
THE JEWISH APPROACH TO ABORTION

The issue of abortion is a charged topic, both hotly and widely debated across the globe. It is an issue that touches on the core values of religion and civil society. On the one hand is the issue of the sanctity of life and the concern for the right to life of the yet unborn. On the other hand, government regulations on abortion are seen as a violation of privacy and a woman's right to decide whether or not to see a pregnancy to term.

While most would agree that individual liberty does not sanction murder, when it comes to abortion the issue turns on the very definition of when life begins. The answer to that question is religiously or ideologically driven, and as such, abortion immediately involves people's most sacrosanct beliefs and opinions about God, the soul, and the nature of existence. The opposing camps of "pro life" and "pro choice" seem to be at eternal loggerheads.

Judaism's approach to this complicated and sensitive matter differs radically from some of the well-known stances on the topic, such as the Roman Catholic Church's position at one extreme and pro-choice permissiveness at the other. The former unconditionally prohibits abortion from the moment of conception, while the latter sees abortion as the right of every woman to make her own decision concerning her body.

Judaism embraces the tremendous sanctity of life. Judaism prohibits the wanton destruction of a fetus, and as such, sides with the pro-life camp in condemning the use of abortion as mere birth control. On the other hand, Judaism also recognizes the necessity for abortion in certain cases and therefore does not ban it. Which instances specifically warrant abortion is itself a hotly debated topic within Jewish law, one in which there is no clear-cut consensus. Practically, one should seek guidance from a competent halachic authority.

This class will explore the issue of abortion from the perspective of the Jewish tradition, delving into the classical sources, as well as the modern-day legal decisions of the leading experts in Jewish law. In doing so we will seek to answer the following questions:

- Where in the Torah or the Talmud does it discuss the issue of abortion?
- Does Jewish law prohibit abortion as a form of murder, or is there another basis for the prohibition?
- Under which circumstances is abortion permitted in Jewish law?
- How early in the pregnancy does the prohibition apply?
- How does Judaism's approach differ from secular and Catholic approaches to abortion? Is it more in line with the pro-life or the pro-choice camp?

Class Outline:

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NOTE: Nothing in this study session should be taken as either authoritative Jewish law or even practical advice. This class is meant simply to raise questions and help the process of discussion and discovery. Any practical questions should be directed to a competent Torah authority.

SECTION I. THE ABORTION ISSUE

No matter what your perspective on abortion, everyone can agree that it has serious ramifications not only for the individuals involved but for future generations to come. In dealing with abortion we are playing with fire and we must approach the issue with the gravity it deserves. In this section we will briefly explore some of the legal history of abortion and the major arguments advanced by both sides of the debate.

PART A. OVERVIEW OF THE HISTORY AND LEGALITY OF ABORTION

1. **Dr. Avraham Steinberg, Encyclopedia of Jewish Medical Ethics, p. 1 – The debate over abortion has a long history.**

Most religious and legal systems in ancient cultures were opposed to induced abortion. Thus, the Assyrians, Indians and ancient Egyptians, among others, were opposed to induced abortion. There were differing opinions among the ancient Greeks. By contrast, the Romans prohibited abortion and established severe punishment for those who performed them.

A negative attitude toward induced abortion is also evident in most known physicians' oaths. Even if this negative attitude is not explicit, it is implied as part of the general ethical conduct of physicians. The Hippocratic Oath states: "I will never give a potion to a woman nor use any instrument to induce an abortion," although other Greek schools of medical thought did not oppose abortion ...

2. **Guttmacher Institute, www.guttmacher.org – Worldwide rates and legality of abortion.**

In year 2008 worldwide, there were over 40 million abortions; 20% of all pregnancies ended in abortions. 54 countries allow abortion, accounting for 61% of the world population. 97 countries comprising about 39% of the population have abortion laws that make it illegal according to the Center for Reproductive Law and Policy in New York. Abortion rates vary throughout the world. The New York Times (February 3, 2011) reported that the Year 2009 abortion rate in New York City of 40% has been holding steady since the year 2000.

3. **Background: “Should Abortion Be Legal?” from www.procon.org – Abortion was illegal in the US by the early 1900’s, but since *Roe v. Wade* in 1973, abortion has been legalized in many states.**

In 1821, Connecticut became the first state to criminalize abortion. It banned the selling of an abortion-inducing poison to women, but it did not punish the women who took the poison. Legal consequences for women began in 1845 when New York criminalized a woman’s participation in her abortion. By the early 1900s, influenced primarily by physicians fearing its safety, most states had banned abortion. By 1965, all 50 states had outlawed abortion, with some exceptions varying by state. Federal action on abortion didn’t occur until *Roe v. Wade* in 1973, which declared most state anti-abortion laws unconstitutional. The high court’s 7-2 decision established rules based on a pregnancy trimester framework, banning legislative interference in the first trimester of pregnancy, and allowing states to regulate abortion during the second trimester (weeks 13-28) and third trimester (weeks 29-40), but only when “related to maternal health.”

4. ***Ibid* – Americans are almost evenly split on the issue of legalizing abortion.**

A May 2009 Gallup poll on abortion attitudes revealed that 51% of Americans consider themselves pro-life and 42% pro-choice. It was the first time since 1995, when the poll first started, that a majority of Americans identified as pro-life, and it was the first time since 2000 that more people were pro-life than pro-choice.

PART B. THE ETHICAL DEBATE

Each side in the abortion debate has chosen a name to attract followers. After all, who is anti-life or anti-choice? Nevertheless, the debate between these two camps centers on which is the operative of the two values in determining the right to abort a fetus. Below are just two examples of the arguments offered both in favor and against abortion.

1. **“Pro-Choice and Proud,” from www.prochoice.org, posted Apr. 27, 2010 – Women have the right to live with dignity.**

The ability to access safe and legal abortion has been critical for many women as they seek to define and live their lives with dignity. Honoring women means honoring their choices, including the choice of whether and when to have children.

Women are capable of making intelligent and conscientious decisions about their own lives and families. Women deserve the autonomy and dignity to act in accordance with their personal convictions, and to decide what is best for their own lives and families. Women should be trusted and respected to exercise the choices about their bodies and lives that are best for them, and not be forced by the government into personal reproductive decisions that are against their will.

2. **National Right to Life Committee (NRLC) Jan. 2004 – No one has the right to deny life to someone else.**

While there are many things that society can and should do to ensure that women are never denied basic rights or opportunities on account of their sex or reproductive status, to claim that these rights require the death of the innocent is to undermine the very foundations of justice itself ...

We believe in freedom, but absolute freedom, to do whatever one wishes without limits, cannot exist. If people are “free to choose,” to harm or kill one another for any reason whatsoever, all live in fear, not freedom ... [S]ociety as a whole has something at stake when one human being claims the right to kill another or to decide who is worthy of life.

PART C. PATIENT AUTONOMY, INFORMED CONSENT, AND THE PRUDENT STEWARD

The common approach to medical care is that patients have the right to make medical decisions about their health without their physicians trying to influence their choices. Patient autonomy does allow for doctors to educate the patient, but does not allow the physicians to make the decision for the patient. The patient may consent to their doctor's recommendation. Consequently, when weighing the decision for an abortion, a married couple or an unmarried mother would consult with whomever they felt would provide them with the best medical, psychological, sociological, and legal guidance. What are the values addressed by secular medical ethics that guide medical decisions?

1. **Daniel Eisenberg, MD, Medical Informed Consent in Jewish Law, jlaw.com, aish.com – The key secular medical ethics principles in making medical decisions: beneficence, non-maleficence, justice, and autonomy.**

While the Jewish world has the Torah from which to seek guidance, the secular world must rely on consensus. As a result, any society-wide decision must be widely inclusive of almost all philosophies, preferences, and religious beliefs. As there is very little that we all agree upon, very little can be legitimately circumscribed without infringing on the personal freedoms of some one individual or group.

So, when it comes to medical ethics, and particularly medical decision-making, secular society treads very lightly in compelling individuals to accept any particular treatment. The days of the physician knowing best and the patient blindly acquiescing are over. Instead, the modern approach to medical ethics is predicated upon several universalistic principles.

Secular society demands several things from physicians: that any health-care decision promoted by the physician be in the patient's best interests (beneficence); that the physician “do no harm” (non-maleficence); and that health-care be provided in a fair and equitable way to all, without prejudice (justice). But these three requirements are dwarfed by the fourth – that the patient has the ultimate responsibility and final decision-making capacity with respect to health-care decisions (autonomy).

The question naturally arises how a patient without medical training can exercise their autonomy if they do not understand the choices being placed before them. That is why one of the most important requirements in allowing for true patient autonomy is the concept of informed consent. The patient must be given enough information to allow for an educated and reasoned healthcare decision. The usual secular understanding of informed consent is predicated upon the right of the individual to express his autonomy by deciding which actions he will or will not allow to be performed on his body.

How does Judaism view the medical decision-making process? What if a mother claims, “It’s my body, therefore the abortion is my decision”? In Judaism, the decision to seek or refuse a medical procedure is guided by the principle known as the “prudent steward.”

2. **Ibid. – Judaism teaches that man is charged with being a prudent steward.**

Judaism takes a paternalistic view of many human endeavors, including the practice of medicine. Since man was created in the image of God and his body is the property of the Creator, man is given only custodial rights to his body. But if man is charged with being the prudent steward of his body, required to accept medical treatment, this would seem to preclude the possibility of there being a meaningful concept of informed consent in Jewish law.

This is not the case! Judaism requires a type of informed consent that while not identical to the secular concept, in some ways is actually more stringent than its secular counterpart as follows: The key distinction between the secular and the Jewish approaches to informed consent is the difference between rights and obligations. The secular emphasis on autonomy inescapably leads to the conclusion that the patient has the right to refuse any and all medical information. In Judaism, both becoming informed and giving consent for appropriate treatment are required.

The situation is akin to a money manager entrusted with the funds of a client. He is obligated to research all reasonable investment options. After accumulating the necessary information, he **MUST** decide where to invest his client’s money. He **MUST** invest the money because that is his mandate. Only if he feels that all investment options are unacceptable for his client, based on sound reasoning, may he leave the money as cash. Similarly, as the prudent steward of one’s own body, one **MUST** acquaint oneself with all reasonable medical options, including inaction, before making a decision. But after evaluating all reasonable options, the Torah requires one to choose the sensible option, the one that the prudent steward would choose.

In what framework does the prudent steward decide a medical question? A prudent steward addresses the medical decisions to be made through the framework of *halachah*, Jewish law, with the guidance of a competent *posek* (Jewish legal authority).

3. **Rabbi J. David Bleich, *Judaism and Healing*, Ktav Publishers, 2003, p. xii – Halachah guides all areas of human endeavor.**

Judaism is fundamentally a religion of law. Halachah governs virtually every facet of human endeavor. An individual who seeks to find answers with the Jewish tradition can deal with such questions in only one way. He must examine them through the prism of halachah, for it is in the corpus of Jewish law as elicited and transmitted from generation to generation that God has made His will known to man.

We now proceed to see how the halachah addresses abortion. For background on the process of halachah, please refer to the Morasha shiurim on The System of Halachah: Jewish Law.

KEY THEMES OF SECTION I:

- ≈ Whether to allow or prohibit abortion has been debated since ancient times.
- ≈ The current debate about abortion outside of Jewish law swings in balancing competing values: the value of the right to life of the fetus versus a patient’s autonomous right to make an informed medical decision.

- ⌘ Since man was created in the image of God and his body is the property of the Creator, man is given only custodial rights to his body. Therefore, the Jewish approach to deciding about an abortion is predicated on the patient's responsibility of being a prudent steward of both one's life and that of the fetus.
- ⌘ A prudent steward addresses medical decisions through the framework of halachah in consultation with a competent posek (Jewish legal authority).

SECTION II. ABORTION IN THE TORAH AND TALMUD

We now turn to central sources in the Torah and the Talmud that address abortion. Jewish legal authorities cite three verses in the Torah that relate to abortion. The first source is understood by the Talmud as prohibiting abortion for Noachides, which is then extended by the Talmud to apply to Jews as well. (The Noachide commandments are the prohibitions against idol worship, murder, theft, forbidden sexual relationships, blasphemy, eating a limb torn from a live animal, and the positive commandment of setting up courts to enforce laws.)

1. Bereishit (Genesis) 9:6 – The Torah prohibits the act of murder to all mankind.

He who spills human blood shall have his own blood spilled by man, for God made man in His own image.

שפך דם האדם באדם דמו ישפך כי בצלם אלהים עשה את האדם:

This verse is explained by the Talmud as referring to abortion.

2. Talmud Bavli (Babylonian Talmud), Sanhedrin 57b – Feticide is established as murder for Noachides.

In the name of Rabbi Yishmael it was said: [A Noachide may be put to death] even for the killing of a fetus. What is Rabbi Yishmael's source? For it is written, "One who spills the blood of a person shall have his own blood spilled by another person [literally read: one who spills the blood of a person *inside another person* etc.]." (Bereishit 9:6). Which person is inside another person? This is referring to the fetus in the mother's womb.

משום רבי ישמעאל אמרו: [בן נח נהרג] אף על העוברין. מאי טעמיה דרבי ישמעאל? - דכתיב (בראשית ט:ו) "שפך דם האדם באדם דמו ישפך" איזהו אדם שהוא באדם - הוי אומר זה עובר שבמעיו אמו.

Prohibitions for non-Jews are applied by the Talmud to Jews as well:

3. Ibid. 59a – If abortion is considered as murder for a non-Jew, then it is also classified as murder for a Jew.

There is nothing that is permitted to the Jew but is forbidden to the gentile.

ליכא מידעם דלישראל שרי ולבני נח אסור.

The second Torah verse prohibiting abortion is the general prohibition of murder in the Ten Commandments, cited by Rabbi Moshe Feinstein (see Section III).

4. **Shemot (Exodus) 20:13 – Prohibition of murder.**

You shall not murder.

לא תרצח.

The third Torah source addressing abortion is a case when two people are engaged in mortal combat. The pregnant wife of one of the combatants enters the fight to save her husband. A death blow meant for the man accidentally hits his pregnant wife, killing either her or her unborn child. The Torah relates the law in both such instances as follows:

5. **Ibid. 21:22-23 – When someone intends to kill someone but instead inadvertently makes a woman miscarry, he pays monetary damages.**

[This is the law] when two men fight and [accidentally] harm a pregnant woman, causing her to miscarry. If there is no fatal injury [to the woman], then [the guilty party] must pay a [monetary] penalty. The woman's husband must sue for it, and [the amount] is then determined by the courts. However, if there is a fatal injury [to the woman], then he must pay full compensation for her life [i.e., be put to death].

וכי ינצו אנשים ונגפו אשה הררה ויצאו ילדיה ולא יהיה
אסון ענוש יענוש כאשר ישית עליו בעל האשה ונתן
בפללים: ואם אסון יהיה ונתתה נפש תחת נפש:

This source teaches that killing a fetus results in monetary compensation to the family for damage.

The final source we cite in this section is a Mishnah discussing abortion when a mother's life is threatened during childbirth. The Mishnah permits, and in fact requires, the destruction of an unborn child in the case that the difficulties the mother faces in childbirth present a real danger to her life. The Mishnah gives the rationale that שחייה קודמין לחייו – her [the mother's] life takes precedence over his [the child's] life.

6. **Mishnah, Ohalot 7:6 – The Mishnah allows abortion in order to save the mother's life, but not once the child is partially born.**

For a woman who is experiencing a difficult birth [i.e. where the mother's life is in danger], one should dissect the child inside her and extract the pieces, for her life takes precedence over his. Once most of the child is already out, we do not touch him, for one does not push aside one life for the sake of another.

האשה שהיא מקשה לילד מחתכין את הולד במעיה
ומוציאין אותו אברים אברים מפני שחייה קודמין
לחייו. יצא רובו אין נוגעין בו שאין דוחין נפש מפני
נפש.

We see from this Mishnah that although the unborn child has a right to live, this right is not equal to the mother's. Therefore, in the case of a conflict between the two, the mother's life is more important. Yet once the child is even partially born, then the two are of equal standing. This means that the Torah does not view the life of the unborn as equal to the life of someone already born. However, under normal circumstances where there is no threat to the mother, the implication here would be that abortion is prohibited.

KEY THEMES OF SECTION II:

∞ There are several key sources in the Torah and Talmud that address abortion.

- ≈ The Torah includes a prohibition of murder described as “a person inside a person.” The Talmud teaches this prohibition against abortion is due to murder.
- ≈ Rav Moshe Feinstein cites the Fourth Commandment, “Do not murder” as an additional source for prohibiting abortion.
- ≈ In the case where a fetus threatens the mother’s life, the Mishnah teaches that the fetus should be aborted since the mother’s life takes precedence.

SECTION III. THE NATURE OF THE PROHIBITION AGAINST ABORTION

There are three basic reasons cited for the prohibition of abortion: murder, destroying potential life, and causing damage.

PART A. MURDER

The mainstream opinion in Jewish Law is that abortion is considered murder. The Mishnah quoted from Ohalot above teaches that if the fetus is threatening the mother’s life, it may be aborted. Rambam (Maimonides) provides a rationale for this law. He tells us that the fetus is a *rodef*, an aggressive pursuer of the mother’s life. We are allowed to kill it to save the mother’s life, just as we are allowed to kill anyone actively threatening someone’s life. From this justification given for the one known exception to the rule, we can discern the nature of the prohibition against abortion.

1. **Rambam, Hilchot Retzichah V’Shmirat HaGuf 1:9 – The fetus is considered an aggressive pursuer of the mother’s life.**

This, indeed, is one of the negative mitzvot – not to take pity on the life of a *rodef*.

On this basis, our Sages ruled that when complications arise and a pregnant woman cannot give birth, it is permitted to abort the fetus in her womb, whether with a knife or with drugs. For the fetus is considered a *rodef* of its mother ...

הרי זו מצות לא תעשה שלא לחוס על נפש הרודף.

לפיכך הורו חכמים שהעובר שהיא מקשה לילד
מותר לחתוך העובר במיעיה בין בסם בין ביד מפני
שהוא כרודף אחריה להורגה...

The law of the *rodef* permits one to kill someone who is threatening to murder someone else. Rabbi Moshe Feinstein, one of the foremost authorities in Jewish Law in recent times (1895-1986), claims that by invoking the rationale of *rodef* to permit killing a fetus, Rambam was also teaching us that a fetus is considered a living person. Only the status of a *rodef* permits one person to kill another person. Without this justification, the killing of a fetus would in fact be an act of murder, the same as killing any other person. Therefore, when not actually threatening the mother’s life, killing a fetus is murder. Such was the conclusion of Rabbi Feinstein:

2. **Rabbi Moshe Feinstein, Igros Moshe, Choshen Mishpat II, 69 – Abortion is murder, for Jews and non-Jews alike.**

Abortion is forbidden as murder both for gentiles and Jews ... Therefore, the law is... that there is a complete prohibition of murder, derived from the verse, "You shall not murder" (Shemot 20:13), even regarding a fetus, except that the killer is not liable for the death [penalty].

לברר שהריגת עובר אסורה באסור רציחה בין בעכו"ם
בין בישראל... ולכן לדינא... איכא איסור רציחה מלא
תרצח גם על עובר ורק שפטור ההורגו ממיתה.

3. **Rabbi Reuven Leuchter, Ner Le'Elef – Severity of the prohibition of abortion.**

Based on Rav Moshe Feinstein above, classifying an abortion as murder means that a person who is faced with an unjustified abortion is in the category of **יהרג ולא יעבור** – one surrenders his own life rather than transgress the Torah commandment of murder. This underscores the severity of the prohibition of abortion.

PART B. DESTRUCTION OF POTENTIAL LIFE

Halachah is a system of law, and as such there are always dissenting opinions. While the mainstream traditional Jewish approach is that expressed by Rabbi Feinstein – that abortion is forbidden for a Jew because it is deemed a form of murder – nevertheless, other halachic authorities have expressed differing opinions on the matter.

Some argue that the prohibition involved in aborting a fetus is the destruction not of life itself but rather of *potential* life. The source for this view of abortion arises out of a discussion concerned not directly with killing a fetus but rather with saving a pregnancy. The Mishnah says that a pregnant woman who smells food on Yom Kippur and develops a craving for it may eat the food until the craving eases.

1. **Mishnah, Yomah 8:5 – A pregnant woman is fed to satisfy her craving even on Yom Kippur.**

A pregnant woman who smells food [who feels a strong craving to eat], we feed it to her [even on Yom Kippur] until her spirit is calmed.

עוברת שהריחה מאכילין אותה עד שתשיב נפשה.

For whom was this law stated? Whose health is the Mishnah concerned about, just the mother's or also the child's?

Rabbi Shimon Kayyara (9th century Babylonia), in his Halachot Gedolot (Section 13, Laws of Yom Kippur), explains that such a woman is in danger of miscarrying. And even though there is always a doubt as to the viability of the fetus, we nevertheless permit violating Yom Kippur on its behalf. Ramban (Nachmanides) writes that since the author of Halachot Gedolot discusses the viability of the fetus, he clearly understood that the mother should violate Yom Kippur even if the danger was only to the child and not merely to herself.

But why would she be allowed to eat on Yom Kippur to save the fetus? The answer to that question will also tell us the rationale for prohibiting abortion.

2. **Ramban, Torat Ha'Adam, section on life-threatening situations – One may desecrate Shabbat to save a fetus.**

As far as the observance of mitzvot is concerned, we would violate them for his (the fetus's) sake, for the Torah says to violate one Shabbat for his sake, since if he is saved he will have the chance to observe many more Shabbatot. Therefore, even for the sake of a fetus that is less than forty days post-conception, that as of yet has no life to it at all, we would still violate the Shabbat, in accordance with the opinion of the author of Halachot Gedolot.

לענין שמירת מצות מחללין עליו אמרה תורה חלל עליו שבת אחת שמא ישמור שבתות הרבה. הלכך אפילו בהצלת עובר פחות מבין ארבעים יום שאין בו חיות כלל מחללין כדעת בעל הלכות ז"ל.

3. **Rabbi Reuven Leuchter, Ner Le'Elef – Desecrating Shabbat for a fetus before forty days is based on the value of potential life.**

In the case of a fetus more than forty days old, one does not unjustifiably abort a child because of the prohibition of murder. Before forty days, however, the fetus is classified as potential life and if aborted this is not considered murder. Consequently, the Ramban teaches that one desecrates the Sabbath for a fetus even under forty days based on the principle "violate one Shabbat for his sake, for if he is saved, he will have the chance to observe many more Shabbatot."

Whereas Rabbi Leuchter reflects the position of most authorities, Rabbi Shmuel HaLevi Vosner understands the Ramban's words "violate one Shabbat for his sake since if he is saved he will have the chance to observe many more Shabbatot" to apply even to a fetus older than forty days. To Rabbi Vosner, if the Ramban considered the fetus a full-fledged person, then he would not have had to seek further justification for providing it food in violation of Yom Kippur. Any person in mortal danger may violate Yom Kippur to stay alive. But the Ramban does not rely on the standard leniency of threat to life; instead he introduces a new rationale – the potential to keep many more Yom Kippurs in the future at the expense of violating this one. Consequently, to Rabbi Vosner, the prohibition of abortion is not murder, but the destruction of potential life.

4. **Rabbi Shmuel Vosner, Shevet HaLevi 7:208 – Just as we must save a fetus, so too must we avoid killing one.**

It is obvious that since it is permissible according to Torah Law to desecrate Shabbat in order to facilitate the development of [a fetus] into a person obligated to keep mitzvot, then even more so it is forbidden according to Torah Law to wantonly kill it for that very same reason – but that does not make doing so actual murder.

פשיטא דכמו דמותר לחלל שבת מה"ת כדי להביאו למחויב במצוות הה"ד וכ"ש דאסור להרגו בחנם מה"ת כדי להביאו לידי מחויב במצוות, אלא דאין זה מסרך רציחה.

According to this view, Jewish law does not afford a fetus full status as a person. But while it is not considered full-fledged life, it is also not *not* life; that is, a fetus is considered a *potential* life with rights and privileges unique to that status.

Rabbi Yair Chaim Bachrach (1638-1702) also followed this line of reasoning when he suggested that abortion is considered *hashchatat zera*, destruction of male seed (similar to male masturbation), which is forbidden because of the destruction to potential life.

5. **Rabbi Yair Chaim Bachrach (1638-1702), Chavot Ya'ir, Responsa 31 – Abortion is forbidden because it is the destruction of potential life.**

[The Talmudic sages] were extremely condemnatory concerning the prohibition of improper ejaculation. The reason for that is because from every drop there is the potential for the creation of holy progeny.

והפליגו באיסור הוצאת ש"ז לבטלה והטעם משום שראוי להיות נוצר מכל טיפה זרע קודש.

Rabbi Ben-Zion Meir Hai Uziel (1880-1953), the first Sephardic Chief Rabbi of Israel, reflected a similar sentiment when he claimed that abortion is a violation of the mitzvah to have children.

6. **Rabbi Ben-Zion Meir Hai Uziel, Mishpetei Uziel IV, Choshen Mispas 46 – Abortion is a violation of the command to be fruitful and multiply.**

But there is another reason to forbid abortion, based on the Gemara which says, "A Jew who does not procreate is as if he has shed blood." If this is said in reference to someone who merely refrains from procreation ... how much more so in regard to someone who does an action that minimizes the possibility for the growth and development of even a single Jewish life. It is beyond question that this is the meaning of the Tosafot, which states that it is forbidden for a Jew to perform feticide.

אבל מצד אחר יש מקום לאסור הפלת העובר או הריגתו מו"ש בגמרא: כל יהודי שאינו עוסק בפריה ורביה כאלו שופך דמים... ואם דברים אלה נאמרו במי שאינו עוסק בפריה ורביה, ... על אחת כמה וכמה במי שעושה פעולה שממעטת אפשרות קיום וגדול נפש אחת מישראל, ואין זה ספק כי לזה כוונת התוס' באומרו שישאול אסור בהמתת עוברין, שהבאנו דבריהם לעיל.

PART C. DAMAGE

A third explanation for the prohibition of an unwarranted abortion is causing injury.

1. **Rabbi Yoseph ben Moshe Trani (1568-1639), Responsa Maharit 1:97 – Abortion is a form of injuring (the mother or the fetus) and is therefore forbidden.**

Tosafot writes there (Sanhedrin 59a, Chulin 33a) that although one is not liable for killing a fetus, it is not permitted. The basis for the prohibition is the law forbidding causing injury.

וכתב שם התוספות נהי דפטור על הנפלים אבל לא שרי וכו' דהא דאסור מדין חבלה הוא.

Authorities in Jewish law debate the meaning of this statement, whether Rabbi Trani posits that the prohibition of abortion is due to injuring the mother or the fetus.

Whatever the derivation of the prohibition of abortion – whether murder, destruction of potential life, or causing damage – the Zohar clearly states it undermines our relationship with God.

2. **Zohar, Shemot 3b – Abortion drives the Divine Presence from the world; by aborting a child, one destroys God's handiwork.**

One who causes a fetus in the womb of its mother to be killed destroys God's work and

ההוא עוברא דמתעברא אתתיה וגרים לקטלא ליה במעוהא דסתיר בנינא דקב"ה ואומנתא דיליה... וקב"ה

craftsmanship ... and causes God's Presence to leave the world ... and pushes away God's Presence.

אסתלק מעלמא ... דחיא שכינתא...

KEY THEMES OF SECTION III:

- ≈ The mainstream opinion, written by Rabbi Moshe Feinstein, is that an unjustified abortion is considered an act of murder.
- ≈ A dissenting view claims that abortion is not murder because a fetus is not yet considered a full-fledged person. Rather a fetus is a potential life. The prohibition on abortion stems from the fact that it is forbidden to destroy potential life.
- ≈ A third opinion states that abortion is prohibited as an act of injury, either to the mother or to the fetus.

SECTION IV. WHEN IS ABORTION PERMISSIBLE?

I was born in Tel Adashim. The date was under dispute, until my father and the head of the village determined: January 11th, 1929. I left my mother's womb to breathe the world's air because my parents were ... too poor. Four children came before me, and my father could not provide for them. That is why my parents decided to spare me from such poverty and put an end to my life, still in my mother's womb. But we were so poor that my father couldn't afford the two liras necessary to perform the abortion.

Through great effort my father was able to collect one lira and 20 grushim. He urged the doctors to do the abortion and promised to pay the 80 grushim at a later date. But the doctors refused. No credit allowed, and a son was born. There were days when my parents would say jokingly: "Is this kid worth two liras?" (Based on the testimony of former Chief of Staff of the Israeli Defense Forces, war hero Major General Rafel Eitan who passed away in 2004, from www.efrat.org.il.)

The above story highlights the need to consider the circumstances in which abortion is warranted. Is not having enough money to support a child a reason to preempt his or her life? What if having a child could result in serious psychological trauma to the mother – is that justification for abortion? What if the child is not viable and will certainly die within days or weeks of birth? What then?

The answer to these questions very much depends on the attitude toward abortion developed in the previous section. If abortion is murder then it will apply as soon as life is considered to have begun. Alternatively, if abortion is prohibited as destruction to potential life then there might be more room for discussion as to which scenarios justify it. We will explore these issues in the following section.

PART A. THE FIRST 40 DAYS

If a fetus is considered a living being, at what point does its life begin? At conception? Or perhaps only when it could survive without the mother? Or perhaps after a different stage of fetal development?

The Talmud states that an embryo is considered "mere water" until forty days post-conception vis-à-vis certain laws. The first of such cases is derived from the law pertaining to the eating of *terumah*, one of the

tithes of food given to the priests (Kohanim). Terumah is permissible for Kohanim to eat and forbidden to non-Kohanim (Israelites and Levites). If the daughter of a Kohein marries a non-Kohein or has a child from a non-Kohein then she loses her right to eat terumah. The Talmud discusses the status of a childless daughter of a Kohein who returns to her father's house after previously being married to a non-Kohein:

1. **Talmud Bavli, Yevamot 69b – An embryo is considered mere water until forty days post-conception.**

The daughter of a priest who married an Israelite (a non-priest) and he died immediately following the consummation of the marriage; she may immerse [in the mikveh] and eat terumah that evening. Rav Chisda said, "She may immerse herself and eat for forty days; if she is not pregnant – she is not pregnant. And if she is pregnant, well for forty days it is considered as if it is mere water."

בת כהן שנישאת לישראל ומת - טובלת ואוכלת בתרומה לערב! אמר רב חסדא: טובלת ואוכלת עד ארבעים, דאי לא מיעברא - הא לא מיעברא, ואי מיעברא - עד ארבעים מיא בעלמא היא.

Another case where we see that an embryo less than forty days after conception is not considered a person is the case of a miscarriage. Normally, the birth of a child requires the mother to immerse in a *mikveh*, ritual bath, to rid herself of a certain ritual impurity known as *tumat leidah*, the ritual impurity associated with bearing a child. Such impurity is not contracted if the miscarriage takes place within the first forty days; though it would following a full term birth or a later-stage miscarriage (see Mishnah, Niddah 3:7). Nor would the miscarried fetus itself be considered ritually impure like a corpse (see Mishnah, Ohalot 18:7). These laws seem to indicate again that within this time span, life has not yet begun.

Perhaps, then, an abortion within the first forty days should be viewed as the removal of "mere water" rather than as the destruction of a life. If the prohibition of abortion is based on murder, then perhaps within the first forty days no harm is committed since the embryo is still "mere water"? On the other hand, as a potential life – one that we would violate Shabbat to save – perhaps the forty-day marker is insignificant? This issue is debated in the halachic literature between the major authorities in Jewish Law.

2. **Rabbi J. David Bleich, "Abortion in Halachic Literature," from Jewish Bioethics, p. 143 – The status of abortion within the first forty days of conception will depend upon the nature of the prohibition.**

[T]he status of an embryo's claim to life during the first forty days following conception is not entirely clear. Is the prohibition against infanticide operative during this early stage of fetal development during which the embryo is depicted as "mere water"?

It would appear that according to the grounds advanced by Chavot Yair no distinction can be made between the various stages of fetal development since, according to this opinion, feticide is prohibited, not because it is tantamount to taking a human life but because it is a form of "destroying the seed."

Due to the above complication in ruling on this issue, there has been a wide debate amongst authorities in halachah on this topic.

PART B. THREAT TO THE MOTHER

The classic Talmudic case permitting abortion, in fact mandating it, was one in which the pregnancy or birth threatened the life of the mother. Is this the only case in which abortion is permitted? And even if it is, which

threats to the mother's health justify abortion and which do not?

1. Rabbi Moshe Feinstein, Igros Moshe, Choshen Mishpat II, 69 – Threat to the mother's life is the only justification for abortion.

Since abortion is forbidden as murder both for gentiles and Jews ... therefore the law is ... that there is a complete prohibition of murder, derived from the verse, "You shall not murder" (Shemot 20:13), even regarding a fetus ... It would be forbidden to kill it even to save someone's life. The exception would be to save the life of the mother during childbirth, not for any other need of the mother, which would definitely be forbidden ...

לברר שהריגת עובר אסורה באסור רציחה בין בעכו"ם בין בישראל... ולכן לדינא... איכא איסור רציחה מלא תרצח גם על עובר... ואסור להורגו אף לפקוח נפש דכל אינשי ורק להצלת אמו שלא תמות בלידתו הוא ההיתר ולא בשביל שום צורך דהאם שזה אסור בפשיטות...

According to Rabbi Feinstein the only justification for abortion is when the continuation of the pregnancy or the childbirth itself poses a direct threat to the mother's life. Other authorities have stated that any threat to the mother's life endangered by her pregnancy, such as heart disease, kidney disease, high blood pressure, or diabetes, also constitutes an indication for abortion (see Rabbi Dr. Avraham Steinberg, Encyclopedia of Jewish Medical Ethics , p. 9).

One halachic authority notably lenient in cases of abortion was Rabbi Eliezer Yehudah Waldenberg (1915-2006), judge on the Supreme Rabbinical Court in Jerusalem and Rabbi of the Shaare Zedek Medical Center. Rabbi Waldenberg permitted abortion on a case-by-case basis even when the danger to the mother was less than life threatening.

2. Rabbi Eliezer Yehudah Waldenberg, Tzitz Eliezer 9:51, Ch. 3 – Sometimes abortion may be performed even in less than life-threatening situations.

If there is a danger to the mother from continuing the pregnancy, one should permit abortion without hesitation. Also, if her health is poor and to cure her or to relieve her from great pain it is necessary to abort the fetus, even if she is not in actual danger, there is room to permit it, based on the halachic authority's evaluation of the situation.

כשנשקפת סכנה לאשה בהמשכת ההריון יש להתיר הפלת העובר בשופי. גם כשמצב בריאותה של האשה רופף מאוד ולשם רפואתה או השקטת מכאוביה הגדולים דרוש לבצע הפלת העובר, אע"פ שאין סכנה ממשית, גם כן יש מקום להתיר לעשות זאת, וכפי ראות עיני המורה המצב שלפניו.

Would Jewish law also consider psychological threats to the well being of the mother as a reason for abortion?

3. Daniel Eisenberg, MD, Abortion in Jewish Law from www.aish.com – Judaism recognizes psychiatric factors as possible indications for abortion.

Judaism recognizes psychiatric as well as physical factors in evaluating the potential threat that the fetus poses to the mother. However, the danger posed by the fetus (whether physical or emotional) must be both probable and substantial to justify abortion. The degree of mental illness that must be present to justify termination of a pregnancy has been widely debated by rabbinic scholars, without a clear consensus of opinion regarding the exact criteria for permitting abortion in such instances. Nevertheless, all agree that were a pregnancy to cause a woman to become truly suicidal, there

would be grounds for abortion. However, several modern rabbinical experts ruled that since pregnancy-induced and post-partum depressions are treatable, abortion is not warranted.

PART C. GENETIC DISORDERS AND BIRTH DEFECTS

An additional discussion of abortion regards genetic disorders and birth defects.

1. **Rabbi Moshe Feinstein, Igros Moshe, Choshen Mishpat II, 69 – Short of a threat to the mother's life there is no leniency for performing an abortion, even if the baby has little chance of survival, as in the genetic disorder Tay-Sachs.**

Even for children for whom the doctors predict a very short life span, such as those children who are born with the disease called Tay-Sachs, which through newly developed tests can be diagnosed prenatally, it would be forbidden since there is no danger to the mother and the infant is not a *rodef*. One cannot permit an abortion even though there is very great suffering involved ... It is incontrovertible and clear as I have written, a straightforward halachah according to the words of our Masters, the traditional commentaries and halachic authorities, that abortion would be forbidden as bona-fide murder, for any fetus; legitimate or a *mamzer*, genetically normal or afflicted with Tay-Sachs, are all included in the prohibition according to Jewish law.

דאף הולדות שלפי דעת הרופאים הם כאלו שלא יחיו שנים רבות כהא דנולדים איזה ילדים במחלה הנקראת תיי - סקס אפילו כשנודע ע"י הבדיקות בעובר שנתחדש עתה שהולד יהיה ולד כזה אסור כיון דלהאם ליכא סכנה ואינו רודף אין להתיר אפילו שהצער יהיה גדול מאד... וברור ופשוט כדכתבתי הלכה הברורה ע"פ רבותינו הראשונים המפרשים והפוסקים ממש שאסור בדין רציחה ממש כל עובר בין כשר בין ממוזר בין סתם עוברים ובין הידועים לחולי תיי - סקס שכולן אסורין מדינא ממש.

While Rabbi Feinstein clearly stated that Tay-Sachs or birth defects do not justify an abortion, the issue has been debated amongst the greatest of halachic authorities. While most halachic authorities forbid abortion for such fetuses, Rabbi Eliezer Yehudah Waldenberg is an exception.

2. **Rabbi Eliezer Yehudah Waldenberg, Tzitz Eliezer 9:51, Section 3 (in summary #13); 13:102, Section 1 – Questions of birth defects and Tay-Sachs.**

Abortion within the first forty days of the pregnancy and also before the fetus has completed three months of the pregnancy is a much less severe issue than later in the pregnancy. Therefore, it is possible to permit an abortion within this time period, as long as there are as of yet no fetal movements, if there is an established risk that the child will be deformed and suffer great pain ...

Regarding the termination of pregnancy due to detection of Tay-Sachs in the fetus:
After seriously examining all the facts concerning this serious question, in my humble

לסדר הפלה קודם שנמלאו ארבעים יום מהריונה וגם לרבות קודם ג' חדשים מהריונה הוא קיל בהרבה מלסדר לאחר מיכן ויש על כן לצדד להתיר לסדר הפלה קודם שנמלאו לה כנ"ל והעובר איננו עוד בתנועה גם כשיש חשש מבוסס שהעובר שיוולד יצא בעל מום ובעל יסורים...

הפסקת הריון בגלל המחלה הנקראת תייסקס כאשר מאבחנים את המחלה בעובר:
והנה אחרי העיון בדבר בכובד ראש בכל צדדי הנתונים שבבעיה האמורה, נלפענ"ד על יסוד הבירורים

opinion, based on what I have already clarified concerning the termination of pregnancy in my work *Tzitz Eliezer* Vol. 9:51 (Section 3), it would be possible to permit performing an abortion up until the seventh month in this unique circumstance where the consequences of continuing the pregnancy are so severe. The abortion must be performed in a manner that there be no danger involved to the mother. From seven months and on the matter is much more severe.

הנרחבים שכתבתי בדבר הפסקת הריון בספרי שו"ת צ"א חלק ט' סי' נ"א שער ג' על שלשת פרקיו הארוכים. כי שבמקרה המיוחד הזה אשר תוצאות כה חמורות בכנפיו עם המשכת ההריון והלידה, אפשר להתיר הפסקת הריון עד שבועה חדשים, ובאופן שבביצוע הפסקת ההריון לא יהא כרוך בשום סכנה לאם. משבועה חדשים והלאה הדבר כבר יותר חמור.

KEY THEMES OF SECTION IV:

- ⌘ While according to some religions, life begins at conception, in Judaism this is a matter of debate. Several laws indicate to us that the benchmark for a fetus to be considered a living child is forty days after conception. Therefore, according to those views that abortion constitutes murder, abortion within the first forty days might be less severe. However, if abortion is prohibited due to destruction of potential life then presumably the forty-day benchmark is irrelevant.
- ⌘ The universally accepted justification for abortion is the threat to the life of the mother. Authorities in Jewish law have debated precisely what type of threat to life falls within the parameters of the requirement to save the mother's life. There exists a lenient opinion that would permit abortion in specific instances even due to great psychological distress.
- ⌘ Since Judaism does not evaluate the relative worth of one life versus another, the possibility of birth defects does not in general constitute grounds for abortion. Nevertheless, some leading Rabbinic authorities have sanctioned abortion in rare instances of fetal deformation and suffering, or no chance of survival, such as Tay-Sachs disease.

SECTION V. THE PUBLIC POLICY DEBATE AND JEWISH LAW

Rabbi Yitzchak Hutner, a renowned Rosh Yeshivah in America, once told a disciple: "Do not rely on anything that I ever said to someone else. Each legal decision is unique."

As we have seen, abortion is a very serious matter in Jewish law. It may be considered murder or at least the destruction of potential life. However, Judaism also recognizes instances that may call for abortion, as when there is a significant threat to the mother or when the child has no chance of survival. In reality, each case must be judged on its own merit by a Rabbi qualified highly enough in Jewish law to make the decision. (See the Morasha series on *The System of Halachah – Jewish Law*.)

The system of Jewish law, halachah, is not easily given to grand public policy decisions. It is more the sum of its parts, the collective works of Rabbinic authorities produced throughout the generations. The focus of Jewish law is not to determine the rights of the individual, but rather to determine which is the correct course of action in each unique situation. As such, the Jewish stance on abortion does not fit neatly into either the pro-life or the pro-choice camps.

1. **Rabbi Yitzchak Breitowitz, PhD, “How a Rabbi Decides a Medical Halachah Issue”, www.jlaw.com – While secular law focuses on the right of the individual, Jewish law focuses on the correctness of the action.**

Secular law is primarily concerned with who gets to make a decision. Courts and legislatures are thus preoccupied with advance directives, surrogate decision-making, ethics committees, institutional review boards etc. This is so because the primary value the law seeks to enshrine is the autonomy of the individual. Thus, once we identify the “who,” we essentially have no interest in the “what.” By contrast, Jewish law is far more interested in the substance of what the decision should be and, in theory, the resolution should not depend on the identity/personal predilections of the decider. Secular law asks who decides; Jewish law asks what is to be decided.

The question remains, though, is Judaism pro-choice or pro-life? The answer is both! Judaism strongly opposes the wanton destruction of a fetus and at the same time champions the civil rights that allow the halachic process described above to operate. It is for this reason that in the United States, Jewish leaders have favored the leniency in the law at the expense of a religiously-driven agenda.

2. **Rabbi Michael Broyde, Esq., “Jews, Public Policy and Civil Rights: A Religious Jewish Perspective,” from www.jlaw.com – It is in the best interest of Jews to support civil rights even when such rights grant people license to act immorally.**

The decision by Jewish organizations to support, oppose, or remain neutral in a dispute where certain people desire to expand their civil rights is not determined solely by whether the group under discussion is one generally in compliance with Jewish law or morality. It is in the best interests of Judaism to support the continued granting of basic civil rights to all, *while making clear our moral opposition to the underlying conduct of those who exercise their freedom in violation of basic ethical norms of Judaism* . . .

Indeed, the record is full of even Orthodox Jewish organizations advocating support for religions and beliefs that are completely foreign to Jewish law or ethics. For example, in *Decker v. O'Donnell*, 661 F.2d 598 (7th Cir. 1980) the Union of Orthodox Jewish Congregations filed an amicus brief supporting the right of the Roman Catholic Archdiocese of Milwaukee to use taxpayer-provided money for job training. In *Webster v. Reproductive Health Services*, 429 U.S. 490 (1989), Agudath Israel of America filed an amicus brief arguing that a state's finding that human life begins at conception violated the First Amendment, but that the abortion right should only be fundamental in the exceptional cases of a threat to maternal life or an abortion mandated by sincere religious belief whether such beliefs are Jewish or gentile. It is hard to justify these and many other public positions except by asserting that our legislative agenda is not solely based on seeking to legislatively prohibit that which is prohibited by Jewish law. Rather, what we seek to codify into secular law must be based on a balance between Jewish law mandates and realpolitik factors.

Legislative goals which do not necessarily seek to enforce Jewish law can be well supported from a pure Jewish law perspective. For example, in 1977 Rabbi Moses Feinstein was asked what statutory changes Orthodox Judaism should seek from the New York State government on the issue of time of death. He replied that Orthodox Judaism should seek a legislative mandate that allows each person (or family) to determine the time of death in accordance with their own religious or personal beliefs; he did not suggest that the proper governmental policy to seek is that New York state should be urged to adopt Jewish law in this area. The public policy advocated by Rabbi Feinstein in the context of time of death – one of Orthodox Judaism seeking to allow Jews to follow Jewish tradition without forcing our standards on non-believers – was the preferred one. This was so notwithstanding the certainty that some people, given this new freedom, will adopt a standard for time of death which violates Jewish law by withdrawing care before a time permitted by Jewish law, thus committing suicide (or even murder). Rabbi Feinstein did not feel compelled to seek the enforcement of Jewish law by the secular state.

This attitude toward the interplay of public and Jewish policy can be seen in the position paper of one of the prominent Jewish agencies mentioned in the previous source, the Agudath Israel of America.

3. Agudath Israel of America National Public Policy Position Paper (1999) – Restricting abortion on demand while allowing abortions when the pregnancy endangers the mother.

Agudath Israel has taken positions on a host of legislative and public policy issues that touch upon fundamental moral concerns and impact upon the family unit. One illustration of Agudath Israel's approach in this area is in the context of abortion. Jewish tradition teaches that a human fetus has status and dignity; and that termination of pregnancy raises profound moral concerns. Agudath Israel accordingly has urged the Supreme Court to reconsider its holding in *Roe v. Wade*, and supports legislation that restricts abortion on demand. At the same time, in line with its support for religious freedom, Agudath Israel opposes initiatives that would make abortion unlawful even in situations where termination of pregnancy is mandated by religious law as it is, for example, under Sinaitic Jewish law when the pregnancy endangers the life of the mother.

In conclusion, it is important to keep in mind that even Rabbi Waldenberg, the authority most renowned for leniency in cases of abortion, stressed the gravity of the abortion issue with the following remark.

4. Rabbi Eliezer Yehudah Waldenberg, Tzitz Eliezer 9:51, Ch. 3 – Both those seeking abortion and those authorities who permit it must be aware of the great gravity of the issue at hand.

All Jewish people are strictly commanded not to behave in a casual manner regarding the termination of pregnancy; and there is a great responsibility placed both on the one asking the halachic question and on the one being asked.

כל בני ישראל מוזהרים באזהרה חמורה לא לנהוג
קלות ראש בהפסקת ההריון, ואחריות גדולה מוטלת
בזה הן על השואל והן על הנשאל.

The Jewish position on abortion – that of balancing the seriousness of the issue with the necessity of the freedom to make individualized rulings – is most delicate with far-reaching consequences. We conclude with an insight into how Rabbi Shlomo Zalman Auerbach (1910-1995) discussed an abortion with a woman who had decided that it was necessary for her personal situation.

A woman interested in Judaism went to study in Jerusalem. She is learning about Torah and mitzvot, making real progress. One day, she announces to her teacher that she has decided to leave.

"Why are you leaving?" the teacher asks her.

"Because I'm pregnant," she says. "I want to terminate my pregnancy."

"But why do you want to terminate your pregnancy?" the teacher asks.

"Because I want to embark on a career," she says. "This pregnancy is just going to make things too difficult."

"What does your husband say?" he asks her.

"He stands by my decision."

The teacher sees that he is out of his depth...

"Listen," he says, "if you're going to have an abortion, you should be aware that it is a dangerous procedure. Let me take you to a great Rabbi, a holy person. Let's ask him for a blessing to get you through this abortion safely. I'll go along to act as your interpreter." The woman agrees, and the teacher takes her to Rav Shlomo Zalman Auerbach.

"I would like a blessing," she says to R' Shlomo Zalman. "You see, I'm going to terminate my pregnancy."

"Why would you want to terminate your pregnancy?" asks Rav Shlomo Zalman.

"Because I want to pursue a career," she says.

"What kind of career do you want to pursue?"

"I want to become a doctor."

"And why do you want to become a doctor?"

"Because a doctor saves lives."

Rav Shlomo Zalman smiles and asks, "Really? And what is so important about saving lives?"

The woman is startled by the question. She gives Rav Shlomo Zalman a strange look, as if she was wondering if he was senile.

"What's important about saving lives?" she says. "Saving a life is the most important thing in this world."

All of a sudden the significance of what she has just said hits her. She looks at Rav Shlomo Zalman, then she points to her abdomen. "You don't mean this, do you?"

Rav Shlomo Zalman says, "It can become a life, a living human being."

The woman nods in acceptance.

(From Listen to your Messages, Rabbi Yissocher Frand, ArtScroll Publications, pp. 29-30.)

KEY THEMES OF SECTION V:

- ⌘ The system of Jewish law, halachah, is not easily given to grand public policy decisions. It is more the sum of its parts, the collective works of Rabbinic authorities produced throughout the generations. The focus of Jewish law is not to determine the rights of the individual, but rather to determine which is the correct course of action in each unique situation. As such, the Jewish stance on abortion does not fit neatly into either the pro-life or the pro-choice camps.
- ⌘ Is Judaism pro-choice or pro-life? The answer is both! Judaism strongly opposes the wanton destruction of a fetus and at the same time champions the civil rights that allow the halachic process to operate. It is for this reason that in the United States, Jewish leaders have favored the leniency in the law at the expense of a religiously-driven agenda.
- ⌘ Rabbi Waldenberg, the authority most renowned for leniency in cases of abortion, also stressed the gravity of abortion.

CLASS SUMMARY:

WHERE IN THE TORAH OR THE TALMUD IS THE ISSUE OF ABORTION DISCUSSED?

There are three sources in the Torah that prohibit unjustified abortion. The Talmud finds an allusion to abortion in the prohibition of murder that God related to Noach after the flood. However, the only explicit case of feticide mentioned in the Torah is in the context of a fight that leads to the killing of a fetus inside the pregnant wife of one of the combatants. It is clear from that source that killing a fetus is not treated the same as killing its mother.

The Talmud also discusses the case when the fetus is causing difficulties for the mother, stating that when her life is threatened the baby is aborted. The Talmudic commentators, namely Rambam and Ramban, disagree on the rationale behind the Talmud's ruling.

DOES HALACHAH PROHIBIT ABORTION AS A FORM OF MURDER, OR IS THERE ANOTHER BASIS FOR THE PROHIBITION?

There is a disagreement among halachic authorities as to the reason abortion is forbidden. The simplest understanding would be that abortion is forbidden for a Jew – as it is for a non-Jew – because it is a form of murder.

There are other opinions which disagree with this approach and contend that it is *not* murder, but rather is forbidden for other reasons. According to one of these opinions, abortion is *hashchatat zera*, the destruction of potential life, and a violation of the command to be fruitful and multiply.

A third opinion states that abortion is an act of injury, either to the mother or to the fetus.

HOW EARLY IN THE PREGNANCY DOES THE PROHIBITION APPLY?

The starting point for the prohibition of abortion is discussed at length by many Torah authorities. Some say that before forty days the embryo is considered mere water, and there would be no issue in terminating the pregnancy. Others disagree and claim that there is no difference: the killing of potential life begins at conception. It is clear that once childbirth begins and the head is visible, killing the baby is forbidden.

UNDER WHICH CIRCUMSTANCES IS ABORTION PERMITTED IN JEWISH LAW?

First of all, when there is a risk to the mother's life, her life takes precedence over the life of the fetus. This is agreed upon universally. Abortion for reasons other than a threat to the mother's life is debated among halachic authorities. For example, Rabbi Moshe Feinstein did not permit abortion for any other reason, but Rabbi Eliezer Waldenberg was more lenient (see below).

The most lenient opinion is that of Rabbi Eliezer Waldenberg who allowed abortions within the first forty days, and even within the first three months depending on the circumstances of each case. Regarding Tay-Sachs, Rabbi Waldenberg even permitted an abortion up until the seventh month. However, he concluded, abortion should be taken seriously and each case should be thoroughly examined.

HOW DOES JUDAISM'S APPROACH DIFFER FROM SECULAR AND CATHOLIC APPROACHES TO ABORTION? IS IT MORE IN LINE WITH THE PRO-LIFE OR THE PRO-CHOICE CAMP?

Whereas the secular world views abortion as an expression of individual liberty and the Catholic Church's approach prohibits abortion from the moment of conception, Judaism takes many factors into account, including medical and psychological ramifications for the mother.

In terms of the general prohibition on abortion, Jewish law is in line with the pro-life camp. However, Jewish law demands more flexibility than what the public policy debate seems to allow. As such, Judaism also affirms the civil rights of people to be able to choose when abortion is appropriate, while maintaining its own narrow definition of when it would actually be permissible.

ADDITIONAL RECOMMENDED READING & SOURCES

PRIMARY SOURCES:

SECTION II

Sanhedrin 72b and Rashi – fetus as a *rodef*
 Rambam, Hilchot Roztei'ach 1:9 and Kesef Mishnah
 Chidushei R' Chaim Halevy on Rambam (ibid)
 Tosafot Chullin 33a
 R' Eliyahu Mizrahi on Shemot 21:12
 Rosh, Yoma 8:13
 Chidushei HaRamban, Niddah 44b

SECTION III

Bereishit 38:9-10 – the source for *hashchatat zera*
 Rambam, Hilchot Isurei Bi'ah 21:18
 Shulchan Aruch, Even HaEzer 23:1
 Meshech Chochmah, Shemot 35:2 – discussing *mitah b'dei Shamayim*

SECTION IV

Responsa Achiezer 3:65
 Responsa Mishpetei Uziel IV Choshen Mishpat 46-47
 Responsa Sridei Aish 1:162
 Responsa She'elat Ya'avetz 3:65

SECONDARY SOURCES:

Avraham Steinberg, Encyclopedia of Jewish Medical Ethics: Abortion
 Fred Rosner and J. David Bleich eds., Jewish Bioethics, Chapters 8 & 9

This class was written by Rabbi Aharon Meir Goldstein and edited by the Morasha editing team.