

Roe v. Wade, 410 US 129 (Section VI.1-2)

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VI

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century.

1. *Ancient attitudes.* These are not capable of precise determination. We are told that, at the time of the Persian Empire, abortifacients were known, and that criminal abortions were severely punished.⁸ We are also told, however, that abortion was practiced in Greek times as well as in the Roman Era,⁹ and that "it was resorted to without scruple."¹⁰ The Ephesian, Soranos, often described as the greatest of the ancient gynecologists, appears to have been generally opposed to Rome's prevailing free-abortion practices. He found it necessary to think first of the life of the mother, and he resorted to abortion when, upon this standard, he felt the procedure advisable.¹¹ Greek and Roman law afforded little protection to the unborn. If abortion was prosecuted in some places, it seems to have been based on a concept of a violation of the father's right to his offspring. Ancient religion did not bar abortion.¹²

2. *The Hippocratic Oath.* What then of the famous Oath that has stood so long as the ethical guide of the medical profession and that bears the name of the great Greek (460(?)-377(?) B. C.), who has been described as the Father of Medicine, the "wisest and the greatest practitioner of his art," and the "most important and most complete medical personality of antiquity," who dominated the medical schools of his time, and who typified the sum of the medical knowledge of the past?¹³ The Oath varies somewhat according to the particular translation, but in any translation the content is clear:

"I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner, I will not give to a woman a pessary to produce abortion,¹⁴"

or

⁸ A. Castiglioni, *A History of Medicine* 84 (2d ed.1947), E. Krumbhaar, translator and editor (hereinafter Castiglioni).

⁹ J. Ricci, *The Genealogy of Gynaecology* 52, 84, 113, 149 (2d ed.1950) (hereinafter Ricci); L. Lader, *Abortion 75-77* (1966) (hereinafter Lader); K. Niswander, *Medical Abortion Practices in the United States, in Abortion and the Law* 37, 38-40 (D. Smith ed.1967); G. Williams, *The Sanctity of Life and the Criminal Law* 148 (1957) (hereinafter Williams); J. Noonan, *An Almost Absolute Value in History, in The Morality of Abortion* 1, 3-7 (J. Noonan ed.1970) (hereinafter Noonan); Quay, *Justifiable Abortion -- Medical and Legal Foundations* (pt. 2), 49 *Geo.L.J.* 395, 40622 (1961) (hereinafter Quay).

¹⁰ L. Edelstein, *The Hippocratic Oath* 10 (1943) (hereinafter Edelstein). *But see* Castiglioni 227.

¹¹ Edelstein 12; Ricci 113-114, 118-119; Noonan 5.

¹² Edelstein 13-14

¹³ Castiglioni 148.

¹⁴ *Id.* at 154.

"I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy."¹⁵

Although the Oath is not mentioned in any of the principal briefs in this case or in *Doe v. Bolton*, *post*, p. 410 U. S. 179, it represents the apex of the development of strict ethical concepts in medicine, and its influence endures to this day. Why did not the authority of Hippocrates dissuade abortion practice in his time and that of Rome? The late Dr. Edelstein provides us with a theory:¹⁶ The Oath was not uncontested even in Hippocrates' day; only the Pythagorean school of philosophers frowned upon the related act of suicide. Most Greek thinkers, on the other hand, commended abortion, at least prior to viability. *See* Plato, Republic, V, 461; Aristotle, Politics, VII, 1335b 25. For the Pythagoreans, however, it was a matter of dogma. For them, the embryo was animate from the moment of conception, and abortion meant destruction of a living being. The abortion clause of the Oath, therefore, "echoes Pythagorean doctrines," and "[i]n no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity."¹⁷

Dr. Edelstein then concludes that the Oath originated in a group representing only a small segment of Greek opinion, and that it certainly was not accepted by all ancient physicians. He points out that medical writings down to Galen (A.D. 130-200) "give evidence of the violation of almost every one of its injunctions."¹⁸ But with the end of antiquity, a decided change took place. Resistance against suicide and against abortion became common. The Oath came to be popular. The emerging teachings of Christianity were in agreement with the Pythagorean ethic. The Oath "became the nucleus of all medical ethics," and "was applauded as the embodiment of truth." Thus, suggests Dr. Edelstein, it is "a Pythagorean manifesto, and not the expression of an absolute standard of medical conduct."¹⁹

This, it seems to us, is a satisfactory and acceptable explanation of the Hippocratic Oath's apparent rigidity. It enables us to understand, in historical context, a long-accepted and revered statement of medical ethics.

¹⁵ Edelstein 3.

¹⁶ *Id.* at 12, 15-18.

¹⁷ *Id.* at 18; Lader 76.

¹⁸ Edelstein 63.

¹⁹ *Id.* at 64.