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Abortion and Halacha

Daniel Eisenberg, M.D.

The traditional Jewish view of abortion does not fit conveniently into any of the major "camps" in the current American abortion debate. We neither ban abortion completely, nor do we allow indiscriminate abortion "on demand." To gain a clear understanding of when abortion is sanctioned, or even required, and when it is forbidden, requires an appreciation of certain nuances of *halacha* (Jewish law) which govern the status of the fetus.

The easiest way to conceptualize a fetus in *halacha* is to imagine it as a full-fledged human being - but not quite. In most circumstances, the fetus is treated like any other "person." Generally, one may not deliberately harm a fetus, and sanctions are placed upon those that purposefully cause a woman to miscarry. However, when its life comes into direct conflict with an already born person, the autonomous person's life takes precedence.

It follows from this simple approach, that as a general rule, abortion in Judaism is permitted only if there is a direct threat to the life of the mother by carrying the fetus to term or through the act of childbirth. In such a circumstance, the baby is considered tantamount to a *rodef*, a pursuer after the mother with the intent to kill her. Nevertheless, as explained in the Mishna (Oholos 7:6), if it would be possible to save the mother by maiming the fetus, such as by amputating a limb, abortion would be forbidden. Despite the classification of the fetus as a persuer, once the baby's head has been delivered, the baby's life is considered equal to the mother's, and we may not choose one life over another, because it is considered as though they are both pursuing each other.

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 is not well established and therefore criteria for permitting abortion in such instances remains controversial.

As a rule, *halacha* does not assign relative values to different lives. Therefore, almost all major *poskim* (Rabbis qualified to decide matters of Jewish law) forbid abortion in cases of abnormalities or deformities found in a fetus. Rabbi Moshe Feinstein, one the greatest *poskim* in this century,

rules that even amniocentesis is forbidden if it is performed only to evaluate for birth defects for which the parents might request an abortion. Nevertheless, a test may be performed if a permitted action may result, such as performance of amniocentesis or drawing alpha-fetoprotein levels for improved peripartum or postpartum medical management. While most *poskim* forbid abortion for "defective" fetuses, Rabbi Eliezar Waldenberg is a notable exception. Rabbi Waldenberg allows first trimester abortion of a fetus which would be born with a deformity that would cause it to suffer, and termination of a fetus with a lethal fetal defect such as Tay Sachs up to the end of the second trimester of gestation.

The question of abortion in cases of rape, incest, and adultery is a complex one, with various legal justifications propounded on both sides. In cases of rape and incest, a key issue would be the emotional toll exacted from the mother in carrying the fetus to term. The same analysis used in other cases of emotional harm might be applied here. Cases of adultery interject additional considerations into the debate which are beyond the scope of this short essay.

I have attempted to distill the essence of the traditional Jewish approach to abortion, but in reality, the parameters determining the permissibility of abortion within *halacha* are subtle and complex. It is crucial to remember that when faced with an actual patient, a competent *halachic* authority must be consulted in every case.

Source: Maimonides: Health in the Jewish World, Vol. 2, No. 1 (Spring 1996), The Institute for Jewish Medical Ethics. I would be happy to hear from anyone with questions on this topic or who is interested in further information on other Jewish medical ethics topics. My e-mail address is eisenber@pol.net, web. www.daneisenberg.com