

The Maine Interfaith Council
for Reproductive Choices

REPRODUCTIVE CHOICES:
*A Reform Jewish
Perspective*

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I. Personhood

I'd like to begin by going back to the Torah, the core of the Jewish and Christian Bible. First, the Torah does not discuss abortion per se. There is no specific law regarding abortion in Torah. There is, of course, a prohibition against murder. But nowhere does the Torah does equate abortion with murder.

What is murder? It is when one person kills another person. Murder is an action in which the victim has the status of personhood. And here is where we get an understanding of the Torah's position regarding abortion. According to the Torah, the fetus is not a person (*nefesh*).

That doesn't mean that the fetus is not human. Of course, it is human. But Judaism defines personhood as a legal status which one acquires at birth.

The religious question is sometimes phrased in terms of "when does life begin?" For Judaism, this is an unanswerable question. We cannot say that when there is one cell, there is no life, and when there are two cells, there is life. We do not speculate as to when the soul became a part of a person. Did ensoulment occur when two DNA got entangled with each other? Is ensoulment a genetic by-product? We are happy to regard life as miraculous and a gift from God, but we do not base legal principles on speculation about which moment life begins, or when ensoulment occurs.

What, then, is a fetus, in Jewish law, if not a person? It is a potential person, and therefore is deserving of respect, care, and protection. It is holy the way that Judaism regards the entire body as sacred. But, it is not a separate person, with rights independent of those of its mother, until birth.

II. A Legal Case from the Torah

How do we know that this is the Torah's position? From a single law, which appears in Exodus 21:22-23f. You are probably familiar with a piece of this text, even though you may have never associated it with the discussion of abortion. It discusses the following scenario. Two men are fighting. In the course of the fight, a bystander who is pregnant is pushed, resulting in a miscarriage. If the woman is unharmed in any other way, in other words, if the

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only damages that result are the loss of her fetus, then, the text says, the person who pushed her must pay a fine to the woman and her husband for their loss. If, however, the woman is hurt in some additional fashion, then the penalty shall be (and here's the part you've heard) life for life, eye for eye, tooth for tooth, etc.

(A brief aside: When the Torah says an eye for an eye, it is stating a principle of equity, not a manner of punishment. But that is a discussion for another time.)

The meaning of the law is that damage to the fetus is not in the same category as damage to the mother. If she dies as a result of her injuries, the man who hit her is guilty of a capital offense. The miscarriage of the fetus, however, is not regarded as a capital offense. It is a loss to the mother, to be sure, and the responsible party must pay her damages accordingly. But he has not killed a person. Rather, he has caused the mother and father a loss, and is assessed a fine, similar to the way he would be liable in a case of property damage.

In short, the guilty party may have caused a miscarriage, but that doesn't constitute murder. Therefore, we deduce from this law that the fetus is not a person, with the full rights of personhood.

To say this does not mean that Judaism regards it as a woman's right to do with the fetus as she chooses, because Judaism does not regard it as any person's prerogative to do anything with their body that they choose. One is prohibited from harming oneself. But, to harm oneself is not murder. And, indeed, there may be extenuating circumstances in which harm to oneself may be justified, even required, for a higher good.

III. The Mother's Welfare Comes First

To understand this approach to cases of conflicting values, we must go beyond the Torah to the literature of the rabbis, Mishnah and Talmud, which date from the first to the fifth centuries of the Common Era. In these legal texts, we find repeated statements of the basic principle that the mother's welfare comes first. Indeed, abortion was known in the early rabbinic period and was practiced for therapeutic reasons. Thus, we read in the Mishnah (Oholot 7:6): "If a woman is having difficulty giving birth, one cuts up the fetus within her womb and extracts it limb by limb. But if the greater part was already

born, one may not touch it (i.e. cause it harm), for one may not set aside one person's life for that of another."

I apologize for the graphic nature of the citation, but it is helpful for us to realize that the issues that we face today were dealt with forthrightly and in unambiguous terms by those concerned with Jewish ethics as much as 2,000 years ago. They did not hesitate to describe the medical procedures involved, and to articulate a principle of justice. From their perspective, the mother's welfare always takes priority over that of the fetus, up until the point at which the fetus has emerged part way from the womb. The rabbis of the Talmud summarized their position with the following statement: A fetus is a limb of its mother (*ubar yerech imo*), (Arachin 7a).¹ The act of birth changes its status from limb (*yerech*) to person (*nefesh*).

Later, in the middle ages, rabbinic authorities took up the question of what constituted sufficient danger to the mother to justify an abortion. Here, the unanimity of the law breaks down. There are liberal and conservative rulings of various rabbis. A majority hold that threats to the mother's health constitute sufficient moral justification for abortion. Differences of opinion occur over issues such as whether health encompasses mental health and psychological anguish.

There are also those who view the Talmud's position, that personhood is established when the fetus emerges from the womb, as the Talmud's attempt to define fetal viability. That is, that the Talmud means to say not that the fetus lacks personhood until it literally emerges from the womb, but rather, that it lacks personhood until it reaches the stage of fetal viability, which, 2,000 years ago, was virtually synonymous with emergence from the womb. Thus, there are contemporary differences of opinion among rabbis regarding the permissibility of abortion at different points of pregnancy, with many simply drawing the line at the point of fetal viability, and others blurring that line in consideration of other factors. No contemporary rabbis, however, regard personhood as established prior to fetal viability.

IV. The Right to Choose

It would be facile, then, to suggest that there is a

single unequivocal Jewish position delineating the conditions under which abortion is morally permissible. At a minimum, however, one can state that Judaism recognizes conditions in which abortion is morally justified and may even be necessary. In most cases, it simply cannot be regarded as murder.

Given Judaism's long-standing recognition of such circumstances, Jews have historically been in the forefront of the movement to protect a woman's right to choose abortion under law. It is not the case that we view all such choices as morally justifiable. Rather, we are reluctant to see abortion regulated in a way that would preclude us from making those choices that we do consider ethically sound.

Jews find such anti-choice maneuvers an affront to our basic liberties. We know that other religions view abortion differently. It is their prerogative. But we feel it is an infringement upon our religious practices to prevent us from making such decisions in accordance with our own religious beliefs.

V. The Holocaust Analogy

Indeed, much of the anti-choice movement is not only an attempt to impose religious beliefs upon those of us who believe differently and practice other religions; it is often couched in language that is directly offensive to Jews. Nothing strikes us as more grotesque and obscene than the frequent analogies drawn between abortion and the Holocaust. I have, myself, received hate mail with the outrageous heading: "Abortion: The American Holocaust."

The Holocaust is an event in Jewish history. It is the murder of European Jewry by the Nazis. It is not a synonym for genocide, let alone murder. The Holocaust was an act of hateful, anti-Semitic violence, directed at one particular people and rooted in a history of religiously based anti-Semitism. For anyone to equate the Holocaust with abortion is to display extreme insensitivity to the suffering of the Jewish people, who were murdered specifically because of a bigotry directed at them by the Nazis. The Jews who died in the Holocaust were not simply innocent victims of war; they were singled out because they were Jews.

There is something perverse, and occasionally anti-Semitic, in these analogies. For the very same people who decry abortion as a Holocaust often point their fingers at physicians as being profiteers from a presumed abortion industry. The whole sound of it is quite ugly to Jewish ears. Often the

doctors are Jewish. Jewish doctors; profiteering; babies and murder: these are familiar themes in the history of anti-Semitic hate language. We take it personally.

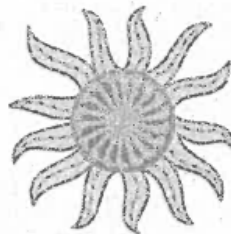
Then, there is the sad truth that such hostile rhetoric, laced with anti-Semitic overtones, leads a handful of lunatics to commit acts of violence, such as the murder of Dr. Bernard Slepian, an obstetrician in Buffalo, New York. As you may have read, Dr. Slepian was returning home from synagogue after attending services to say Kaddish, the memorial prayer, for his father, when he was shot.

VI. Postscript

To summarize, Jews view the issues of abortion in the context of our interpretation of the Bible and our religious understanding of the definition of personhood. We take special note of the way the current debate over abortion all too often employs anti-Semitic code language, and therefore recognize the inherent relationship between reproductive choice and civil rights. We look to our colleagues to speak out, not only for the rights of women, but against the hateful rhetoric that demonizes the other.

¹ Rosner, Fred, "The Jewish Attitude Toward Abortion," in Kellner, Menachem, ed., *Contemporary Jewish Ethics*.

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