

JEWISH WISDOM

Ethical, Spiritual, and
Historical Lessons from the Great Works
and Thinkers



RABBI JOSEPH TELUSHKIN

By Rabbi Joseph Telushkin

NONFICTION

Nine Questions People Ask About Judaism (with Dennis Prager)
Why the Jews? The Reason for Antisemitism (with Dennis Prager)
*Jewish Literacy: The Most Important Things to Know About the Jewish Religion,
Its People, and Its History*
Jewish Humor: What the Best Jewish Jokes Say About the Jews

FICTION

The Unorthodox Murder of Rabbi Wahl
The Final Analysis of Dr. Stark
An Eye for an Eye

this be compared? To a man who was traveling in the desert. He was hungry, tired and thirsty, when suddenly he came upon a tree whose fruits were sweet, its shade pleasant, and a stream of water was flowing beneath it. The man ate of the tree's fruits, drank of the water, and sat in the tree's shade. When he was about to continue his journey, he turned to the tree and said: 'Tree, O Tree, with what shall I bless you? Shall I say to you may your fruits be sweet? They are already sweet. That your shade be pleasant? It is already pleasant. That a stream of water flow by you? A stream of water already flows by you. Therefore, this is my blessing, "May it be God's will that all the shoots planted from you be just like you."'

"So it is with you," [Rabbi Isaac said to Rabbi Nahman]. "With what shall I bless you? Shall I wish you Torah learning? You already have learning. Wealth? You already have wealth. Children? You already have children.

"Therefore, this is my blessing: May it be God's will that your offspring will be like you."

—Babylonian Talmud, *Ta'anit* 5b-6a

IF THE FETUS IS NOT A LIFE, WHAT IS IT?

Judaism and Abortion



When men fight, and one hurts a pregnant woman and a miscarriage results, but no other injury, the assailant shall be fined as the woman's husband may exact from him and as the judges determine. But if other damage ensues [that is, if the woman dies from the assailant's attack], then you shall punish him life for life.

—Exodus 21:22-23

As this passage makes clear, whatever value the fetus has, the Torah does not grant it the status of a human life. If it did, the punishment for killing the fetus would not be a monetary fine, but the same as that for killing the woman, i.e., death. Hence, whatever the offense of abortion might be in Jewish law, it definitely is not murder.

The above is the Torah's only verse that deals with a fetus's legal status. Two talmudic passages make it clear that the fetus does have legal standing and should not be destroyed with impunity:

If a woman is in hard labor [and her life is in danger], they cut up the fetus within her womb and remove it limb

by limb, because her life takes precedence over that of the fetus. But if the greater part was already born, they may not touch him, for one may not set aside one person's life for that of another [in other words, one is designated a person only after "the greater part was already born"].

—Mishna *Ohalot* 7:6

The permission granted by the Mishna to dismember the fetus because the life of the mother "takes precedence over that of the fetus" suggests that if the mother's life were not at stake, such permission would not be granted. Some observant Jews cite this Mishna to argue that abortion should be permitted, therefore, only when the mother's life is in danger. Others, of a more lenient view, argue that endangerment of life can be broadened to include mental anguish as well.

While the lenient view sounds suspiciously modern, its proponents point to another talmudic case, in which a abortion is permitted in order to spare the mother mental anguish:

[In the case of a] woman [convicted of a capital offense] who goes forth to be executed [and who, after the verdict has been issued, is found to be pregnant], we do not wait for her to give birth [but execute her immediately].

—Mishna *Arakhin* 1:4

During many years of teaching, I have found that this passage offends almost everyone, pro-life and pro-choice advocates alike. Therefore, a word of explanation: Since a Jewish high court was the only tribunal empowered to sentence a prisoner to death, there was no higher court to which the prisoner could appeal his or her sentence. (It would be as if death sentences in the United States could be affirmed only by the Supreme Court.) The sentence was carried out on the day after the conviction, since the Rabbis believed that it was a form of "torture" to the prisoner to delay the execution.

As this probably theoretical ruling (there is no evidence that such a case ever happened) makes clear, the Rabbis regard the fetus's life

as subservient not only to the life of the mother but also to her great mental anguish.

Still, whenever I have taught this text, people ask, "Why execute a pregnant woman at all?" Indeed, the societies that surrounded the Jews—the Egyptians, Greeks, and Romans—all postponed execution in such cases until after the birth. Why not the Jews?

About seventy years ago, Jewish scholar Viktor Aptowitz examined this issue in a pathbreaking study, "The Status of the Embryo in Jewish Criminal Law." Aptowitz argued that the calculation made by Greek and Roman jurists not to execute the woman was a utilitarian, not a moral, one. From their perspective, the woman was a useless piece of machinery, fit only to be discarded. But the fetus, because it might someday be useful to the state, remained a cog to be jealously guarded.

Jewish law's perspective, however, is moral. The convicted woman is still a person entitled to compassion. Just as the fetus is sacrificed to save the mother's physical life, so too is it sacrificed to save her spirit from further torture and suffering.

But couldn't one argue precisely the opposite, that Egyptian, Greek, and Roman justices were more moral, that it was they, not the Rabbis of the Talmud, who exhibited greater respect for the value of life? No, Aptowitz answered, because all three differed from Jewish law in another instance as well. They all permitted infanticide, the killing of children who were born with physical defects or other "abnormalities" (perhaps they were just not the sex the parents wanted).

Alone in the ancient world, Jewish law regarded infanticide as murder; once a baby was born, he or she had all the rights of any other human being. The Jewish opposition to infanticide was radical in the ancient world (the first-century Roman historian Tacitus ridiculed this Jewish practice); given reports of the murder of female infants in China, it might also be regarded as radical in parts of the contemporary world.

There is yet one more proof that Jewish law does not regard the fetus as an independent human being, but as part of the mother's body: When a pregnant woman converts to Judaism, the child to

whom she subsequently gives birth is Jewish, and does not need to convert. But if she converts subsequent to giving birth, her child, even if only one day old, does not become Jewish.

The embryo is considered to be mere water until the fortieth day [of pregnancy].

—Babylonian Talmud, *Yevamot* 69b

Thus, aborting a fetus younger than six weeks apparently is not forbidden by Jewish law, even for a very weak reason.

[A woman] differs from "mother earth" in that she need not nurture seed implanted within her *against her will*; indeed, she may "uproot" seed illegally sown.

—Rabbi David Feldman summarizing nineteenth-century Rabbi Yehuda Perilman's ruling that a raped woman has the right to abort (*Birth Control in Jewish Law*, page 287)

In recent years, a number of prominent Orthodox rabbis have ruled that, even in cases of rape, the woman should not have the right to abort. These rabbis wish to restrict abortion solely to instances when the mother's life is physically endangered. It seems to me that, in effect, they demonstrate less compassion for a woman who has been violated than the talmudic Rabbis did toward a woman who had committed a capital offense.

CONTEMPORARY JEWISH VIEWS ON ABORTION: CONSERVATIVE, ORTHODOX, AND REFORM

If a . . . probability exists that a child may be born defective and the mother would seek an abortion on grounds of pity for the child whose life will be less than normal, the Rabbi would decline permission. . . . If, however, an abortion for that same potentially deformed child were sought on the grounds that the possibility is causing severe *anguish to the mother*, permission would be granted. The fetus is unknown, future, potential, part of "the secrets of

If the Fetus Is Not a Life, What Is It?

God"; the mother is known, present, alive, and asking for compassion.

—Rabbi David Feldman, *Birth Control in Jewish Law*, pages 291-292

Feldman's statement reflects the views of the most traditional forces within Conservative Judaism and the most liberal voices within Orthodoxy, which, while generally restrictive on abortion, would be open to it in instances of Down Syndrome and Tay-Sachs.

Most Orthodox spokesmen today tend to be much more restrictive in granting permission for abortions. As Dr. Fred Rosner, an Orthodox physician and a leading authority on Jewish medical ethics, summarizes the recent trend of Orthodox responsa:

[Permitting abortions in cases of incest or rape] "is a minority viewpoint. [In addition], only a very small group of Rabbinic Responsa regard the possibility of a deformed child being born to prey so much on the mother's mind as to constitute impairment of her health [and therefore grounds for permitting an abortion]."

—Fred Rosner, "The Jewish Attitude Toward Abortion," page 75

Rabbi J. David Bleich, an Orthodox scholar, opens his survey of "Abortion in Halakic Literature" with the following citation from the Zohar, the primary text of Jewish mysticism:

There are three who drive away God's presence from the world, make it impossible for the Holy One to fix His abode in the universe, and cause prayer to go unanswered. . . . [The third is] he who causes the fetus to be destroyed in the womb, for he destroys the artifice of the Holy One, and His workmanship. . . . For these abominations, the Spirit of Holiness weeps.

—Zohar on Exodus 36

The Reform position is that the mother (presumably with input from the father) should make decisions concerning abortion, and need not consult with a rabbi. As Rabbi Balfour Brickner, speaking

several years ago on behalf of the Union of American Hebrew Congregations, testified before a congressional subcommittee:

It is precisely because of this regard for that sanctity [of life] that we see as most desirable the right of any couple to produce only that number of children whom they feel they can feed and clothe and educate properly, only that number to whom they can devote themselves as real parents.

—Brickner's testimony is printed in Menachem Kellner, *Contemporary Jewish Ethics*, pages 279–283

Nevertheless, I suspect that Brickner would not have a high regard for parents who aborted a child that was revealed by ultrasound or amniocentesis to be of the “wrong” gender.

When I interviewed the fundamentalist minister Reverend Jerry Falwell a number of years ago, he pinpointed the issue that makes abortion-on-demand problematic for many people: I’ve never heard of a woman who was planning to have a baby speak about “the fetus” in her womb. She’ll always call it a “baby.” The word “fetus” is invariably used by people who support abortion, and who want to disguise from themselves the evil of what they are doing. (I have paraphrased Reverend Falwell since I have no verbatim record of his comment.)

The above statements notwithstanding, it would be wrong to assume that Jewish “pro-life” and “pro-choice” positions can invariably be predicted simply by knowing a rabbi’s denominational affiliation. What follows are two admittedly unrepresentative views on the subject, the first by Rabbi Ben Zion Uziel, an Orthodox rabbi and the late Sephardic Chief Rabbi of Israel (1939–1953); the second by Rabbi Marc Gellman, a contemporary Reform rabbi in Deerpark, Long Island, and, I believe, one of the few non-Orthodox rabbis who, on ethical grounds, believes that abortion rights should be restricted.

It is clear that abortion is not permitted without reason. That would be destructive and frustrative of the possibility

of life. But for a reason, even if it is a slim reason (*ta'am kalush*), such as to prevent the pregnant woman's *niyul* [disgrace, as in the case of the pregnant woman who is to be executed], then we have precedent and authority to permit it.

—Rabbi Ben Zion Uziel, *Responsa Mishp'ei Uziel*, Vol. III, *Hoshen Mishpat*, No. 46

In a short memoir describing his shift from left-wing politics during the 1960s, Rabbi Gellman explains his unhappiness with liberalism's almost uniform support for abortion rights:

Many of the pro-life people were moved by their faith to take this position. I could not say that about the pro-choice people I knew. The pro-life people spoke of rights and wrongs, while the pro-choice people spoke of rights and laws. The former language was . . . far closer to my sense of how God wants us to make religion real in the world. . . . This struggle smells like a fight to keep women and men from accepting the consequences of sexual promiscuity. How narrow and selfish that seems to me now. . . .

[As for the charge made by pro-choice activists that religious opposition to abortion represents an effort by religious groups to impose their sectarian views on America, Gellman writes: "I had never apologized for being pro-civil rights on the basis of the Bible; why should I apologize for being pro-life on the basis of the Talmud. . . .

"I am still uncertain about how my view on abortion ought to be translated, if at all, into public policy, but I know that the killing of a fetus is a not a morally neutral act. . . ."

—Rabbi Gellman's untitled essay is published in David Dalin, ed., *American Jews and the Separationist Faith*, pages 53–56.