries may have a religious background. After all, modern procedures in the fields of reproductive medicine and genetics raise not only profound anthropological issues but also spiritual ones concerning the foundations of human existence. Yet it is an open question how far people's decisions and social practice in relation to pregnancy termination, *in vitro* fertilization or the use of human embryos to produce stem cells are influenced by religious notions and tenets. This is because, firstly, these techniques give rise to novel situations, which cannot always be evaluated simply on the basis of existing experience and patterns. Careful consideration must therefore be given to the appropriateness or otherwise of applying existing criteria and arguments to the new circumstances and the associated problems.

Secondly, attitudes to the unborn child, to embryos created *in vitro* and to isolated germ cells are determined not only by religious notions. In fact, social and economic factors also play an extremely important part in deciding whether, say, abortions are practically and legally feasible, whether female fetuses should be aborted preferentially, and whether embryos created *in vitro* may be used for research purposes or selected in a test tube. In addition, social hierarchies – in particular, the position of women in the family and society – are surely also of paramount importance in moulding attitudes to prenatal life.

Over and above the social factors that influence the regulation of actions involving embryos and fetuses, many states also consider that by, for instance, permitting the production of human embryonic stem cells, they can participate in the development of modern biotechnology and take advantage of opportunities for cooperation with Western scientists or for drawing on powerful Western sources of funding.

It is therefore no simple matter to determine the norms and criteria that underlie people's decisions and the factors that govern social practice in relation to actions involving embryos and fetuses. However, a precise analysis might not only throw light on the presumed or actual differences between the various religions and cultures, but also reveal a great deal of established common ground that has developed in the practice of different groups. This could constitute a basis for arriving at a partial, if not a complete, consensus and for mutual respect for such differences as cannot be resolved. Behind all this lies yet another question, of central ethical and philosophical importance, which concerns the conditions for the possibility—as well as the desirability in principle—of a bioethics transcending individual cultures.

These, then, are some of the considerations and reasons behind our choice of the cultural differences—or common ground—in attitudes to the unborn child or, more precisely, to embryos and fetuses, as the subject of our Annual Conference. One thing, after all, seems clear: against the background of globalization and its possible consequences, it is virtually impossible to conduct a bioethical debate on these issues without considering human beings as members of a given culture.

During the course of today's conference we shall hear eight papers on religious views and social practices in four cultures. This full programme will conclude with a panel discussion on the prospects for a bioethics that transcends individual cultures. To allow sufficient time for all these presentations, let us begin immediately with the first paper.

## The muslim perspective

### Introduction

It is difficult to give a categorical answer to the question of the Islamic view of the status of the embryo and of research on embryonic stem cells since Islam does not have a clergy in the hierarchical sense of the term. I shall, however, try not to evade the question with the neat manoeuvre of saying that I am about to set out the views of one Muslim and not of Islam.

I shall present the Islamic view in three parts. Firstly, I shall explain the bases of the decision-making process in Islam, after which I shall describe the main Islamic theological principles regarding the status of the person, life and the embryo before ending with a tentative practical answer to your questions, putting forward the accepted elements regarding what would be unanimously condemned. It seems impossible to define a person (and/or define an embryo) considering medical science alone'. Lawfulness cannot therefore come from science alone and bioethics could be considered an answer that lies on the borders of science, philosophy and theology, or – more simply – of faith and law.

### The bases of the decision-making process

In the absence of an official position, it is customary to analyse the lines of thought common to Muslims by drawing on the 3 sources that inspire them: firstly, the Koran, which contains the word of God and the prescriptions for Muslims; then the Hadiths, or the words and exemplary acts of the Prophet Muhammad (Sira) and finally the elements of jurisprudence.

The latter have a practical intent, namely to propose the ethical translation of moral principles. These authorities aim to “order what is proper and proscribe what is

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<sup>1</sup> Sève, L., Pour une critique de la raison bioéthique. Paris: Editions Odile Jacob, 1994, p. 418.

blameworthy” (Koran, III, 110)<sup>2</sup>. This involves defining limits and promoting the responsibility of man while reminding him of his basic duties.

The approach of adopting different decision-making levels is illustrated by a Hadith of the Prophet that takes the form of a dialogue with one of his companions, who asked him:

*“On what should I base my judgments?*

*On the Koran.*

*And if the Koran says nothing on the matter?*

*On the Sunna.*

*- And if the Sunna says nothing on the matter?*

*- On the ijma (or consensus) of the companions.*

*And if they have said nothing on the matter?*

*On your own reason.”*

In considering what helps us understand and take decisions, we nevertheless need to distinguish between a definite text (the Koran) and an “open” text, which admits the possibility of being interpreted in many ways and allows reason to enter the process.

This approach proceeds from and is closely related to *ijtihad*, or the effort of discovery, a personal seeking effort. In Islam, reason is the foundation of religion. Islam is the last revelation. For Muslims, a continual procession of prophets was necessary before Islam, but with the advent of Islam the continuity of the Divine message is assured by enlightened reflection. The essential condition is that it must not transform itself into an idol ideology.

Reason cannot work in a vacuum. Reason needs to be channelled. What channels reason is faith. Calling to mind the fear of drifting displayed by certain scientists and manufacturers of reason without faith (we are not far from “neither faith nor law”...), a distinction can be drawn between faith that is chosen and coercive law. To which the subject must submit. Since the Islamic religion does not present itself only as a faith, but also as a rule and ethics of life guiding the behaviour of the believer<sup>3</sup>, for the Muslim a person’s attitude, the law and morality alike all proceed from the act of faith.

<sup>2</sup> Koran III, 110; La famille de’Imran: (trad. J. Berque) Paris: Albin Michel, 1995.

<sup>3</sup> Boisard, M. A., L’Islam aujourd’hui. Paris: Editions UNESCO, 1985.

Therefore Islamic law, which is to say the principles set out in the Koran, illustrated by the Hadiths and extended by the elements of jurisprudence, are based on and implemented at three levels of responsibility: individual, collective and state<sup>4</sup>.

- » individual: affirms the responsibility of the individual. “No man shall bear another’s burden” (Koran, XXXV, 18)<sup>5</sup>. There is, moreover, co-responsibility of act and intention. “Man’s intention is worth more than his acts. Acts are measured by intentions, and every man according to his intentions” (Hadith). Scientific work is valued in Islam and considered an expression of adoration. A person cannot be condemned if their intention is pure, even if they are wrong. Reflection on one’s purpose is therefore at the heart of research in Islam. This could be an attempt to approach science that frees one from the dictatorship of “how?” to tackle the matter of “why?”. We return to Kant’s prescription to consider the self and other as an end, and never simply as a means.
- » responsibility is also collective. “Believers are in mutual relationships of protection: they command the proper and proscribe evil” (Koran, IX, 71)<sup>6</sup>. “Those of you who witness a reprehensible act, put it right with your hands or, if you cannot, with your words. If you cannot do that either, condemn it in your heart: that is the minimum of faith” (Hadith).

I have mentioned this collective responsibility common to all believers, which has a considerable impact in Muslims, due to the strong societal reactions which questions of bioethics could arouse. Indeed the mu’tazilite philosophers had no fear of defying the Omayyad caliphs when they said: “No one is bound to obey a creature, even a caliph, when it is a matter of rebelling against the Creator.” This is like Sophocles’ Antigone, who opposed King Creon: “... I didn’t believe your edicts, which only came from a mortal, were strong enough to break sure laws, the unwritten laws of the gods: they are not something of today or yesterday, but live forever and no one knows their origin”<sup>7</sup>.

A fatwa (or decision on a case of this kind) can come within the framework of this collective responsibility. But a fatwa only concerns and binds its author. It is more of an aid, a profane guide than a definitive spiritual affirmation. “The

<sup>4</sup> Negra T. Un équilibre fragile: droits, responsabilités, liberté. In: L’individu et la société en Islam. Paris: Editions UNESCO, 1994, p. 63-80.

<sup>5</sup> Koran XXV, 18; Le Créateur: (trad. D. Masson) Paris: Gallimard, La Pléiade, 1967.

<sup>6</sup> Koran IX, 71; Le Repentir ou La Dénonciation: (trad. J. Berque) Paris: Albin Michel.

<sup>7</sup> Sophocle. Antigone. Cité par Jean-Luc Aubert Introduction au droit Paris: Presses Universitaires de France, (Que sais-je), 1979.

more one sinks into a fatwa, the more one sinks into the fire.” In the early centuries of Islam, the companions of the Prophet refused to issue fatwas, well aware that they involve committing oneself to responsibility. Because the wiser one is, the more scrupulous one needs to be (in the sense of fearing God) and the more one needs to protect oneself against the sin of pride.

» lastly state responsibility. The state (Caliphate) is at the service of its citizens. It must preserve social cohesion, promoting good and condemning evil (“Order that which is good and prohibit that which is blameworthy, or God will curse you and flay you like I have stripped the bark from this stick.” (Hadith, quoted by<sup>8</sup>). Religion becomes a political concept: it is the link that unites men. “Religion and morality are thus two identical concepts, as the Prophet asserted when asked about the meaning of religion, answering that religion was good morals” (Hadith, quoted by<sup>8</sup>). The relationship between the individual and community can be interpreted on the basis of this “regulator” political foundation: under Islamic law, the notion of public interest (*maslaha ‘amma*) prevails over any other consideration. In the event of a conflict between two interests, one must give priority to the most important”<sup>8</sup>.

## Man, foetus and embryo

The initial premise is respect for life and its sacred character. “He who saves a life, saves all humanity, and he who kills a life, kills all humanity” (Koran, V, 32)<sup>9</sup>. Only God can grant life and only God can take it away. The French National Consultative Bioethics Committee (NCBC) is, moreover, not mistaken regarding the sacred, the mythical character of life when, in opinion No. 8 on “Research and operations on in-vitro human embryos for medical and scientific purposes”, it poses the question of the respect due to the person from their very beginning. The invention of the concept of a “potential human person” is consonant with the respect for life, although as the NCBC text indeed points out, “certain people consider the person to be present in the embryo from conception, others that one can only talk of a person from later stages, but opinions diverge on when this stage occurs: implantation after the sixth day, the appearance of the primitive streak at the end of the second week, the viability phase towards the 24th week or even birth itself.”

<sup>8</sup> Fekih, H., *Penser le social*. In: *L'individu et la société en Islam*. Paris: Editions UNESCO, 1994. p. 101-120.

<sup>9</sup> Koran V, 32; *La Table Servie*: (trad. D. Masson) Paris: Gallimard, La Pléiade, 1967.

According to the Koran, man “was created in the most perfect form” (Koran, XCV, 4)<sup>10</sup>, but one can, for research requirements, act on his body for a specific purpose (we find the notion of purpose here again), with the agreement of the person concerned, or else of their family or a religious leader.

Man, the individual, is also unique. “We have created you of a male and a female. We have formed you in peoples and tribes so that you can know one another. The noblest of you, to God, is the most pious amongst you” (Koran, XLIX, 13)<sup>11</sup>. “If God had wanted to, He would have made a single community of you: but He wanted to test you in His fights. Send floods of good deeds towards God. The return, for all of you, is in Him. He will inform you what your differences consist in.” (Koran, V, 48)<sup>12</sup>. A religious diversity of men therefore exists after they are created from a single source. I interpret this requirement for diversity (each man being unique) as a condemnation of reproductive cloning.

The status of the foetus proceeds from its life. “He formed man harmoniously and He breathed His Spirit into him” (Koran, XXXII, line)<sup>13</sup>. (N. B.: the term “ruh” is translated both as “spirit” and “soul”). For most thinkers, life comes later, and the soul is breathed in on the 40th day. For others, fertilization marks the beginning of the life process.

Life is sacred and protected from the moment it begins, there is no longer a distinction between the fetus, newborn child, infant or adult. One cannot therefore carry out an abortion from this stage on unless the mother’s life is at risk as a result of this pregnancy. Preimplantation diagnosis is effectively prohibited since it could only be permitted for therapeutic and not eugenic ends. The intrauterine diagnosis of a pathology of the fetus is lawful if it allows one to implement a suitable therapy. Conversely, it is possible to terminate pregnancy if the foetus is affected by a lethal congenital defect.

The difficult case of the diagnosis of a severe handicap or defect in the foetus remains. People with disabilities enjoy special protection in Muslim society. It is inconceivable to mistreat them, and this protection extends to the stage preceding birth. More specifically, where antenatal diagnosis is concerned, life is sacred after 40 days’ pregnancy. A doctor is a person who tries to preserve life and not someone who brings death. To summarize, abortion is admissible before the 40th day, and it is lawful

<sup>10</sup> Koran XCV, 4; *Le Figuier*: (trad. D. Masson) Paris, Gallimard, La Pléiade, 1967.

<sup>11</sup> Koran XLIX, 13; *Les Appartements Privés*: (trad. D. Masson) Paris, Gallimard, La Pléiade, 1967.

<sup>12</sup> Koran V, 48; *La Table Pourvue*: (trad. J. Berque ) Paris, Albin Micheal, 1995.

<sup>13</sup> Koran XXXII, 9; *La Prosternation*: (trad. D. Masson) Paris, Gallimard, La Pléiade, 1967.

if the mother's life is in danger. A recent fatwa dating from the Bosnian war nevertheless merits a word. It regards women who became pregnant following rape. In these cases, abortion is permitted if the woman is sincere, frightened of a scandal and has the aim of protecting her honour. Conversely, however, no one can force this woman to abort if she wants to keep the child. This case seems to me to be an interesting incursion, I believe, of the religious into the social to protect from distress.

The embryo and embryogenesis are the subject of a detailed description in the Koran. "— Yes, We created man from a quintessence of clay (*nufta*) then We made it a drop of liquid, placed in a secure receptacle (*fi qararin makinin*), then We made (*khalakna*) it adherence (*alaaqa*), and made the adherence into a chewed lump (*mudgh*), and made the chewed lump into bones, and clothed the bones in flesh, after which We brought it forth as another creation (*An ch-ana Khlakna Akhira*)... Blessed be God, the best of creators!" (Koran, XXIII, 12-14)<sup>14</sup>.

It is the status of the embryo and foetus that guides our answers to the new research on totipotent embryonic cells<sup>15</sup>. This research seems promising, and medical progress is strong value in Islam. In Islam, disease is not a curse. There is no disease that does not have a cure, and it should be sought. Similarly, the concept of redemption through suffering is unknown. "Servants of God, take care of yourselves. God has not created diseases for which he has not provided cures, with the exception of one alone. 'Which one?' they asked. He answered: 'Old age'" (Hadith). However, the new genetic engineering makes one fear the sin of pride. "It is because man was created from mud that the Koran, watchful to protect him from the vanity of preventable pride, reminds him of the humility of his bodily origin and describes the creation and formation of the individual in detail" Habib Fekih tells us<sup>8</sup>.

## Faced with questions of science

When it comes to the question of cloning, a distinction needs to be made between therapeutic cloning and reproductive cloning. Reproductive cloning is condemned. Only God gives life and only God can take it away again. In the process of creation, man may have the illusion in his laboratory that it is he who creates, when he is in actual fact using created cells, the creation itself belonging to God. In addition, cloning scorns the specificity of man, his uniqueness.

<sup>8</sup> Fekih, H., *Penser le social*. In: *L'individu et la société en Islam*. Paris: Editions UNESCO, 1994, p. 101-120.

<sup>14</sup> Koran XXIII, 12-14; *Les Croyants*: (trad. J. Berque) Paris, Albin Michel, 1995.

Therapeutic cloning would be possible under certain conditions, respecting the concept of purpose and intentionality that characterizes and gives value to our acts. Science and Islamic culture integrate the sacred and profane. For a Muslim, science must be useful to humanity, and scientists responsible in line with their knowledge and the eventual consequences of their research.

On a practical level, Islam recognises the advances of medically-assisted procreation, providing that the lineage, the genetic identity of the father and mother are respected. Artificial insemination by a donor that is not the legitimate husband, or the use of surrogate mothers is not authorized.

The question of embryonic reduction surgery has not been formally decided, since it could enable one or two embryos to be kept alive when there is the risk that five or six would be unable to achieve normal development. In such cases, again, therapeutic needs take priority.

Finally, one last point regarding supernumerary embryos that have not been the subject of parental planning. The position of Islam is to refuse the gift of these embryos since the lineage must be respected. These embryos must be preserved or destroyed, since they are still below the threshold of 40 days' pregnancy. Could one carry out research on these embryos instead of destroying them? Could one imagine a subtle distinction similar to that pronounced by the French parliament with the 1994 bioethics laws (studies are authorized under certain conditions while all experimentation is prohibited...)? Or could one compare these to the foetal cells obtained after abortion, knowing that the latter are comparable to an organ transplant obtained after brain death and therefore authorized<sup>15</sup>?

As a last resort, the precept of choosing the lesser of two evils could be interpreted as accepting research on embryos that are no longer the subject of a parental plan rather than destroying them, but in no case accepting that one might envisage creating embryos solely (or specifically) for research purposes. The difference between rule and exception remains: an exception cannot establish a new rule. If science can help treat sterility, for example, the thinking that establishes the difference between the end and the means must be applied. One cannot accept everything, and for the believer there is still faith when research is impotent.

<sup>15</sup> Sachedina, A., *Islamic Perspectives on Research with Human Embryonic Stem Cells*. In: *National Bioethics Advisory Commission (USA): Ethical Issues in Human Stem Cell Research, Volume III: Religious perspective*. Rockville, Maryland, 2000, p G1-G6.

By way of conclusion, when suspended between the ethics of conviction and the ethics of responsibility, or between the ethics of the lesser evil and the ethics of conviction, the question of individual responsibility remains. This responsibility is both the condition and corollary of freedom. If one places oneself on the ethical plane of responsibility and bears in mind that religion is equal to morality from the standpoint of Islam<sup>3</sup>, then the following two hadiths (collected by Nawawi and quoted by Jacques Berque, Honorary Professor at the Collège de France<sup>16</sup>), have special resonance. “This hadith is the pivot upon which the whole of Islam turns.” The following hadith is taken from the same book: “One day, when I went to see God’s Envoy, he said to me: ‘You’ve come to ask me what virtue consists in.’ – ‘Yes’, I answered. – ‘Consult your heart’, he then said to me. ‘Indeed, virtue is putting your soul at peace. Evil conversely, is what establishes itself in you and incessantly returns to your conscience, even if the people you consult on the subject authorize you to do it.’”

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<sup>3</sup> Boisard, M.A., *L'Islam aujourd'hui*. Paris: Editions UNESCO, 1985.

<sup>16</sup> Berque, J., *Relire le Coran*. Paris: Albin Michel, 1993. 139 pp.a

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## **Ethics and pragmatism: “Unborn life”\*\* and women’s health in muslim societies**

### **Background**

Unborn life is about uncertain, undeterminate status—a life not yet fully there, the philosophical notion of potentiality, and the complicated ethical and legal decisions that involve two intertwined lives. Yet the formulation of laws, policies, and programs requires a definitive determination of what unborn life represents and of the criteria that need to be taken into account when decisions are made about the fetus and the mother. The analysis presented here highlights the tension between the need for clarity and a blurred reality regarding two key questions: when the fetus is deemed to be a person, and how a woman’s life, her health, and her welfare are to be assessed in decisions about a pregnancy.

The purpose of this review of the evidence on unborn life in Muslim countries is to bring out the dimension of practice, in order to complement ethical and doctrinal discussions of Islam and what it says about unborn life. Although information about ideas and practices related to the unborn can be obtained by considering the different phases of a pregnancy from beginning to end, most of the available evidence comes from analyses of policies, statistics, and practices related to abortion. Abortion however represents a rather narrow scope through which to try and understand notions related to unborn life, and this paper draws on additional sources including the new reproductive technologies and the practices surrounding pregnancy through which various beliefs related to the fetus are expressed.

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\* The views in this paper are those of the author and do not represent those of the World Health Organization.

\*\* This paper is based on a presentation at the National Ethics Council of Germany Annual Conference, Berlin, October 23, 2003. The term unborn is used in this paper, as it was in the conference as a whole, to refer to life before birth. It is in quotation marks in the title to indicate that the paper does not espouse a specific philosophical position regarding when exactly life begins or regarding the ethical questions related to abortion.



When discussing Islam, it is useful to make the distinction between the term *Muslim*, which refers to practices and people recognized as belonging to Islam, and the term *Islamic*, that is reflecting the essential values of the religion (Arkoun 1984). This paper does not address the question of whether the laws and practices of various countries are Islamic, that is in conformity with the doctrine, nor does it claim to offer results that will hold for all the countries that are considered Muslim (56 countries, if one goes by the members of the Islamic Conference). Rather, it reviews available evidence in order to highlight patterns that may be shared in the region. The geographic area covered here refers to countries with large Muslim populations in the so-called Middle East and North Africa region. Sources on Muslim countries outside this area—Indonesia, Bangladesh, and Malaysia—are also referred to in order to illustrate particular points (see the list of countries in the table below).

The evidence on ideas and practices regarding unborn life can be examined at three related levels:

1. The first is that of the laws and policies of the state, which provide the setting for the decisions that individuals make. This information comes from a global review of laws and policies in the region, in addition to case studies of particular countries.
2. The second level is that of societal practice, i.e. the implementation of laws and policies and the use of services. Here the evidence comes from practices measured at the aggregate level, as well as from available information on what happens in the health sector.
3. The third level is that of individual practice, in particular individuals’ perceptions and behaviors in relation to unborn life. This is what anthropologists refer to as “situated local practices”, and the information comes primarily from observations in the field that bring out the knowledge and practice of individuals, especially women, in dealing with unborn life, and the ethical dilemmas they may face in the process.

## State policies on unborn life: interpretations of Islamic doctrine

Laws related to abortion provide a good proxy for societal conceptions of unborn life. In all Muslim countries, the source of laws related to personal status is *shari’a*, Islamic jurisprudence, which is based on the sacred texts. The Quran refers to three stages of fetal development from the smallest *nutfah* (drop [of semen]), to the *’alaqah* (clot), to the *mudghah* (lump), each seen to correspond to 40 day periods. An important change takes place when *khalqan akhar* (another creation) happens, and ensoulment

takes place. The different *madhahib* (schools of jurisprudence) don’t agree exactly on when ensoulment takes place—at the end of these three periods, i.e. at 120 days, or earlier, at the first stage. All agree however that, although not as grave a sin as killing a child, killing a fetus is morally wrong, and some jurists require that *diya* (blood money) be paid accordingly (Omran 1992, Rogers 1999, al-Hibri 2003). In general, beliefs that the fetus is a person from the time of conception are correlated with restrictive positions on abortion, and conversely, permissiveness on abortion tends to be associated with the belief that the fetus becomes a person closer to the time of birth: the earlier ensoulment is thought to happen, the more limited is the window of time during which abortion is seen as permissible (CERED 1998, Lane 1997).

Religious opinions regarding ensoulment in Islam are only imperfectly mirrored in state laws related to abortion. The laws in place in a particular country do not seem to correspond to the doctrinal interpretation of the Muslim school (*madhhab*) that is dominant in that country. For example, the Shafi’i school, following the philosopher al-Ghazali, holds that ensoulment happens once the drop from the man has mixed with the blood from the woman, but there are different legal opinions regarding the permissibility of abortion in the largely Shafi’i countries of Syria, Indonesia and West Africa. Similarly, the Maliki school tends to be restrictive regarding abortion, but the different states that are predominantly Maliki in North and West Africa differ on how strictly they interpret the doctrine (Bowen 1997, al-Hibri 2003, Omran 1992, CERED 1998). One place where the laws do correspond to the position of the dominant *madhhab* is Turkey: the Hanafi school states that although it is disliked (*makruh*), abortion is allowed if done for a good reason, and accordingly, the law is relatively permissive; other predominantly Hanafi countries however have more restrictive laws, as is the case in Egypt.

Differences in the laws are thus not attributable to religious interpretations. Rather, as has been observed for population policy in general, interpretations of *shari’a* on reproductive matters reflect political factors at the national and international level (Obermeyer 1994, 1995). Many countries of the region inherited restrictive abortion laws from earlier times when colonial or mandatory powers ruled, and these have been difficult to change after independence. In Bangladesh, for example, there were attempts to legalize abortion in the 1970s but they failed (Ahmed 1999)<sup>\*\*\*</sup>. In Iran, abortion has been a controversial part of the family planning program. In 1973, the law had been liberalized on the basis of the approach outlined by Ayatollah Beheshti, a conservative theologian, but after the Revolution, abortion became illegal and is

<sup>\*\*\*</sup>It was following these attempts that the Bangladesh menstrual regulation program was developed (see below).

now only allowed if the pregnancy threatens the woman's health. Before ensoulment, ie before 120 days, the person causing the abortion pays a *dieh* (diya, blood money) to the fetus' lawful heirs, but after ensoulment, abortion is equivalent to murder and is punishable by a higher blood price; physicians may suffer imprisonment or loss of their license (Hoodfar 1995, 2003).

The recent international situation regarding Islam has polarized positions regarding *shari'a*, and made it difficult to change legislation, especially regarding gender issues. As feminists have pointed out, groups fighting over national legitimacy make claims about holding on to tradition and identity, and women's bodies are often seen as the repositories of cultural and religious traditions (Obermeyer 1994). So conservative politics is in turn expressed in restrictions on abortion and rights for the fetus (see for example Hathout 1974). In an analysis of debates surrounding the Cairo International Conference on Population and Development, Bowen argues that at the time of the conference in 1994, the issue of abortion was seen by many Muslims as a question of public morality, and attempts to liberalize the laws became for some equivalent to attacks on their religious principles and values. Hence, there was less flexibility in defining the grounds on which abortion would be allowed, although as Bowen points out, there was in fact greater latitude in Muslim positions than appeared to be the case at first from press reports (Bowen 1997).

As a result of historical factors, national politics and international climate, the laws in Muslim countries are fairly similar in being restrictive, except for three countries that permit abortion on demand and which are discussed below. The table provides a summary of the legal situation in the region. Out of 28 countries, about two-thirds (19 countries) have strict laws which prohibit abortion except for saving the mother's life. Nine countries are more permissive and allow abortion to save a woman's health (United Nations 2001). But the differences between these two groups of countries are not considerable in that they all recognize certain exceptional conditions when abortion is allowed. Another common trait is that in all countries, regardless of whether it is performed to save the mother's life or protect her health, in all countries, the decision to allow abortion rests primarily on health grounds, reflecting the medicalization of issues related to reproduction and the powerful role of the medical profession in defining these issues.

Legal grounds for allowing abortion, selected Muslim countries \*

COUNTRY	CONDITION			
	on demand	to save woman's life	to preserve woman's health	other (fetal impairment, rape, incest)
Afghanistan		X		
Algeria		X	X	
Bahrain	X			
Bangladesh		X		
Comoros		X	X	
Djibouti		X		
Egypt		X		
Indonesia		X		
Iran		X		
Iraq		X		X
Jordan		X	X	
Kuwait		X	X	X
Lebanon		X		
Libya		X		
Malaysia		X	X	
Mauritania		X		
Morocco		X	X	
Oman		X		
Pakistan		X	X	
Qatar		X	X	X
Saudi Arabia		X	X	
Somalia		X		
Sudan		X		X
Syria		X		
Tunisia	X			
Turkey	X			
UAE		X		
Yemen		X		

\* Source: United Nations 2001

There are three exceptions to the generally restrictive stance of Muslim countries. In Tunisia the law changed in the 1960s to make abortion legal if the woman had 5 or more children, or if the pregnancy threatened her health, provided it was performed on the recommendation of a physician and before 3 months of pregnancy. Turkey legalized abortion in 1983 provided it is performed before 10th week of pregnancy. And in Bahrain, abortion has been available on broad grounds since 1976 (United Nations 2001).

It is also important to note that there are considerable variations within the broadly restrictive context of the laws in Muslim countries, and that within a given country, the positions of individual *imams* (religious leaders) can diverge a great deal. The more restrictive positions tend to reflect a general political opposition to what is perceived as interference from the outside, sympathy with the stance of Muslim fundamentalism, and generally conservative positions on gender. In addition, Bowen (1997) suggests that in North Africa, those imams whose opinion is derived mainly from texts are more uncompromising than those who have to advise individuals about real life problems.

Across the region, efforts are made by various groups to foster more liberal views and give priority to the welfare of the mother over the life of the fetus (IPPF 1992). The liberal position recognizes a category of social abortion, performed to protect the health of the mother or to ensure better living standards for the family. This is seen as disliked (*makruh*) but permissible during the first 40 days of pregnancy; during the following period up to quickening at 120 days, only therapeutic abortion is permissible; after that abortion may only be performed to save the woman's life (Boutti cited in IPPF 1992). Given that usually it is not possible to pinpoint exactly the number of days since conception, the lines between the three categories are not rigid and some leeway seems to be built into this approach. In addition, in a number of countries, as well as among Muslim immigrants in countries of the North, there are women's groups who debate and reinterpret the religious texts in ways that are more in line with notions of gender equality and rights and they tend to advocate more permissive positions on reproductive matters (al-Hibri 2000, Mas'udi et al. 1996).

In sum, Islamic doctrine upholds the principle that unborn life needs to be protected and compensated for and takes a restrictive position on abortion. But *shari'a* is not understood in the same way in all countries or even within countries, and there is some flexibility in the different interpretations. In addition, as we will see below, considerable variations exist in the application of the law.

## Health and fertility practices at the aggregate level of society

Several factors influence whether and how the Islamic doctrine is implemented in particular settings: the particular language of the abortion laws themselves, the existence of other laws which temper the consequences of abortion laws, as well as political or economic circumstances.

Egypt provides a good illustration of the factors which moderate the effect of legal prohibitions. The punishment for killing a soul that would normally be invoked for abortion is mitigated by another law stating that there is no punishment for killing in self-defense or to save someone who is in danger. In addition, although abortion is illegal, there are clear monetary incentives for physicians to perform it, since even the least expensive abortion can amount to a good portion of a physician's monthly salary. As a result, although no consensus exists on the part of the medical profession regarding abortion, and despite concerns on the part of physicians that their colleagues may criticize them as behaving against Islam, abortions are available in the private sector (Lane 1997). There are no systematic data on the frequency of abortion in Egypt, and, as in other countries of the region, only estimates are available, based on a few small studies, but abortion is thought to be fairly common, with about one third of all terminated pregnancies estimated to be induced (Huntington 1997), and the practice appears to be higher among private patients and women with higher income.

Moreover, the requirements to bring an abortion case to trial are nearly impossible to fulfill: proof has to be provided of the pregnancy, the interruption of it, and the illegal means used (United Nations 2001). Thus, it is very difficult to obtain the evidence necessary for a conviction, and the police does not intervene regarding abortions unless there is a death, and a body is found (Lane 1997). The legal and moral ambiguity is reflected in the fact that many abortions are performed by women themselves or by lay practitioners using herbs and traditional remedies (*wasfa baladi*) often resulting in health problems (Lane et al. 1998, Seif al Dawla 2000). A similar situation prevails in Morocco (CERED 1998) and in a number of countries of the region: though in principle, there are legal punishments for abortion, prosecution is rare, the practice is tacitly accepted, and it is well known that abortions can easily be obtained from private physicians for a fee.

The case of Indonesia illustrates the ambiguity that can reside in the legal texts, and the consequences this has in practice. The 1918 Dutch criminal code, which made abortion illegal and punished physicians performing them, became part of the law in 1950 when the country gained independence. In the 1970s, the law was interpreted

liberally so that medical professionals could perform abortions to save a woman's health. Later laws, however, were less permissive. Different terms were used in the texts: one, a synonym for abortion, was deemed illegal, while another, an euphemism for it, was deemed permissible if the woman's life was in danger. Thus, abortion continues to have a semi-legal state, with safe abortions not really being legal, and dangerous abortions not really being illegal (Hull et al 1993, Djohan et al. 1999). Several other countries have also moved to a more restrictive interpretation of the law, for example Malaysia (Raj et al. 1998, Kamaluddin 1998), but the laws are not consistently enforced.

The situation in Bangladesh highlights the importance of the label that is used to refer to pregnancy termination. After the failure to legalize abortion in the mid-seventies, the government introduced so-called menstrual regulation into its family planning program. This was a way to deal with the problems of unsafe abortions which at the time represented a high level of mortality for women of childbearing age (Khan 1984). Menstrual regulation (MR) is usually performed at government clinics, by paramedics with limited schooling as well as by physicians, provided that it is no later than 10 weeks after the last menstrual period. It is considered to be a family planning method, and is widely accepted and provided in the country (Ahmed 1999). The interesting feature of the program from an ethical point of view is that MR is performed for the stated purpose of regulating a period, and without a pregnancy test. The lack of pregnancy confirmation and the label of regulation allow both patients and providers to avoid the ethical dilemmas of deciding whether the procedure is taking a life. Health providers in Indonesia similarly do not think of menstrual regulation as abortion since they do not believe that ensoulment occurs before 120 days (Djohan et al. 1999).

In Iran, two physicians must agree that an abortion is necessary in terms of the mother's health, but the fact that health is defined as both physical and mental helps to provide a broader justification. In principle, the husband has to agree as well but it is unclear how strictly this requirement is fulfilled. Physicians vary in their attitudes towards abortion, some having a problem with it—though not necessarily for religious reasons—and hence referring patients to others who will agree to perform the procedure. It is interesting to note that the idea of the *dieh*, the blood money to be paid for the life of the fetus, has come to be incorporated into the physician's fee: doctors will charge an amount which includes their fee plus the *dieh*, which they then pay back to the parents (Hoodfar, 2003). This symbolic measure reflects the continuing notion that a life has been taken and that compensation has to be made.

In the region as a whole, as in many other parts of the world, statistics are not available to assess the extent to which abortion is performed, but estimates suggest that it is relatively frequent (Mudigo and Indriso 1999). Henshaw et al. (1999) estimate that the abortion rate per 1,000 women aged 15-44 was 8.6 in Tunisia and 3.8 in Bangladesh in 1996, and 25 in Turkey in 1993. A survey in Morocco found that 5% married women reported that they had had one or more induced abortions, with repeated abortion accounting for half or more of the total, indicating a lack of family planning among particular groups of women (CERED 1998), and in Egypt the estimate is about 15 abortions per 100 known pregnancies (Huntington 2001).

Health and family planning professionals in the Arab world and the Middle East are convinced that abortion represents a considerable problem, both as a failure of family planning and as a health risk. A report from the 1992 International Planned Parenthood Federation conference estimates that "hundreds of young girls commit suicide because of pregnancy, thousands of unsafe abortions are performed, and thousands of young women come to hospital with self-induced and incomplete abortions". These statements are in part based on information from Tunisia comparing estimates before and after abortion became legal, and showing that following the passing of the 1973 law, septic abortions disappeared, the maternal death rate fell, as did the number of suicides of young women; and also by data from Algeria showing that 30% of women who committed suicide were pregnant and unmarried, and that 2,000 children are abandoned each year (IPPF 1992).

Taken together, the data from these different countries highlight a disjunction between restrictive laws and the practices of the many women who face the problems of an unwanted pregnancy. Observers have noted that the topic of abortion is controversial everywhere and laws are difficult to change (Mundigo and Shah 1999). This is likely to be especially so in Muslim countries, given the polarization surrounding the general issue of Islamic law, and the disjunction between policy and practice will probably persist—as it does in numerous other countries outside the region.

A dramatic illustration of the pressure on the legal sphere that results from rapidly changing practices comes from the new reproductive technologies that have been spreading in countries of the Arab World and the Middle East. Zuhur (1992) and Inhorn (2003) report growing numbers of *in vitro* fertilization (IVF) centres, as well as centers that provide so called "icsy" (intra-cytoplasmic sperm injection) to deal with male infertility. The position of Al-Azhar, the centre for Sunni orthodoxy has been that assisted reproduction is acceptable so long as it does not interfere or modify biological filiation (surrogacy and donor insemination are prohibited), while some

divergences are found among followers of Shi'a Islam regarding the acceptability of sperm and egg donation (Omran 1992, Inhorn 2003).

Observations in the field show a great deal of ambivalence regarding the new reproductive technologies. Inhorn (2003) reports that some of her respondents see the procedures as a solution that is saving many marriages from the difficulties caused by infertility, which usually would lead to repudiation or polygyny. Others disagree and fear the confusion of genealogical lines and the possibility of incest that may come from indiscriminate technologically assisted fertilization. Although they appear in complete opposition, both responses underscore the continuing importance of the biological lineage in the formation of families: the former by showing the length to which individuals will go to have offspring that is biological connected to at least one of the parents, even if the procedure potentially conflicts with religious teachings; the latter by endorsing the view that a fetus belongs to its biological parents, that nature and genes are crucial to the definition of unborn life, and are not simply overcome by upbringing.

### **"Situated local practices" of individual women**

The laws, policies, and public health services regarding unborn life define a complex domain where the rules are imprecise and at times contradictory, and where individual women do not easily find the guidance and help that they need. Studies that have tried to elicit the attitudes of individual women towards unborn life show the complicated options that they have and the ways in which they justify their choices in the face of the ethical dilemmas.

Attitudes towards abortion have not systematically been studied among the populations of Muslim countries, but an opinion poll of women in Bangladesh provides some clues. At the time when the issue of abortion was being debated in the 1970s, a cross-section of women in Dhaka were asked a variety of questions on their approval of abortion given certain circumstances. It is remarkable that although there was no support for unconditional abortion on demand, the vast majority of women (88%) endorsed the practice to save a woman's life, and more than half approved it if the fetus was defective (Chaudhury 1980). Such statistics indicate that women are neither casual about terminating a pregnancy, nor rigid in completely disallowing it, and it is likely that in Bangladesh and elsewhere, the majority of women take moderate positions.

Several studies of Egypt provide a glimpse of how women perceive unborn life, and of the ethical dilemmas they face in cases of pregnancy termination. Few of the

women interviewed after having post-abortion care in an Egyptian hospital report that they induced their abortion (Huntington 2001), but their reports as well as observations at hospitals suggest that women wishing to terminate a pregnancy often find a way to initiate bleeding. They then present themselves at a government hospital asking for D and C (dilation and curettage), which physicians have to provide because the law requires assisting someone who is in danger. The category of incomplete abortion avoids the issue of legality and shifts the situation to one of life-saving care, which is ethically more acceptable for both physicians and patients (Lane 1997).

It is interesting to note that women express the need for a period of rest after an abortion, and that this period is usually of 40 days, the same duration as after the birth of a child. This similarity suggests that at least some women seem to live a of loss of a potential child. When asked about their moral assessment of their actions, post-abortion patients in Cairo express deep faith in God and their conviction that since he is almighty, he is the one who makes the final decision on whether a pregnancy continues or terminates. Women's attempts to induce an abortion can be in vain, and the final responsibility is God's (Abdel-Hady et al. 1997). Thus, the women's religiosity influences them in a way that they take themselves to be exonerated from this undesirable action. These attitudes are echoed in another study of Egyptian women where some said that abortion was *haram*, a sin, while the majority believed it to be permitted. Fewer than a third mentioned religion as a basis for making decisions, and when they did, they said that God would understand their predicament and forgive them (Lane 1997). A similar mixture of guilt and belief in God's forgiveness is expressed by the informants of Seif al Dawla et al. who thought that the decision to have an abortion was *haram*, but that for practical reasons they had to do it anyway. Women feared retribution but at the same time could not imagine that God would want their families to suffer if they had to stop working because of an unwanted birth (1998).

The midwives (*daya*) who provide abortions in traditional settings see the situation as a choice between the scandal and suffering brought on by unwanted births on the one hand, and terminating a pregnancy on the other. Some of the outspoken midwives interviewed in a study in Pakistan had little hesitation about helping women terminate a pregnancy that would have burdened them and their families, and they contrast the position of women who have to face the problem with that of men who appear not to know that abortions happen (Shirkat Gah 1996).

The pain that can be caused by abortion and the efforts to minimize the guilt it creates are expressed in some of the practices found in Iran. Local notions of reproductive physiology in Iran reflect Islamic conceptions (Good 1980) and the colloquial term used for fetus is in fact the Koranic term of *notfeh*. Most women believe that the

fetus starts to "flutter" in utero even before the 3-month mark that defines its passage to the status of a child, and when women feel this movement, they are believed to start to love their baby. Hence, there is a good deal of remorse about abortion. Hoodfar reports the case of a woman who had a difficult D and C operation because the fetus clung to the uterus, and who, 16 years later still felt the pain and anguish that the procedure caused her: the fetus was seen as having a will to stay, and did not want to come out, hence the mother felt that she had killed it (Hoodfar 2003). Another case is that of a rural woman who unexpectedly became pregnant after she thought she had completed childbearing and had been diagnosed with a health problem. She was concerned that people in the village would disapprove of her abortion and would say she was going to kill a baby, so she told her story widely in order to share her difficult predicament and mobilize the support of relatives and neighbors. She later announced that she had started to bleed and therefore that she needed to get care at the larger hospital in the neighboring town. Although everyone in the village knew that she wanted to terminate her pregnancy, presenting it as a miscarriage helped make it more acceptable (Hoodfar 2003).

A study in Malaysia also shows the attempt to redefine abortion as a different procedure in order to lessen the difficulty of dealing with it. The local terminology uses the vocabulary of "cleansing" and "washing" to refer to an abortion, and these words make it easier to think about the practice. Women still have concerns about the precise time at which the fetus becomes "a life" and use ultrasound images to try and decide on the basis of the size and shape of the fetus how developed it is. They make a clear distinction between "a life" which should not be aborted, and the phase that precedes it when it would be permissible, as illustrated in the quote: "If done at the beginning it can be washed. If it is already formed, it is not good, it is a life, isn't it?" (Kamaluddin 1998).

In Lebanon as well, women invoke medical technology in order to make decisions related to abortions easier. In a study of about 300 middle aged women, more than one third reported that they had had an induced abortion in the course of their reproductive lives. The stories they told about why these pregnancies were terminated highlight the role of medical factors, as well as circumstances beyond their control. Women spoke about the accidental ingestion of harmful medicines, about undergoing X-rays before they knew they were pregnant, about a sick husband, or about their own bad health; they also talk about the war circumstances that prevailed at the time when they found themselves pregnant. Although some do refer simply to a mistimed pregnancy or a desire for no more children, most of the stories present abortion as therapeutic in one way or another. By explaining their decisions in this manner, women reduce their own moral responsibility for these actions. Nevertheless, the

texts also express their regrets and their guilt at the mistake they made, using such terms as *haram qatl nafs*, (it is a sin to kill a soul) *dhib bi raqbt* (a sin around my neck), or *rabbi ysamihni* (may God forgive me). They also express their opinion that they should be forgiven (*ma'dhura*) given the circumstances (Obermeyer 2003).

Further analysis of these data shows that the two factors that were statistically significant in explaining the likelihood of induced abortion were socioeconomic status and religion: women of the lowest and highest strata were more likely to report induced abortions, and Muslim women in the sample were 4 times more likely to report induced abortions than (mostly Catholic) Christian women. While this does not prove that Muslim women did in fact have more abortions—it may be that Christian women were less inclined to discuss their experience—it does point to some differences in notions of unborn life between the two groups, and suggests that the Catholic prohibition against abortion probably exerts an influence on the perceptions and behaviors of women of that group.

The reciprocal links between language and perceptions are also vividly illustrated in some of the beliefs and practices surrounding unborn life in North Africa. Several observers have reported on a local term referring to a child that falls asleep in the mother's womb, and remains dormant for indefinite period, which is referred to as the *raqid*, from *raqada*, to sleep. A recent publication (Jansen 2000) reports that the belief is still pervasive in Algeria, Morocco and Tunisia, and that people of different educational or socio-economic backgrounds hold the possibility that a fetus can be *in utero* longer than nine months, and even that it may not "wake up". Interestingly, Malik Ibn Anas, the theologian of the Maliki school dominant in North Africa, is said to have been a *raqid* himself. It is not surprising therefore that the Malikis are the most lenient regarding the duration of pregnancy and that some traditional Maliki writings refer to pregnancies lasting years. Because of this, the *'idda* period that a widowed or divorced woman must wait before she remarries can be set as high as 4–5 years, with some scholars saying it can last up to 7. Although modern laws in North African countries have reduced the legal duration of pregnancy to 9 months or one year from earlier longer periods, the belief in the *raqid* does persist.

Jansen's analysis shows that most often a claim of a *raqid* is used in cases of infertility or miscarriage to alleviate the "blame the victim"-mechanisms: the woman is seen not as a malfunctioning body, but as someone carrying a sleeping child who will wake up. The *raqid* is also mentioned in connection with unwanted pregnancies, and when the outcome of attempts at getting rid of the fetus is not clear. For widows and divorcees, the *raqid* functions to legitimize children born out of wedlock, and for infertile women to make claims on inheritance of husband. More recently, women

whose husbands are away because of migration also use the *raqid* for similar purposes. Jansen argues that the *raqid* is not simply a coverup for extramarital relations but a means by which women try to alter the disadvantageous position that they have under *shari'a*. She suggests that although *raqid* allegations are not necessarily believed, they are often tolerated because even where families doubt the veracity of a claim, they may accept it out of compassion for an infertile wife or a deserted daughter, or out of a desire to protect the honor of the family or continue its line.

The beliefs and practices that are illustrated by these examples are not unique to Muslim women. Comparative analyses of unborn life in other parts of the world show a discrepancy between official and applied practices regarding abortion. Renne (1996) finds that women in Nigeria rely on "practical" strategies to deal with their reproductive dilemmas, rather than on the official positions of their society. The analysis by Nations and others in Brazil (1997) similarly show that there are culturally prescribed methods to provoke menstrual bleeding. These practices are accompanied by a great deal of cognitive ambiguity, expressed in terms such as a "delayed" or "suspended" menstruation, which is not equated with pregnancy. The beliefs, practices, and language used in this case contribute to reinforcing the uncertain cultural and legal zone that "unborn life" occupies.

## Conclusion

This analysis has shown that despite the patchy evidence, it is possible to gain some insights into notions of the unborn by bringing together evidence at three levels—the ethical-legal sphere, the aggregate level of policies and their implementation, and the lived experience of women in different societies. The analysis highlights both the constraints that stem from the religious doctrine and the imperfect correspondence between religious ideas and existing laws in various countries. Most countries have restrictive policies on abortion, but the ambiguity that comes from unclear laws, contradictory policies, and uneven implementation provides a good deal of leeway in practice. Available evidence suggests that abortion is quite frequent in a number of countries, and that the new reproductive technologies have spread rapidly, bringing about unprecedented dilemmas in their wake about appropriate family formation and ideas about the unborn.

A key finding of this analysis is the pragmatism of women in the face of stringent laws and difficult circumstances. In trying to confront the burden of an unwanted pregnancy or the suffering caused by infertility, women call on both religion and folk

notions to reduce their guilt and lessen the moral dilemmas. The analysis also highlights the importance of terminology in defining how unborn life is perceived and how the processes that affect it are judged. The ambiguity that surrounds unborn life often provides a space for resolving difficult situations, and this in turn raises questions about the trade-offs between clarity and obscurity in dealing with this issue.

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## The Status of the Fetus in Scriptural Hinduism

The status of the fetus in Hinduism is informed by the law of karma, which is central to the Hindu world view. In the earliest Hindu scriptures, the Vedas (ca. 1500–800 BCE), karma (literally act) referred to the properly performed rituals that upheld (cosmic, societal, and familial) order. Although this view continued, karma was internalized and individualized by the sixth century; it had become a principle of moral causation – as you act, so you become (*Bṛhadāraṇyakaupaniṣad* 4.4.5). In the classical period (ca. 600 BCE to 600 CE), when the contours of the pre-modern Hindu worldview were established, the law of karma was elaborated.

All acts (including those of mind and speech) were said to create a potency (*bhāvaṇā*) that formed impressions (*saṃskāras*) which would be activated or manifested in the future as an effect (*phala*). These impressions are analogous to modern DNA: coded data that are potentialities for future existence in interaction with the environment. There are two major differences, however. First, biological and psychological data are considered intrinsically moral or immoral. And second, the impressions are passed not from parents to children but rather from oneself to one's own future being in a future life.

When the potency is good, it constitutes *dharma* or *punya*; when bad, *adharma* or *pāpa*. As such, all actions have a moral or immoral character; each will exact a precise ethical retribution. Because there are no amoral actions, there can be no legitimate excuse for bad ones (although the punishment might vary depending on the degree of intentionality). Rightness, obligation, and retribution have their origins in the order that exists at the foundation of the universe (*ṛta*), which is not only embodied in ordinances but also regulated by deities, the law of karma, and the practice of *dharma* (religion, ethics, and law). Evil, too, exists. This explains the gradual decline of *dharma* in each cosmic cycle until the universe is destroyed. At the individual level, evil is understood as ignorance. It has no beginning but can be stopped with liberation. Therefore, people must strive to be righteous—that is, to overcome aspects of the human condition that effect destiny.

The law of karma informs the theory of reincarnation (*saṃsāra*): the belief that existence is cyclic—in both the cosmic sense (with its revolving ages and period

destruction, rest, and recreation) and the personal (the cycle of life, death, and re-birth in various forms such as plant, animal, human, minor deity, or demon, depending on the amount of good or bad karma).

Entry into the human realm (*manuṣyaloka*), which can occur only at the beginning of a *kalpa* (a cycle in the cosmic scheme), is considered extremely momentous, because only in human existence can all the stored (*prārabdha*) karma be eliminated or its effects neutralized through special religious and moral actions. These steps are required for liberation, the highest purpose of existence. Even if the amount of karma is merely reduced, the possibility for liberation in a future life is enhanced. According to the common definition, liberation (*mokṣa*) means transcending the cycles of death and rebirth altogether. Thus, the status of the fetus (*garbha*; *bhrūṇa*) is linked intrinsically with the precious status of *human* birth in the Hindu view of destiny.

## Status of the Fetus: the Medical (Āyurvedic) Texts

The status of the fetus is discussed in Āyurvedic texts such as the *Carakasamhitā* and the *Suśruta-samhitā*, which were evolving compendiums of medical information (probably compiled by guild-like schools) between the third century BCE and the sixth century CE. Āyurveda is defined as the knowledge of life or longevity (*āyus*) with special reference to happiness and unhappiness, beneficial and unbeneficial life (from the perspective of a good destiny that is), and long and short life spans as well and the material, qualities, and actions that influence it.<sup>1</sup> Although Āyurvedic texts are primarily about empirical medicine, the concept of medicine is closely related to the Hindu world view and integrated with Hindu rituals, ethics, and the theory of karma.<sup>2</sup>

### Conception.

One topic of medicine is conception. A woman's fertile period (*ṛtu*) is defined as a state that occurs from the fourth through the twelfth day after menses. Rituals facilitate conception, which can be either unpredictable or impossible. The Dharmasāstras (see below) describe a ritual called "the gift of an embryo" (*garbhadāna*), and even medical texts advocate the ritual enhancement of intercourse to insure fertility. At the end of a woman's menses, she ritually bathes to remove all impurities, beautifies herself with attractive clothing and jewelry, utters a mantra, and then has intercourse

with her husband.<sup>3</sup> The moment of conception is when (1) the *śukra* (father's fluid, translated as "semen" by modern authors) joins with (2) the *artavam* (mother's fluid, literally blood but translated as "ovum" by modern authors), (3) *rasa* (nutritional serum provided by the mother), and (4) the *ātmaja* (that which arises from within the self – that is, the *jīva* and the *sattva*). The *jīva* is the unmanifest life-principle – the soul and subtle body, including the storehouse of karma, with data from "the sensual organs, consciousness, knowledge, wisdom, duration of life (longevity), pleasure, and pain."<sup>4</sup> The *sattva* is the karma that chooses conditions for a particular type of body (in this case human rather than animal or plant) and links the subtle (unmanifest) body (which has transmigrated) with these conditions (which must include healthy reproductive organs) to form the gross (manifest) body. In short, the moment of conjunction is the moment of conception. It begins the process of manifestation, also called "the arising of the conditions of name and form" (*nāma-rūpa*), which involves the change from subtle body to gross body.<sup>5</sup>

### The nature of the fetus.

A corollary of the Āyurvedic view of conception is that personhood exists from the *moment* of conception, because the fetus then has both soul and subtle body, including the karmic inheritance that defines individuality, and therefore personhood. In addition, the growth of the fetus is a continuum without ontological change, although it goes through stages such as the following: a gelatinous lump (*kalala*) in the second month; a form with five protuberances in the third; the transformation of these into limbs and organs along with development of awareness (*cetanā*), the awakening of desires, and the development of movement in the fourth; the emergence of mind (*manas*), awakening from the sleep of subconscious existence, and manifestation of consciousness expressed through the mother's desires in the fifth; the development of subtle body in the sixth;<sup>6</sup> further development of the limbs and organs in the seventh; the concentration of life force in the eighth; and birth in the ninth or following. This approach – the conjunction of the soul and matter to form the person and the gradual manifestation of the potential arising from this conjunction – is informed by the ontology of *Sāṃkhya*, an early philosophical school that was incorporated into the early Āyurvedic texts. The same approach occurs throughout pre-modern Hindu thought with one variant: *Sāṃkhya*'s dualism is changed to other ontologies, non-dualistic (*advaita*) or qualified non-dualistic (*viśiṣṭādvaita*) ones. But this does

1 *Caraka-samhitā Sūtrastānam* XXX: 23. Ram Karan Sharma and Vaidya Bhagwan Dash, trans. and eds. 1976–77. *Caraka Samhitā: Text with English Translation and Critical Exposition Based on Cakrapāṇi Datta's Ayurveda Dipikā*. Vols 1–2. Varanasi: Chowkhamba Sanskrit Series Office.

2 See M.G. Weiss, "Caraka Samhitā on the Doctrine of Karma," in W. D. O'Flaherty, *Karma and Rebirth in Classical Indian Traditions* (Berkeley: University of California Press, 1980) 90–115.

3 *Suśruta-samhitā Śārīrastānam* II.25. Bhishagratna, Kunjalal K., trans. and ed. [1918] 1963. *An English Translation of the Suśruta-samhitā*: Based on Original Sanskrit Text. 2<sup>nd</sup> ed, 3 vols. Chowkhamba Sanskrit Studies. Varanasi: Chowkhamba Sanskrit Series Office.

4 *Suśruta-samhitā Śārīrastānam* III.19.

5 *Caraka-samhitā Śārīrastānam* III.5.

6 *Suśruta-samhitā Śārīrastānam* III.14-16.

not affect the status of the fetus. The only dramatically different approach is found in the *Garbha-upaniṣad*, a minor text belonging to the second or third century CE, which claims that the soul's descent into matter occurs only after the seventh month.<sup>7</sup>

## Status of the Fetus: the Religious Texts

Hindu religious texts consist of two kinds of scripture: *śruti* and *smṛti*. The former is “heard” and the latter “remembered.” *Śruti*, considered eternal and authorless (*apauruṣeya*), includes the four Vedas, the Brāhmaṇas, the Āraṇyakas, and the Upaniṣads. *Smṛti* includes several genres. For the topic at hand, the most important is the Dharmaśāstras, which includes the works of Manu (ca. 200 BCE-100 CE), Yājñavalkya (ca. 100-300 CE), and Nārada (ca. 100-400 CE).<sup>8</sup> Dharma (from the verbal root *dhṛ*, to support, sustain), which is the subject matter, includes information on rituals and religious beliefs, on ethics (including custom, norms, duties, and virtues), and what today is known as civil law (recovery of debt, sale, non-payment of wages, theft, assault, partition of land, and inheritance). Only after the tenth century did distinctions among religion, ethics, and law develop.

### Dharma in the context of the goals and stages of life.

Hindu axiology states that there are four goals of human life (*puruṣārthas*): *dharma artha*, *kāma*, and *mokṣa*. *Dharma* refers to religion, morality, and law; *artha* to wealth and statecraft; *kāma* to pleasure; and *mokṣa* to liberation. *Dharma* is first in the list, because it is the support of, or foundation for, the other three by placing them in a moral framework; that is the foundation for liberation, the final goal. The moral framework provided for *kāma* is important for the status of the fetus, because sexual desire and pleasure are legitimate activities in Hinduism as long as they occur in appropriate contexts. For elite men and women in patrilineal families (the prevailing family structure), this means marriage (although men can have sexual liaisons, in addition, with non-elite women—as described in the *Kāmasūtra*). The purpose of marriage is to produce children in the culturally ideal setting, thus renewing the family and, by extension, society. To encourage men to marry and have children, they

are told to repay their debts to the ancestors by having a son (thus involving their deep identification with the reproductive cycle, which would otherwise be linked only with female biology). Nonetheless, Hindus recognize several exceptions to the norm of marriage. Spiritually evolved male ascetics may bypass marriage altogether as may women who are courtesans, professional performers, or saints.

For several reasons, Hinduism has been pronatal. Many of its policies were formed in ancient times, when life spans were short because of death in childbirth, warfare, famine, and so forth; they had to renew the population. By classical times, Hindus needed big families to provide agricultural labour. After migrations to open up new areas of the subcontinent, minorities wanted larger numbers to ensure their own demographic or political safety. This sociology aligned with religious motivations for protecting the fetus. But despite this pronatal position, there was no religious prohibition of contraception.

### Protection of the Fetus.

The *Dharmaśāstras* describe rituals called *saṃskāras*, which mark stages in the Hindu life cycle. Several, at key stages in fetal development, protect the fetus. One, for instance, occurring at the time of its first movement, prevents miscarriage; another, at six months, prevents premature birth.

The ethical principle of *ahiṃsā*, too, protects the fetus. *Ahiṃsā* is a desiderative noun derived from the verbal root *han* (to kill or injure) plus the negative prefix *a*, which forms a compound denoting not even the desire to harm or kill and connoting non-injury/non-killin – or, put positively, benevolence, protection, and compassion. Beginning in the ascetic literature (the Upaniṣads and then the Yoga-sūtras), this principle entered lists of ethical rules and virtues, which came to be considered common (*sāmānya*) or universal (*sādhāraṇa*) in the Dharmaśāstra literature. The lists usually begin with *ahiṃsā*, as in Manu 10:63. This idea, along with the importance of *human* life in the soteriological scheme, creates a general presumption of the sanctity of life in Hinduism. In general terms, human life provides the opportunity to work out karma. Hindus should protect a fetus, because sheer living allows bad karmas to come to fruition, thereby improving destiny. The moral and spiritual dimensions of human life, of course, improve destiny even more.

### Prohibition of Abortion and its Exception.

The corollary of protecting the fetus is prohibiting abortion. The Āyurvedic texts distinguish miscarriage from abortion. The terms for miscarriage refer in the early stages to flow or emission of the fetus (*garbhāśrava*) and in the later stages to falling, fall (*śramsāṇa*; *pāta*), issue (*prasūti*), and generation (*sūtaka*).<sup>9</sup> One medical text,

7 Julius J. Lipner, “The Classical Hindu View on Abortion and the Moral Status of the Unborn.” In Harold G. Coward, Julius J. Lipner, and Katherine K. Young, *Hindu Ethics: Purity, Abortion, and Euthanasia* (Albany: State University of New York Press, 1989) 54. See also Katherine K. Young, “Hindu Bioethics.” In: *Religious Methods and Resources in Bioethics*, edited by Paul F. Camenisch (Chicago: Kluwer Academic Publishers, 1994) 3-30.

8 These are discussed in commentaries such as those on Manu by Medhatithi (9<sup>th</sup> century A.D.) and Kulluka (13<sup>th</sup>), on Yājñavalkya by Viśvarūpa (9<sup>th</sup>) and Vijñaneśvara (11<sup>th</sup>), and on Nārada by Asahāya (7<sup>th</sup>) - much of this then being condensed into digests.

9 Lipner 1989, 43.

*Kaśyapa's Compendium*, attributes miscarriage to the goddess Jātahāriṅī—a witch in the form of a jealous, infertile woman who snatches the fetuses of evil, selfish, or promiscuous women—and describes how this can be prevented by the mantras of brāhmaṇa priests and amulets of midwives.<sup>10</sup>

Unlike the words for miscarriage, those for abortion denote active killing (*hatyā; vadha*).<sup>11</sup> The act of performing an abortion, which causes an untimely death and robs the fetus of its human life so important to influence destiny, is classified a great crime (*mahāpātaka*: a great falling down) along with other acts such as murder, incest, sexual union with the guru's wife, theft, drunkenness, and eating beef.<sup>12</sup> Whatever a fetus's social status – the child of a slave, someone of low or mixed caste, or an adulterous person – no one may abort it.<sup>13</sup> Because all actions are classified as either moral or immoral, and because abortion is classified among the latter, it cannot legitimately be excused by a woman's ignorance, naiveté, retardation, fear, depression, and so forth. Whoever performs an abortion (*bhrūṇaghni*) is subject to severe punishment: loss of caste (which means loss of occupation as well as ritual and social status) or a heavy fine.<sup>14</sup> Texts do not make clear whether this refers to the pregnant woman or her helper, the midwife, but presumably both are culpable.

Scriptural Hinduism has allowed one exception to this condemnation of abortion: self-defense, which allows a pregnant woman to protect her life in the event of a medical problem. The medical text *Suśruta-saṃhitā* says that a physician should try all means to save both the fetus and the mother, using medical techniques along with mantras; if both cannot be saved, then he should save the mother's life. Moreover, the king should be informed to prevent any charge of homicide.<sup>15</sup> What about defective fetuses? According to Julius Lipner, they too are not to be aborted.<sup>16</sup>

Another possible exception might be rape (defined as union by force “in a secluded place against the woman's will or with a woman who is intoxicated or is disordered in mind or is under a mistake or when she raises a cry”<sup>17</sup>). This belongs to

the general category of *strīsaṅgrahaṇa* (unlawful union), which includes deceit and sexual passion.<sup>18</sup> Of importance here is that “In the case of rape and sexual intercourse by male deceit the woman was not at all punished but she had to undergo a penance (*prāyaścitta*)... for contact with a male other than her husband... After performing *prāyaścitta*, she was restored to her former position.”<sup>19</sup> The scriptures do not make explicit the fact that abortion would be allowed if the rape results in pregnancy. This can be read into the text, however, which is highly sympathetic to the woman's predicament. Had rape been discussed, Hindu thinkers might have acknowledged that it poses a serious moral dilemma. Intercourse because of sexual passion, however, involves a woman's intention and results in more severe punishment. The texts vary, some mandating physical disfigurement, others high fines; the punishment is always, however, half that of man's for the same offense. Although adultery can often be hidden and punishment averted, becoming pregnant causes a serious problem for an unmarried woman or for a married one if her husband obviously is not the father.

In sum, pre-modern Hinduism protects the fetus with one exception (when the mother's life is at stake) and categorically opposes abortion, classifying it as a horrendous crime and punishing it severely. Still, Hinduism might allow some flexibility in the case of rape.

## On Authority and Change

### Classical sources of moral authority.

Organized in descending order, the four sources of dharma are *śruti* (primary scripture and the highest Hindu authority), *smṛti* (secondary scripture), *sadācāra* (the behavior of good people), and *ātmatuṣṭi* (individual conscience). After *śruti*, the eternal and preeminent source, each amplifies or makes explicit the preceding source. It can be argued that protecting the fetus is well-grounded in *śruti*, because texts belonging to this pre-eminent category – such as the *Atharvaveda*, the *Śatapatha-brāhmaṇa*, and the *Bṛhadāraṇyaka-upaniṣad* – explicitly condemn one who has an abortion. The

<sup>10</sup> Dominik Wujastyk, *The Roots of Ayurveda* (New Delhi: Penguin Books India, 1998) 43.

<sup>11</sup> Lipner 1989, 42-43.

<sup>12</sup> *Atharva Veda* VI.113.2; VI.112.3, views abortion generally as a great crime; *Śatapatha-brāhmaṇa* III.1.2: 21 compares it to the great sin of eating beef; *Bṛhadāraṇyaka-upaniṣad* IV.3.22 to theft; *Kauṣītaki-upaniṣad* III.1 to theft and killing parents; *Mahā-nārāyaṇa-upaniṣad* 159; 160; 436-437 to violating the guru's bed, not maintaining a vow of chastity, and drunkenness; and *Viṣṇudharmasūtra* XXXVI.1 to the killing of a brahmin. For Sanskrit passages and discussion, see Lipner 1989, 43-47.

<sup>13</sup> Whatever a fetus's status – the issue of slave, low caste, mixed caste, or adulterous parents – it must not be aborted. See Lipner 1989, 50-51.

<sup>14</sup> *Āpastamba-dharmasūtra* 1.7.21.7-8 prescribes loss of caste; *Manu* V.90 prohibits ancestral libations of water; *Yājñavalkya-smṛti* II.236 prescribes a large fine.

<sup>15</sup> *Suśruta-saṃhitā Cikitsasthānam* XV 1-11ff.

<sup>16</sup> P. Ray, H. Gupta and M. Roy in *Suśruta Saṃhitā: A Scientific Synopsis* (New Delhi: Indian National Science Academy, 1980, 22) claim that according to this text a deformed fetus may be aborted. But Lipner (1989, 66 note 47) remarks that “such *laissez-aller* cannot be justified textually”.

<sup>17</sup> Kane III:531.

<sup>18</sup> Rape was considered a horrendous crime and the punishments were extreme, although they varied according to the caste of the woman raped. For rape of a woman of higher caste than the man, this involved confiscation of all property; capital punishment was proscribed (until capital punishment itself was condemned). For rape of a woman of the same caste as the man, it involved confiscation of all property, castration, and public shaming. For rape of a woman of lower caste, half this punishment was demanded (whatever that might mean). Intercourse through deceit of a woman (defined as involving a trick, pretence, or intoxicant) was also recognized as an unlawful union; the punishment was confiscation of all property, branding on the forehead with the sign of female genitals, and banishment from town (Kane III: 531-532).

<sup>19</sup> Kane III, 532-533.

*Āyurveda* has come to be considered a fifth Veda in some circles, which reinforces the scriptural authority of Hinduism's radical protection of the fetus. And *smṛti* passages – such as *Gautama-dharma-sūtras* or *Manava-dharma-śāstra* (Manu) – reinforce this pre-modern view.

### Hermeneutical scope for change.

The only remaining question, then, is whether Hinduism has any way of changing its position in a way that could still be recognized as Hindu. When it comes to some other problems, Hindu thinkers have recognized the need for reinterpretation or at least that other legitimate interpretations are possible. In the past, after all, commentaries on key scriptures gave rise to six systems of philosophy, all recognized as Hindu. They have recognized the degree of intention (such as compelling motive, submission to coercion, innocent stupidity, and so forth) when assigning punishment. They have recognized that the possibility of conflict between ethical principles (truth, say, and *ahiṃsā*) or between principles belonging to *sāmānya dharmas* (common ones) and *viśeṣa dharmas* (particular ones in the sense of gender, caste, region) – the command not to injure/kill, for instance, versus the warrior's duty to protect even if that requires doing so. They have recognized the existence of some insoluble moral dilemmas. They have generally erred on the tolerant side of ethical issues, being willing to recognize, at least initially, local customs.<sup>20</sup> And they have developed many hermeneutical strategies that foster change. The *Kalivarjya* prohibitions in the tenth century argued that people are no longer accountable to a high moral standard, for instance, because there is so much unrighteousness in the present age, the *Kali-yuga*, based on the belief that dharma automatically declines with every age before the cycle begins again). This opens the door for leaders to redefine some norms, perhaps by consensus in the courts (*samhitis/sabhas*). But none of these arguments have been used in connection with abortion.

I can think of only two ways to allow greater access to abortion on scriptural *Hindu* terms. Both involve ways to respond to radically new conditions imposed by modernity albeit in ways that respect traditional Hindu hermeneutics for change. One way would be to argue that the population explosion is a radically new situation, for instance, which has created a crisis. If so, one could resort to the concept of *āpad-dharma*, the “dharma in distress” (*āpad*), which stipulates that normative behavior may be changed when survival and communal security are threatened. (*Āpad-dharma* is analogous to the concept of self-defense as an exception to the general norm of non-violence.) The application of that principle might look like this: if society must

respond to unprecedented misery, poverty, and environmental destruction because of overpopulation, the norm of opposition to abortion may be temporarily ignored until population growth is brought under control. Once the problem has been solved, of course, society must restore the norm and mark the occasion ritually.

The other way to allow abortion would be to argue that many women are well educated, for the first time in Hindu history, and can therefore contribute to the ethical debate over abortion. Women have yet to take up this challenge in explicitly *Hindu* terms, however. Although they could resort to the *Kali-yuga* argument for a total break with the pre-modern Hindu position, this kind of radical departure still leaves several problems unresolved. How, for instance, could this change be justified? And how could a fundamentalist reaction be avoided? The rhetoric of human rights poses another problem for Hindus, because rights have practical importance only in connection with the duties that they imply – and the duty here is to marry, have children, and protect the fetus. Because no one has stipulated the number of children – despite the popular blessing “May you be the mother of a thousand sons,” an obvious exaggeration for effect or *arthavāda* – women could still fulfill their duty by having small families. On traditional Hindu grounds, moreover, no one can argue legitimately for reproductive “privacy” because of the duty to marry. Hindu women will have trouble justifying abortion on the grounds that the law of karma acknowledges autonomy, because Hinduism acknowledges a limit to autonomy: the principle of “do no harm.” Still, a woman could resort to the concept of *āpad-dharma* by arguing that having this child creates an enormous crisis in her life or reasons of health, rape, or inability to care for the child. This argument could be used only once, however, because repeated use would indicate the use of abortion as routine contraception rather than response to a crisis. A woman has the ethical responsibility for defining crisis, ultimately, because her decision will affect her own karmic destiny and, of course, that of the fetus – let alone society at large, which must be governed by norms to protect the vulnerable.

There is another angle to this discussion. Since the classical period, Hinduism has recognized a partial separation between religion (*dharma*) and state (*artha*). Since medieval times, moreover, it has recognized a distinction between ethics and law. The function of Hinduism, according to this schema, should be as moral guide to the state and to its citizens. But this does not mean, even in traditional terms, that Hindu morality must be embedded in state law or that morality and law be the same.

Modern India is a secular state. In 1971, it legalized abortion on demand during the first twenty weeks of pregnancy and even later in cases of danger to a woman's life or mental state, and in connection with rape, incest, or fetal impairment (but not for economic and social reasons). There has been very little commentary by Hindus on this law, either to compare it to the scriptural position or to rationalize the change in Hindu terms.

<sup>20</sup> Patrick Glenn thinks that Hinduism's degree of tolerance and pluralism makes its law distinctive among the traditional legal systems of the world (H. Patrick Glenn, *Legal Traditions of the World* [Oxford: Oxford University Press, 2000] 271-276).

## Postscript: Implications for New Reproductive Technologies Today

Before leaving this topic, a few comments are in order on how the status of the fetus might affect Hindu deliberations on new reproductive technologies. Much controversy over the new reproductive technologies arises from the problem of fetal status. This discussion makes clear that aborting a female fetus after ultrasound would be immoral from a Hindu perspective, because that has nothing to do with a man's duty to repay his debt to the ancestors by having a son. The original purposes of this duty had been to encourage his personal engagement in the necessary task of reproduction by allowing him to identify with a child in his own image and to provide for the continuity of a patrilineal social structure (a son to ensure continuity of the lineage and therefore of the family). This was never to be done by destroying female fetuses,<sup>21</sup> although this is being done today in the name of (male) sex selection blamed on Hindu preference for sons.

The abortion of seriously deformed or genetically defective fetuses has no scriptural discussion, because it was once impossible to know whether a fetus was deformed. Infanticide of deformed or defective children, however, was prohibited by Hindu scriptures, because deformed human life was understood as a punishment for sins in a previous life and killing a damaged new-born would prevent the elimination of bad karmas. Now, with ultrasound technology, detection of defects in utero is possible. If Hindus think that this causes a serious crisis for a woman and family, then they could resort to the *āpad-dharma* exception to the general rule of protecting the fetus. As for selectively reducing the number of embryos during IVF, the general prohibition on abortion would apply because the decision regarding how many should be transferred to the womb could be made in advance to ensure a healthy pregnancy. Therapeutic cloning is slightly different. Several swamis have argued that it should not be done, because karma both as inheritance and as responsibility for the future defines an *individual*; a clone would destroy this individual orientation.<sup>22</sup>

From a comparative perspective, all the major world religions have argued for protection of the fetus as a *general presumption*, although they have differed in the exceptions they allow. By contrast, in the modern world surveys indicate that many people want the choice of abortion, even though they might be reluctant to exercise it for religious reasons. This makes it easy for contemporary lawmakers to argue that there is no consensus within a religion on the status of the fetus, and so the state does not have to be concerned about religious views. But it could also be argued that many

new countries have not had the opportunity to think through the ethical issues involved and find hermeneutically creative ways to adjust scriptural traditions to some of the realities of modern life. Ethics time is always slow time (not the fast time of technological development) because time is needed for reflection and to build societal consensus. If there is not sufficient opportunity to develop a creative hermeneutic to bridge the gap between scripture and new technological opportunities, then there is enormous danger that this will create polarization between the forces of tradition and modernity. And when this occurs, there is real danger that fundamentalisms will develop to reassert the traditional perspective, closing off the window of opportunity for ethically nuanced change without the loss of identity.

<sup>21</sup> See Kane II:508ff for lack of Hindu endorsement of infanticide.

<sup>22</sup> For further discussion, see Katherine K. Young, "Medical Ethics Through the Life Cycle in Hindu India" in Lawrence McCullough and Robert Baker, eds. *Cambridge History of Medical Ethics* (Cambridge: Cambridge University Press, forthcoming).

## Practices in India

### Abstract

Until the middle of the 1970s, scientists had no access to human eggs and embryos, and the latter only after a miscarriage, when it had developed to a stage to be referred to as a foetus. However, with the development of techniques leading to IVF, scientists can now recover women's eggs to fertilize them ex-corporo, in a petri dish. 'Unborn human life' in the title of the conference could in my opinion either refer to the foetus, or to eggs and embryos, or perhaps even semen. In my presentation I will first discuss the practice of abortion, which is legal in India since 1971. In spite of it being legal, most abortions are conducted by unqualified practitioners and in unsafe conditions. I will then discuss the practice of sex determination and sex (pre-)selection and sex selective abortion of female foetuses. Genetic testing of the foetus for reasons other than sex selection is happening only in a limited way in India. Thereafter, I will deal with the proliferation of assisted reproduction technologies (ARTs) for infertility management focussing on transactions in reproductive body parts, such as egg donation, egg-sharing and surrogacy in India based on my on-going empirical research. I argue against the trend towards commodification of eggs, embryos and sperm and trade in these (reproductive) body parts.

### Abortion

An extremely significant development took place with the passing of The Medical Termination of Pregnancy (MTP) Act in 1971, which became effective from April 1972 allowing medical termination of pregnancy up to 20 weeks gestation. Until then the abortion laws in India had been very restrictive. The most important reason given for liberalization was to counter the hazards of the large number of illegal abortions. Since the concept of family planning was already accepted (India was the first country in the world to adopt a family planning programme in 1951-52), it was assumed that liberalization of the abortion law would be met with support rather than opposition from religious and professional groups. The legislation provided recourse

to abortion under broad health (physical and mental) grounds, on eugenic indications, under juridical conditions (such as incest or rape), and for social reasons such as mental or social injury to the mother. The law did not have population control as its stated objective. However, the provisions of the law were liberal enough for those who wished to avail themselves of it to do so. The commission stated: "... abortion also can be used as a means to control family size as is being done currently in several countries. In which case family planning or contraception and abortion are in two parallel categories, both of which lead to population control"<sup>i</sup>. It is clear that abortion is regarded as a family planning method. The population control motive is likely to have played an important role in the liberalization of abortion in India. Women who have two or more children, with the youngest being above three years, when seeking abortion at a government clinic, are pressurized to get themselves sterilized at the same time. On paper, however, abortion is not part of the FP programme and is ostensibly only a health measure<sup>ii</sup>.

The easy availability of abortion did not make it an issue of 'self-determination' for women in India. It is noteworthy that Indian women obtained the right to abortion without a struggle or even a campaign on this issue, whereas it is still an explosive issue in many Western countries – predominantly Catholic countries – as well as in the US, where the opposition to abortion is the strongest and is organized in a pro-life lobby. This powerful lobby has ensured blockage of funds for reproductive health programmes of the UNFPA in developing countries in 2003.

The MTP Act has been subsequently amended in 2002. Merely the fact that abortion legislation is liberal does not guarantee that women have access to legal abortion facilities. "There has been no significant increase in the number of legal abortions, implying an overall increase in illegal abortions" (Hirve, 2002:15). Mainly the better educated/informed and economically well-off women find their way to legal abortion clinics, while women who are either less educated and/or economically weak fall back on illegal abortion services. Though abortion policies do not require spousal or third party consent for termination of an unwanted pregnancy (except in the case of a minor), in reality abortion providers often insist on it and this may become a barrier to access safe abortion facilities (Hirve, 2002). In India, the incidence of illegal abortions is still alarmingly high; at least 10 times as many illegal abortions are carried out as legal ones and at least 80 percent of women admitted to hospitals with complications have had abortions performed by unqualified people. Around one-tenth of maternal deaths in the country are due to septic abortions. About 4.2

million induced abortions take place every year. A high percentage of women seek help for abortion at a late stage of pregnancy. As in many other developing countries, in India this is due to reasons such as "internalized abortion shame", lack of confidentiality, ignorance of their legal rights to abortion, ignorance regarding the availability of legal abortion facilities and above all due to inadequate health care services.

### Use of the abortion pill (RU 486)

After years of research at various hospitals in India the abortion pill (mifepristone) is now one of the methods of abortion offered at private clinics as an alternative to suction/curettage. The Drug Controller of India has licensed its use for pregnancies under seven weeks gestation only on the prescription of a gynaecologist, restricting access to urban areas. It could replace most abortions, performed in the first 10 weeks, which is currently about 80 percent of surgical abortions.

It could be offered as a once-a-month abortion pill, which is easier to take than a daily contraceptive pill. To some it offers an easier method to rationalize their way out of the guilt associated with what they consider as killing an unborn baby. Wrong use of RU 486 is very likely even though abortion is legal in India. As most women come for abortion at a late stage of pregnancy, this method may not be the most suitable (RU 486 is recommended for pregnancies under 7 weeks). Also it requires four visits to the clinic which many women may not be able to make for various reasons. Besides, the abortion pill may be sold over the counter due to lack of a strict control on drug provision and consequently used without the necessary supervision. If RU 486 becomes commercially available, that is without a prescription over the counter, it is likely to result in a dramatic rise in the number of abortions. Also, there may be an increase in the number of women suffering from the consequences of incomplete abortions, including carrying a malformed child. Women could use it without the supervision of trained health workers. They are less likely to have access to the necessary information for the proper application of RU 486. When complications occur, medical help is likely to be inaccessible to them.

## Sex-selective abortion

### Sex determination and sex (pre)selection: Getting rid of females even before they are born

The technique of amniocentesis was first introduced in India in 1974 at the All India Institute of Medical Sciences (AIIMS) in New Delhi to detect foetal abnormalities. By 1975, it was known that the test was being used for conducting sex-selective abortions. The AIIMS stopped performing the tests in 1979, when the Government of

i Ministry of Health and Family Planning, Government of India (1966), *Report of the Committee to Study the Question of Legalization of Abortion*, p. 40.

ii Nair, Amrita 'The variety of ways', *Free Press Journal*, Jan. 13, 1991.



India banned the misuse of medical technology for sex-determination in all government institutions. Then came reports from Amritsar and Bombay of private gynaecologists offering the test. This marked the beginning of privatization and commercialization of the technology.

Dr. Bhandari of the New Bhandari Hospital in Amritsar announced his unique savings scheme in a handbill with this tempting slogan: “Spend Rs. 500 now and save Rs. 50,000 later” – meaning, spend a paltry sum now on the test and, by comparison, save a huge amount later which one may have to spend on the dowry of a daughter. This was a call for sex-selective abortion without explicitly saying so. The advertisement referred to daughters as a “liability” to the family and a “threat to the nation” while exhorting women to avail themselves of the services of the clinic to escape this danger (Mazumdar, 1994:3). Since then, prenatal diagnosis has grown into a thriving business of sex detection for the purpose of selective abortion of female foetuses in a society where there is pressure on people to have not more than two children and a preference for male children is very strong.

Clinics providing prenatal diagnosis facilities including amniocentesis and ultrasound scan mushroomed even in the remote corners of India. The techniques became household words, even in rural India where otherwise illiteracy prevails and there is a lack of basic facilities such as clean drinking water and electricity. The question is: is it appropriate to use these prenatal diagnosis tests in India unless there is a family history of a hereditary disease, where the woman’s average age at marriage and at birth of first child is still rather low (around 18 years) and childbearing ends by mid-thirties? Besides, unhygienic conditions in which tests may be done could result in reproductive tract infections, thus bringing about extra health risks.

A majority of doctors who offer sex determination tests consider they are offering a humane service to women who do not want any more daughters. Some acknowledge that it is wrong but unavoidable in the Indian social set-up. Most are of the opinion that it provides an effective method of family planning. What is particularly disturbing is that medical practitioners have hailed these technologies as an important tool in the promotion of population control programmes in India. Sex determination and selection technologies are offered to plan a so-called ‘balanced family’. This concept of a balanced family has a clear sexist bias. Hardly any couple with one or more sons would be expected to get rid of a male foetus and have a daughter to balance the family. As sex determination tests do not guarantee the birth of a male child, a woman is likely to have (more) abortions, not for medical or social reasons but just to achieve this so-called balanced family. The new slogan of the Indian family planning programme, NRR 1 (Net Reproductive Rate of 1), not more than one daughter per couple, with the logic that fewer women means less reproduction, is likely to exacerbate this practice. The basic motive of practitioners is clearly money-making which is cloaked in the argument of offering ‘choice’ to women for ‘family

balancing’, merely an euphemism for aborting female foetuses. It is the doctors who in the first place made it known that the test could be used for the purpose of sex determination. In fact, it has been pointed out that when these technologies could have been used with some justification, as in the case of pregnant women who were exposed to the gas leak in Bhopal, no doctors came forward to offer their services.

An important consequence of the use of such techniques for sex determination and preconceptional sex selection is an imbalance in female-male sex ratios, especially in societies where a preference for male children exists. India has an already low and almost steadily decreasing female-male sex ratio in contrast to most developed countries, 972:1000 in 1901, 933:1000 in 1981, 927:1000 in 1991; 933:1000 in 2001 (Government of India 2001 Census figures). Regional variations in sex-ratio are further evidence of the bias against girls, particularly in states where female literacy is low. Sex ratios in the states of Haryana (861), Punjab (874) and Uttar Pradesh (898) females to 1,000 males are evidence of this. Also, the sex ratio among under-six year olds in states such as Punjab and Haryana has shown a sharp adverse decline against females, clearly due to the use of sex-selective abortions. The social consequences for girls and women of this unfavourable sex ratio are bound to be serious. Although there are those who argue that the market forces of supply and demand will result in women acquiring a higher status once they are in short supply, research studies on societies with adverse female sex ratios have indicated the presence of customs like polyandry (which in reality means being used by more men), abduction and purchase of women. Also, adverse sex ratios are bound to increase the incidence of rape, prostitution and violence against women.

The Indian government has been under such severe pressure from the international population establishment (including the UNFPA) and institutions such as the World Bank and the IMF to reduce its population growth that it did not take effective measures against this systematic killing of females only on the basis of their sex. Use of modern technologies to bring about population reduction in nations of the South is frequently advocated in the Western media, either in relation to hunger and poverty or in connection with environmental degradation.

In 1988, the State Government of Maharashtra banned the tests for the purpose of sex determination and on 26th of July 1994 the tests were banned at a national level by the Government of India through an Act of Parliament. The law which came into operation on 1st of January 1996 was in response to a strong campaign against the practice by the Forum Against Sex-Determination and Sex-Preselection Techniques (FASDSP), formed in October 1985, and Indian women’s health and rights advocates. The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1995 requires that all prenatal diagnostic centres should be registered and that records be maintained of all prenatal diagnostic procedures performed. The indication for carrying out the test must be specified and recorded in each case, and

there are heavy penalties for misuse. Gynaecological clinics are supposed to prominently display a sign which states that they do not provide sex-selection services, which is a punishable offence. Medical practitioners or laboratories performing the test for sex selection will lose their licence to practice if found guilty. It also makes not only the woman asking for a sex determination test but her husband and relatives co-offenders. The legislation has several drawbacks and loopholes (which I shall not go into here), the most important being how to ensure that the law is implemented. How will those who misuse the technology (both clients and providers) be tracked down and convicted? Who is going to be able to discover the real reason for amniocentesis and ultrasound done in a clinical or diagnostic laboratory? Often the amniocentesis, chromosomal analysis, or ultrasound and abortion are done at three different places; no records are kept of the chromosomal analysis, or ultrasound and its findings, the results are communicated only verbally.

As it appears from Emily Buchanan's documentary film *Let Her Die* made for the BBC (1993)<sup>iii</sup>, unscrupulous doctors are bringing the sex-detection service to the customers' doorstep by driving around with a portable ultrasound machine in their car. Those who are responsible for enforcing this legislation hold the same values regarding son-preference. One of the doctors who provides the technology, interviewed for the film, shows the futility of legislation when he very brazenly asks who is going to stop this practice when even high government officials, including legislators, and enforcers of law bring their daughters and daughters-in-law to be tested. Legislation to regulate the use of prenatal diagnosis technologies has made it subject to checks and balances outside the medical profession. Banning it makes it a criminal offence, and gives a powerful weapon in the hands of those opposing it and working towards eliminating it, justifying and valourising their efforts in this direction. A survey done by Arora and Desai (1990) showed that most young women doctors strongly opposed the misuse of sex determination tests. In their opinion a legal ban could help them refuse the test to clients who demand it. Many doctors however provide the service to women, because the latter ask for it and will get it elsewhere if they do not get it from a doctor who does uphold the law. The legislation has not proved to be effective due to a lack of monitoring and enforcement machinery, and the practice continues.

A public interest litigation was filed in the Supreme Court in 2001 by activists and social researchers working on health issues. The Court directed the state governments to enforce the PNDT Act and file an affidavit regarding action undertaken. It also directed nine companies to provide details of ultrasound machines (11,200) sold to clinics in the last five years. Medical associations, such as the Indian Medical Association, were asked to provide details of members using the machines. Since the Supreme Court directive, some (16,000 out of 25,000) ultrasound machines have

been registered. Whether the legislation will act as a deterrent is yet to be seen. There has not been a single conviction in all these years<sup>iv</sup>. A court case is currently pending against a prominent clinic in Mumbai, which did not display the sign and openly advertised sex (pre)selection services on its website even after the ban.

There are different opinions about whether legislation is the answer to this form of large-scale abortion of female fetuses. Madhu Kishwar, editor of *Manushi*, a journal on Indian women, in an article (Kishwar, 1993: 113–115) written while the Bill was still pending in Parliament, expressed serious doubts that legislation would have the desired effect. In her opinion “statist measures such as banning the test and punishing those who go for it, are likely to be both ineffective and counterproductive”. Apparently the clinics now give the result only orally, thus it is difficult to prove that they are still performing the tests (Kishwar, 1995). Due to the lack of an effective enforcing and vigilance agency, as experience in Maharashtra has shown after the test was officially banned there, it is likely to become a clandestine practice offered at exorbitant rates (as in countries where abortion is illegal, it has led to the flourishing of backstreet abortions), where quality of care cannot be guaranteed.

Opinion is divided over whether the woman who goes for sex determination tests and abortion afterwards should also be punished. The FASDSP and many others see her as a victim rather than a culprit. They argue that by punishing her, one is ignoring the social reality in which women are compelled to produce male offspring in order to improve their status in society. It is clear that it is societal and family pressure which force a woman to abort a female foetus, specially when there is also pressure for a small family (one or two children) by the State. Some others disagree. They point to the fact that a number of highly educated women from the upper middle classes are quite determined in their desire to undergo a sex determination test and abortion afterwards and are not under any compulsion by their husbands or their families. They see themselves as consumers who should be able to get the service they want as long as they can afford to pay for it. This was also the argument of one of the prosperous-looking women interviewed for the film *Let Her Die* when she says: “It’s like this. I have a black suit. I want a green and yellow suit too. I have a choice. I have two girls already, now I want a boy.”

Although I agree with Kishwar regarding the difficulties of making the legislation work and that social attitudes cannot be changed by legislation alone, in my opinion, it should not be posed as an either/or question. Passing laws banning such practices and raising awareness regarding such issues and working towards changing the social climate which nourishes these practices ought to go hand in hand. And that is where women activists have been playing an important role.

iii Buchanan, Emily (1993), Assignment: Let Her Die, BBC TV, Broadcast on 2 October, 1993.

iv Krishnakumar, Asha, What the laws says, *The Hindu*, Dec. 14, 2003, p. 14.

Reproductive technologies can be misused to intensify the oppression of women, particularly within cultural settings where women already have a low status in society as in India. Female children and women are seen as inferior beings. Their birth is mourned and their death is sought by various means. In such a context the (mis)use of technologies for sex determination is hardly surprising. The practice of this has added yet another dimension to the violence against women both within and outside the home. Technology does not change this ideology, only exacerbates it, with more groups taking it over. The misuse of these technologies usually followed by an abortion to pre-select the sex of the child in favour of males, violates the dignity of women as human beings at an ideological level. Female fetuses are liable to victimization on the basis of their sex alone even before they are born. The sexist bias is what distinguishes female foeticide from abortion in general. Also, the fact that women themselves come forward to undergo these tests due to the pressures of patriarchal family structures and values comes as no surprise. What is particularly disturbing is the scale on which this sort of selective abortion is practised, as compared to the number of female children dying due to neglect or even by active killing (infanticide). Technologies for sex (pre)selection, whether it is pills based on Ayurvedic concoctions, or modern technology such as ultrasound, or pre-implantation diagnosis, undermine women's struggle for equality (cf. Gupta, 1994').

Scientists discover new methods and some medical practitioners find ways and means to get around what is not allowed. There is great interest in sex-preselection technologies used in artificial insemination and through pre-implantation diagnosis of embryos in IVF; sex selection is already in practice in these cases. At the moment these are less successful, but more expensive options; also, awareness about them is low. Only in early 2003 was the PNDT Act amended to include pre-conception techniques as well. The sex determination campaign demonstrates how concerted public opinion and action can be successful in exposing certain undesirable trends and even discredit and outlaw them. The struggle continues; the most important level at which the struggle is being conducted by women's rights organizations is the questioning of ideologies and traditions which lie at the root of such practices, the socialization of people and how consciousness is formed.

v I try to demonstrate that when patriarchal ideologies meet up with ideologies of development which, on the one hand, marginalize women and, on the other, are based on population control (emanating from the "population bomb" theory) and use modern technology as their handmaidens, the very existence of the girl child is threatened.

## Genetic testing of the foetus

Most people in India are completely unaware that what they know as 'sex tests' or 'Boy-Girl test' can diagnose birth defects. The most common application of genetic testing in India is related to reproduction of which prenatal diagnosis is the most important. Congenital malformations and genetic disorders have become important causes of mortality in the perinatal period. The commonest indications for counselling are repeated miscarriages, identifiable syndromes, chromosomal disorders, mental retardation, primary amenorrhoea and high-risk pregnancies. An increasing (although percentage-wise still very small) number of Indian men and women are finding their way to specialist clinics to check their genetic 'compatibility' and to find out whether they'll have healthy children (Srikanth et. al, 2002). An increasing number of pregnant women undergo prenatal (genetic) diagnosis to prevent the birth of children who may be affected.

There's a demand for such tests because an abnormal baby is an economic burden on the family. Some want the tests done so that they are prepared beforehand.

There is very little testing of familial history in India. There is more faith in an astrological horoscope caste at the birth of a child than in a genetic horoscope, and this may take long to change. In the cities pre-natal check-ups of pregnancies occur in clinics and thus congenital malformations and genetic disorders may get diagnosed; they are increasingly reported as important causes of perinatal mortality. However, communicable diseases remain the main cause of mortality, including infant and child mortality, with there being an enormous variation in incidence among the different states in the country. The prevalence of consanguineous marriages in certain communities such as Muslims in North India, and in South India, and to a lesser extent among the Sikhs and Maharashtrians, and Parsis significantly influences the prevalence of genetic disorders, according to geneticists.

Genetic diagnosis and counselling services are very meagre; specialist genetic counselling is available at about 25 centres in the country (pers. communication I. Verma, 2002), mostly in the big cities. Obstetricians, paediatricians, and medical specialists provide genetic counselling and referrals to specialists. The technique of pre-implantation genetic diagnosis (PGD) is used to biopsy embryos at 8-cell stage, and transfer 'normal' healthy embryos through IVF. Inadequate diagnostic facilities and ignorance of the general population regarding genetic disorders/diseases makes it difficult to give exact figures of their prevalence. Given the size of the country's population, genetic diseases affect a small number of people, and in case diagnosed, they are largely untreatable. Although, for the families concerned they pose a considerable burden since rehabilitation facilities for individuals with genetic disorders are very poor.

The economic rationale of preventive screening programmes still needs to be established. Geneticists recommend the holding of awareness campaigns in university

colleges to educate students on hereditary conditions and the importance of screening before marriage. Also, they recommend that simple screening and diagnostic facilities should be provided at district health centres with possibilities of referral to specialized centres. However, testing should be offered in a limited way only to families with a history of a particular genetic condition and other high-risk groups. The Indian Council for Medical Research (ICMR) has drafted guidelines on Assisted Reproduction Technologies (ARTs), but guidelines on genetics are still under preparation. It is important that guidelines are formulated in this field at the earliest to rule out abuses in the field.

## Proliferation of ARTs

Until the middle of the 1970s, scientists had no access to human embryos, except after a miscarriage, when the foetus had very limited use. However, with the development of techniques leading to IVF, scientists could recover women's eggs to fertilize them ex-corporo, in a petri dish. As far as techniques are concerned there is not much difference between what is being offered in India as in infertility clinics in the West. While some clinics are modest establishments, offering artificial insemination through the use of husband's or donor semen and intra-uterine insemination (IUI), some others offer a full range of high-tech services such as IVF including the use of donor eggs/embryos, ICSI for male infertility, surrogacy and pre-implantation diagnostics.

A few private sperm banks exist in major cities. Many large hospitals also have their own sperm banks. Finding donors as such is not much of a problem, but finding donors who meet the criteria is not easy. Service providers place advertisements in newspapers, on college notice boards and on their own clinic web sites on the Internet. Medical students are generally preferred as sperm donors.

Most egg donors in India are relatives or they are participating in egg-sharing programmes at a specific clinic. Women are administered fertility drugs to hyperstimulate the ovaries to produce (multiple) eggs, some or all of which are fertilized. Some embryos are transferred to start a pregnancy, while the remaining eggs and embryos are cryopreserved for future use. Doctors have retrieved up to 30 eggs (normally only one egg is produced in every menstrual cycle). Some doctors replace 4-5 embryos, especially in women above 35, and if there is a history of previous failures (2-3 IVF cycles) and also because affordability of patients is low. This works out cheaper, as there is a higher chance of success. Thereafter, in case of multiple pregnancy, they do pregnancy reduction. Multiple pregnancy rates are, therefore, higher – in one clinic 38 sets of twins were born out of a total of 127 pregnancies. They are

performing ultrasound scans every week. Risks associated with that need to be looked into. Women in their late forties and fifties (post-menopausal women) are also coming for IVF. Some clinics use a consent form, others don't, to register an agreement between the different parties (patient/donor/hospital) involved, regarding the use of left-over eggs. The disposal of oocytes/embryos is often at the discretion of the IVF team.

A variety of sophisticated ART techniques such as ICSI, and MESA/PESA/TESEA are being used to overcome male factor infertility, without understanding the underlying cellular and molecular etiology. Although most couples undergoing infertility treatment are happy to have a child, regardless of its sex, ARTs are being used for sex pre-selection through X-Y separation of sperm to increase the chances of a male child being conceived. Pre-implantation genetic diagnosis (PGD) of the embryo to identify its sex and thereafter transferring an embryo of the 'right' sex into the woman's uterus, is also being practised, although these practices were banned in 1994 as a result of long campaigns by women's health and rights advocates. They are also banned according to the ICMR guidelines on ARTs. There is a case pending in the courts against a leading practitioner who defends women's right to sex selection.

Egg donors in India are recruited through word of mouth and advertisements placed on the web sites of service providers. About Rs. 20,000 may be offered to a donor who remains anonymous. However, many specialists prefer to depend on a known donor instead. In India most egg donors are relatives. Patients are asked to bring their own donors. Some patients get their younger sister, cousin, or sister-in-law to donate their eggs. However, the Draft guidelines (ICMR, 2002), discussed below, do not permit the use of either eggs or sperm donated by a relative or a known friend of either the wife or the husband. Also, no relative or person known to the couple may act as a surrogate.

Specialists say it is difficult to find women (non-patients) willing to donate their eggs, because the process is painstaking. It requires a woman to undergo a series of tests and take injections for 12 days to hyperstimulate the ovaries, after which the eggs are harvested. Few women want to go through this for nothing. This leaves infertile older women wanting to be mothers with one choice – i.e. share the eggs of a younger (non-relative) woman who produces eggs, but can't have a baby for other medical reasons. Usually, poor patients exercise this option to donate their eggs in exchange for costs of their own treatment being shared. Both donor and recipient remain anonymous, and are not allowed to meet. The recipient has to pay half the donor's treatment costs. Both women benefit from this egg-sharing method, but still demand always outweighs supply.

Surrogacy, whether altruistic or commercial, is still rather uncommon in India. Finding someone willing to carry a pregnancy is difficult. Patients have to arrange a surrogate themselves. Surrogate mothers are always related to the couple in some

way. According to doctors, the arrangements are assumed to be altruistic though money or property could change hands.<sup>vi</sup> Surrogacy has no legal status. Doctors often make both parties sign papers to absolve the doctor/clinic of any responsibility.

## Legislation and regulation of ARTs

Initially, a 28-member committee headed by former Chief Justice MN Venkat-chaliah was set up to formulate guidelines regarding ARTs. The Indian Council of Medical Research and the National Academy of Medical Sciences drew up a draft of “guidelines for the ethical practice of ART methods and for taking measures for setting up an independent body through legislation for accreditation, regulation and supervision of infertility clinics in India.” (ICMR, 2002). The committee met in December 2001 to revise the guidelines, which have been available on the Internet since October 2002.

The guidelines aim at standardizing and regularizing the use of assisted reproduction technologies. ICMR has suggested a proper accreditation procedure and registration of centres that follow standardized protocols and guidelines. Couples must go through a mandatory screening for HIV and hepatitis. Egg donation from relatives is to be banned, while commercial egg donation as well as surrogacy will be allowed. In case of surrogate motherhood, adequate genetic screening should be conducted. In the case of unused or spare embryos, the consent of couples concerned should be obtained. While ownership rights of embryos rest with the couple, in case of donations, recipients should remain anonymous. The tissue from dead embryos may be used for transplants or research. But voluntary consent from the mother will be necessary for donation of tissues from an aborted foetus. No research will be permitted on a live aborted foetus. Intact embryos will not be kept alive artificially for the purpose of removing usable material. Foetal tissue from abortions will not be used for commercial purposes. The document discusses the codes in detail in view of the advantages of foetal tissue transplantation for various diseases.<sup>vii</sup> Ova derived from fetuses cannot be used for IVF, but may be used for research. Research on embryos shall be restricted to the first 14 days only and will be conducted only with the permission of the owners of the embryos. Human cloning must be banned. Stem cell cloning and research on embryos (less than 15 days old) needs to be encouraged. IVF clinics are a key source of embryos. There is hardly any serious research going on in

such areas in the country. ICMR feels the need to establish one or two well-equipped centres in the country to carry out genetic diagnosis.

In general, infertility specialists do not want government regulation, while some acknowledge the need for proper counselling, standardized infertility protocols, properly equipped clinics, keeping records, and a natural accreditation registry for assisted reproduction clinics. With no uniform protocol, no auditing, no one to answer to, private doctors generally do as they like. Some doctors claim to follow self-imposed guidelines; others guidelines that have been set in the West, either those of the European Society for Human Reproduction and Embryology (ESHRE), or the American Fertility Society. In smaller centres no one is monitoring the work of individual doctors.

It is important that the law on transplantation surgery and ARTs includes the concept of informed consent. The ICMR guidelines contain a set of sample consent forms for various procedures to be signed by the husband, the wife or both. The concept of ‘consent’ has been refined and now includes informed consent. Informed consent requires that (1) the person whose participation in research is desired must be competent to give consent. (2) He should give it with full knowledge of the risks and benefits, the possible results, appropriate alternative procedures having been explained to him to give his informed consent and he should give his consent voluntarily, without force, fraud, duress, deceit, coercion or constraint, direct or subtle.

As Steinberg (1997: 66) observes for the West, it turns out that in practice, it is also true for India that “the primary function of consent forms is to protect the practitioner from liability, not to protect the ‘patient’ from injury or abuse”. Also, they serve to transfer custody – contractual ‘ownership’ – of embryos from patients to IVF clinics (p. 70).

The question is: Is egg selling, or surrogacy, the same as organ selling or morally equivalent to allowing the needy to sell their kidneys to rich patients? An article in the weekly *India Today* in 1990 – ‘The Great Organs Bazaar’<sup>viii</sup> had drawn attention to the marketing of organs on a large scale in India. The Transplantation of Human Organs Act 1994<sup>ix</sup> made the selling of solid organs (internal organs which have anatomical boundaries)<sup>x</sup> illegal. In spite of the ban the practice continues, although less openly.<sup>xi</sup> However, what is not covered under the Act is the transaction in reproductive

viii *India Today* 1990 – ‘The Great Organs Bazaar’.

ix The Act authorized the harvesting of organs from the bodies of persons diagnosed as brain dead. Also, it forbade the gift of an organ from a live donor other than a parent, child, sibling, or spouse. Exceptions to the Act need to be approved by Authorization Committees set up in each state to implement the Act to ensure that the donor is some kind of relation or close friend.

x “By ‘solid organ’ is meant internal organs including the heart, liver, kidneys and lungs that have an anatomical boundary in contrast to blood, bone marrow and so on.” (Lock, Margaret, 1999, p. 259).

vi Srinivasan, Sandhya *The Times of India*, July 6, 1997.

vii Jain, Kalpana, ICMR code for using human guinea pigs, *The Times of India*, July 3, 2000.

body parts—women’s eggs, male sperm and embryos, as well as surrogacy. The WHO’s International Forum on Transplantation Ethics also doesn’t consider sperm and eggs. It is imperative that legislation at a national and international level is adopted and monitoring mechanisms are put in place to deal effectively with the worldwide growing trade in (reproductive) body parts.

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## The beginning of life – Jewish perspectives

### PART I

#### The sanctity of life

In Judaism, the value of human life is supreme; therefore, to save a life, nearly all biblical laws are waived. This is certainly true concerning killing or hastening death. This approach is in contrast to the secular ethical view which considers human life to be one of many values and often gives greater weight to “the quality of life”. However, even in Judaism, the value of human life is not absolute and in certain rare and well-defined circumstances other values may supercede it. Nonetheless, this does not in any way diminish the supreme value of human life in Judaism.

The obligation to save life is one of the cardinal principles of Judaism because he who destroys a life is as if he destroyed a whole world and he who saves a life is as if he saved a whole world<sup>1</sup>. Almost all biblical and rabbinic commandments (except three: idolatry, murder, and forbidden sexual relations) are suspended in order to save a life. Thus, a dangerously ill patient must desecrate the Sabbath or eat at the Day of Atonement or violate any other prohibition, if necessary, to save his life. Even if someone is coerced to violate biblical laws or be killed, he is obligated to violate them if one can do so in private, even if it means violating religious tenets.

One soul is dearer to God than the observance of all the Torah precepts, thus testifying to the extreme importance of saving a life. This is the meaning of the phrase “*and thou shalt live by them*” (i.e., the commandments) but not die by them. From this interpretation we learn that “the laws of the Torah are not vengeful but merciful and compassionate to bring peace to the world. About heretics who claim that it is prohibited to desecrate the Sabbath even to save a life it is written, *Wherefore I gave them also Statutes that were not good, and ordinances whereby they should not live*”<sup>2</sup>.

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<sup>1</sup> Babylonian Talmud, Tractate Sanhedrin 37a.

<sup>2</sup> Maimonides' *Mishneh Torah, Shabbat* 2:3.

The individual's permission is not required in order to save his life. Even if the person in danger cries out "Do not save me", one should disregard his wishes and save him.

According to Jewish legal rulings, he who desecrates the Sabbath to save a life does not transgress; rather he fulfils a biblical commandment. Even if his rescue attempts are unsuccessful and even if someone else has already effected the rescue, he has still done the right thing and will be rewarded by God. Even if he erred and thought the person was in danger and acted accordingly, he is exempt from any spiritual liability.

Even only a doubtful or possible but not actual danger to life requires the waiving of all Torah precepts<sup>3</sup>. The rule of the majority is, therefore, not invoked when it comes to saving lives because the Torah says that "*you shall live by its* [precepts]". This means that no one should die because of the observance of its precepts.

One may not sacrifice one life to save another life. Therefore, during the birth of a baby, if the head has emerged from the birth canal but the baby is endangering the mother's life, one may not destroy it to save the mother<sup>4</sup>.

Nonetheless, although Jewish law requires that Torah and rabbinic laws be set aside in the face of danger to life, there are a few exceptions:

- » With regard to the three cardinal sins, idolatry, murder, and forbidden sexual relations, a person should rather be martyred than commit them<sup>5</sup>.

The Rabbis also discuss situations other than the cardinal three precepts where Torah laws are not waived even for saving life:

- » If the violation of any Torah law must be done in public and involves a desecration of God's name one should rather suffer death than transgress<sup>6</sup>.
- » During times of persecution, if a ruler decrees that the Jews must abandon their religion or nullify a Torah precept, they should suffer death rather than transgress.<sup>7</sup>

- » In times of war, the danger to each individual is not as important as the welfare of the entire population at war. Therefore, soldiers must obey commands to go to war in spite of personal danger and the principle of individual danger of life is waived.

The principle of autonomy which is dominant in Western secular medical ethics is modified in Judaism. Judaism asserts that man was created in the image of God<sup>8</sup> and that all people are, therefore, considered special and equal. Thus, Judaism requires that people must respect and help one another. Judaism also accepts a degree of patient autonomy in the physician-patient relationship. However, in certain situations in which autonomy conflicts with other fundamental principles of Judaism, such as the obligations to preserve one's health and life, to avoid harming others and to do good for others, the *halakhah* may be in direct conflict with autonomy.

In Judaism, man is said to have free will and choice. This does not mean that he is permitted to choose to live immorally or to violate Torah laws. A person is commanded to live within Jewish laws and ethics (*halakhah*) and thus his autonomy and free choice are restricted. Decision-making in areas which do not involve *halakhah* can be totally autonomous. However, in every life situation in which there is a clear *halakhic* position any Jew, be he physician or patient, must always act within the parameters of *halakhah* and not on one's own inclinations and desires.

## PART II

### The moral status of the embryo

From time immemorial, scientists and philosophers have argued about when life begins. From a purely scientific viewpoint it is impossible to answer this query. In fact, it is impossible to define scientifically the very term "life". Indeed, the definition of life and of the beginning of life involves religious, ethical, legal and social considerations.

Similarly, from time immemorial scientists and philosophers have debated the status of the embryo/fetus. There has been, and continues to be a great dispute as to whether or not an embryo has an independent claim for life and/or whether or not he possesses a status of an independent person.

<sup>3</sup> Babylonian Talmud, Tractate Yoma 83a-84b.

<sup>4</sup> Babylonian Talmud, Tractate Sanhedrin 72b; Maimonides' *Mishneh Torah, Rotzeach 1:9; Shulchan Aruch, Choshen Mishpat 425:2*.

<sup>5</sup> Babylonian Talmud, Tractate Yoma 82a.

<sup>6</sup> Babylonian Talmud, Tractate Sanhedrin 74a-b.

<sup>7</sup> Babylonian Talmud, Tractate Sanhedrin 74a.

<sup>8</sup> These views are summarized by C. Strong and G. D. Anderson, In: M. R. Gillon (edit.), *Principles of Health Care Ethics*, Chichester, 1994, pp. 587 to 600.



a) Some scholars have opined positively to this query but they differ as to the stage of the fetal development at which the fetus has its own rights and personhood:

- » The moment of conception
- » The time of implantation of the fertilized egg in the uterine wall
- » The time that the fetal shape or human form is recognizable
- » The time that the brain develops
- » The time of fetal movement
- » The time of viability of the fetus outside the uterus, which differs according to the scientific ability to sustain extra-uterine life.

b) Some scholars believe that the fetus is never considered as an independent human being, and he has no independent claim for life.

c) Yet other scholars opine that the fetus does not possess a self and independent moral rights but it has a relative claim for life and for rights based upon its eventual personhood in that it is a potential human being while in utero. According to this view, the closer to birth the fetus is, the closer to personhood it can be considered and the more justified it is to accord rights to it.<sup>8</sup>

Hence, three views pertain to fetal rights:

- » The fetus has no independent rights and is merely an integral part of the mother
- » The fetus has all rights, identical to a born, and is a fully formed and independent human being
- » The fetus has some rights but less than a person has after birth.

The philosophical argument about when “personhood” endows someone with rights seems an unresolvable issue. It varies according to one’s religious, cultural and social beliefs.<sup>9-10</sup>

Another moral issue pertains to the question whether or not there is a moral distinction between an embryo that is already implanted and developing in utero compared with a pre-embryo in a test tube after an *in vitro* fertilization is performed.

<sup>8</sup> These views are summarized by C. Strong and G. D. Anderson, In: M. R. Gillon (edit.), *Principles of Health Care Ethics*, Chichester, 1994, pp. 587 to 600.

<sup>9</sup> M. Lockwood, *Bioethics* 2:187, 1988.

<sup>10</sup> H. T. Englehardt, *JMed Philo* 18:419, 1993.

Yet another moral issue concerns the status of a fetus as a patient. The advancement of medical technology and knowledge has stimulated the notion that the fetus should be considered a separate patient with its own rights and needs for protection”.

Hence, a variety of ethical questions pertain to the moral aspects of intra-uterine treatment:

- » The mother’s right to autonomy and the need for her informed consent for any fetal treatment which requires invasion of her body, versus the right of the fetus to receive effective therapy and to be protected from harm.
- » The uncertainty of the outcome of fetal therapy.
- » The proper allocation of limited resources – is it proper to utilize enormous resources for an unborn fetus rather than for urgent care of living people?
- » Can the parents and/or physician be sued by the newborn for malpractice for not treating an unborn fetus?
- » Can the mother request abortion if the fetus is defective, at least during the first stage of pregnancy (in countries where abortion is legal), or is the fetus a separate entity from the mother?

### Jewish perspectives

The fundamental Jewish position toward the status of an embryo/fetus is based upon the assumption of a progressive acquisition of a human status. The gametes, the zygote, the blastocyst, the early organogenesis, and the progressive physical development and viability of the pre-embryo / embryo / fetus all indicate and express a progressively growing potential for human life and existence. The biological progression of the fetal development also reflects a moral and legal progression of rights and dignity. Hence, these various stages of biological development merit a progressively growing respect, dignity and rights. The changing moral status of the developing embryo / fetus can be, and in fact should be, balanced and weighted against other moral values and rights. Full, complete and unrestricted rights as a human being are achieved only after childbirth.

Moreover, Judaism sharply distinguishes and differentiates between pre-implanted embryos and those who are already implanted in-utero, as shall be discussed below.

### Ensoulement

The Talmudic Sages, as well as some subsequent Jewish scholars, have debated the theological and meta-physical question whether or not a fetus acquires a soul, and if

<sup>11</sup> M. R. Harrison, et al (eds): *The Unborn Patient. Prenatal Diagnosis and Treatment*, 2nd. edit., Philadelphia, 1991.

he does—at what stage of its development does this occur. The Talmud quotes the following dispute:

*Antoninus said to Rabbi Judah the Prince: “When is the soul placed in man, as soon as it is decreed that it shall be male or female or when the fetus is actually formed?” He replied: “From the moment of formation”. He objected: “Can a piece of meat be unsalted for three days without becoming putrid? But it must be from the moment that God decrees its destiny”. Rabbi Judah the Prince said: “This thing Antoninus taught me and Scripture supports him”.*<sup>12</sup>

Nonetheless, most Rabbis exclude a fetus from the Biblical term *nefesh*, meaning soul or person.<sup>13</sup> Other Rabbis call a fetus a *safek nefesh*, meaning a partial or a potential person.<sup>14</sup> Maimondes’ position on this matter is questionable and debatable.

The theological question of the timing of ensoulment has not, and cannot be resolved by Jewish practical and legal mechanisms; this question is beyond human ability to solve.

The Talmudic Sages and subsequent authoritative Jewish scholars have been engaged in another interesting legal-moral debate concerning the status of the fetus. Some Rabbis consider the fetus to be an appendage of the mother, whereas others disagree.<sup>15</sup> Such discussions are common in the Talmud, and apply either directly or indirectly. This question may be dependent on the issue of when the soul enters the body. There is, however, a difference of opinion among Jewish scholars whether or not this statement has any legal ramifications.

Nonetheless, these theological and legal debates have an insignificant impact on the application of Jewish law concerning the rights appropriated to the different stages of fetal development. Whether or not ensoulment occurs at fertilization, conception or formation of the fetus, and whether or not the fetus is or is not an appendage of the mother is irrelevant to the issue of rights and claim for life for the following considerations:

On the one hand, the developing human being from the gamet to the newborn deserves respect and dignity and should not be emitted and/or destroyed for naught.

<sup>12</sup> Babylonien Talmud, Tractate Sanhedrin 91b.

<sup>13</sup> *Rashi*, Sanhedrin 72b, s. v. *yatza*; Meiri and *Ramah*, Sanhedrin 72b; Novellae *Ramban and Ritva*, Niddah 44b; *Minchat Chinuch*, precept #296.

<sup>14</sup> Rosh, in *Shitah Mekubetzet*, Arachin 7a #5; *Aqudah*, Arachin #6.

<sup>15</sup> See *Yebamot* 78a-b; *Nazir* 51a; *Gittin* 23b; *Baba Kamma* 78b; *Sanhednn* 80b; *Chullin* 58a; *Temurah* 10b, 11a, 19a, 25a and 31a; *Jerushalmi Kiddushin* 1:3.

On the other hand, in face of conflicting values and rights the decisions will shift for or against the rights of the fetus depending on the fetal stage of development and on the moral-legal weight of the opposing values and rights, as will be shown below.

### Jewish-legal position regarding stages of embryonic development

Several stages of the human fetal development have particular significance in Jewish law and philosophy. These are: semen, pre-embryo (i.e., a pre-implanted fertilized ovum), embryo in-utero up to 40 days, embryo/fetus in-utero from 41 days on, and newborn.

#### Semen

Jewish theology attributes respect to semen as a human part and as a potential for future life, but does not regard it as life. The Jewish legal consequence of this position is a clear and unqualified prohibition of improper emission of semen, including masturbation.

Expending semen for naught is considered a very serious offence in Judaism<sup>16</sup>. He who expends semen for naught is as if he shed blood by destroying a soul<sup>17</sup>, because every drop is capable of producing human beings.

#### Pre-implantation embryo

This entity deserves dignity and respect as a human part and as a potential for future life, but it is not considered as life. The potential for future life of this entity is still very small and very remote. It also requires further unnatural human intervention in order to continue its existence and to enable it to become a human being. Hence, this entity has no humanhood status.

One of the basic sources for the Jewish position designating an inherent different legal and moral status to a pre-implanted embryo as compared with an in-utero embryo is the following:

The Bible states “*One who spills the blood of a human, in a human, his blood shall be spilled*”.<sup>18</sup> This verse teaches us that the prohibition of murder applies exclusively to a human formed within another human, i.e., a fetus within its mother’s womb.<sup>19</sup> Hence, a pre-implanted fertilized ovum does not have the status of a human being regarding the prohibition of murder.

<sup>16</sup> Maimondes’ *Mishneh Torah*, *Issurei Biyah* 21:18; *Shulchan Aruch*, *Even Haeze* 23:2.

<sup>17</sup> Babylonien Talmud, Tractate Niddah 13a; Maimondes’ *Mishneh Torah*, *Issurei Biyah* 21:18; *Shulchan Aruch*, *Even Haezer* 23:3.

<sup>18</sup> Genesis 9:6.

<sup>19</sup> Babylonien Talmud, Tractate Sanhednn 67b.

Pre-implanted zygotes or blastocytes, as such, are entitled to fall under protection in virtue of their dignity. However, when these rights come into conflict with other values one ought to weigh the relevant merits and rights and balance between them.

One of the consequences of such a balance is the permission to perform a preimplantation genetic diagnosis and to discard defective pre-embryos. The potential damage of giving birth to a seriously defective child overrides the minimal dignity that the zygote deserves and the remote potential of life of a pre-implanted fertilized egg.

Another consequence of current importance is the permission to derive stem cells from superfluous frozen fertilized eggs in order to advance potential cures for many people with chronic, debilitating, fatal, degenerative disorders. The ethical dilemmas concerning stem cell research are currently intensely and passionately debated in all western countries, and it is beyond the scope of this article to discuss all its ramifications in depth from a Jewish point of view. Suffice it to say that the balance between the enormous potential life-saving benefits derived from stem cells out-weigh the responsibility towards the dignity of the fertilized egg.<sup>20</sup>

#### Embryo in-utero – First 40 days

According to the Talmud, until forty days post conception, the fetus is “mere fluid”.<sup>21</sup> Current obstetrical calculation of the gestational period starts from the first day of the last menstrual period. Since the Talmudic Sages calculated the gestational period from conception, this “forty day” stage is at the end of the seventh week of pregnancy according to current obstetrical terminology.

This stage *per se* does not yet constitute a status of a human being. Hence, all Rabbinic authorities agree that if a woman miscarried within forty days of conception, the laws of uncleanness of childbirth do not apply to her, because the aborted embryo at that stage is not considered a human being.<sup>22</sup>

However, since the embryo at this stage is already implanted in the womb its potential for becoming a human being is a natural process. Nonetheless, this is still a remote possibility. These two sides of the coin have generated a debate amongst the Rabbinic authorities concerning the deliberate cessation of the embryo’s existence.

<sup>20</sup> Testimony of Rabbi M. D. Tendler before the American National Bioethics Advisory Commission, Vol 3, p. H-1 ff, 2000.

<sup>21</sup> Babylonien Talmud, Tractate Yebamot 69b; Maimondes’ *Mishneh Torah*, *Terumot* 8:3 and *Issurei Biyah* 10:1.

<sup>22</sup> Babylonien Talmud, Tractate Niddah 30a; Maimondes’ *Mishneh Torah*, *Issurei Biyah* 10:2; *Shulchan Aruch*, *Yoreh Deah* 194:2.

Some Rabbis assert that up to forty days one can be very lenient in regard to abortion and it is not forbidden to abort a fetus at that stage, or at least it is an additional reason to permit the abortion when other reasons exist<sup>23</sup>. Other Rabbis, however, state that it is biblically prohibited to abort any fetus, even prior to forty days, just like it is prohibited after forty days.<sup>24</sup>

#### Embryo in-utero – After 40 days

At this stage, the potential of becoming a full and complete human being is getting greater and closer. Hence, a negative attitude toward abortion is expressed unanimously among the rabbinic commentators. Nearly all agree that some type of prohibition is involved in the performance of an abortion. However, there are differing views as to the nature of the prohibition, its seriousness, the reason for the prohibition, and the conditions under which abortion may be considered. It is beyond the scope of this article to discuss in-depth all the aspects of abortion according to Jewish law.

Many of the current authoritative Rabbis consider abortion as a moral and theological form of murder, though all agree that the fetus still has no full claim for life at this stage. Hence, on the one hand, it is strictly forbidden to abort a fetus, but on the other hand, the life of the mother takes precedence over the life of the fetus, so that if the mother’s life or health is seriously threatened by the continuation of the pregnancy, then abortion is not only permissible but actually required. Also, no capital punishment is administered upon the transgressor, as would have been the case if one murdered an existing human being outside the womb.

<sup>23</sup> Responsa *Chavat Yair* #31; Responsa *Seridei Aish*, Part 3 #127; Response Tzitz Eliezer, Part 7 #48:1:8.

<sup>24</sup> Rabbi I. Y. Untermau, *Noam* 6:1-11, 5723 (1963); Responsa *Iggrot Moshe*, *Choshen Mishpat*, Part 2 #69.

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## Practices in Israel

With respect to practices in Israel, it is only fair to point out that while the predominant culture in Israel is indeed Jewish, there is a substantial Muslim minority living in Israel, as well as smaller groups of Christians, Druse and Bahai among others.

But that is not all that complicates the issue. The spectrum of Jewish practices in the area under discussion, as well as in other areas, is extraordinarily wide. They range from the very meticulous observance of halakhah (Jewish religious law) in the Mea Shearim district of Jerusalem, where families of 10 and more children are the norm, to the totally secular segments of the Israeli population, whose behavior and attitudes are no different from their Western secular counterparts in other parts of the world. The population varies extremely also in its ethnicity and in its sophistication. Ethiopian Jews who have just arrived from the most primitive areas of Africa live in the same communities with professionals from Moscow and New York and are treated side by side in the same hospitals and clinics.

I happen to teach communication skills to medical students, and when I chose patients from my department one morning for the students to examine, I discovered at the end of the morning that each of the 9 patients I had chosen at random was born in another country.

There is another aspect to Israeli culture, which is important to appreciate, particularly in contrast to German culture in which obedience to the law is fairly strict. In Israeli society improvisation and attempts to work around the law are often the rule, rather than the exception; so there is often a serious divergence between law and practice.

An Israeli colleague, Professor Amos Shapira summarized Israeli culture as a “unique mix of orthodoxy and secularism, of communal paternalism and assertive individualism and of proscription and permissiveness”.

Let us look first at the history of abortion in Israel as the starting point for the attitude toward the unborn, since until recently our concern and involvement with the unborn focused on the abortion issue.

Under the British mandate, in effect until 1948, induced abortion was illegal, with prison sentences mandated for both the perpetrator of the abortion as well as the

woman upon whom the abortion was performed. With the creation of the State of Israel the laws of the mandate initially continued to be in force. By these laws the performance of an abortion could result in up to a 14 year prison sentence for the perpetrator and up to 7 years prison for the woman.

In 1966 the Knesset amended the laws reducing the maximum sentence for the abortionist to 5 years and eliminating the prison sentence for the woman entirely.

But the entire public discussion, in spite of its vehemence, was really largely academic, because Israel's attorney general had set a policy that there would be no prosecution under these laws for abortion unless an abortion resulted in death, was performed without the woman's consent, was performed by a medically unqualified person, or was performed negligently. In matter of fact it was well known that tens of thousands of abortions were being performed annually in Israel, mostly by gynecologists in their private clinics. In fact one of the classic descriptions of a major side effect of abortion, post-abortion sterility, was described by an Israeli obstetrician, Dr. Asherman, and commonly bears his name.

This situation demonstrated a real paradox. On the one hand Israel's formally stated policy was strongly pro-natal for the Jewish population. Immigration was greatly encouraged and there was a publicly articulated need for an increase of the Jewish population. Family planning was not encouraged or provided. Yet wholesale violation of the laws against abortion was tolerated and sanctioned.

In 1977 the Knesset finally passed legislation officially regulating abortions.

The legislation was still worded in the same language as the original mandate law which forbids abortion, but gave exceptions to the ban under five categories:

1. Danger to life or health of the mother.
2. Danger of fetal malformation or disability.
3. Mother under the legal age of marriage or over the age of 40.
4. Pregnancy resulting from incestuous relationships, rape or out of wedlock.
5. Difficult social or family problems for the mother.

Abortions could be performed legally only in hospitals and only after approval by a committee composed of a gynecologist, another physician and a social worker.

The legislation represented a compromise between those who wanted total freedom for the woman to decide on abortion, and those who felt that only serious threats to the mother's and/or the fetus' health should permit abortion.

The passage of this legislation took place only after bitter and emotional public debates, and against strong objections of the parties representing the religious segments of the population. Under this legislation between 15,000 and 20,000

abortions per year were performed legally, with the largest number being done under the so-called 'social clause'. However, it was public knowledge that an additional large number of abortions were still being performed illegally, mostly by physicians, for women who did not want to face the bureaucracy and questioning associated with the legal abortions procedure legal abortions. Obviously the exact number of illegal abortions performed cannot be ascertained. Estimates range from half the number of legal abortions to twice the number of legal abortions. Thus clearly some 30-50,000 abortions were being performed annually in Israel, at a time when there were about 70,000 live births. By now there are about 135,000 live births annually with the number of legal abortions essentially unchanged.

In 1979, following a change in government which resulted in the religious parties achieving the status of a key partner in the government coalition, they succeeded after a vigorous battle to change the abortion law and eliminate the so-called 'social clause' under which some 43% of the abortions were being performed. The religious parties would have desired an even more restrictive legislation, but even this change represented for them and their constituencies a 'great' accomplishment.

But, as it turned out, this was a Pyrrhic victory. In looking at the official figures on abortions one would have surely expected that since abortions under the social clause were over 40% of the abortions, abolition of the clause should have caused a serious drop in the number of legal abortions. But as a matter of fact the number of legal abortions remained more or less constant even after the repeal of the social clause. What happened to explain this paradox?

The overall attitude of society on these issues, exclusive of the religious element, is quite permissive on the subject of abortion; there is a strong feminist voice, particularly in the media; and in most of the hospitals the members of the committee that decides on whether to permit an abortion share these permissive views and feel that a woman has a right to decide on the fate of her pregnancy. Therefore they simply have recategorised those cases previously classified as social cases now as medical indications to preserve the mother's health.

Subsequently there were several government committees, one in 1983 and another in 1992, which recommended more careful and uniform functioning of the hospital committees approving abortions, stricter observance of the regulations, provision of better information to the women applying for abortions and the like. But the results of these recommendations were never implemented largely because of the sensitive nature of the subject which is a part of the *kulturkampf* within Israel between religious and secular elements of society. There exists a so-called 'status quo' in these areas and even ministers of health who are personally religiously observant have

hesitated to take any action, legal and justifiable as it may be, for fear of the conflict that such action may precipitate.

Surveys have shown that Israeli women who are pregnant are among the greatest users of prenatal genetic testing and other technologies to guarantee a 'perfect' baby, and are more likely to ask for, and to obtain, an abortion even for relatively minor defects in the fetus than women in most other Western countries.

There are probably some illegal abortions performed even for sex selection as well, although there is no data on the subject.

There are a number of factors which may explain the relatively high incidence of abortions. The sexual permissiveness that pervades the media in the Western world has left its mark on Israeli secular society as well, with resultant impact on the abortion issue. The Israeli public has a great admiration for technology and science and eagerly exploits every new advance, thus the enamored with genetic testing of all sorts and its consequences. There is probably no country in the world with as wide a utilization of genetic testing and prenatal screening as in Israel. There is also a significant degree of misinformation not only among the public, but also among health professionals exaggerating the dangers of illness, medications and x-rays during pregnancy<sup>1</sup>, as well as a fear of malpractice suits by physicians in the event of the birth of an infant with a malformation. This results in an attitude of "do not take a chance – do an abortion". A large influx of young women from the Soviet Union where abortions were the standard means of birth control also contributed to the permissive approach to abortion. There also seems to be a reduced tolerance for, and willingness to cope with, disability in Israeli society as compared with other Western societies. All these factors, and probably some others as well, have contributed to the high number of abortions in Israeli society.

It is estimated that since the creation of the State of Israel well over a million, and perhaps as many as two million, abortions have been performed, this in spite of the position of Judaism on the subject of abortion, which, while not as restrictive as the Roman Catholic position, does not sanction the great majority of abortions performed in Israel.

In contrast to the United States, however, the religious opponents of abortion have not resorted to violent means of expressing their opposition. Instead the organizations working in this area have made attempts to persuade women to reduce the number of abortions, and have extended economic and social support to women

<sup>1</sup> Fink, D., Glick, S. M, Misinformation among physicians about dangers of fetal x-ray exposure Harefuah, 124:717-719, 1993 (Hebrew).

who are considering abortion because of social circumstances. Their tactics have nevertheless come under criticism from feminist groups who regard negatively any attempts to apply pressure on women to avoid abortions.

If I were to summarize the treatment of the unborn within the pregnant mother's womb, there are three levels from the theoretical to the practical. If we were to eliminate all the illegal abortions in Israel, we would reduce the numbers by 30-70%. If the abortions carried out legally were performed in full accord with the letter, as well as the spirit of the law, abortions would probably be reduced by some 80% or more. And if the religious, halakhic, standards were to be applied universally, more than 90% of the abortions might be avoided.

Thus we see a marked dissonance between the standard of the religion and the practice in the field. This discrepancy is reminiscent of the extraordinary low birth rate in Spain and Italy, two nominally Roman Catholic countries. When one deals with such intensely personal, intimate and sensitive subjects such as abortion and other reproductive areas, it would seem that legislation is a poor way to influence behavior. If the religious elements in Israel had concentrated their efforts on education, using sophisticated methods of influencing public opinion, their impact on the practice of abortion might have been much more effective than the results of changing the laws.

When we turn to the unborn outside the womb of the mother the dissonance between the religious guidelines and the practice in the field diminishes greatly. The reason for that is because in Jewish halakhah the products of conception outside the womb are accorded a lower status to than to those already implanted. Therefore, if their use may lead to saving of life, alleviating illness or curing infertility, they may be exploited for these purposes. This attitude exists in spite of the great respect that the Jewish tradition has for even sperm or ova before fertilization. The destruction of such potential life is normally clearly forbidden, so that condom use for example is interdicted by halakhah.

But the Jewish tradition has a powerful positive pro-life attitude promoting reproduction. The first command in the Bible is "Be fruitful and multiply".

Whereas in many Western countries today many couples forgo having children voluntarily and small families are the rule, there is a strong pro-natal drive in Israeli society. Infertility is regarded as a serious tragedy and almost no effort is considered excessive in the drive to procreate.

Israel's medicine has been in the forefront in both the research and the clinical frontiers in the study and treatment of infertility right from the very earliest stages of modern advances on. Israeli physicians and scientists have consistently been pioneers in reproductive endocrinology, from the early days of hormonal therapy, through *in vitro* fertilization (IVF), up to intracytoplasmic sperm injection, and most recently

stem cell research. Israel has by far the greatest number of centres for *in vitro* fertilization per unit population in the world. It has been estimated that currently 3% of all babies born in Israel have been created using *in vitro* fertilization techniques. The Israeli National Health Service provides free IVF for all comers for up to two births, and sets no limit on the number of attempts funded. The number of treatment cycles provided in Israel is 3,400 per million population, which compares to 900 in Northern Europe, 600 in France and 580 in the United Kingdom. When the government, under severe budgetary constraints, recently proposed that it would support only 5 cycles for a first baby, and only up to a maternal age of 44, public protests have been very strong and furious, and at the time being the fate of this proposal is uncertain.

When in February 1997 the birth of Dolly was announced, the resultant tremors affected almost all Western countries in one way or another. Within a month no less than three bills were submitted to the Knesset to regulate cloning. Extensive hearings were held with opportunities given to scientists, physicians, ethicists, rabbis, legal experts and others to express their opinions. The final bill was intended to prevent the potential abuses that could result from injudicious and unethical practice and yet not jeopardize the advancement of research for the benefit of mankind. It was also clear that the fields in research were moving at such a fast pace that long term predictions were impossible and it would be foolish to anticipate in advance the issues and problems that might arise many years later. The final form of the law that came into effect on January, 1999<sup>2</sup> entitled the 'Prohibition of Genetic Intervention', was to remain in force for a period of five years. The preamble of the law reads "The purpose of this law is to determine a prescribed period of five years during which no genetic intervention should be performed on human beings in order to examine the moral, legal, social and scientific aspects of such kinds of intervention and the implications of such intervention on human dignity".

The Israeli law – unlike the UNESCO declaration of November 1997<sup>3</sup> – did not state categorically that cloning contravenes human dignity, but rather that one needs to examine more carefully the consequences of cloning on human dignity. There are two types of prohibited activities. The first is human cloning and the second is germ line gene therapy. An Advisory Committee set up to monitor the field is to submit an annual report and the Minister of Health is empowered, in consultation with the Advisory Committee, to permit certain kinds of genetic intervention if the situation dictates it so.

<sup>2</sup> The Book of Laws 1697, 5759, 7 January 1999, 47.

<sup>3</sup> Universal Declaration on the Human Genome and Human Rights, United Nations Educational, Scientific and Cultural Organization, Paris, 11 November 1997.

While there is universal agreement in Israel that human reproductive cloning should be absolutely forbidden at the present time, neither religious authorities nor most Israeli secular ethicists rule out the possibility of permitting such activities in the future in very special situations if the safety of such procedures is guaranteed. Such a possibility seems far off at the present time, but it is important to point out that the general total rejection of the possibility of human cloning expressed in many declarations on the subject by organizations and individuals is not widely shared in Israel.

The five year term of the present law is to expire shortly and there is a multidisciplinary government committee which is currently preparing recommendations to go into effect when the present law expires.

The use of human embryonic stem cells for research purposes is carried out in Israel under the guidelines<sup>4</sup> prepared in 2001 by the Bioethics Advisory Committee of the Israel Academy of Sciences and Humanities. These guidelines attempt to balance respect for the human embryo with the enormous potential life saving therapies that may be developed by research on stem cells. The deliberate fertilization of an ovum by sperm for research purposes is interdicted.

But embryos from IVF procedures which are unfit for implantation or are in excess of the clinical need for the reproductive purposes of the parents may be used as a source of stem cells with the express permission of the donors.

Embryonic stem cells may also be obtained using cloning techniques or from fetuses which have been aborted. *In vitro* culturing of embryos beyond two weeks is forbidden. All embryonic stem cell research projects must have specific approval by a national Helsinki Committee for Genetics. These are just a few of the safeguards and regulations in effect.

Pre-implantation diagnostics for serious genetic diseases is an accepted practice in Israel. The question of its use for sex selection has become an issue as well in cases other than sex-linked diseases. The Ministry of Health has just issued a ban on this practice while the subject is under careful study.

In the area of the pre-embryo outside of the mother's womb there has been little or no clash between the Jewish religious tradition and the practice of research scientists in the field. Both agree not to create embryos for the sole purpose of research and not to deliberately perform abortions in order to obtain fetuses for research. But when embryos have already been created for reproductive purposes, the potential life saving benefits of medical research on stem cells is believed to outweigh the restrictions on the use of these stem cells.

<sup>4</sup> Report of the Bioethics Advisory Committee of the Israel Academy of Sciences and Humanities on The Use of Embryonic Stem Cells for Therapeutics Research, August 2001, Jerusalem, Israel.

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## Buddhist Perspectives on Unborn Life

### Abstract

This paper addresses four aspects of the Buddhist perspective on unborn human life. The main focus is on values, but it also makes some reference to current practice. The paper begins with some brief observations about methodology and the problems of accurately representing the Buddhist position. Second, it provides a summary of early Buddhist medical notions regarding conception and embryology. Buddhism differs from theistic religions in not attributing the origin of human life to a divine creator but to natural processes. As to the question of when life begins, the Buddhist belief in reincarnation adds an interesting dimension to the question. The third part of the paper summarises the position of the classical scriptures concerning the moral status of unborn life. The key moral principle operative here is *ahiṃsā* or non-harming. My conclusion is that in the understanding of the ancient authorities human life began at conception and was entitled to moral protection from that point onwards. The implications of this view for reproductive technologies such as IVF, cloning and stem cell research is briefly reviewed. The paper concludes with a brief and selective survey of contemporary practice relating to abortion in Buddhist countries in order to illustrate the range and variety of positions encountered among different cultures and schools.

This paper deals with the Buddhist perspective on unborn life. This is a large subject, but since space is limited I intend to address only four points. Hopefully this will be sufficient to convey the essence of the Buddhist position without distorting it unduly. My method will be as follows. Firstly, I will say something about my own position with respect to the subject matter, and make a few comments about Buddhism as a religion. Second, I will summarise the traditional Buddhist medical notions regarding embryology and the development of the fetus. Third, I will summarise the traditional view concerning the moral status of unborn life, and finally I will give a very quick survey of contemporary practice relating to abortion in Buddhist countries. The main focus of my paper will be abortion, since the position one adopts on this question will determine to a large extent one's view of reproductive technologies and developments such as cloning.



The first point is a methodological one regarding my own standing in the matter and the problem of accurately representing Buddhist teachings on this and other issues. I hope this can be dealt with quickly by saying that I myself am not a Buddhist and do not speak for Buddhism or represent the views of any Buddhist group. My position is that of an observer who seeks to remain both objective and sympathetic, if such a balancing act is possible. Buddhism has no global ecclesiastical structure and there is no Buddhist pope, Vatican, council, or similar body responsible for defining and co-ordinating doctrine. There are two major branches of Buddhism, Theravāda Buddhism in south Asia and Mahāyāna Buddhism in north and east Asia, and these have important doctrinal differences comparable perhaps to the Western and Eastern wings of Christianity or the Sunni and Shi'a branches of Islam. There are national organizations in different Asian countries, but their authority does not extend beyond their own shores nor even to all the groups and sects which exist within their national boundaries. Given the fragmentary nature of Buddhism just described, it is scarcely possible for anyone – Buddhist or otherwise – to act as spokesperson for the tradition. One encounters a fairly wide range of opinion across the Buddhist countries of Asia, and the arrival of Buddhism in the West has created a new constituency of Buddhists who will inevitably reflect the diverse opinions within their local culture. This first point is therefore both a caveat and a disclaimer: it is a caveat insofar as what I have to say will invariably be superficial and incomplete, and a disclaimer to the effect that my views carry no official Buddhist imprimatur.

## Embryology

My second topic is Buddhist embryology. Perhaps the first thing to note here is that the Buddhist belief in rebirth or reincarnation adds a distinctive dimension to its view of unborn human life. For one thing, it puts the question ‘When does life begin?’ in an entirely new light. For Buddhism, life has no discernible starting point. Birth and death are like a revolving door through which an individual passes again and again. All conception is thus re-conception, and the belief that each individual exists even *prior* to conception provides an interesting alternative perspective to Western views.

For Buddhist's life is not a gift from God but something that comes into being when certain conditions are fulfilled. In keeping with traditional Indian medical thought, the Buddha explained conception as a natural process that occurs when three specific conditions are met. In this understanding i) intercourse must take place ii) during the woman's fertile period, and iii) there must be available the spirit (*gandharva*) of

a deceased person seeking rebirth. When these three conditions are met a new life begins. Gender was thought to be determined at this point, and, like many other physical and mental characteristics of the new individual, such as lifespan, physical appearance, and health was believed to be determined to a large degree by the karma – that is to say, the moral history – of the individual carried forward from the previous life. We might think of karma in this respect as performing certain of the functions which scientists today attribute to DNA.

Once formed, the embryo develops through a series of stages. In the first month four stages were identified. The first is known as the *kalala*, and the tiny embryo at this stage is described as ‘clear and translucent, like a drop of purest oil on the tip of a hair’. The following three stages are the *abbuda*, the *pesi*, and the *ghana*, terms which connote increasing density and solidity. Sometimes a fifth stage is mentioned, *pasā-khā*, which means ‘five-branched’ and denotes the point at which the form of the head and limbs begins to sprout forth from the trunk. From this point on the fetus was thought to develop gradually growing in size and physical complexity until it came to term. The length of the pregnancy was calculated by reference to the number of months which had passed since conceptions. Some sources calculate the length of a normal pregnancy as 38 weeks, while others put it at 268 days or 270 days. This early view of conception and embryology dates from several centuries B.C.E. and remained influential down to pre-modern times. We see substantially the same views repeated in texts dating from as late as the seventeenth century.

For Buddhism, then, conception is an event marking the start of a gradual process of development up to birth and beyond, through childhood into maturity, and through death once again to rebirth. In holding what might be termed a ‘gradualist’ view of fetal development, Buddhist thinking was ahead of the West, which until the modern era was hampered by Aristotelean notions of three separate stages of ensoulment in the embryo.

## Moral aspects

Turning now to the question of values, my third topic, one of the most basic principles of Buddhist ethics, and one for which it is universally admired, is its belief in ‘non-harming’ or ‘non-violence’. The name Buddhism gives to this is *ahiṃsā*, a term made famous by Gandhi in connection with his policy of non-violent political protest. The idea of *ahiṃsā* was not invented by Buddhism and is part of the shared heritage of many Indian religions and philosophies. Although the word takes a

negative form, it signifies not merely the absence of something, but a deeply positive feeling of reverence or respect for living beings, a moral position known in the West under the more familiar names of ‘respect for life’, the ‘sanctity of life’, or the ‘the inviolability of life’. The essence of the principle of *ahiṃsā* is that it is morally wrong to intentionally cause harm or injury to living creatures.

The object of *ahiṃsā* is not just human life, but also animals, insects, and even plants and vegetation. Buddhism teaches that the different forms of life we see around us in reality form a continuum such that the same life-form can be at one time a human being and at another an animal or a god. Life, however, is to be respected whatever form it takes. The ancient scriptures tell us that Buddhist monks often used a strainer to make sure they did not destroy small creatures in their drinking-water. They also avoided travel during the monsoon to avoid treading on insects and other small creatures which became abundant after the rains. In some Buddhist cultures the practice of agriculture is frowned upon because of the inevitable destruction of life caused by ploughing the earth. Acts which cause harm or injury to living creatures are prohibited by various precepts, such as the first of the Five Precepts observed by Buddhist laymen.

## Abortion

How do the distinctive Buddhist teachings of *ahiṃsā* and reincarnation impact upon its view of the moral status of unborn human life? Does belief in rebirth increase or reduce the seriousness of abortion? It may be thought that it reduces it, since all that has been done is to postpone rebirth to a later time. Traditional sources, however, do not take this view, and regard the intentional killing of a human being at any stage of life – whether born or unborn – as morally wrong, regardless of the fact that he or she will be born again. This is because although in one sense life is a continuum, Buddhism also believes that each life as an embodied individual (one’s existence this time as George or Georgina) is unique and has a clear beginning and end, the boundaries of which lie at conception and death.

As we have seen, from the earliest times Buddhist sources have taken the view that individual human life begins at conception, a view widely shared today in Buddhist societies. The ancient authorities, of course, had an imperfect knowledge of embryology, particularly the processes of ovulation, fertilization and implantation, but their understanding of fetal development as a gradual process with a definite starting point was not very different to that of modern science. The writers of the early and authoritative commentaries who considered the matter expressed the view that the

human individual was fully present at the time of the *kalala* stage, the starting point of embryological development. Given this view, it is not surprising to find that abortion was regarded as a breach of the First Precept.

Cases of abortion in which monks were involved, given their role as counsellors, intermediaries, and physicians, are also recorded in texts dealing with monastic discipline and canon law. These provide interesting glimpses of how the monastic authorities regarded the status of intra-uterine life. We see from these case-histories, for example, that the gestational phase of the pregnancy does not appear to have had any legal or moral significance when offences involving abortion were under consideration. The question of the stage of the pregnancy is never raised as a relevant issue. We also see that the penalty imposed for the destruction of unborn life – namely lifelong expulsion from the monastic community – was the same as the penalty imposed for the killing of children and adults. The wording of the relevant monastic precept makes specific reference to abortion as follows:

*An ordained monk should not intentionally deprive a living thing of life even if it is only an ant. A monk who deliberately deprives a human being of life, even to the extent of causing an abortion, is no longer a follower of the Buddha. As a flat stone broken asunder cannot be put back together again, a monk who deliberately deprives a human being of life is no longer a follower of the Buddha. This is something not to be done by you as long as life lasts (Vin i. 97).*

This seems clear enough. Frustratingly, however, there is little discussion here or elsewhere of what should be done in the so-called ‘hard cases’, for example where abortion is necessary to save the life of the mother, or in cases of rape. There is no extant Buddhist teaching on these points, and there appear to be no examples in Buddhist canonical literature of abortion performed for therapeutic reasons which might guide our thinking. It should be pointed out that while Buddhism regards abortion as an immoral act, the degree of guilt or responsibility in individual cases may vary. Buddhism places great emphasis on the intention and motivation with which an act is done, and where a person acts under duress or is constrained by circumstances the degree of guilt incurred may be slight, or even non-existent.

A third strata of early evidence is found in more popular literature which recounts the evil karmic consequences which pursue across various future lives those who have been involved in abortion. These painful consequences, such as being reborn in hell, are described in lurid detail. We see, therefore, a consistent picture emerging in what we might call the view of the classical authorities, that is to say in the canonical texts, the commentarial tradition, and in popular moral didactic tales, on the moral

status of unborn human life. This is that human life is to be respected from its origins and that the intentional taking of unborn life at any stage was regarded as both morally wrong and a grave ecclesiastical offence.

### Reproductive medicine and genetic research

To round off this third section I would like to make a few brief comments about reproductive medicine, cloning and stem cell research. As a preface to this it should be noted that Buddhism has no objection to contraception. Contraception is widely used and approved of in Buddhist countries, especially where the method does not involve the destruction of fertilized embryos. Methods that prevent implantation, such as the low-dose estrogen pill (the “minipill”) and the IUD or “coil”, are less acceptable, although far from uncommon in use.

With regard to assisted reproduction through IVF there is no strong Buddhist objection in principle to AIH (artificial insemination by the husband) since the aim is to assist married couples to overcome infertility. The technique of AID (artificial insemination by donor), however, is less acceptable since it introduces an anonymous third party into the married relationship and a child conceived through this means would be denied knowledge of its genetic inheritance. For similar reasons, and because of the emotional and legal complications involved, Buddhism would take a very cautious attitude to the use of surrogate mothers. Furthermore, the practice of superovulation used in almost all IVF programmes would seem to be in conflict with the Buddhist position on abortion since it involves the implantation of excess embryos and their selective reduction by early abortion as the pregnancy proceeds.

With respect to cloning, the Buddhist position may differ from that of the theistic religions since Buddhism does not believe that life is a gift from God. Accordingly it has no strong theological objection to the technique in those limited cases where it could be used to overcome infertility, for example. This assumes, of course, that the technique could one day be perfected, but the procedure is far too risky at the present time for its use to be considered. Therapeutic cloning, or cloning where embryos are produced to be used as subjects for research, on the other hand, would not be acceptable to Buddhism because it would be in conflict with the principle of *ahimsā*.

Many scientists see great potential for the use of human stem cells in the treatment of medical conditions. The pluripotent nature of these cells means that they can develop into any kind of bodily tissue. It seems that Buddhism would hold that: a) there is no ethical problem in principle with the therapeutic use of *adult* stem cells; and b) the harvesting embryonic stem cells from embryos is morally impermissible. Buddhism sees the moral issues raised by stem cell research as not in principle different from those raised by IVF treatment where this involves the destruction of spare embryos. Regarding the use of stem cells taken from aborted fetuses, there is scope for different views. Some would regard it as permissible, since in this case the central

objection that a living being was harmed through the harvesting of the cells would not apply as the donor is already deceased. Where a legally valid consent has been obtained from the next of kin for the use of the cells the situation can be seen as analogous to the donation of cadaver organs for transplantation. The criterion here is similar to that employed by President Bush in his decision in 2001 to allow U.S. government-sponsored research to utilize a list of sixty existing embryonic stem cell lines, but not to use or develop new ones. The alternative position takes a stricter view on the question of complicity and holds that the cells obtained through abortion would be tainted by the immorality of the abortion itself and should therefore not be used. The analogy of organ donation would be challenged by pointing out that in this case, unlike that of most cadaver transplants, the person providing the consent (usually the mother) will be the same person who has direct responsibility for the death of the donor. A closer analogy, it might be suggested, is with using money stolen in a bank robbery for charitable purposes, something which would still be wrong regardless of the good achieved. There is thus scope for legitimate disagreement on this particular point, although perhaps the majority of Buddhists would incline towards the former position.

### Contemporary situation

Turning finally to the contemporary situation, things are much less tidier and more inconsistent than they appear in the classical sources. There is considerable variety across the Buddhist world, much divergence between theory and practice, and a fair amount of what might be called ‘moral dissonance’ whereby individuals experience themselves as pulled in contradictory directions.

As might be expected, given the classical view outlined above, in the more traditional Buddhist countries such as Sri Lanka and Thailand, abortion is illegal with certain limited exceptions, such as when necessary to save the mother’s life or in case of rape. Nevertheless, illegal abortion is very common, with perhaps 300,000<sup>1</sup> such abortions a year in Thailand performed in the many hundreds of illegal abortion clinics found throughout the country but particularly in rural areas. According to a 1987 study the majority of abortions (around 80-90 %) were performed for married woman who were mostly agricultural workers. The study also confirmed that abortion was the accepted method of birth control among these women, suggesting that if better contraception was available, the number of abortions would diminish considerably.

<sup>1</sup> Report of the Bioethics Advisory Committee of the Israel Academy of Sciences and Humanities on The use of Embryonic Stem Cells for Therapeutics Research, August 2001, Jerusalem, Israel.

Moving from south to East Asia, a constructive contribution to the dilemma posed by abortion has been evolved in recent decades by Japanese Buddhists. In Japan (where Buddhism has been influential but is not the state religion), abortion is legal and around a million abortions are performed each year. The problem of abortion in Japan has been particularly acute because the contraceptive pill has not been widely available, allegedly because of concerns about side effects. Faced with the trauma caused by large numbers of abortions Japanese society has searched its ancient cultural heritage and evolved a unique solution, in the form of the *mizuko kuyō* memorial service for aborted children. The Japanese Buddhist concept of unborn human life is particularly distinctive and the cultural history of the concept has been explored by writers like William LaFleur.<sup>2</sup> According to LaFleur, the Japanese conceptualise the fetus and even young infants as having an indeterminate existential status in which they hover between the human and the spirit worlds and only gradually become full members of the human community. Their fluid status is seen by some commentators as bringing abortion within the range of what is morally permissible. It should be said that the practice of *mizuko kuyō* is opposed by the Jōdō and Jōdō Shin denominations, which are the largest Buddhist groups in Japan.

Korea provides an interesting comparison with Japan. Both countries have a very high rate of abortion, but in Japan it is legal and has been since 1948 whereas in Korea, it is not. Annual figures of between one and two million are quoted for Korea, a country with a population of around 46 million. Over a quarter of the population are Buddhists, which makes them the majority religious group. Statistics<sup>3</sup> reveal that Buddhists are slightly more likely to have abortions than other segments of the population. In 1985, an anti-abortion movement began and rites and services for aborted children similar to the Japanese service although distinctively Korean in form were introduced.

While recognizing that abortion means taking life, Buddhism is also renowned for its benevolence, toleration, and compassion. Some contemporary Buddhists, especially in the West, feel that there is more to be said on the matter than is found in the ancient sources, and that there may be circumstances in which abortion may be justified. For one thing, early Buddhist attitudes were formulated in a society which

took a very different view of the status of women from that of the modern West. Feminist writers have drawn attention to the patriarchal nature of traditional societies and to the institutionalized repression of women down the centuries. It has also been argued that abortion rights are integral to the emancipation of women and are necessary to redress injustice. American bioethicist James Hughes, for example, suggests that “clear and defensible distinctions can be made between fetuses and other human life,” and finds the moral logic of utilitarianism persuasive in the context of abortion, although tempered by the requirements of a virtue ethic which takes into account the mindset of the actors. Abortion, he suggests, may therefore be allowable where the intention is compassionate and the act achieves the best outcome for all concerned. Buddhists who are sympathetic to this view and who support the notion of the woman’s ‘right to choose’ may recommend meditation and discussion with a Buddhist teacher as ways in which the woman can come to a decision in harmony with her conscience.

This survey could be prolonged, but I must draw my paper to a close. By way of conclusion let me reiterate the main points:

1. Buddhism is a heterogeneous tradition, and whether the different schools which compose it share a common moral core or not is a moot point. It is not easy to locate a locus of authority, or to find position papers or public statements on questions such as those discussed here.
2. By contrast, the voice of the high tradition as expressed in classical texts and commentaries is clear and consistent. These sources teach that life begins at conception and is entitled to moral respect from that point onward. At the level of values there is evidence of broad acceptance among Buddhists of the classical position.
3. At the level of *practice* there is divergence between precept and practice as well as variation between Buddhist countries. To some extent this can be attributed to the influence of indigenous cultures, which has often been so strong that it is not easy to know what comes from Buddhism and what comes from without. The counterpoint provided by local cultures at times overwhelms the major theme, and it needs a well-trained ear to determine where one begins and the other ends.

<sup>2</sup> The *mizuko kuyō* service is generally a simple one in which a small figure of the bodhisattva Jizō represents the departed child. Jizō is a popular bodhisattva who is regarded as the protector of young children, and statues and shrines to him are found throughout Japan. Often the image is decorated with a child’s bib, and pinwheels and toys are placed alongside. Traditionally the image would be placed in the home or at a small roadside shrine, but in recent years specialist temples have appeared which offer commemorative services of various degrees of sophistication. These temples are like memorial parks or cemeteries, with rows and rows of small statues each commemorating a terminated pregnancy or

miscarriage. The *mizuko kuyō* ceremony can take many forms, but would typically involve the parents, and sometimes other members of the family, paying their respects to the image by bowing, lighting a candle, and perhaps reciting a Buddhist *sōtra*. The rite may be repeated at intervals such as on the anniversary of the abortion. The public nature of the ceremonial simultaneously acknowledges the child that has been lost and helps those involved come to terms with the event on an emotional level.

<sup>3</sup> Tedesco, Frank (1999), “Abortion in Korea,” in: *Buddhism and Abortion*, ed. Damien Keown, London: Macmillan, pp. 121-155. p. 133.

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## **Unborn Human Lives: Genetic Intervention From A Chinese Confucian Perspective**

### **1. Unborn Human Lives, Designer Babies and Confucian Moral Thinking**

Recent years have seen breathtaking advances of our technological capacities through newly available chemical and biological means. The rapidly expanding technologies have greatly outrun the sound judgment needed to apply our morality to the new circumstances that we face. Very often we may even lack the very concepts in terms of which the issues before us can be thought through from a moral point of view.

For example, what does morality have to say about the use of biological means for enhancements of human beings? What moral judgments should be made about the interference with unborn human lives through genetic design? Under what circumstances the application of genetic intervention to create designer babies is morally justified or not justified? How to direct our moral reflection to catch up with our fast expanding technological capacities to ensure that they are fitted to the human world in which we live? These are real problems.

As pointed out by Harris, “It is genetics that is beginning to create a new generation of acute and subtle dilemmas that will in the new millennium transform the ways in which we think of ourselves and of society.” (2001, p. 20) Indeed, genetics is bringing both a new way of understanding what we are and endless possibilities of enabling us to influence what we are. It is posing serious challenge to the traditional distinction between what is given and what is done. We can now think about determining “not only who will live and who will die, but also what all those will die in the future will be like.” (ibid). This is indeed a revolution in thought, and in ethics.

In the essay, I want to turn to the Chinese Confucian moral tradition to examine how Confucian thought in this regard can enrich our moral thinking about contemporary

bioethics in general, and about the applicability of genetic intervention to unborn human lives in particular. Specifically I want to focus on the Confucian notions of “inner dignity” of the person, “reciprocity” in human relations and “harmony” between humans and nature and evaluate their significance for offering an alternative perspective on the ethics of genetic choice and manipulation. Cross cultural exchange and dialogue are useful for extending our moral imagination. They can lead to the development of a more adequate and well-balanced theory of bioethics which is better fitted to the world we live in.

## 2. Designer Babies: Three Common Ethical Concerns

For the purpose of this paper, “designer babies” refers to the creation of human lives whose genetic code is either composed from scratch or produced through modification of a fertilized human egg cell or of a human clone. In the first case, the genetic code of a human being is put together by design to create the desired composition of genetic features and predispositions at birth. In the second case, the genetic code of a human being is modified, at the very beginning of a human life, to produce the desired composition of genetic features and predispositions. Since both cases involve the creation of a human life whose genetic materials accord with some human plan, they are in this sense, qualitatively different from enhancement therapy.

One can think of at least three common ethical concerns regarding the use of genetic intervention to determine the genetic endowment of another human being, even assuming that the technology is safe, predictable and reasonably affordable by everyone who wants to make use of it.

The first concern is related to the objection that humans should not be playing God or competing with nature by trying to interfere with “natural” procreation. According to this view, intervention of nature is intrinsically wrong. The distinction between the “natural” and the “artificial” should be upheld. Moreover, the natural process of procreation has the value of saving us from the responsibility to technically control the process and products of human reproduction. If the concept of the “natural” is abandoned, society and parents become responsible for designing and distributing the genetic conditions. Upholding the “natural” relieves parents and society of such a responsibility.

Such a view is however not uncontested. Opponents could argue that such a distinction between the natural and the artificial is both difficult to draw or to show the

moral significance of. They could query that letting a person’s genes be determined by a natural lottery over those of her parents is no more natural than letting a child die of a bacterial infection that could be cured with antibiotics. They may also contend that since no one could be accused of playing God in trying to save the life of an accident victim, by the same token, there is nothing morally wrong or “unnatural” for parents to use available technologies to liberate their children from undesirable genetic predispositions.

The second concern raised by genetic intervention is related to the lack of consent and the risk of later non-endorsement by future persons. This view questions the right of parents to make decisions concerning the genetic predisposition of their children because it can greatly affect their quality of life. It is argued that interference with the genetic endowment of another human being is permissible only insofar as the consent of the future persons whose endowment the decision affects, can be anticipated beyond a reasonable doubt.

But this view is not unproblematic since parents do make many non-genetic choices for their children all the time, such as choice of schooling, first language, or the very choice of whether to conceive or not to conceive the child in the first place. In making choices for their children, whether genetic or non-genetic, parents ought to be guided by the moral principle of the best interest of the couple’s future children, but not deference to their perception of what is natural and unnatural. Even if it is true that deliberate genetic interventions, especially germ-line more than somatic genetic interventions, may well result in a loss of human genetic diversity, but why should the absence of these traits from the human population be regretted when people actually do not wish to choose them for their children? Moreover, why should couples be forced to raise children with genetic traits that are widely regarded as undesirable just so that we can preserve some extra diversity?

A third common objection to genetic intervention of unborn human lives is related to the concern that unconstrained genetic design implies eventually that there will not be a clear and sharp distinction between human and non-human organisms. This is because of the fact that not only would such interventions change the basic parameters of the human gene pool, they would also enable us to design living human beings that are in various ways intermediate between human beings and other now existing animal species. The dramatic possibilities are endless. They will put great pressure on our concept of a person. Therefore, there should be constraints on the freedom of dramatic design, set by the moral threshold of personhood.

But the notion of personhood and its moral implications are not uncontroversial. The debate has raised fundamental questions about the coherence and validity of the concept, and about why personhood should be accorded moral status and respect? How to understand and set the boundaries of moral personhood? How to make a case for a concept of human personhood which recognizes the limitations of human freedom but which can at the same time be used to defend human dignity and protect human worth? How to develop an understanding of the relation between humans and Nature which recognizes their distinctive boundaries but which can at the same time serve to justify due respect and appropriate intervention of nature?

It is the intention of this paper to argue that the Chinese Confucian moral tradition can offer the intellectual resources to support an alternative “Third way” approach (Yu, forthcoming 2004) to these bioethical issues. Such a “Third way” approach can free us from either the need to outlaw outright all human interventions with nature because they are intrinsically bad or to endorse indiscriminately all forms of human interventions with Nature because they are intrinsically good. The Confucian moral tradition can offer an interesting counter point to the dominant values of autonomy and independence which have shaped liberal approach to bioethics in the West. Through its emphasis on the values of reciprocity and harmony, it enables us to see “interconnectedness” and “interdependence” between human beings and Nature, by avoiding a bifurcated perspective on the differentiation of functions between Nature and humans, and by transcending a dichotomized view of role of Nature and the role of humans in genetic interventions such as those concerning unborn human lives and designer babies.

### 3. A Triadic Relation of Humans, Heaven and the Earth

Chinese Confucian philosophy is marked by a lack of a notion of transcendence. There is also absence of the Judaeo-Christian notion of *creation ex nihilo* in both Chinese mythology and philosophy (Tao, 1990). This explains the relative lack of tension between notions of the “creator-created”, “subject-object” or such binary notions which characterize the Chinese understanding of the humans-nature relation. Mark Elvin, based upon his analysis of “selfhood” in Chinese novels and literary development, has further pointed out that there is an absence of a sense of alienation from the world which gave the self in China slightly less sharply defined margins than it had in the West. In fact, the Chinese have always understood the place of human beings to be somewhere between the Earth and Heaven. Humans and Heaven and the Earth form a triad in the universe which binds them. The motif of humans being at

home between the Earth and Heaven is a central motif firmly embedded in the Chinese mind and Chinese culture. It has been a central motif and a major source of inspiration not only to Chinese paintings, but also to Chinese poetry and Chinese philosophy in the more than two thousand years of Chinese history.

This sense of the self being at home in the universe between Heaven and the Earth was beautifully captured in these lines from a poem by an eighth Century Chinese poet:

*To what shall I compare myself, so blown by the winds?  
To a lone sand-gull between the Earth and Heaven.  
Duh Fuu (8th Century poet)*

### 4. A Process-View of Nature

The Chinese has a conception of Nature as an organic process, a spontaneously self-governing life force. Nature to the Chinese mind, stands for the creative force, the source of life. In a sense, it is a view which does not emphasize Nature as substance or product, but which sees Nature as an evolving process of never ending change and transformation and creation. The regular movements of heavenly bodies and the sequential changes of the four seasons are the silent steadfast ways Nature works as a creative force and a source of life. As Confucius himself has observed:

*“Heaven does not speak: yet the four seasons run their courses thereby,  
the hundred creatures, each after its kind are borne thereby”  
(The Analects, 17:19)*

Nature as a life force is dynamic and ceaseless, consistent and forever changing, transforming and unfolding new contours, new forms, and new lives. It is a self-perpetuating force which has neither a beginning nor an ending. Xunzi, a major Confucian scholar, explained the nature of nature in this way:

*“Change, transformation, succeeding, and rising are called the virtues of heaven. While heaven has never spoken out, people revere its highness. While the four seasons have never spoken out, people revere its thickness. While the four seasons have never spoken out, people expect their sequences. These regularities (you chang) come about because heaven, earth, and four seasons all perfect their cheng (consistency, sincerity, constancy)”  
(Hsun Tzu, ch.3:9, Watson trans. 1967)*

This life force possesses continuity, wholeness, and dynamism. It gives rise to the life, flourishing and development of the myriad creatures through realizing with *cheng* or consistency the virtues of change, transformation, succeeding and rising. This is regarded as a morally good thing because not only does Nature bestow life, Nature also supports the infinite succession of life through following the principle of the changes. For example, in “The Great Treatise” of *The Book of Changes*, it is said:

“Favouring the infinite succession of life is the basic principle of the Changes. It is the great virtue of heaven and earth to bestow life.”  
(Wilhelm trans. 1989: p. 328)

But Nature not only supports life, Nature also supports diversity. (Yu, forthcoming 2004). It is in fact the virtue of Nature that “there is nothing that heaven doesn’t cover, nothing that earth doesn’t bear up” (Zhangzi, Watson trans. 1996, p. 67). This explains why in Nature “The ten thousand creatures can coexist without excluding one another.” This is because Nature as a process is dynamic and ceaseless, consistent and forever changing, transforming and unfolding new contours, new forms and new lives.

But Nature is not a “creator,” because that would imply agency, design, deliberation, and willing. The regular movements of heavenly bodies and the sequential changes of the four seasons are the ways Nature work as a creative force and a source of life. Non-stopping and ever-changing are the principles of Nature. In following these principles, Nature can produce new lives and new forms to sustain the process of continuity and change without having to make any pronouncements or issue any commands, nor to engage in deliberations or to decide on choices.

## 5. Confucian Perspective on Human Dignity and Moral Responsibility

All life comes from Nature. From the Confucian perspective, the nature of Nature is to nurture life and to sustain diversity through a ceaseless process of continuity and change. Nature gives rise to life and the development of the myriad creatures. It is also the greatness of Nature that the ten thousand creatures can coexist without excluding one another. All life forms receive their endowments from Nature. But it is humans alone, on the Confucian account, who are endowed by Nature with potentials for developing moral virtues. In Mencius’s theory of human nature (*Mencius* 2A:6), every human being is endowed by Nature with four potential moral virtues at birth. These are the seeds of compassion, shame, modesty, and right and wrong

which are equally possessed by all. They are also the “four beginnings” or “four moral possibilities” of the virtues of humaneness, righteousness, propriety and wisdom. It is said in *the Analects*:

“Heaven is the author of the virtue that is in me.  
Yao and Shun (ancient sage kings) and I are of the same kind.”  
(*The Analects*, 7:23)

Human beings are distinguished by their “moral possibilities” which mark them off from other non-human life forms. These moral potentials are also the source of human dignity. The Confucian thesis of potentials for a moral mind received from Nature enables the Confucians to argue for a special mission for humans not expected of the other species in the non-human world. Human’s mission is to develop their potentials and to follow morality in their life. The way of humans is therefore different from the way of other non-human species. Humans have to develop their moral potentials through self-cultivation to achieve full humanity, conceptualized as the ideal of *ren*, or moral personhood (meaning humaneness or benevolence, or the heart that cannot bear the suffering of others).

The ideal of *ren* is the cardinal virtue in Confucian moral philosophy. Humans are born imperfect and perfection has to be attained through cultivation of the moral self in the context of developing one’s social relations and fulfilling one’s social responsibilities. Confucian personhood, although socially oriented, is not socially constituted. (Roetz, 2001) The emphasis is on inner dignity and the cultivation of the internal life as the basis of morality. Such a notion of inner dignity is also central to the moral autonomy of human beings. Filial piety and the parent-child relationship are regarded as the root of *ren*, the starting point for cultivating human morality. The goal is to extend our concern gradually from those who are close to us to those who are unrelated and to all spheres of life eventually, including the non-human sphere. But there is no one single prescribed way to achieve morality. Mencius himself has emphasized that there can be different paths to become a sage, although the goal of *ren* or moral personhood is the same for all alike (*Mencius* 6B:6).

Thus according to Confucian moral thinking, the dignity of humans is grounded in human’s inborn moral sense, which accords them a nobility based upon their moral worth, not based on their worldly ranks (Bloom, 1995). Moral substance is the stuff that humans are made of. Because of their inborn moral sense, human beings can make moral judgments. Unlike Nature, they have a moral mind which can distinguish between what is good or bad, right or wrong, proper or improper. They also have sight which can enable them to identify wrongfulness, hearing which can enable



them to heed suffering, and speech which can enable them to articulate standards of hope and ideals. Because of their moral nature received from Nature, humans have a special positive duty of intervention on the ground that:

*“Our unbearable moral feeling and concern for the suffering of others cannot but compel us to actions. It prescribes the direction: to prevent, remove, and do no harm. What is contrary to this direction constitutes immorality.”*  
(Lee, 2002)

Humans owe this reciprocal duty to Nature. They are under a special moral imperative to act to prevent harm and suffering. Failing to do so will amount to immorality. Humans not only have a moral duty towards one another, they also have a duty of caring for the things of this world as nature’s offsprings, including human life itself. This is grounded in the Confucian conception of the sanctity of life and the dignity of humans. From the Confucian moral perspective, the sustaining of life is a moral imperative, self-sacrifice is nothing to be sought after, endurance and survival are preferred (*The Analects* 15:7), not to give up or give in in the face of hardship and suffering are equally important moral imperatives for the human agent. Reverence for heaven or Nature is reverence for life – in keeping with the life engendering and nourishing power of nature itself.

## 6. Confucian Insights on the Way of Nature, the Way of Humans

As pointed out by Yu (forthcoming, 2004), the way Nature works as a life force is just “natural.” It is said in *The Analects*: “Heaven does not speak; yet the four seasons run their courses thereby, the hundred creatures, each after its kind are borne thereby.” The “naturalness” of nature’s way of working is further explained in Zunzi:

*“Not to act, yet bring to completion; not to seek, yet to obtain – this indeed may be described as the work of Nature”. (Knoblock trans. 1999, p. 535)*

By working in this “natural” way, Nature “hits upon what is right without effort and apprehends without thinking” (Chan, 1963, p. 107). The virtues of Nature is life giving and nurturing of the myriad thousand things through realizing with *cheng* or consistency the virtues of change, transformation, succeeding and rising. Willing, choosing, judging and deliberating which constitute thinking, do not form part of the way of Nature. Nature does not have a moral mind as humans do. Nature has no speech,

no sight and no hearing. Moral deliberation is not involved in the way of Nature. Nature in this sense is non-deliberative, un-discerning, and un-reflective in its action.

The way of humans, in contrast, is not “natural,” but “deliberative” (Yu, *ibid*). The mind of human beings is a discerning mind, because human beings not only have the four moral senses, but they also have sight, hearing and speech. They can tell what is bad, miserable and undesirable. Human beings cannot but make moral judgments and decisions regarding which is a better course of action. They are under the moral imperative to “choose the good” and to “hold fast to it”. Moral deliberation and moral choice constitute the distinct way of humans. The way of humans also requires that one fully develops one’s capacities and potentials for moral virtues to make them flourish in the same way Nature’s virtues are developed and flourish in this universe.

As Yu rightly points out, the important insight of the Confucian understanding of the relation between Nature and humanity lies in its conception of the distinction between the province of humans, and the province of Nature wherein each of them has its separate function and different virtue. Nature cannot do the job of the moral mind; neither can the moral mind do the work of nature. There is no way that humans can compete with Nature in its creative power since as a life force, Nature is dynamic and ceaseless. The principle of changes is the principle of Nature, and in following this principle through the endless cycle of changing, transforming, succeeding and rising, Nature is able to realize its virtue of “nurturing an infinite succession of life” and “containing an ever-unfolding diversity”.

The principle of humans is the principle of self-cultivation. Humans are under a moral imperative to develop their potentials to become a moral person and attain full humanity or *ren*. It is however important to note that the Confucian moral ideal of *ren* requires both humaneness (*ren* in the narrow sense) and righteousness (*yi*) for its realization. Humaneness (*ren*) stresses having proper affective concern for other living things, while righteousness (*yi*) stresses a strictness with oneself, involving a commitment to right conduct.” (Shun, 2001, p. 234) In other words, the affective concern that is part of humaneness has to be regulated by a commitment to right conduct for the person to be truly humane.” (*ibid*, p. 236) This emphasis on the link between humaneness and righteousness is the cornerstone of the Confucian ethical system. It is only by joining righteousness with humaneness that the moral mind is able to make appropriate moral judgment and undertake appropriate moral action to achieve moral ends to fulfill the distinctive function of humans.

## 7. The Interconnectedness among Humans, Heaven, and the Earth

Confucian insight into the role differentiation between the ways of humans and nature is complemented by a further insight into the functional interconnectedness of humans and nature. From the Confucian perspective, because of the different ways they work, this gives rise to different missions and functions for human and nature. The Way of Nature is to give life. It works through discriminating the strong and the weak. The Way of humans is to govern and regulate. It works through distinguishing right and wrong. (Yu, *ibid*)

Notwithstanding their different missions and functions, Confucians do not conceive the relation between humans and nature as one of domination, exploitation or competition. It offers a Third way to conceive the relation as a complementary relation between humans and Nature. It emphasizes that the province of nature should be distinguished from the province of humanity. But at the same time it also emphasizes the interconnectedness between the way of Nature and the way of humans.

Because Nature is non-deliberative, un-discerning and un-reflective, having no sight, no hearing and no speech, this implies that the natural course of Nature is not always morally acceptable. It can sometimes go wrong and cause worry and anxiety to the human mind which is reflective and evaluative. This explains why, “Great as heaven and earth are, men still find some things in them with which to be dissatisfied” (*Legge* 1960, p. 392). Since humans can think, discriminate and judge, they therefore have the moral duty to see for heaven to identify misery or suffering; to hear for heaven to heed distress or sorrow; and to speak for heaven to pronounce judgments on right or wrong.

Humans therefore have a moral duty to speak for heaven, to see for heaven and to hear for heaven, which Mencius explains in this way by quoting from the *T'ai shih*:

*“Heaven sees with the eyes of its people. Heaven hears with the ears of its people.” (Mencius 5A:5)*

Humans have the moral responsibility to rectify nature’s moral blindness through the exercise of moral judgments to differentiate between right and wrong conducts and to seek adjustment accordingly. Regulation or rectification of nature is justified as a positive moral duty, to make things happen one way rather than another, to make a difference. A responsible person should not refrain from acting.

Nature does not do the job of the moral mind, and the moral mind cannot do the job of nature. To the Confucians, it is very clear that

*“In such a situation, the [Perfect Man], however profound, does not apply any thought to the work of Nature; however great, does not apply his abilities; and however shrewd, does not apply his acumen for inquiry to it. This indeed may be described as “not competing with Nature in its work.” Heaven has its season; Earth its resources; and Man his government. This, of course, is why it is said that they “can form a Triad.” (Xunzi, Knoblock trans. 1999, p. 535)*

The differentiation of functions in the two provinces can be further explained in the way that it is Nature which gives birth to plants, but it is humans who plough and sow. It is water which can nurture the growth of things, but it is humans who do irrigation and who control flooding.

Humans should use their moral capacity and intellectual faculties to complement the work of Nature. “To follow Nature is called the Way”; “To rectify the Way is called Culture.” There is something that we cannot expect from Nature, and we should get it through human effort. Nature is morally blind. But Nature is the source of life. Humans are the source of value, the maker of meaning, the fabricator of culture. What the Confucians think would be the appropriate course of action for humans is neither to just emphasize Nature or merely to extol culture. The best way to achieve flourishing is neither to abandon Nature to its natural course of development nor to replace Nature by highly controlled human design. They support a “Third Way” approach (Yu, 2004) which tries to strive for the Golden Mean as the right balance between following Nature and rectifying it. This opens up the possibility that the moral mind should correct the natural course of development of Nature through human intervention when it becomes morally undesirable. But their conduct must be guided by the requirements of *ren* and *yi*. In this way, humans are able to give “their full development to the nature of animals and things”, and “assist the transforming and nourishing powers of Heaven and Earth”. This is what the Confucians meant by humans “not competing with Nature in its work”. To the Confucians, it is only proper that “Heaven has its season; Earth its resources; and Man his government”. It also explains why in their view, the Earth and Heaven and Humans can form a Triad which exemplifies the virtue of harmony.

However, it is important to bear in mind that to the Confucian Chinese, harmony is not opposed to diversity. Harmony is not the same as homogenization. Harmony is valued not because it implies uniformity or eliminates differences. Harmony is

valued because it can give rise to new things. As pointed out earlier, Mencius himself emphasizes that there is no one single prescribed way to realize one's moral potentials and that there are different pathways to become a moral sage. By the same token, there are different ways whereby Nature's virtues can be expressed and realized. This explains why in *the Analects*, Confucius himself emphasized this important distinction between "harmony" and "conformity":

*"The moral person ho (harmonizes) but not tung (conforms); the mean person tung (conforms) but not ho (harmonizes)." (the Analects 8:23)*

Harmony or ho is valued over homogeneity or tung because:

*"Harmony gives rise to new things. Homogeneity will lead to stagnation. To balance one thing by another is called harmony, which will lead to enrichment." (Guo-yu, chapter 16, "Zheng-yu")*

It is very clear that from the Confucian perspective, harmony or *ho* does not mean the suppression of individuality or the construction of a static state. Harmony or *ho* is to be pursued because it gives rise to new things; *tung* which suggests conformity or sameness, is to be rejected because it leads to stagnation. Stagnation and sameness are incompatible with Nature's virtues as a life force which is dynamic, ceaseless, changing, and forever unfolding new contours, new forms and new lives.

## 8. Unborn Human Lives: To Intervene or Not To Intervene?

From the Confucian perspective, humans are born with potentials for moral perfectability, through personal efforts at self-cultivation in the context of the social world. Perfection is not to be achieved through controlled design, but through individual human endeavours. Furthermore, human efforts should focus on cultivation of the perfection of the inner life rather than on the perfection of the external attributes or properties of the human agent. Regulation and rectification of Nature is a positive moral duty if they were undertaken for therapeutic/remedial purpose to assist full development of the nature of things. Such kind of interventions are considered to be morally justified to prevent suffering, to reduce harm, and to assist development to completion. They are consistent with the role of humans to assist nature to sustain life, to complete growth and to support diversity.

But humans should not try to replace Nature by disrespecting the role differentiation between humans and nature. The Golden Mean or the "Third Way" approach is not the same as taking the middle way or the average between two extremes. What is actually required by the Golden Mean or the Third Way is that the merits of the two extremes should be taken into consideration in identifying the Mean. (Osamu 1996, p. 86) In this way, humans are not replacing nature, or displacing nature or playing "God".

From this "Third Way" Confucian perspective, it is not acceptable to change the nature of things, or to produce designer babies. Moreover, if we manipulate the genes of plants, animals, or human beings, such that we get what we regard as the best plants, animals or human beings, then we run the risk of disrupting the natural transformation process, and may end up sacrificing the diversity that is in the nature of Nature. The limits of intervention are very clear, expressed by Zhuxi in this way:

*"Humans have a duty to "zan (assist) the transformation and nourishment," in which each step has to wait for its own turn. For example, people should not interrupt the process of a plant through pulling shoots upwards, because a complete process of sprouting, flowering, fruiting, and withering is the nature of the plant. Similarly, they should not kill any pregnant animals. The sages cannot add anything to the movements of heaven and earth. However, they can ensure that no movement will be violated by artificial efforts. This is the way through which humans develops the nature of all things in heaven and earth." (The Recorded Conversations, 1750).*

In the case of intervention in human lives, the relevant question is not whether parents have a right to choose or make decisions for their unborn children. To the Confucians, parents are bound by their moral duty to choose and decide in the best interest of their children. They are under a positive moral duty to do so. Fulfilling parental responsibility is a moral imperative which endorses sustaining, protecting, and nurturing the life of children and Nature's offsprings to completion. There is a reciprocal relation between parent and child in the same way that there is a reciprocal relation between humans and Nature. The root of filial piety lies in the parents' solicitude for the child, and what the child is to do for them comes as a natural response to their prior love, concern and care. In this way, a natural reciprocity, not based upon consent or contract in terms of the human life cycle is being exhibited in the mutual inter-dependency between the father and the child, based on the shared life of the family.

The notion of reciprocity has many interpretations. One approach is to conceive it as a give-and-take relationship emphasizing a simple tit-for-tat notion, referring to

direct and exact return in kind. In the Confucian account, reciprocity is not conceived in terms of a kind of transaction like an exchange of gifts or goods. Neither is it to repay a debt, or to fulfill contractual obligations necessary for maintaining membership in some mutually beneficial exchange schemes. What reciprocity in Confucian ethics prescribes is to return good for good.

Such a notion of reciprocity is expressed in the often-cited Chinese proverbs: “An earlier generation plants trees under which later generations find shelter and repose”; and “As you drink the water, think of the fountain-head from which the water sprouts”. Such a moral obligation of reciprocity exists not only just between humans, but also between humans and the one thousand myriad things in nature. Instead of domination or exploitation, rights or equality, reciprocity is the central ethical principle which governs interpersonal relations, including our relations with the non-human world.

Moreover, Confucian reciprocity is a notion of generalized reciprocity as the two proverbs exemplify. Adopting a Confucian notion of reciprocity can enable us to recognize our non-voluntary obligations – the obligations we acquire to both humans and non-humans in the course of our life, but acquire without regard to our invitation, consent or acceptance. The major normative task for such a self is not to protect individual rights or to maximize individual preferences and desires, but to maintain interdependence with others and with nature in a reciprocal relationship of harmony based on a respect for connectedness and difference.

Hence, according to the Confucian view, intervention with Nature is a reciprocal duty, but we should avoid decreasing diversity or suppressing individuality. It is justified for purposes of rectification, remedy, or relieving suffering, but not for the purpose of pursuing maximal results to satisfy individualistic needs and desires, or to achieve some standard of perfection. Enhancement using germ-line genetic intervention is not supported, but somatic genetic interventions are acceptable to fulfill the role of “assisting” Nature. The Confucian moral point of view will find germ-line therapy objectionable because it can reduce the amount of genetic variations among people. It will also object to genetic engineering to enhance human traits or to select the desired genetic predisposition according to plan because it can diminish the autonomy of the person concerned. Autonomy is valued because it is central to the process of self-cultivation to achieve full humanity or personhood. In this sense, designer baby implies diminished personhood. Confucian moral thinking supports perfection through self-cultivation rather than perfection through controlled design.

## 9. Towards a Confucian Bioethics of Harmony

A Confucian approach to bioethics is a bioethics of harmony which favours individuality, diversity, and reciprocity. It is human-centred but is not exclusively centred on human interests and benefits as the moral justification for human intervention with nature or with the environment. It enables us to move beyond current debates regarding species or the boundaries of humanity by emphasizing the moral nature of the human mind and underscoring morality as the distinctive responsibility of human beings. It reminds us of the central role played by involuntary obligations in the moral life of the human agent, and provides an important counterpoint to the role of consent and agreement in contemporary Western morality.

The Confucian conception of the triadic relation between Humans, Heaven and the Earth enables the Chinese to avoid a dichotomous view of humans either as the sovereign or as the steward of Nature. The emphasis on role differentiation and division of responsibility also enables the Chinese to see interdependence and interconnectedness between the functions of humans and nature. It holds out a relational view of the self as a counterpoint to the individualistic self-understanding which emphasizes separateness and independence and which has importantly shaped the development of Western bioethics.

A Confucian bioethics of harmony is in this sense an expression of the ideal of universal fellowship of all things based upon the Confucian notion of reciprocity. Harmony does not imply a state of perfection. Confucian ethics recognizes that both Humans and Nature are imperfect. But humans, in following the principles of humaneness (*ren*) and righteousness (*yi*), can assist in the search for perfection and transformation of humans and nature. A Confucian bioethics respects interconnectedness, but it also supports individuality within relationship and diversity within harmony. In a state of harmony, the individual both merges with others and distinguishes himself/herself. The Confucian notion of harmony offers a counterpoint to the ideals of maximization and standardization in contemporary bioethics.

A Confucian bioethics of harmony favours a Third Way approach to intervention with Nature. In this Third Way, there is no need to adopt a bifurcated perspective which either proscribes “banning all genetic engineering” or “allowing genetic engineering laissez-faire” (Rollin 1995: 10–11). It acknowledges a positive duty for humans to “assist” the transforming and nourishing power of heaven and the earth, but not to replace or displace their role and function. On this view, enhancement through genetic intervention is not supported although relieving suffering and preventing harm may be fully endorsed. But germ-line therapy is unacceptable because it can

affect future generations indefinitely and is probably irreversible. Parents have a duty to protect their offsprings from harm, but they have no right to determine what will happen in the world, or the sorts of beings that will exist in future. The use of genetic intervention to create designer babies is also to be rejected because it violates the role differentiation between humans and Nature.

The Confucian process view of Nature as continuous self-unfolding life force, and of personhood as continuous moral-cultivation for self-development, enables us to see the two processes as interdependent rather than oppositional, as mutually supportive rather than mutually exclusive. It justifies the importance of sustaining the interdependence of these two processes and upholding their division of responsibility in order to ensure their continuance as a source of reciprocal support for mutual sustenance. To achieve this, the Confucian perspective recommends following the Golden Mean to maintain a harmonious balance of role functions between humans and Nature to prevent marginalization or suppression of the one by the other. In this regard, it gives clear-cut guidance about what is, and what is not, permissible intervention under this notion of mutually supportive division of labour.

In order to fulfill well this role of “assisting” Nature, humans must work hard to develop the moral mind and cultivate their potentials. Human intervention should be guided by the virtues of *ren* and *yi*. It should not be merely driven by the pursuit of maximal results and self-interest. Importantly, it should also be based on a proper concern and respect for Nature’s virtue of “nurturing an infinite succession of life” and “containing an ever-unfolding diversity.” The Confucian focus on virtues reminds us that there is more to morality than principles. It can contribute to a more balanced approach to bioethics issues by avoiding oversimplistic attempts to reach any overall conclusion about the rightness or wrongness of genetic engineering *per se*.

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