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tude to the question of life and thus views abortion with great concern, reasons affecting basic life and health may sanction or even require therapeutic abortion. Were the beliefs of another religion concerning abortion to be enacted into law, our right to follow our religious convictions as we understand them would be abrogated. This is a most serious matter since Jewish women are particularly subject to Tay-Sachs disease—a genetic disease fatal to infants. No Tay-Sachs child has ever lived beyond 5 years of age and they die an agonizing death. Tay-Sachs disease cannot be detected until the second trimester and thus no therapeutic action can be taken until that time.

The differences in religious belief regarding abortion should be quite obvious to any and all. Yet hard as it may be, in the absence of any theological, religious or scientific agreement, the agencies of society have an obligation to seek a path through conflicting theology and belief so as to protect the rights of all.

What should be their yardstick?

In our judgment the criteria that ought to be applied should be a civil one: that is, one which interferes *least* with individual conscience. Or, to put it positively, that which guarantees *most* the individual freedom of every member of society in the free exercise of that member's religious, unreligious or even a-religious commitment.

A second criterion that ought also to be applied is that which considers the legitimate and compelling interests of the state (the government, be it federal, state or local). That is what the Supreme Court considered in *Roe v. Wade*.

In considering the state's interest in maternal health, the Court took into account the fact that modern medical techniques have greatly reduced the risks in abortion. In the first trimester of pregnancy (roughly the first 12 weeks or three months), a properly performed abortion presents no more, and apparently even less, of a threat to a woman's life than childbirth. Therefore, the Court said, during this period the state may not interfere with the decision to terminate a pregnancy except to require that the abortion be done by a physician . . .

As for the state's interest in protecting the fetus, the Court held that legally the word 'person' as used in the Constitution applies only after birth and that therefore the Fourteenth Amendment's provision that no person shall be deprived of 'life, liberty, or property, without due process of law' does not apply to the unborn. Thus the Court concluded that the fetus is not a 'person' with constitutional rights. In the light of the sharp disputes among physicians, theologians, philosophers, and others as to when life begins, the Court further concluded that neither courts nor legislatures could, by adopting a single theory on when life begins, override a woman's constitutional right to choose abortion. (*Abortion: public issue, private decision* by Harriet F. Pilpel, Ruth Jane Zuckerman and Elizabeth Ogg. Public Affairs Pamphlet No. 527, 381 Park Avenue South, New York, N.Y. 10016)

As a religionist and as a civil libertarian I find that posture acceptable. It is basic, it is fundamental, it is just. It ought to be sufficient. It is a position which neither compels nor restricts the right of an individual's conscience and it guarantees every woman that right freely to choose. This right to conscience is a freedom which I as a religious person believe worth fighting for even against every effort to restrict, curtail or deny that right.

If the polls are correct it would seem that the majority

of Americans (Roman Catholics included) share that belief. In February, 1976, 1,117 men and women were polled nationally by the Knight-Ridder Newspaper Poll. That poll put the following statement to those it interviewed: "If a woman wants to have an abortion, that is a matter for her and her doctor to decide and the government should have nothing to do with it." Ninety-eight percent of the Jews polled agreed, 82 percent of the Protestants polled agreed, and 76 percent of the Catholics polled agreed; 81 percent of the total group polled expressed agreement.

One final word. My religious tradition is one which has revered and sanctified human life for nearly four thousand years. During the time when "religious men" were marching heedlessly across the face of the world in wanton destruction of the family of man, in the name of Christ or Allah, we, the Jewish people, were teaching our children that the home was a "mikdash m'at," a miniature sanctuary where parents and children ministered in the house as priests before an altar of God. We have always sought to preserve a sensitive regard for the sanctity of human life. It is precisely because of our regard for that sanctity that we see as most desirable the right of any couple to be free to produce only that number of children whom they felt they could feed and clothe and educate properly; only that number to whom they could devote themselves as real parents, as creative partners with God.

It is precisely this traditional Jewish respect for the sanctity of human life that moves us now to support legislation which would help all women to be free to choose when and under what conditions they would elect to bring life into the world. It is that regard for the sanctity of human life which prompts us to support legislation enabling women to be free from the whims of biological roulette and free mostly from the oppressive, crushing weight of ideologies and theologies which, for reasons that escape my ken, continue to insist that in a world already groaning to death with overpopulation, with hate and with poverty, there is still some noble merit or purpose to indiscriminate reproduction. Let those who cry so for the unborn express the same kind of active concern for the already born and the too frequently dying.

I am well aware that the issue of abortion is one that is emotionally charged. I am well aware that there are some citizens of this country who hold deep religious convictions which cause them to consider abortion morally wrong. I do not quarrel with their view. But I cannot believe that the state has the right to foist through legislation the religious conviction of any one group upon all the citizens of the country. To do so would discriminate against large segments of our population, and would foster the return to illegality and the continuation of deception in the matter of abortion. It would particularly negatively affect the poor and the indigent among us.

If the Supreme Court's ruling on abortion were to be overturned or if legal barriers to block the effects of the decision are imposed, the disastrous and well-known consequences that accompanied the former restrictive abortion laws could once again reach alarming proportions. That would be truly hurtful to our society, already overburdened with more social problems than it can resolve. I urge you to leave the situation as it presently stands.

Linda -

Human Life Review
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traditional, Orthodox view

Jewish Views on Abortion

Rabbi Dr. Immanuel Jakobovits

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IN RECENT years, no medico-moral subject has undergone a more revolutionary change of public attitudes than abortion. What was previously either a therapeutic measure for the safety of the mother or else an actionable criminal offense is now widely and legally performed not only as a means to prevent the birth of possibly defective children or to curb the sordid indignities and hazards endured by women resorting to clandestine operators, but simply for convenience to augment other birth-control devices. Under the mounting pressure of this shift in public opinion, generated by intense agitation and skillful propaganda campaigns, the abortion laws have been liberalized in many countries, starting with the British Abortion Act of 1967 and culminating in the decisions of the United States Supreme Court of January 22, 1973. In effect, abortion is now—or, pending anticipated changes in existing laws, will soon be—available in most parts of the Western world virtually on request, or at least at the discretion of doctors within some general guide-lines.

Many physicians have, of course, always claimed that the decision whether or not to terminate a pregnancy should be left to their judgment—a claim already for some time asserted on a wide scale through the establishment at many hospitals of “abortion boards”, composed solely of physicians, charged with the responsibility of sanctioning all such operations.

In the Jewish view, this line of argument cannot be upheld.

Dr. Immanuel Jakobovits is the Chief Rabbi of the British Commonwealth of Nations, and is also well-known in the U.S., having served as the first Rabbi of New York City's Fifth Avenue Synagogue for a decade (1958-67). He is a prolific writer on Jewish affairs, and the author of several books, including *Jewish Medical Ethics* (which is widely recognized as the standard work on the subject). This article is based on an earlier work (published in *Abortion and the Law*, edited by David T. Smith, published by Western Reserve University Press, Cleveland, 1967) that Rabbi Jakobovits has specially revised for *The Human Life Review* to take into account both the latest rabbinical *responsa* and recent changes in civil abortion laws. For source references (omitted here), readers may consult the original article indicated above, or its slightly updated republication in *Abortion, Society & the Law* (edited by D.F. Walbert and J.D. Butler, Case Western Reserve University Press, Cleveland and London, 1973).

THE HUMAN LIFE REVIEW

The judgment that is here required, while it may be based on medical evidence, is clearly of a moral nature. The decision whether, and under what circumstances, it is right to destroy a germinating human life, depends on the assessment and weighing of *values*, on determining the title to life in any given case. Such value judgments are entirely outside the province of medical science. No amount of training or experience in medicine can help in ascertaining the criteria necessary for reaching such capital verdicts, for making such life-and-death decisions. Such judgments pose essentially a moral, not a medical problem. Hence they call for the judgment of moral, not medical specialists.

Physicians, by demanding that as the practitioners in this field they should have the right to determine or adjudicate the laws governing their practice, are making an altogether unprecedented claim not advanced by any other profession. Lawyers do not argue that, because law is their specialty, the decision on what is legal should be left to their conscience. And teachers do not claim that, as the profession competent in education, the laws governing their work, such as on prayers at public schools, should be administered or defined at their discretion. Such claims are patently absurd, for they would demand jurisdiction on matters completely beyond their professional competence.

There is no more justice or logic in advancing similar claims for the medical profession. A physician, in performing an abortion or any other procedure involving moral considerations, such as artificial insemination or euthanasia, is merely a technical expert; but he is no more qualified than any other layman to pronounce on the rights or legality of such acts, let alone to determine what these rights should be, relying merely on the whims or dictates of his conscience. The decision on whether a human life, once conceived, is to be or not to be, therefore, properly belongs to moral experts, or to legislatures guided by such experts.

Jewish Law

The Claims of Judaism

Every monotheistic religion embodies within its philosophy and legislation a system of ethics—a definition of moral values. None does so with greater precision and comprehensiveness than Judaism. It emphatically insists that the norms of moral conduct can be governed neither by the accepted notions of public opinion nor by the individual conscience. In the Jewish view, the human conscience is meant

to enforce laws, not to make them. Right and wrong, good and evil, are absolute values which transcend the capricious variations of time, place, and environment, just as they defy definition by relation to human intuition or expediency. These values, Judaism teaches, derive their validity from the Divine revelation at Mount Sinai, as expounded and developed by sages faithful to, and authorized by, its writ.

The Sources of Jewish Law

For a definition of these values, one must look to the vast and complex corpus of Jewish law, the authentic expression of all Jewish religious and moral thought. The literary depositories of Jewish law extend over nearly four thousand years, from the Bible and the Talmud, serving as the immutable basis of the main principles, to the great medieval codes and the voluminous rabbinical *responsa* writings recording practical verdicts founded on these principles, right up to the present day.

These sources spell out a very distinct attitude on all aspects of the abortion problem. They clearly indicate that Judaism, while it does not share the rigid stand of the Roman Catholic Church which unconditionally proscribes any direct destruction of the fetus from the moment of conception, refuses to endorse the far more permissive views of many Protestant denominations. The traditional Jewish position is somewhere between these two extremes.

The Rulings of Jewish Law

While the destruction of an unborn child is never regarded as a capital act of murder (unless and until the head or the greater part of the child has emerged from the birth canal), it does constitute a heinous offense except when indicated by the most urgent medical considerations. The foremost concern is the safety of the mother. Hence, in Jewish law an abortion is mandatory whenever there is a genuine fear that a continued pregnancy might involve a grave hazard to the life of the mother, whether physical or psychiatric (such as the risk of suicide, following previous experiences of mental breakdown).

More difficult to determine—and still widely debated in recent rabbinic writings—is the judgment on abortions in cases of risks to the mother's health rather than to her life; of rape or incest; and of fears of physical or mental defects in children born to mothers who had German measles (rubella) or took certain teratogenic drugs (e.g. thalidomide) during the first months of pregnancy. Quite recently, several leading authorities have reaffirmed the Jewish opposi-

tion to abortion even in these cases, branding it as an "appurtenance of murder." But some others have lately given more lenient rulings in these circumstances, provided the operation is carried out within the first forty days following conception, or at least within the first three months. However, whatever the verdict in these particular cases, they are of course exceptional, and Jewish law would never countenance abortions for purely social or economic reasons.

Moral and Social Considerations

These conclusions, though deduced from ancient principles and precedents by legal reasoning, must be viewed in the context of Judaism's moral philosophy and against the background of contemporary social conditions. In Jewish thought the law, while legalistically constructed, is always but the concrete expression of abstract ideas, the vehicle to convey, as well as to implement, moral and religious concepts. Judaism uses the medium of law much as an artist presents the genius of his inspiration in colours on canvas, in sounds of music or in the building-blocks of sculptured and architectural designs. Accordingly, neither the rationale nor the significance of the Jewish rules on abortion—as indeed on any other subject with social ramifications—can be properly understood except by enucleating the spirit, the moral ethos, from the somatic letter of the law.

The moral thinking set out in the rest of this article, especially insofar as it concerns abnormal births and the products of rape or incest, reflects in particular the majority view of the stricter school of thought which sanctions abortions only for the safety of the mother.

The "Cruelty" of the Abortion Laws

At the outset, it is essential, in order to arrive at an objective judgment, to disabuse one's mind of the often one-sided, if not grossly partisan, arguments in the popular (and sometimes medical) presentations of the issues involved. A hue and cry is raised about the "cruelty" of restrictive abortion laws. Harrowing scenes are depicted, in the most lurid colors, of girls and married women selling their honor and their fortunes, exposing themselves to mayhem and death at the hands of some greedy and ill-qualified abortionist in a dark, unhygienic back-alley, and facing the prospect of being hunted and haunted like criminals for the rest of their lives—all because safe, honorable, and reasonably-priced methods to achieve the same ends are or were, barred from hospitals and licensed physicians' offices by "barbaric" statutes. Equally distressing are the accounts and pictures of pitifully deformed children born because "antiquated" abortion

laws did not permit us to forestall their and their parents' misfortune. And then there are, of course, always heart-strings or sympathy to be pulled by the sight of "unwanted" children taxing the patience and resources of parents already "burdened" with too large a brood, not to mention the embarrassing encumbrance of children "accidentally" born to unwed girls.

There is, inevitably, some element of cruelty in most laws. For a person who has spent his last cent before the tax-bill arrives, the income tax laws are unquestionably "cruel;" and to a man passionately in love with a married woman the adultery laws must appear "barbaric." Even more universally "harsh" are the military draft regulations which expose young men to acute danger and their families to great anguish and hardship.

Moral Standards in Society

All these resultant "cruelties" are surely no valid reason for changing those laws. No civilized society could survive without laws which occasionally spell some suffering for individuals. Nor can any public moral standards be maintained without strictly enforced regulations calling for extreme restraints and sacrifices in some cases. If the criterion for the legitimacy of laws were to be the complete absence of "cruel" effects, we should abolish or drastically liberalize not only our abortion laws, but our statutes on marriage, narcotics, homosexuality, suicide, euthanasia, and numerous other laws which inevitably result in personal anguish from time to time.

So far our reasoning, which could be supported by any number of references to Jewish tradition, has merely sought to demolish the "cruelty" factor as a valid argument *per se* by which to judge the justice or injustice of any law. It still has to be demonstrated that restrictions on abortion are morally sound enough and sufficiently important to the public welfare to outweigh the consequential hardships in individual cases.

The Hidden Side of the Problem

What the fuming editorials and harrowing documentaries on the abortion problem do not show are pictures of radiant mothers fondling perfectly healthy children who would never have been alive if their parents had been permitted to resort to abortion in moments of despair. There are no statistics on the contributions to society of outstanding men and women who would never have been born had the abortion laws been more liberal. Nor is it known how many "un-

wanted" children eventually turn out to be the sunshine of their families.

A Jewish moralistic work of the twelfth century relates the following deeply significant story:

A person constantly said that, having already a son and a daughter, he was anxious lest his wife become pregnant again. For he was not rich and asked how would he find sufficient sustenance. Said a sage to him: "When a child is born, the Holy One, blessed be He, provides the milk beforehand in the mother's breast; therefore, do not worry." But he did not accept the wise man's words, and he continued to fret. Then a son was born to him. After a while, the child became ill, and the father turned to the sage: "Pray for my son that he shall live." Exclaimed the sage: "To you applies the biblical verse: 'Suffer not thy mouth to bring thy flesh into guilt.'"

Some children may be born unwanted, but there are scarcely unwanted children aged five or ten years.

Abortion Statistics

There are, then—even from the purely utilitarian viewpoint of "cruelty" versus "happiness" or "usefulness"—two sides to this problem, and not just one as pretended by the pro-abortion lobby. There are the admittedly tragic cases of maternal indignities and deaths as well as of congenital deformities resulting from restrictive abortion laws. But, on the other hand, there are the countless happy children and useful citizens whose births equally result from these laws. What is the ratio between these two categories?

Clearly, any relaxation of the abortion laws is bound greatly to increase the rate of abortions, which was already high even under rigid laws. In England, for example, the figure shot up from a rate of 25,000 *per annum* in 1967 to 90,000 by 1971. On the apparently realistic assumption that the demand for abortions, in the absence of restrictive legislation, might be 500 or more per thousand live-births, it is estimated that the figure will approach three million in the United States by 1980.

Out of this staggering number of annual abortions only a minute proportion would be fully justified for the principal reasons advanced by the advocates of liberalization. Based on the approximate rate of 10,000 abnormal births annually (as reliably estimated), and making allowance for the number of women whose hazards would be reduced if they did not resort to clandestine operations, well over 95% of all abortions would eliminate normal children of healthy mothers.