HALACHIC PERSPECTIVE:
BIO-MEDICAL ETHICS
OHR TSIPORAH

By Moshe
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BIO-MEDICAL ETHICS
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By Moshe Morgenstern

A Study of the Torah Attitude to the Sacredness, Dignity, and Individuality of Human Life from Conception to Death
Dedicated to my wife,

Nira

my life companion whose love, devotion, and faith have sustained and inspired me to learn and teach the Torah that has culminated in my Halachic Perspective: Bio-Medical Ethics, Ohr Tsiporah
May this book become an eternal testament to a genuinely beautiful person, my aunt, Tsiporah Shaini Faige Fannie who departed this world on the 24th of Nisan 5737 in Jerusalem, Israel. May her soul be among the souls of the righteous who are considered as though living.

“A new light and inspiration shall shine forth in Zion, and we shall all soon merit to benefit from its illumination.”

This illumination was the everlasting mark left by Fannie Morgenstern on the lives of all who knew her. She inspired them and brought out the best in each of them. Like Miriam, the sister of Moshe Rabbenu, who cared and worried about him, so, too, did my aunt have a great share in my welfare and Torah education.

In great appreciation and in reverence to her memory, one of the subtitles of this book will bear her name — Ohr Tsiporah. The Illumination and Inspiration of Tsiporah.

And this is written on her tombstone.

Here lies our dear and honored sister, good-hearted and wise of speech. “She opened her mouth in wisdom, and the law of kindness was on her tongue.” A graduate of Beth Jacob schools, modest in her conduct, G-d fearing, and renowned for her truthfulness, Tsiporah Shaini Faige Fannie was a daughter of Harav Hagaon Shaul Aryeh, and granddaughter of the Gaon Horav Moshe Katzenelenbogen, author of Responsa Ohel Moshe and descendant of the authors of Tosfos Yom Tov and Maharam of Padua. She passed away on the 24th of Nisan 5737 in Jerusalem. May her soul be bound up in everlasting life.

Are you concerned that most people do not value human life, especially a life not belonging to their own group? Are you concerned with Jewish survival and identity in the State of Israel and all over the world? At last you can do something about these problems.

Bais Meir Publications Ltd. has embarked upon a novel idea to combine Torah scholarship with science and to translate the synthesis for the modern man and woman. You can sponsor an advertisement to help Bais Meir Publications enlighten our Jewish people about these issues. In this way, Jews will be motivated to strengthen their identity and reinforce their determination to resist hostile forces that threaten our survival as individual Jews or collectively as the Jewish people.

Judaism’s first principle is humanitarianism. The welfare of every human being regardless of sex, race, color, or religion is our concern. All civilized men who cherish the principles of humanity have a common bond and destiny. The enemy of the Jew and what he stands for — humane lifestyle — is the enemy of all men whose lifestyle and principles are the same as the Jew — all Americans and members of the free democracies. They are really the targets of the bigots. In order to reach out to others, we must first be sure that we know who we are and what our goal in life is. What is our relationship with our immediate family, friends, and neighbors? other Jews living here and elsewhere in the world? What is our attitude towards those who are different from us? toward those who show hostility to us or other Jews anywhere in the world? In what ways can we improve our relationship and attitudes? towards what ideal?
These questions and more are explored in the following books already written and to be prepared for publication:

1. *Halachic Perspective: Bio-Medical Ethics, Ohr Tsiporah.* A Study of the Torah Attitude to the Sacredness, Dignity, and Individuality of Human Life from Conception to Death.

2. *Ethics of the Disabled Jew, Ohr Chana.* A Study of the Torah Attitude to the Mentally Retarded, Psychologically Disturbed, the Deaf, the Dumb, the Blind, the Sterile, the Minor, and the Aged.


4. *Netsach Yaakov Yosef.* (5 vols.) Written in Hebrew, these volumes trace in great depth the Talmudic and Rabbinic sources used in the books described above.

These volumes teach us to reorient our values and goals. They analyze the Torah position regarding the essence of modern living, emphasizing the dignity of the individual, his need and right to realize his full potential and to achieve his emotional, psychological, and spiritual satisfaction to make living meaningful. Torah can help us control our inner anxieties, conflicts, and frustrations in spite of a world of contradictions, pressures, and competition.

These books are a study of the cardinal principles and practices of the Jewish faith for the past 3400 years. They analyze the conflicts, dissenting schools, and intellectual approaches to Judaism, and mirror the persecutions and tribulations of the soul of the Jew since Sinai 3400 years ago.

They study the minds of the giants of the Jewish people and how they are related to the divine teachings over the centuries. They also study the mind of the layman, his psyche and soul. Here is the story of Jewish survival and intellectual heroism against all odds to remain alive as individual Jews and eternal as a people.

5. *Netsach Yaakov Yosef.* (5 vols.) Written in Hebrew, these volumes trace in great depth the Talmudic and Rabbinic sources used in the books described above.

These books were written by Moshe an ordained rabbi. He has been working with physicians for the past nineteen years. As a result of his work, he has learned about many medical-ethical problems that can be related to and solved by the teachings of Torah Judaism. For the past twenty-six years since his ordination, he has studied the Talmud daily as well as the codes of Jewish law and responsa — the replies by scholars to questions of Jewish law in all areas of Jewish life for the past 1500 years.

His books have won the approbation of two of the world's foremost authorities and arbiters of Halachah (Jewish law). Horav Moshe Feinstein, Shlita and Horav Yisroel Yitzchok Piekarski, Shlita. Rabbi has also authored *Discipline: Synthesis of Talmudic and Rabbinic Wisdom with Modern Psychology and its Application to Jewish Education.* Yet these volumes are just the beginning of this on-going project.

In addition, we hope to have other scholars participate in this project of strengthening Judaism by Torah enlightenment. Three books are planned: *Halachic Perspective: Pain and its Relief, Halachic Perspective: Love and the Duty to be Humane, Halachic Perspective: Love and its Communication.* Further books are planned with the goal of summarizing various responsa in English. These responsa are a written record of how the poskim (arbiters of Jewish law) have reacted to the times in which they live (d) by finding answers to the most difficult questions of Jewish law within the framework of the Torah. Many of these poskim are contemporary, and they deal with some of the most current issues confronting us today. Others, of previous generations, give us an insight into how the stance of halachah was formulated on important issues. Some of these poskim have published and continue to publish their responsa in journals especially dedicated to halachah such as Torah She Beal Peh and Noam. Many such volumes, too numerous to list here, will be excerpted to produce A LIBRARY OF MOST IMPORTANT DECISIONS IN JEWISH LAW IN ENGLISH and a library of translation and synopsis of code of Jewish law present and future — in English — of the writings of Aruch Hashulchan.

We hope you will become a partner in this sacred work of strengthening the identity and survival of the Jewish people by completing the ad enclosed with this letter. The ads will help cover publishing costs as well as assist in the support of Kollel
scholars. These young men are engaged full time in the study of the Talmud and Shulchan Aruch (Code of Jewish Law). They are given scholarships and fellowships in compensation for their role in halachic research (Jewish law) and the writing of future Bais-Meir Publications. By assisting these men in the continuation of their studies, a great mitzvoh is performed. For these scholars, who devote themselves to a career in Torah study, are preparing for their role as genuine Jewish leaders and poskim — arbiters of Jewish law. The mitzvoh of supporting this work is a means by which we can perpetuate the survival and identity of the Jewish people, our most worthwhile goal.

We can only accept and publish paid-up ads. You will receive an autographed copy of the book in which your ad appears. The size of a full page ad is 7½" x 4½". Ads smaller than a full page will be proportionally reduced.

If you are not able to place an ad at this time, why not purchase one or more copies of the first book to be published in this series, Halachic Perspective: Bio-Medical Ethics, Ohr Tsiporah by Moshe Morgenstern? The price is only $6.00 per volume which includes $.60 for shipping (4th class) and $.40 sales tax. If you are exempt from sales tax, include a photostat copy of your exemption certification. Otherwise, sales tax must be paid.

Every Jewish home should have a copy of this book. This volume makes the perfect gift for patients, clients, or customers, and the expense is tax deductible. Congregations can use these books as promotion items or give them to their general membership, men's club, or sisterhood.

As an example of the important and relevant material covered in this series, consider the contents of Halachic Perspective: Bio-Medical Ethics, Ohr Tsiporah. A Study of the Torah Attitude to the Sacredness, Dignity, and Individuality of Human Life from Conception to Death.

CHAPTER I:
Amniotic Testing and Hallacha
A. Reliability
B. The Hallachic Viewpoint

CHAPTER II:
Legal Problems of Physicians that Influence their Advice
A. Amniotic Testing
B. Abortions

CHAPTER III:
Social and Psychological Effects of Amniotic Testing
A. Mother's Decision to Terminate a Pregnancy
B. The Abnormal Child

CHAPTER IV:
Psychological and Hallachic Adjustment of a Woman Having Abortions

CHAPTER V:
Faith and the Role of the Jewish Woman and Mother: Taharas Hamispocho
A. The "Most Important Person in the World"
B. The Lasting Spiritual Effects of Taharas Hamispocho
C. The Act of Creation vs. The Act of Destruction

CHAPTER VI:
The Hallachic Status of the Unborn Child
A. Legal Status of the Fetus
   1. Inheritance Rights
   2. Destruction of the Embryo
B. Conflict of Lives — The Principle of the Rodef
C. Organ Transplants
   1. Hallachic Determination of Time of Death
   2. Removal of Life Sustaining System
   3. Termination of Medication
   4. Donation of Organs
You will agree that this volume contains topics of extreme interest and importance to contemporary Jews living in a world in which abortions are being performed daily, and organ transplants are commonplace. The Jewish tradition, which began at Sinai and has continued through the millennia, is the place to look for answers to the difficult choices facing each of us. In Rabbi Morgenstern's lucid study, we learn how our Torah teaches us to preserve the dignity of the individual human life.

This entire book contains decisions of halacha (Jewish law). Consequently, it has the sanctity accorded to holy books. It should be kept in a respectable place, or given to an orthodox synagogue to be disposed of.
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My friend, the very distinguished Rav Mosh
is noted and acclaimed widely for his Torah scholarship and
erudition. He is a man who possesses wisdom and common sense.
Harav Mosh, the son of Harav Menachem Sender
was ordained with the rabbinical
degree of semicha by his teachers, the Gaonim at Torah Vodaath,
My Friend, our Revered Teacher, Raya Moshe

Moshé Feinstein

And on this, I have affixed my signature of the 7th day of
the Hebrew people.

Rav I. Pikarski

Aproposition of

The Jewish people.

Elon, in the year of the foundation of the Rambam, I have
published this book to increase the love of God and the
publication of this book is a very commendable thing that he is
instructed. His writings are also beneficial for the instruction of
Judaism. His writings are also beneficial for the instruction of

Meir Bar-Ilan

Rabbi Moshe Feinstein

Tamunus 2799.

And on this, I have affixed my signature of the 7th day of

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Meir Bar-Ilan

Rabbi Moshe Feinstein

Tamunus 2799.
that he studies with great diligence. Despite the fact that he has limited time, nonetheless he has dedicated and fixed times for studying the Torah. I also know of his upright behavior as is appropriate (for him). When he wrote this book, he assembled pearls of wisdom from Rishonim and Achronim. He also included a teshuva from my teacher, the great Gaon, master of the Torah, our teacher Horav Aryeh Zvi Frummer, zt"h, head of the Rabbinical court of Kasiglov and teacher in the Yeshiva Chochmei Lublin who wrote regarding abortion of an unborn child that it is forbidden by reason of murder.

I have also written and shown that it is murder without any doubt at all. Also the contemporary gaonim have prohibited it explicitly. Therefore, I support his effort to publish and distribute his book in order that all should see and understand that it is forbidden explicitly by reason of murder. And I hope that there will be a value to his explanation of it in the English language and in Hebrew before everyone. For certainly everyone will receive his book with enthusiasm.

He is to be relied upon for his appropriate and well-written words before the most important rabbis and also before laymen and advanced students. And he is to be congratulated especially since he has semicha (ordination) from the contemporary gaonim and is deserving of the honor of the office of the rabbinate. For certainly, with G-d’s help, his words will enter the midst of the people of Israel. May G-d help us all that evil decrees harmful to the Jews be abolished, and that very soon we shall merit the coming of our Righteous Messiah.

I have affixed my signature to this, on the 16th of Tammuz 5739 in Queens, his friend who blesses him with best wishes,

Yisroel Yitschok Piekarski

Our revered teacher Rav Moshe is distinguished for Torah, knowledge, wisdom, and common sense, in addition to possessing many other virtues. He is presently publishing his book *Hallachic Perspective: Bio-Medical Ethics Ohr Tsiporah*. Rabbi has shown that abortions are forbidden, and that they are tantamount to murder. May he be congratulated. He has also written about other related matters, regarding the sacredness of human life.

It is my hope that every Jew will properly comprehend the importance of this matter. Certainly, with the help of G-d, his book will have a great effect. Each person will certainly consider it a blessing and honor to have his book in his house.

I know that the author, despite the fact that he has limited time, never the less, undertook the responsibility to publish this very necessary book - to publicize the cardinal prohibitions of abortions. Certainly, each person will help in this publication by placing ads in order to enable the author to re-publish as many times as necessary until this situation will be rectified.

I have affixed my signature to this, on the 10th day of Mar Cheshvovan 5741.

YISROEL YITSCHOK PIEKARSKI
Letter of Approbation from Horav Yitzchok Meir Schorr, son of Horav Gedaliah Schorr.

To my friend, great in Torah, expert, well-versed, and bountifully blessed, our teacher, Horav Moshe Schorr, best personal regards!

Alas for those who have passed and are no longer with us! My master, my father, my teacher and rav, the Eminent and Pious, passed from life. Who can recognize this great loss to the entire Torah world as much as you whom my father, the Eminent and Pious, respected so much?

I know that you visited my father about a month before his passing to request an approbation for your book composed in English clarifying the prohibition of abortion, and also your book regarding the question of who is a Jew. My father, told you that he would give you his approbation after you first received the approbation from Horav Moshe Feinstein, the Gaon and halachic authority of our generation. In fact, Horav Feinstein did not give his approbation until the very day in which my father went to his eternal rest, so that it was not possible for you to receive the approbation which my father had promised you.

May it be G-d’s will, that your wellsprings of knowledge spread abroad, and that your words which come from a pure heart should enter into the hearts of our brethren, the Children of Israel. And through your efforts we should merit that G-d should correct the imperfections of His people and that we should soon merit the coming of the Righteous Redeemer.

Your friend, who blessed you with best wishes,

YITZCHOK MEIR
Son of Horav Gedaliah Halevi Schorr

My Rebbe and mentor, Hagaon Horav Gedaliah Schorr, who departed this world on the seventh of Tammuz 5739, Sunday night, July 1, 1979, was first and foremost a great human being. He had a comprehensive knowledge of the Talmud, commentators, and codes. Because of his great erudition, he was appointed dean of the great yeshiva Torah Vodaath at a relatively young age. He also was a member of many organizations formed to ensure Torah education and the survival of Judaism all over the world.

In addition to his intellectual greatness, what Horav Schorr meant to thousands of American students cannot be transcribed on paper. It transcended the normal relationship of Talmid to Rebbe. It was love for Torah, for the man of Torah, for the representative of Hashem.

The passing of Horav Schorr can be compared to Elijah’s passing. The prophet Elisha cried out when Elijah ascended to heaven on a fiery chariot – "Father, Father, the chariot of Israel and its horses!" Not only was Elijah the driver and captain but he provided the horsepower, and upon
his shoulders fell the responsibility for the most detailed duty of running Judaism in that era. So, too, our Rebbe and father, Horav Schorr, not only provided the leadership but tended his flock of future leaders for Judaism with love, tenderness, and fatherly care for every detail of their lives.

I, for one, had the zchus, merit, to know Horav Schorr since I was in the yeshiva as an adolescent. I later attended his classes for a number of years, was ordained by him, and kept constantly in touch with him for the past twenty-five years since receiving smicha. I can cry out, "I have been orphaned!" I have lost a great friend who always understood my problems before I had to go into great detail and always offered advice, encouragement, and any help he could.

Symptomatic of the great human being that Horav Schorr was is the way he expired. Although he had been critically ill with a heart condition for a period of four years, as soon as he got better, he continued his rigorous schedule of duties at the Mesivta and then helped raise funds. In addition, during the evenings he attended the simchos of "his boys" where he would speak. It was at one of the simchos Sunday night that he suffered a heart attack soon after delivering an address. Like a soldier who falls in battle, so did our Rebbe return his soul to G-d in the line of duty. Though he departed this world, in the two generations that he actively was engaged in chinuch in the yeshiva, he won the hearts and minds of thousands of disciples like myself, who have adopted not only his faith and philosophy of Judaism and Torah learning but parts of his personality and temperament and goals. We, in turn, will inspire future generations to keep high the torch of Torah learning and observance of mitzvos to the end of days — when G-d in His great mercy will resurrect our Rebbe together with all men, and no one will ever die again. In this way our Rebbe lives on eternally. "David, King of Israel, lives on," and so, too, our great Rebbe is alive through the thousands of his disciples who follow the word and spirit of his life.

I met with Horav Schorr, on Friday, May 18, 1979 at his home and reviewed the contents of this book and the additional volumes which will follow this one: Ethics of Disabled Jews, and Dynamics of Halachah, Jewish Identity and Survival (five volumes). Horav Schorr was satisfied with my writings and agreed to send me haskomos (approbations) for all books. He related his intentions to Horav Piekarski. However, he wished to wait for the haskomo of Horav Feinstein before sending me his. Horav Feinstein's haskomo arrived July 6th. Unfortunately, Horav Schorr passed away on July 1. Let us hope that his intent be realized that all my books be widely read and their messages carried out.
Chapter I

AMNIOTIC TESTING AND HALACHAH

Nowadays it is quite common for a physician to recommend that a pregnant woman undertake an amniotic fluid test during the fourteenth or sixteenth week of pregnancy to ascertain if the child will be physically normal. This test is designed to detect if the child would possibly suffer, G-d forbid, from chromosome deformities, be born a mongoloid, have Tay Sachs Disease, or be afflicted with spinal maladies or other neurological, crippling disease.

The problem of whether it is permitted for a Jewish woman to undergo such a test can be analyzed from a factual point of view and from a moral-halachic standpoint as well. When we purport to deal with hard facts, we must ask, how valid and reliable are the tests?

Any individual with some knowledge of the history of science and medical development knows that the pace of development and change is so rapid, that what is considered "medical truth" today is relegated to disproven theory the next day. Thus, the symptoms that indicate a chromosome problem may very well turn out to be some totally harmless phenomenon. Scientific knowledge about cell development is still in its infancy — Man has not yet conquered cancer; therefore many mysteries remain unknown to man about the cells extracted from the fluid used in the testing. It is therefore conceivable that even assuming the accuracy of the testing completed in the laboratory, there still are definite reservations as to the validity of the interpretation of the results.

I have spoken to dozens of pathologists who concede that errors in interpretations of biopsies occur. These specimens are taken directly from the suspected area. In the case of embryo testing, the clinical possibility of error appears to be much greater.

Let us assume that no errors were made in testing. Is it halachically permitted to abort a baby for the possibility of
chromosome problems or if the mother contracted German measles (rubella) and suspects that the child will be born with severe physical or mental abnormalities? Rabbi Dr. Immanuel Jakobovitz, writing in Jewish Law Faces Modern Problems, reviews the halachic writing that forbid abortions under the above circumstances. He also writes in Jewish Medical Ethics that leading physicians in Great Britain opposed Tay Sachs testing on the ground of generating neurosis among the population. In Medical Ethics Dr. Moses Tendler reviews the halachic position regarding abortions, contraceptives, and amniotic testing. He supports the halachic position forbidding abortions even in the face of abnormalities of the embryo.

In my two chapters, “The Unborn Child” (Chap. VI), and “Conflict of Lives” (Chap. VII), I discuss at length the halachic (Jewish law) point of view. Here I only summarize what the Maharash recorded in the Yam Shel Shlomo. “One is prohibited from inflicting physical damage on one’s person or from shaming oneself or even destroying one’s money. One is not permitted to kill oneself or one’s children even if he is afraid that they will be forced to convert to another religion.”

The Yam Shel Shlomo explains, “Even if one’s children do convert, they can always return to the fold of Judaism. Even if they do not, then perhaps their offspring will. Since they were forced to convert, they are in the category of anusim, ‘forced,’ and are free from Heavenly rebuke.” It is therefore strictly forbidden to take matters into one’s own hands and commit suicide or murder in order to escape possible problems in the future.

When Rav Chananya ben Tradyon was being burned at the stake by the Romans, he refused to open his mouth and let the flames enter in order to hasten his death and lessen his suffering. “Let me die at the hands of others; let the One who gave my soul take it, but not at my own hands.”

In I Kings 22:32-33, Yehoshaphat, King of Judah, was battling the Syrians. He was attacked by soldiers who thought he was the King of Israel. But, at the last moment, they realized that he was not the king they sought to slay, and stopped pursuing him.

Of such incidents the Talmud relates:

Even if a sharp sword is suspended above one’s head, one should not despair of the hope for divine mercy.

We can summarize:

1. The testing process for abnormalities in the embryo is not 100% accurate.
2. It is conceivable that at some future date scientists may find that the phenomena that led them to suspect some basic abnormalcy may very well indicate some other condition that is not abnormal at all.
3. Even assuming that nos. 1 and 2 are not so, it has been shown by the responsa summarized in Chapters VI and VII ("The Unborn Child," and "Conflict of Lives") and opinions of Rabbi Jakobovitz and Dr. Tendler that it is forbidden to abort the embryo.
4. It is forbidden to commit murder or suicide or hasten the death of any individual or abort an unborn child in order to avoid possible future problems.

Assuming that the abortion is nevertheless pursued, what is the relationship of the spouses following the abortion? Would this couple be willing to consider having more children? Would they risk another supposedly abnormal pregnancy?

If fears of abnormal births are to be taken into account, one should also consider the possibility weighing in the opposite direction, i.e. the fear of aborting a normal, healthy child. There is also the possibility that an artificial interruption of the pregnancy might permanently impair the mother’s fertility and health, as held by Professor Asherman of Tel Aviv.

An abortion can be more dangerous than birth, since the woman must be pregnant close to fourteen to sixteen weeks before the test can be performed. It takes two weeks to get the results. Even if the woman physically recovers, psychological scars of an interrupted pregnancy cannot be erased easily.

Women having a number of healthy children can nevertheless give birth to a deformed child. Possibly if these women took the test before giving birth to the normal children, the children’s cells may have shown some abnormalcy. However, the abnormalcy was not dominant, and the children remained normal. Obviously, the embryo that exhibits some abnormalcy in testing derived this abnormalcy from its mother or father. Nevertheless, both spouses are normal. Why? Because the
dominant chromosomes are normal. How, then, can we be 100 per cent certain that the test performed on the fluid from the embryo did, in effect, reflect the dominant features? Even if it did, it has already been shown that halachically it is tantamount to murder to abort according to some authorities. Other authorities consider it as partial murder while others consider it a violation of the cardinal principles of Judaism. Only when the mother’s life is in danger or the mother can definitely become insane and be in danger of committing suicide or murder can abortions be permitted.

Even an animal killed for a purpose other than the consumption of its meat had a day in court. It had to be proven that this animal had killed another animal, and its presence was a menace to society.

Certainly the fetus is not worse than an animal! Is the world too small for another soul? Since when is it better to be dead than crippled? Should all the blind, crippled, deformed, retarded children and adults also be terminated? True, the embryo is not given the legal status of a human being, and the one who kills the embryo is not given capital punishment. However, the stigma of taking a potential human life remains. The psychological scar remains forever on the person authorizing this act.

As Jews who have suffered for the past 4000 years and have not recovered from the Holocaust trauma, it is an abomination of the greatest dimension to practice “selection and right to live” as did the Nazis. It is the greatest blow to a free society when its citizens agree that only the “physically strong” have the right to live or even to be born.

Can Jews who have suffered and endured a Holocaust by the Nazis and continue in every generation to be the victims of bigots for the only sin of being born Jews, suffer upon their own flesh and blood — the embryo — the same persecution? Is it the embryo’s fault that it contains the chromosomes of its father and mother? Is not an abortion the negation and non-acceptance of one’s self for good or what does not appear as good?

Is it the fault of the embryo that he or she was created different? Who is to judge what is normal? Is it normal for a physically healthy individual to behave as an animal?

During the time of the prophets, even a prophecy forecasting disaster and tragedy could be reversed by the mercy of G-d. Nowadays, no one is given the power to forecast the future. How, then, can a Jew or a Jewess place his faith on what is at most an educated guess on the part of a physician that the resultant baby will be born with deformities? Can he decide a matter of life or death to the embryo on the basis of such guessing? Would he be willing to lend a stranger $10,000 on evidence of no greater validity than that submitted by such physicians?

In the past eighteen years I have spoken to several hundred psychiatrists. They have informed me that there is not one person in the world who does not have some form of neurosis some time during his or her lifetime. There are divided opinions among psychiatrists of the effect of the environment on psychosis and schizophrenia. It is a known fact that not all individuals suffering from psychosis are institutionalized even in our culture. In many cultures they function and are part of society. Now if scientists discover some symptoms in the cells of the embryo that could be characteristic of neurosis, psychosis, or schizophrenia would it then also be advisable to terminate such pregnancies? If such a course were followed, there would be no need for an atomic war to put an end to the world. Hitler’s genocide of the Jews would be but child’s play compared to the terror and nightmare that genetic engineering would cause if carried to its logical conclusion.

Why, then, are we prepared to apply Hitler’s standard of selection to unborn human beings? Are our own flesh and blood “things” to be selected just as groceries in the supermarket? Have we lost our Humanity? The Greeks used to expose infants to the environment on psychosis and schizophrenia: It is known that not all individuals suffering from psychosis are institutionalized even in our culture. In many cultures they function and are part of society. Now if scientists discover some symptoms in the cells of the embryo that could be characteristic of neurosis, psychosis, or schizophrenia would it then also be advisable to terminate such pregnancies? If such a course were followed, there would be no need for an atomic war to put an end to the world. Hitler’s genocide of the Jews would be but child’s play compared to the terror and nightmare that genetic engineering would cause if carried to its logical conclusion.

Three epithets has this people [Israel]: the Merciful Ones, the Ones Who are Embarrassed to do Evil, and the Ones Who Practice Kindness to One Another.

It follows from the preceding discussion that it is not advisable not is permitted according to halachah to take a test of amniotic fluid. If there have been cases of abnormal births in the
immediate family, the guidance of a Rosh Yeshiva — Dean of a
Yeshiva — should be solicited for a halachic ruling. Otherwise,
why look for trouble where none exists? Why try to become
prophets or magicians and anticipate imagined problems? Can the
doctor forecast what is going to occur in the future? If we are
deserving according to G-d and spared from anguish, no agency
in the world can give us trouble. On the other hand, if G-d in His
ultimate wisdom deems it necessary to cleanse us or try us, there
is no lack of messengers and agents that will fulfill G-d's desires.14

Above all, the Jew functions beyond the laws of history and
what is considered normal by the secular world. The Jewish
people would have long ago become extinct if they functioned
according to the laws of the nations of the world. The Jew, having
a portion of the eternal “soul of Israel,” transcends even the laws
of time and space when he so merits. His spiritual personality that
develops from the performance of mitzvos is linked with his
portion of the "soul of Israel" and achieves eternity. Thus, he
transcends time and space.

It is, therefore, a leap of faith that the Jew must make in this
instance. If his life is governed completely by the Torah, he
cannot make up his mind in each case as he sees fit. Rather, he
must keep all mitzvos. Therefore, he cannot commit murder or
suicide to try to avoid unpleasant things in life. Indeed, the Torah
gives us a choice between life and death. Life is assured by
following its commandments. Let us pray that all men select life.

Notes to Chapter 1
   pp. 31-37.
4. On Bava Kama 8:59.
5. Avodah Zarah 18a, end of Tractate Kallah.
6. Brochos 10a. See also Yalkut Shimon, sec. ה"מ (end), and Bachya ibn Pakuda,
   128-167; Rabenu Moshe ben Nachman, Kitzei Ramban, edited by Chaim Dov Chavel,
   Maharal Mi-prag (Rabbi Judah Loew ben Bezalel), Sefer Nesivos Olom, Jerusalem, 5720,
7. Rabbi Dr. E. Jacobovits, Jewish Law Faces Modern Problems, p. 73.
8. If a test reflects the recessive features, the child is normal, and the recessive
characteristic may not appear even in future generations. In some cases, the parents are not
Chapter II

LEGAL PROBLEMS OF PHYSICIANS THAT INFLUENCE THEIR ADVICE

Whoever goes to a physician expects the doctor to give him advice that is based 100 percent upon his best interest, not the interest of the doctor. Patients implicitly believe in their doctors with greater faith than a religious zealot. If a doctor advises a patient to place his life in danger by submitting to surgery, the patient if he is told there is no alternative, will skirt with death. Doctors thus wield tremendous influence upon the minds of their patients.

When the same physician advises a woman to abort her unborn child stating that the parents may have to contend with a child having some abnormalcy, the woman will follow her physician’s advice. Given the blind faith and trust that patients and their families place on science and medicine, we may conclude that science has assumed the role of a substitute religion. The overwhelming majority of people will unquestionably welcome having the new high priest of the new religion, the physician, make the decision for a woman to undergo an abortion. Little do they suspect that far from giving a scientifically honest appraisal and the best advice, many physicians are motivated by reasons that are definitely not principally in the welfare of the patient under their care.

The New York Times, in its issue of Thursday, December 28, 1978, featured a front-page article entitled, “Doctors Held Liable in Abnormal Birth.” On page B6L, Mr. Walter F. Wortman, attorney for the physician found liable, stated “That as a practical matter, a lot of doctors will interpret the decision as almost requiring amniocentesis, which involves withdrawing fluid from the amniotic sac. The result is that a medical decision will now be made on legal grounds, not medical grounds,” he said.

“And with amniocentesis in particular,” he continued, “there is another problem: The procedure has some risks, including slightly more chance of miscarriage. It is possible that women who have the test and suffer complications, will sue their doctor for malpractice.”

Thus, it is imperative for everyone to know that when doctors advise a woman to take an amniocentesis test, they are not recommending it because it is for the patient’s benefit, but because they themselves want to be positive that there is no chance of being sued. With such an overriding motivation, can one place much trust on them or rely on the physicians administering the tests when they advise an abortion?

Doctors do not perform amniotic testing routinely, but only on women who fall into certain categories involving greater risk. Overall, the possibility that a woman will give birth to a baby with a defect is a low percentage. But for certain categories, the percentage is higher; for example, women over 35. The physician would advise testing for a woman in this group. Although the risk is greater in this category, the doctor cannot predict with any certainty if any individual woman in this group will give birth to an abnormal child, only that the group as a whole runs a greater risk mathematically.

Although a doctor must protect himself from a legal standpoint by informing the patient that such a test is available, he is not obligated to pressure the patient to take the test. By so doing, he is restricting the patient’s right to refuse the test, if she and her husband so desire.

The primary interest of the gynecologist-obstetrician and especially the staff of the hospital administering the amniocentesis tests is to protect themselves from future lawsuits. Whatever dedication and honesty they individually possess is subordinated to the overriding fear that they would lose their jobs or means of financial support if they were sued by patients giving birth to children less than perfect. In the case reported by The New York Times a woman suing gave birth to a child having Down’s Syndrome, a mongoloid child, that in extreme cases must be institutionalized at a cost of $35,000 a year for care.

I have spoken to obstetricians who have established a reputation in our community of dedication and honesty, and they are scared. They insist that their patients be tested. Only in rare circumstances will they agree to waive these tests, and then only
after receiving written assurances from the pregnant woman as well as her husband that 1) they are aware of possible risks of abnormalities that could be revealed by amniocentesis testing, 2) that they waive having such information and the opportunity of having an abortion, and 3) that they will under no circumstances sue the doctor.

In the chapter entitled "Amniotic Testing and Halachah" I question the reliability of such tests and show that such testing is contrary to halachah. I base my findings on information given to my by physicians over the past eighteen years. I also have a chapter entitled "The Social and Psychological Effects of Amniotic Testing" wherein I show the traumatic impact on the woman undergoing such testing. I also discuss the shattering and psychologically devastating experience of a woman who finds an imperfection with her baby and foolishly lets her doctor convince her to undergo an abortion. The effects are especially acute since such a baby was a wanted child, not an accident. I have spoken to psychiatrists, and they have enlightened me as to the longlasting traumatic effects and psychological damage resulting from such abortions.

It must be remembered that the obstetricians performing such abortions, which by necessity cannot take place before the fifth month of pregnancy when the amniocentesis is performed, charge almost as much for the abortion as they would for a normal delivery. Thus, financially they are in no worse a position by advising an abortion than they would have been had the woman delivered at nine months. Furthermore, the hospitals charge almost the same for a fifth month delivery — the abortion — as they do for a ninth month delivery. Thus, they are ahead financially without the headache of future suits which they fear would result if their staff honestly advised the parents to accept the child with his or her imperfections and give the baby a chance to live.

If there are problems, which human does not have problems? All progress and scientific advances were motivated by the existence of problems, the solution of which provided relief from suffering and overcame the challenges posed. However, the hospitals performing amniocentesis, who are the prime targets of such lawsuits, are not willing to take any chances. The hospitals are in greater jeopardy of being sued than the referring obstetrician, who has fulfilled his legal duty once he advises the pregnant patient to take the test. For good measure he will recommend an abortion at the slightest imperfection out of fear of being sued. The hospital staff performing the test will certainly feel more secure (that they will not be sued) if the woman carrying the embryo with possible problems aborts. Thus, their problems are aborted. Therefore, any advice given by the physicians and the hospital staff to abort should be viewed in the proper perspective and never blindly accepted. If a physician or hospital gives advice omitting essential information that would help parents reach an intelligent decision, the doctor or the hospital should be sued. Likewise, if the medical advisors fail to prepare the parents as to the consequences of an abortion, they should be sued. It is wise to consult a rosh yeshiva, head of an Orthodox rabbinical seminary, who possesses the wisdom of halachah, who is observant and practices what he learns, to help appraise the necessity of the amniocentesis from the halachic perspective and to determine if an abortion is halachically permitted under the circumstances. Each case must be individually judged on its merits, taking into consideration all factors — medical, social, economic, psychological, etc. — and their interrelationship with one another.

Let us pray that the physicians — men of good will — remain true to the oath they undertook and remember that there is a G-d who takes an accounting of every action, no matter how well concealed, rewarding and punishing each one according to his merits in this world and the next.
Chapter III

SOCIAL AND PSYCHOLOGICAL EFFECTS OF AMNIOCENTESIS

Now that we have understood the physical difficulties and moral questions involved in amniocentesis and subsequent abortions, let us turn to the critically important effects of such a decision on the potential parents. As mentioned, the tests are administered between the fourteenth and sixteenth week of pregnancy. It takes two weeks for the laboratory or laboratories to return the results and the doctors and genetic specialists to meet with the patient to inform her and her husband of the results.

The results can show what is currently considered and interpreted to be abnormalities of the chromosomes, i.e. the child is afflicted with Tay Sachs or Down’s Syndrome or a disease such as German measles or any other malady. If such be the case, theoretically the parents then have until the twentieth week of pregnancy to make an intelligent decision to continue with the pregnancy or to terminate it.

However, what is rarely considered are the subjective reality and the consequences of undergoing such an experience. The mother and father are not computers which are fed the relevant medical, psychiatric, sociological, financial, economic, moral, ethical, halachic (religious law) data and which objectively collate and analyze it in accordance with a programmed system and reach an intelligent decision.

People are not computers, and computers do not have the decision elements of humans—free will and a soul given by G-d—nor do they possess feelings. When human beings with feeling and emotion are confronted with a decision of life and death for one’s own fruit, the embryo, the problem is capable of unsettling the average mother or father. Women, in general more emotional than men, can become unstable or even suicidal when confronted with such a decision. Past frustrations, anxieties, and neuroses can be triggered by such a problem. An individual in such shock is in no position to make a rational decision. Even a person who is not religiously committed nevertheless is faced with a momentous problem as a result of such a test.

Such individuals can then easily be influenced by subjective attitudes, prejudices, and superstitions of physicians, social workers, nurses, and other patients. Rather than reach an intelligent decision based on so-called “scientific data and facts,” the mother, and possibly the father, makes a decision of life and death for the embryo based on the bias of the physicians and their non-medical staff. Thus, in effect, the fetus is tried and condemned by the mob.

Physicians are known to state, “Under the circumstances, we recommend the termination of pregnancy.” Immediately, they add, “We don’t want to express an opinion; you are free to make up your own mind.” However, the average woman implicitly trusts the opinion of her obstetrician. Otherwise, she would not entrust her welfare and life to him. Every birth carries risk to the life of the woman. It is the natural risk of motherhood, but it is a risk nevertheless. When a woman chooses a gynecologist and obstetrician, she has faith in him and trusts him to do what is medically sound. When such a man states that he and his partners were saddened by the results of the laboratory tests but see no alternative other than terminating the pregnancy, he is without question deciding for the woman. The result is the same if he states that if his wife were confronted with such a situation, or if he were a woman deciding this question, he would abort the fetus. The woman has had her mind made up by such a physician the instant she leaves his office. She no longer is a free agent. This decision is further reinforced by similar prejudices on the part of his nurses, who personally inject their neuroses and fears into the helpless expectant mother.

Assuming, for the sake of argument, that the physician was very scrupulous and did not reveal his own prejudices and attitudes and ensured that his staff did likewise, is it mentally possible for every woman to make such a grave decision involving life and death of the embryo in such a relatively short time? The test cannot be administered before the fourteenth to sixteenth week of pregnancy. It takes two weeks until the laboratory results arrive and the conference with the expectant mother and father occurs. By this time the woman has carried for
sixteen to eighteen weeks. She cannot legally have an abortion beyond the twentieth week. Thus, in two weeks (eighteenth to twentieth week) she must make the agonizing choice under the most trying circumstances.

For a professional counselor a decision of that magnitude would require at least three years of graduate school and many years of experience. Only after having an exhaustive knowledge of the various areas that enter into the decision-making process can one first attempt such a difficult choice. None of these conditions exist with regard to any of the expectant mothers. It is, therefore, impossible for any to make an intelligent and responsible decision.

If any professional accountant, attorney, physician, or engineer, would pass judgment on a mundane matter having the knowledge, experience, and emotional state of anxiety that expectant mothers have, such a professional would lose his license. He surely would be guilty of unethical and fraudulent conduct. When an expectant mother is put into such a quandary, all who have had a hand in bringing her to such a state have a very grave responsibility.

Any woman experiencing such mental anxiety being told that her future baby can possibly develop any future maladies would abort. Thus, if she is told that her future baby had a three to five per cent chance of being retarded or a five to ten per cent chance of developing breast tumors or a ninety-five per cent chance of having neurosis, she would most likely desire to avoid the future problem by aborting the baby.

The tragic irony is that every human runs the same risk. However, to the emotionally strained mind of this woman who took the amniotic test, such statistics are magnified totally out of proportion. Likewise, any other statistics that indicate a slightly higher risk of being susceptible to physical ailments will definitely throw the future mother off balance in her judgment.

The tests do not claim to be infallible. The counselors indicate that even though the results show a normal future baby, the baby may, nevertheless, turn out to have some critical constitutional or genetic deficiencies. Why, then, is it not possible that the tests which show some future genetic abnormalities can be dead wrong? If those performing the tests were so sure of their results, why is it necessary to perform an autopsy on the fetus after the woman consents to an abortion?

Obviously, the test results are at best an educated guess in accordance with our present scientific knowledge. Tomorrow our knowledge, and therefore our interpretation of the results, can change. What scientists interpret today as probably abnormal genetic development, can tomorrow be considered normal. Or else tomorrow a cure will be found for such a condition. Such was the case with pregnant women developing German measles—the rubella babies. However, once an embryo is aborted, the fetus has been denied a chance to benefit from any future medical knowledge. If the doctors were wrong, a healthy potential human life was wasted. If the doctors were right, and the fetus becomes a human being with constitutional problems, the possibility always exists of some cure or therapy helping him or her. Even if a cure does not materialize in this individual's lifetime, our hands have not been a party to any injustice.

Contemporary society has lost its sense of values. Society does not distinguish between humans and inanimate objects. We have a culture that places a value only upon the utilitarian productivity of machines. We select our groceries, clothes, cars, homes, schools. So too have we learned to accept our spouses only under favorable conditions. Rather than working with our spouses and patiently trying to solve the problems that develop in a marriage, we choose the easy way out and change partners. No matter how much suffering results to our former spouses and children, one's own concept of "happiness" is given dominance. Approximately half of all marriages end in divorce.

There are millions of abortions yearly. Unwanted pregnancies are terminated. When a wanted pregnancy is suspected of having an abnormality with the embryo, it does not take a great step to decide likewise to terminate it. Obviously, no great effort is made to act responsibly in advising the expectant mother, since even human lives do not carry too great a value.

The same physician who irresponsibly advises an abortion will similarly jeopardize the life of the woman by entrusting her to the care of inexperienced residents at the moment of delivery, as is common practice in certain hospitals. Only in the case of complications will the obstetrician with whom the patient contracted be called and appear at the delivery.

It is obvious that there is no place for any G-d or Providence
in this cruel reality and utilitarian society. A world without G-d must by necessity lead to death—aborted and suicide. And abortions are a form of suicide—the murder of an unaccepted aspect of oneself. Let us hope that individuals choose to live, for life, any life, even the life of a cripple, is beautiful and worthwhile.

Under no circumstances can man be condemned for choosing life. But such a philosophy accepts a living and loving G-d. Hillel, the Talmudic sage living in the first or second century of the Common Era, summarized the entire Torah, “Do not do unto others what you would not do to yourself.” This was the negative of, “Love thy neighbor as thyself.” But both adages assume that people are normal and accept G-d and His Providence. It is assumed that man loves life for its own intrinsic sake. What happens to the man or woman who is suicidal? Such a person can then commit murder! No alternative exists other than a return to basics—the acceptance of the living, loving G-d who is actively involved in the affairs of man. Man may escape the rules and legalities of other men, but he must make an accounting to G-d. He or she will be rewarded accordingly.

Today’s society has a distorted value system in another sense. We are outraged and sensitive to baby seals being killed to acquire their skins. Yet we are unmoved at hundreds of thousands or millions of abortions. We are in this respect what once used to be considered a shoteh, or imbecile. We destroy our most valuable possessions—our future children. Such a decision can never be justified by saying that we are saving the future baby and ourselves problems. This is no exhibition of loyalty but stupidity. This is not love but hate. Such individuals do not have the compassion of future mothers. Such is an escape from life—suicide. Living means facing problems. Only the dead are free from problems.

Furthermore, the tests cannot reveal the spiritual heights such a genetically abnormal child can reach. Who says such a child cannot become another Moses, Maimonides, Rashi, Vilner Gaon, Chofetz Chaim, or Orach Hashulchan and bring spiritual solace, warmth, Talmudic and Rabbinic knowledge to a world that is spiritually starving? Who says such a man or woman cannot develop a cure for cancer or any other crippling physical or mental disease? Who says that such a person will not inspire others to achieve a spiritual or medical breakthrough?

Jews do not believe that by the death of anyone, others live. The Jews’ creed is that by the life of every creature formed by G-d is the universe sustained. For the most lowly human creature—the most retarded—can achieve divine communication or prophecy. He can certainly be healed and made well by G-d as happened at the time that the Jews were liberated from the bondages of slavery at the Exodus from Egypt 3400 years ago.

_Tanya De-Bay Eliyah_ states: “For I swear by the heavens and earth that prophecy can be achieved by the most low and retarded humans as well as the most intelligent.” This applies to mental, material, or physical station of life.

It is not man who gives life but G-d. Let man not tread in an area that belongs to G-d. Man has been given permission to heal, not to destroy. He should detect error only if he can heal such maladies. But never should he improve upon G-d by burying what he cannot mend.

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**Notes to Chapter III**

1. The following essay is based on factual and case information submitted to me by physicians.

2. These obstetricians, who promise to be present at the delivery but send an inexperienced resident in their stead, endeavor to legally protect themselves by having patients sign a waiver that gives the obstetrician the right to substitute another doctor in his place. No woman should agree to sign any paper without first consulting her attorney. She should inquire from the physician during her checkups if there are any papers he wants her to sign since she would like to have her attorney see them.

   Even if the obstetrician arrives to remove the placenta or otherwise conclude the delivery procedure, and regardless of his excuses for not arriving sooner, the fact remains that the woman in childbirth was unnecessarily jeopardized and left at the mercy of inexperienced hospital residents who would have had to handle possible emergencies at the time of delivery.

   In order to avoid such an experience, a woman should not use an obstetrician unless other women have had favorable experiences with him and he enjoys a favorable reputation among doctors. Inquiry about him as well as a frank discussion with the physician as to what is expected from him—to be present during the delivery—is required.

   Any physician who fails to carry out his promise should be sued and reported to the Ethics Department of the medical society and the State Licensing Bureau. The facts about any doctor who behaves this way should be publicized. Otherwise, he may repeat his delinquency and possibly endanger the life of one of his patients.

Chapter IV

PSYCHOLOGICAL AND HALACHIC ADJUSTMENT OF A WOMAN HAVING ABORTIONS

The prophet Hosea (14:2) says: שבעה ישראל דע, אלוקים. Return, O Israel, to the L-rd, your G-d, (Is. 55:7), For G-d has great mercy and will forgive.

In the foregoing chapters I have written regarding the evil of abortions and described the importance attached by the Torah to the individual irrespective of her or his sex, color, race, religion, or physical deformities. If a woman who underwent an abortion read this material and accepted what I wrote, she would experience an uncontrollable guilt feeling. What is she to do? Isn't she forced to justify her behavior, or is there a way to reconcile herself to her past?

The answer to this very complex problem is recognized by the Talmud: מתקע מחנה עם, האortality to the fold of Torah thinking. Once these insights are obtained, a person can work to change his behavior.

After recognizing behavior that he would like to change, a person must explore the mental or psychological obstacles that deter him from carrying forward the desire to return to the fold of Torah thinking. Once these insights are obtained, a person can work to change his behavior.

At the outset I wish to emphasize that a woman who has taken the time to read what I have written and has read thus far deserves to be commended. The very fact that she had the interest and desire to spend her valuable time reading the Torah view regarding disabled Jews and abortions is indicative that she has already come to a certain degree of peace within herself. It indicates that she is not afraid to read what is blatantly unpleasant and contrary to stereotypical thinking. Such a person is open to new ideas since she is honest with herself. Being honest, she will understand and accept what G-d wants from her.

G-d does not want her to live in the past haunted by memories and anguish of events that are no longer in her control. G-d wants her to live in the present and future that are in her hands and to mold herself in the image of G-d.

If this woman has not in the past observed the Sabbath and holidays properly, she should go to an Orthodox rabbi and discover how a Jewish woman is to celebrate them. The Eglei Tal indicates that study of Torah and observance of the Sabbath and Yom Tov is a form of repentance for the sin of destruction of semen, which in essence is what abortion is all about. Until the child is born, according to responsa, the child is a development of fertilized semen. Although as shown in Chapter VI regarding the unborn child, it has been given the status of "doubtful human" and "part human," nevertheless, with all titles conferred upon it, it still remains sophisticated semen with a heartbeat. In parenthesis I may add that even a born human is a more developed stage of sophisticated fertilized semen with a heartbeat. This statement is not meant to be sarcastic but rather to place in proper perspective the problem of abortion. It is G-d's will and desire expressed in the Torah that developed sophisticated semen after it is born is given the status of a human being, while before it is born, it remains only sophisticated semen—a potential human, a doubtful human, or a partial human.

Whether an abortion was justified or not, whether the physician or either or both of the spouses was responsible is not the issue. There is no way of bringing back the aborted fetus, except that when all the deceased will be resurrected, the embryo will also arise to complete its development and never die again.

Meanwhile, the embryo is in heaven continuing in the pursuit of the study of Torah that the angel had taught it while it was in his or her mother's womb. The embryo is in the company of our forefathers and all the saints of the Jewish people. If the mother wishes to improve its position, she should firstly give the embryo a Hebrew name, a male's name to a boy and a female's...
It is wise to give the child a Hebrew name that can easily be changed from male to female or vice versa if the sex is unknown. Thus, if an error was made as to its gender, the addition or omission of some letters will rectify the situation. The same, in my opinion, should be done in the case of a live birth when the child’s genitals are ambiguous, such as a tumtom. Then the mother should resolve to properly celebrate and observe the Sabbath and holidays. Whatever else she observes improves the position that her child’s soul will have in heaven. She should also observe the dietary laws of kashrut, the laws of Niddah-Mikvah described in Chapter V, and study Torah. She should consult an Orthodox rabbi for details.

She should endeavor to have more children, persuade her friends to have more children, and under no circumstances ever again have an abortion unless specifically permitted by Torah law. Only a rosh yeshiva, head of an Orthodox yeshiva, is competent and qualified to rule when an abortion or birth control is permitted.

Notes to Chapter IV

1. Talmud Brachos 34b.
2. In his prologue on the 39 forms of labor prohibited on Sabbath and Yom Tov.
3. Chavas Yoer, No. 31; (See Tsitz Eliezer, Vol. 9, No. 51:3.) Rav Yaakov Emden, No. 43.
4. This development continues through stages: infant, child, adolescent, adult, middle age, old age, senility.
5. Talmud Niddah 30b.
6. An androgenous sex can never be ascertained. According to Jewish law, it can only marry a female. Therefore, it should be given a male’s name. An operation, on the other hand, will determine the gender of the tumtom.

Chapter V

FAITH AND THE ROLE OF THE JEWISH WOMAN AND MOTHER: TAHRAS HAMISHPOCHO

Women have always, since the dawn of history, been the most important element of society. There were no women liberation movements within Judaism because women were liberated by the observance of Torah from the day woman was created.

G-d created man in His image. What or who G-d is, transcends mortal man. For if man knew what G-d is, he or she would have to be G-d. What we do know about G-d is the result of Divine Revelation at Sinai before millions of Jews and non-Jews 3400 years ago. Recorded in manuscripts,1 we have it today in the form of the Written and Oral Law. The Written Law is comprised of the five books written by Moses at G-d’s instruction and the “Nah” recorded by the other prophets through Divine instruction and inspiration. The Oral Law is made up of the Talmud and the Shulchan Aruch, a summary of Talmudic law (halachah), and the post-Talmudic scholarship which endeavors to clarify points of law, a process that has continued from the giving of the Torah to the present time.

G-d manifests Himself to man by man’s perception of certain qualities of G-d, such as justice, law, and order. G-d is the First Cause. He is the Author of the laws of science by which the universe that He created exists, and through His eternal and everlasting providence, it continues to function. Certain of His creations and worlds cease to exist while others are continuously created. This function of creation is the feminine manifestation of G-d.

There is another function of G-d that manifests itself through Divine Providence. G-d preserves his creatures who follow His laws. They continue to survive in spite of all logic. The weakest among His children outlive the powerful. Non-Jews who
observe the Seven Noahide Principles as well as the Jewish people have been living since Adam and will survive to the end of time. This manifestation of G-d transcending the logical order of science and history, is known as the masculine manifestation of G-d.

These two manifestations are evident in both the Creation and the Revelation of the Torah through which G-d gave us knowledge about Himself. An understanding of the truth about G-d and His Torah, historically verified at Sinai, is the most important basic belief for a woman to accept before she can contemplate generating new life. With this understanding she can then resolve what she is, who she is, where she came from, what her roots are, and where she is headed.

The Jewish man and woman has his or her roots in G-d Himself. Each has a portion of the "Soul of Israel" that was created in the image of G-d. The non-Jewish man and woman who observe the Seven Noahide Principles have their roots in G-d Himself. Each has a portion of the "Soul of Abraham" which is also in the image of G-d Himself. Both souls were created by G-d before He created the universe.

Therefore, since the source of every Jewish soul is Divine, the fulfillment of each soul is communion with G-d. How then can the Jewish woman reach this goal? She must strive to observe G-d's will as expressed in the Torah and the Halachos (as summarized in the Shulchan Aruch).

Thus, the Jewish woman who has the foundation of faith does, in fact, know who she is—the most important person in the world. She is not only the queen, but had she been the only person in the world, it would have been fitting for G-d to have gone to the trouble of creating the entire universe just to serve her.

However, in order to be able to deserve this high position, she must in fact fulfill her destiny. She must permit her body to represent in concrete form the manifestation of G-d's Torah laws. She must have studied, understood, and undertaken to observe minutely all the laws concerning Niddah-Mikvah. She is sacred because she lives a life of holiness together with her husband. In the performance of the marital act, timing is Divinely ordained. Neither partner becomes bored. When the participants are committed to G-d's laws in general and the laws of Niddah and Mikvah in particular, love is as eternal as G-d Himself. Love is eternal because a woman's insights about herself become eternal. Woman ceases to be entirely mortal; she has joined herself to the eternal chariot of G-d. Certainly, not all of herself will never die. But a certain portion of herself is eternal—her spiritual personality. Her soul, a portion of the "Soul of Israel" created before the universe and time, remains eternal. Those moments during which she performed and experienced the positive and negative commandments enhance her spiritual personality. This spiritual personality, combined with the portion of the eternal "Soul of Israel" given at birth, becomes eternal. Thus, by the act of refraining from any physical contact with her husband during the period of her niddah (menstruation and seven days after all bleeding ceases or a minimum of twelve days from the start of bleeding) and then immersing herself in a kosher mikvah, built and functioning according to Torah law, the woman has become an accepted partner to G-d in creation. She, her husband, and G-d are the three partners in generating life. Such a woman loves to live. Such a woman is never bored with her husband. Such a woman need not fear that her husband, if he is equally committed, will leave her for a more beautiful woman. For there is no greater beauty in all creation than that which radiates from her spiritual personality. "For charm is false and physical attraction is meaningless; for a woman who fears G-d is to be praised and envied."4

Such a woman does not for a moment ever, under the most trying circumstances, contemplate cutting short her life or the life of her unborn child to escape problems, even mountains of problems. For her life and her body do not belong to her. They belong to G-d. She did not create herself. G-d did. She alone did not create her unborn child; there were two other partners. No sane person would under any circumstances abort a potential human life. True, the unborn child has not been given by G-d the status of a born mortal, but he or she certainly has some form of life. No man has a right to destroy purposelessly even an inanimate object. Likewise, to destroy any vegetable or animal without reason is a sin against G-d. It is as though one is to deny the very concept of G-d. For destroying what G-d created, one considers himself or herself superior to G-d in understanding. G-d created because G-d saw a purpose in such creation, and by his
act of destruction man purports to overrule G-d.

Thus, destruction is an act of blasphemy against G-d. How much more blasphemous is the act of destroying a potential human being, even if there is a possibility that the unborn child might be retarded or have some abnormalcy. Are we to consider ourselves more intelligent than G-d? Are we to become G-d and predict what will occur five, ten, twenty, or forty years from today? Do we know what new medical breakthroughs can result, brought forth by G-d’s Providence just for the sake of this possible retarded or abnormal child? Are we to deny that G-d provides for everyone, that there is Providence? It is the woman of Torah that is the woman of life; she never ceases to hope and pray and is the eternal optimist. Her optimism and faith create a new reality because she is the partner to G-d. Just as G-d can and does create, so too the woman who abides by Torah is able to pray, and G-d will do her bidding. For the righteous woman ordains, and G-d does her bidding. She creates life where none exists. She changes the non-perfect to perfection. She changes the partial human being into a whole human being, and raises the child to adulthood.

The woman who bases her life on Torah can even alter the state of the abnormal child. She replaces his trepidation and bewilderment with assurance and the ability to cope with his or her environment. Her child is perfect because she is perfect within herself. She then transmits her insight about herself and the world to her child.

Let us hope that more women take a deep breath of Torah life that will bring longevity to themselves, their husbands, and their unborn and born children. This can only be done by a daily program of Torah study in any language that a man or woman understands.

It must be explicitly emphasized that G-d recognizes that not everyone under all circumstances can complete a pregnancy. There are contingencies when it is halachically permissible to terminate a pregnancy, and, prior to being pregnant, birth control can also be practiced. Whenever any questions arise, regardless of the sentiments of the spouses or advice from professionals, a rosh yeshiva, a dean of an Orthodox rabbinical seminary, is the only person competent to rule on such a matter, and his Torah view should be consulted.
Chapter VI

THE HALACHIC STATUS OF THE UNBORN CHILD

For mitsvos are divine receptacles and Torah is a flame of insight and life. And G-d enlightens (with Torah) the entire universe and all its permanent inhabitants with compassion. G-d is the One Who enlightens the earth and its transient dwellers with compassion. And with His goodness does He renew daily—eternally—the works of creation. 1

G-d’s master plan for the universe is thus revealed. A partnership exists between man and G-d. Man builds the body, and G-d breathes life into man’s doings. The works of Genesis—of creation—are continuously being reproduced.

Man is G-d’s partner—not man the species, but every individual. Each man must state: ג‑ה ית‑א לני, “For my sake was the world created.” For man himself is a universe. He is the essence of creation.

The prologue to the Zohar, an interpretation of the Zohar that discusses the mystical aspects of the Torah, indicates that each person is composed of all the attributes of the universe. The universe is philosophically categorized as consisting of four basic elements: mineral, vegetable, animal, and man. These basic elements, in turn, can be subdivided into many subcategories. Each person has in his makeup all the possible subcategories of the lower species in addition to those human elements. He possesses all the base as well as noble elements of character—characteristics of saints and villains. Thus, every human has the potential for the divine as well as for its opposite.

The lesson taught by the Sulom, who quotes the Zohar in the ideas expressed above, is that it is only normal for humans to experience or be at some state of their existence the essence of any or all of the above enumerated elements. Thus, when a male is circumcised, the cut skin is thrown into a dish with earth in order to dramatize at the start of life that eventually the joy of life will some day pass through a stage wherein the body will return to and become the same as the earth. However, this is only a stage. There will then be another stage during which this same body will arise from the dust, when G-d in His great mercy will resurrect the dead, and death will be forever driven away. During this interval, the soul created by G-d, given when the fetus was first formed, will return to its Maker and engage in the study of Torah. For it is stated in the Talmud 2 that a male or female is formed forty days from conception according to the opinion of the Rabbis. During the period of pregnancy after it is formed, an angel teaches the fetus all the Torah. Before it is born, the angel makes it swear that it will be a tsadik—a righteous person, and not a rasha—a wicked person. At birth the angel strikes the infant under its nose, and it temporarily forgets what it learned.

Rav Soloveitchik, writing in one of his essays, 3 explains the purpose of teaching the fetus all the Torah. When the fetus is born, grows up, and begins to study again, he or she already possesses the capacity to learn since he is learning something he once learned but forgot.

From the above gemara it is apparent that the neshomah of the fetus exists and this neshomah given by G-d is further purified by its divine pursuit of the study of the Torah. This is the goal of the Jew after he is born. And this will be his goal in the world to be—after his body returns to the soil. And this will be his goal in the hereafter, after resurrection, when body and soul will again be united and never die again.

The Talmud Bavli states 4 that if a man says: I will pass title of one hundred “dollars” to the fetus if he be a male, if my wife gives birth; or I will pass title of two hundred “dollars” to the fetus if she be a female; the child upon birth will acquire title to the property. The Shach 5 explains that one cannot pass title to an unborn human. The fetus lacks capacity to acquire title since he has not yet come into the world.

Nevertheless, a father, having such dedication and love even for his unborn child, will do everything necessary to ensure that the
property legally passes to him at the moment the intention is declared. Therefore, the Shach explains, if no legal remedy exists to pass title to an unborn child, the Rabbis enacted legislation considering the father’s intention as actually passing title.

The question is then debated among the rishonim quoted by the Tur. Does this legislation apply only to the case of the shchiv mera, the individual on his deathbed for whom the Rabbis relaxed many requirements in passing of title, or does it apply equally as well to a healthy individual. The Shach maintains that this law applies to the healthy father also.

There is likewise a dispute as to the age of the fetus qualified to be a recipient of such a gift. Can the fetus be less than forty days from its conception, or must it be at least over forty days?

The Shulchan Aruch quotes both opinions regarding giving property. One opinion holds that it can only be done by a man on his deathbed, while others hold that a healthy person can likewise transfer property. There seems to be no difference if the property gifted be personal property or real estate according to the Shach, although some authorities hold that only personal property can be transferred.

It is thus apparent that from its very beginning, at the most forty days after conception, the fetus was recognized as a partial human being in the words of Meharam Schick. This partial human being, although considered by the Talmud as being part of the body of the mother, nevertheless in many respects was given the status of a distinct personality apart from its mother.

Thus, the Talmud states that if an embryo’s mother is killed or dies in childbirth, the embryo survives its mother. However, if the mother dies as a result of a prolonged illness, the embryo, since it is more fragile than its mother, is “first killed by the Angel of Death.” There is a legal consequence regarding who dies first. If the father of this embryo has children from another wife, and if the mother dies first, the embryo technically inherits her property since he was alive when she died, although he was not born. He, in turn, will pass on his mother’s property to his brothers or sisters from his father. This can be done even if such embryo never be born. Thus, the embryo upon his mother’s demise receives the status of an independent entity.

Likewise, if the mother dies in childbirth on the Sabbath, and it is ascertained beyond a shadow of a doubt that she is dead—she has ceased breathing for an extended period of time, her heart has stopped beating, and she no longer has any vital signs according to all available medical data—only then can the embryo be saved by opening the stomach of the mother and removing the infant. This operation, even if involving the violation of the Sabbath, is nevertheless permitted in order to save the embryo.

The reason stated in the Talmud and Mishnah is that the embryo has the status of sofek pekuach nefesh—a case of doubtful saving of life. We can compare this case to the case of the individual buried on the Sabbath when it is doubtful if he is alive or dead. Even if he is alive but can survive only minutes, nevertheless the Talmud, Shulchan Aruch, and Rambam demand that the Sabbath be violated for the possibility of saving only minutes of the other man’s life. So, too, in the case of the unborn child, there is a possibility that such a child will not survive at all or, even if born alive, will not survive thirty days. Nevertheless, we are instructed to violate the Sabbath—ordinarily incurring capital punishment—in order to save this “doubtful” life of the embryo. Thus, the embryo, though given a “doubtful” status, was nevertheless given some recognition as a distinct person apart from its mother.

Although an embryo born dead does not require mourning (necessary only if an infant is at least thirty days old), there is a school of thought that the embryo must be buried. This is done since niva, or abuse of the deceased embryo, is forbidden. An autopsy of the embryo is also forbidden. The Shach rules that burial is required. The Ohr Zarua quoted by Bach does not require burial. The custom is for the child to be given a Hebrew name, and, if a male, he is circumcised. The Mogen Avraham requires burial and explains that the circumcision is done so that the embryo may be counted among the followers of Abraham. However, even if the child was not circumcised or buried, he or she should be given a Hebrew name.

From the sources discussed above one can see that a definite effort was made to accentuate the individuality and separate entity of the developing child, even though he or she did not yet achieve the full status of a human. At what point can the fetus legally be considered a person apart from its mother? According to Mishnah Niddah 44a, one who killed a child of one day was
liable for capital punishment, but an embryo is not considered to be in the same category. Technically, according to the Mishnah, the instant most of the child is born he begins to enjoy the status of other humans. Rav Ovadiah Mibartanora interprets this statement to mean that if most of his head was born, he attains that status. Tosfos Yom Tov informs us that Mishnah Niddah 111:5 is the source from which we learn that the child is considered born if most of his head appears. The Rambarn states that if the child’s head emerges, he reaches the status of born. This ruling can be applied if there is a mortal conflict between the survival of mother or child at childbirth. Before the child is deemed born, the mother’s life is given priority. The child, if necessary, is cut up in the mother’s belly and extracted piece by piece in order to save the mother.

However, once the child is deemed born, one can no longer subordinate the child’s life to that of the mother. In a case in which both the mother and child are endangered, Tiferes Yisrael argues that the mother’s life should probably take priority since it is doubtful if the newborn child can survive, while the mother obviously has a history of survival. For the short period that the child can survive, we do not sacrifice the mother.

Furthermore, the newborn child is like a rodef, one who is pursuing and endangering the life of another. A rodef is a person who violated the laws of a ruling body or government which regards his action as a capital offense. He then flees to the Jewish community for asylum. (The man is innocent according to halachah.) The government issues an order for the Jews to surrender him or else the entire Jewish community of this city will be destroyed. Just as the rodef has done nothing wrong but in trying to escape his persecutors endangers the lives of others, so the baby, through no fault of his own, endangers the life of the mother. (See Chapter VII, Conflict of Lives.)

If doctors believe that both the mother and child are in mortal danger, in my opinion, it is logical to save the mother since she has a chazakah, a past record, of living. The child, on the other hand, is more fragile, and until thirty days of age, it is doubtful that he will survive. It is presumed that if the child is saved at the expense of the mother, the child will die anyway.

However, if the mother’s life takes priority, it is more likely that she will survive indefinitely because she has a history of living (chazakah). Furthermore, we do not follow the majority in cases of saving of life according to the rule. Even if there is a ninety-nine per cent chance that this woman is going to die, we do not follow the majority. Her past history overpowers any majority. The infant, on the other hand, has a history of being a nefel, and, until he is thirty days old, we are not certain that he is going to survive. Therefore, the mother’s life takes precedence.

From the preceding discussion it is apparent that the only time an abortion is permitted is when there is a question of saving the mother’s life, or if the mother would go insane if she had the baby and jeopardize her life or others. The Sdei Chemed clearly emphasizes this fact. He clarifies that the positive response regarding abortion given in Responsa Mahariz was only in the case of a definite medical need for the mother. Otherwise, there would definitely be an abrogation of a cardinal principle.

Since non-Jews are forbidden by Torah to have abortions, it is inconceivable that Jews are permitted to do so. A Jew who kills an embryo is in violation of a cardinal law although this act does not constitute a capital offense. Responsa Rudvaz also explains the cardinal sin of killing an embryo that has the status of a “doubtful human being” who could possibly be born and survive. For such a doubtful human being one is obligated to violate the Sabbath: However, if one kills the embryo, he is not subject to capital punishment since the death penalty cannot be invoked for a doubtful person.

Responsa Meharam Schick calls the embryo a partial person. According to the Torah, it is forbidden to violate the laws dealing with food even if one does not eat or drink in the amounts necessary to be liable for punishment. So, too, it is prohibited by Torah law to destroy an embryo, which is a “doubtful human,” even though the person who commits this violation is not subject to capital punishment.

From all these responsa and the status conferred upon the embryo by the Talmud, it is patently clear that any physician or counselor who advises a patient to undergo an abortion because the baby will definitely not be normal, i.e. retarded, deaf, blind,
crippled, or sterile, or any other defect, is in gross violation of a fundamental doctrine of Judaism. If there is any doubt about the child’s being disabled, and the mother is advised to abort, the physician or counselor carries an even greater guilt.

Let us pray that physicians and counselors follow their Torah role of healers and mend what is within their power. Let us ensure that they do not bury that which is beyond their power to heal. For only G-d who gives life to the unborn, health to the living, and will resurrect the deceased, can determine who is to die and when. Man has no right to make such a decision; for to do so is to usurp the role of G-d. Let each man and woman act his role assigned by G-d, and we will all then achieve the Messianic Era.

Even if doctors believe that such an infant if permitted to develop will be crippled, abnormal, or a “vegetable,” such an infant must be saved nevertheless. Therefore, there is no justification for aborting this child in the first place. But there is a marked difference between permitting an aborted infant born alive to suffocate or die for lack of medical attention and the abortion of a fetus. In the former case it is criminal murder. In the latter case, it is only “tantamount to murder.” One may further question, if this infant survives and his parents don’t want him, what is to be done with him? The child should be given up for adoption, or raised in an orphanage or state hospital if necessary. But human lives cannot be allowed to be extinguished because doctors or medical personnel who, because of their position have at their fingertips the power of life and death over their patients, have lessened the value of human life. Money must never be considered a factor in denying help to save a human life. For the Creator of the world is the owner of all its wealth. He will repay our efforts to save every one of His children.

Notes to Chapter VI

2. Talmud, Niddah 30b.
4. Bava Basra 141-142.
5. Shulchan Aruch Chosen Mishpat 210 and 253.
10. Erchin 7a.
11. Erchin 7a and Niddah 44a.
12. See Tosfos Niddah 44a (bottom) “Ehu Mais B’raisha.”
13. See Bais Meir on Yorah Deah beginning Laws of Mourning; Shulchan Aruch, Orecch Chayim 330:5 opinion of Ramo that nowadays we no longer know the exact moment of mother’s death and therefore do not jeopardize her life to save the baby.
15. Talmud Yoma 83a; Shulchan Aruch Orecch Chayim 329:3-4; and Rambam, Yad Ha-Chazakah, “Laws of Sabbath,” 2:18.
16. The saving of a human being is the most important and sacred task in the world. Once an unborn child has been prematurely aborted—no matter what the reason—it must be saved. All efforts must be made to keep it alive. Even if physicians assume that it is not viable, but can only live a few days, hours, or only moments, no effort must be spared to keep this infant alive. All medical technology should be employed to preserve him for any amount of time. To let the premature infant gasp for air and suffocate is murder. While the abortion of an unborn child is tantamount to murder, the presumption is that the infant is born dead. However, if the infant is born alive, and is gasping for air, and no medical attention is rushed to him, then this is not just “tantamount to murder” but cold-blooded murder. Killing this baby is the same as killing a terminal patient (goses). Since the premature infant has already been born, he is deemed a human being, even if he has not long to live. This law applies no matter what the sex of the infant or its future prognosis.
Chapter VII

CONFLICT OF LIVES: SURRENDERING A FUGITIVE, ORGAN TRANSPLANTS, AND THE REMOVAL OF A LIFE SUSTAINING SYSTEM

This chapter is intended to be a more detailed discussion of the halachic concept involved in the decision to save one life at the cost of another life. When the conflict involves the infant and mother during the process of birth, we have four possible cases:

1. The head of the infant has not yet emerged, and the mother's life is in danger. In this case, the doctor may choose to destroy the infant in order to save the mother since the infant is really a part of the mother's body.

2. The head of the infant has emerged. Either the mother or the child can be saved and will survive at the expense of the other. Normally, halachah would indicate that the doctor do nothing since the child has a right to life as well as the mother.

3. The head of the infant has emerged. Doctors determine that both mother and child will die unless the doctor intervenes to sacrifice one of them. Most authorities agree that the mother should be saved.

4. Both lives are endangered. Whichever one is saved in all probability that one will die anyway. For example: the mother has a heart condition or cancer and the baby is premature. The author feels in such a situation the mother should be saved.

Surrendering a Fugitive

In order to decide this issue, rabbis and sages have considered the problem of the rodef in the Talmud, which also involves a conflict of lives, in order to see how the case is resolved there. A rodef is a Jew who has committed a capital offense according to the government in power. By halachah he is not guilty. The non-Jews surround a city or camp and demand that the Jews release him to be killed. The government forces threaten that otherwise they will kill everyone in the city. Should the Jews surrender him?

Resh Lakish advises the community not to release the innocent Jew, and the Rambam agrees with him. Under what authority does Resh Lakish advise that all the Jews be jeopardized? Is it not specifically stated in Talmud Bavli (Sanhedrin 74a): "We cannot substitute one life for another?" If a non-Jew threatens to kill a Jew unless he murders his fellow, the Jew must refuse to commit the murder. The Talmud rules that the Jew should sacrifice his life rather than violate G-d's word forbidding the killing of another. Although it is permitted to violate the Torah to save a life, this permission is not granted in the case of the three cardinal sins: murder, adultery, and idolatry.

In addition, if the Jew obeyed and killed the other one, he has not saved a life in G-d's eyes. For although he saved his own life, in killing someone else, he has not accomplished anything, since both lives are equal. The least of two evils is not to take any action. Thus, if the non-Jew physically threw the first Jew upon the second Jew who was thus killed, the first Jew has not violated any law so long as he himself abstained from any action.

To make the analogy with the rodef, a non-Jew has asked another Jew (the community) to murder his fellow Jew (the fugitive). According to Resh Lakish the Jewish community should take no action to release the man to the authorities, thereby protecting him.

The question immediately arises: Is the man really saved by this action? Haramach reminds us that the only time a Jew is required by the Torah to lay down his life is if another's can be saved by his refusal to perform murder. However, if the enemy troops surround the city (Yerushalmi Trumos 8:10), it is only a question of time, days or perhaps hours, before everyone is going to be dead, including the fugitive. Therefore, he argues, the fugitive should be surrendered in order to save the others. Why, then, does Resh Lakish adopt the idealistic plan of action of temporarily protecting one person at the price of an eventual massacre?

Rav Yochanan rules that the fugitive should be surrendered. Whenever there is a disagreement between Resh Lakish and Rav
Yochanan, we conventionally accept the opinion of Rav Yochanan (with certain rare exceptions). However, in this case, the Rambam also rules according to Resh Lakish that the rodef must be protected from his persecutors.

The reasoning of Resh Lakish runs as follows: Ordinarily, the Jewish community takes priority over the life of the individual citizen. But in time of war, the individual’s welfare must be tied together with the community. An individual resident’s fate, in the final analysis, must be protected at the risk of life and limb by every other member. Otherwise, there can be no cohesive Jewish communities. Jews will gravitate to other groups and assimilate into other communities that will offer them protection. Fighting for the life of the individual member is the price that Jewish communities may be forced to pay in order to maintain their identity. They must be one for all and all for one. If not, Jews can, G-d forbid, cease to exist as a people. Survival of the Jewish community sometimes requires great sacrifices.

The issue, therefore, is not to be governed by the laws of survival regarding one individual versus the next. It is rather under the jurisdiction of the laws outlining the principles of group survival at war. At times, a general will sacrifice a group for the survival of his army or the nation. So, too, in order to build morale and cohesiveness of a Jewish community, the group must be prepared to protect its innocent resident members even at the risk of endangering the lives of everyone else.

The Rambam tells us that the group does not have to die meekly. Each should kill as many of the enemy as he possibly can. In fact, it is a tremendous act of courage and the will of G-d to show the world that Jewish blood cannot be spilled with impunity. Jews being massacred for the only sin of being Jews should use any and every destructive means at their disposal and indiscriminately kill as many of the enemy as possible. Let the world realize that one has to pay a very heavy price for spilling Jewish blood. In that manner other Jews in other places and times may very well be saved because anti-Semites will think twice before attacking them. In fact, in Yerushalmi Trumos Resh Lakish personally took up arms to protect not only the life but the property of a threatened Jew. Resh Lakish returned unharmed.

Every Jew is obligated to help and performs the greatest mitsvah in the world when he saves another’s life. You should not stand idly by while your friend’s blood is being spilled or about to be spilled. However, one is not obligated to put himself in danger unless threatened. Then he is governed by the laws of war, and he is obligated to overlook his temporary respite from danger in order to drive the enemy away and thus save himself and others. Only by united action of fighting together can they overcome the enemy.

If, however, a Jew is not threatened at all, he still has the obligation to save his fellow Jew, although not at the risk of his life. He can volunteer, however, since anyone who saves a Jew is considered as though he saved the entire universe. One who saves a non-Jew, any human being, likewise is considered as having saved the entire universe. He doesn’t have to risk his life, but if he does, and sacrifices his or her life, no mortal can compare to him or her in saintliness. Puppos and Lulinius were two brothers who falsely took upon themselves the blame for the death of the princess in order to save the Jewish community. No Jew can be compared to them and stand in their place in heaven since they volunteered and sacrificed their lives at a time when they were not even in danger initially. Rudvaz, who opposes an individual’s sacrificing his life for another individual, will agree that in time of war, when everyone is endangered, he is obligated to fight, especially when many Jewish lives are at stake.

Conflicts between Mother and Infant during Childbirth
Now that we have seen what the various opinions are regarding the case of the rodef, how do they apply to the conflict between the mother and child during childbirth when both lives are endangered unless one is sacrificed?

A distinction must be made between the case of the resident fugitive that the community must save, even at the risk of their own lives, and the case of the child about to be born or whose head already emerged. The case of the fugitive is based on the group response to common shared danger and therefore is governed by the laws of war. The conflict between mother and child is an individual problem between two persons. Therefore Rambam’s position could demand fighting and sacrificing to save the rodef and, at the same time, saving the mother at the expense of the infant.

Therefore, when there is a conflict of mother and newborn
child, and both would die unless the doctors intervene, the mother's life takes priority. For doctors state that the infant has no more than days to live, while the mother can survive indefinitely. The reason is that the child has no chazakah, running track or history of life, while the mother has a chazakah, history of living. Therefore, even if the doctors were proven wrong, and the baby would live longer than a few days, nevertheless, it is not certain that any newborn child can survive thirty days. Until such time, an infant is called a nefel—a possible miscarriage.

Therefore, we do not sacrifice the mother for the child in the process of birth when both lives would be lost even after the head has been born. According to the Tiferes Yisroel17 doctors probably should intervene to save the mother. The Rambam can possibly accept this position since this is a conflict between two individuals, not a question of community survival governed by the laws of war.

Organ Transplants

The picture changes considerably when we confront the infant completely born and already separated from his mother. Let us make the hypothetical case that the mother needs to have a vital organ such as heart or kidneys in a transplant operation, and doctors could remove the heart or kidneys from her newborn infant in order to save her. This would be blatant murder of the child. It is only when the child is encroaching physically upon the mother's life space that it is permitted to sacrifice the child on behalf of the mother. The infant, prior to full birth, is considered part of the mother18 and has no independent chazakah of life. Life belongs only to the mother. She held it all along. The embryo has no claim to her life; he never held it.19

However, once the child is out of the mother's life space—it is born—it is, for all intents and purposes, a separate human being.20 Anyone killing it, for whatever reason in the world, has committed murder.21 It could be argued that the infant may possibly not survive thirty days. At least, then, the infant would be a goses, an individual about to die. However, anyone killing a goses commits murder.22

It thus follows that to perform any transplant operation in which a vital organ such as the heart or kidneys is removed, is murder. The fact that the donor agreed does not lessen the severity of the crime of suicide and murder.23 The fact that the donor has been declared clinically dead, that tests show that all vital signs from the brain have ceased, does not change the conclusion. Even though the person is breathing only by being connected to a respirator, that person is alive as far as Jewish law is concerned. If he or she stopped breathing for a prolonged period of time, but there is at least one other vital sign shown by tests, such as heart movement or brain activity, that person is still alive. Medical tests can be used to confirm that the man is still living. There is no question about this according to all Jewish authorities. Anyone disconnecting the machine is committing murder. A doctor who removes the patient's vital organ after he is disconnected from the respirator is committing murder if such a person could have been kept alive artificially with the respirator.

How do we know that a person on a respirator is still alive? A living person can have his blood transfused to another person, and the recipient would benefit. However, the blood of a cadaver transfused into a living person would be very damaging, if not fatal to a patient. Physicians confirm that a patient connected to a respirator, even though declared "brain dead," can donate blood. His blood is not poison for another living human. Thus, it is not merely "ventilating a cadaver" when a man or woman is connected from the start to a respirator.

Furthermore, if a person who is truly dead is connected to a respirator, the machine cannot cause his heart to start beating once more; blood will not circulate food or medicine injected into his veins, nor will he receive any nourishment even if beneficial substances be injected directly into his organs. On the other hand, a person who is clinically dead and who can breathe only with the aid of a respirator, even though declared "brain dead," can connect to a respirator.

All physicians agree that many of the various functions of man, though inter-related, are nevertheless independent and do not gain their vitality from any of the others. Thus, a man can
very well be brain dead and yet be alive as far as his circulatory and digestive systems are concerned. Halachah clearly considers such a person alive. The Chasam Sofer in describing the conditions of death according to halachah indicates that there must be a cessation of all bodily and organic functions—"silent as a stone"—for an extended period of time in addition to cessation of breathing. The Maharsham explicitly states that any one living function of man refutes the presumption of death, even though one has ceased breathing. Thus, even if we concede, for the sake of argument, that breathing only with a respirator is not considered living according the halachah, nevertheless, such a person having all his organs or part of his organs functioning as explained above would definitely be considered alive.

Rav Moshe Feinstein explaining the signs of death, explicitly rejects brain death, or the decomposition of the brain or the liquid of the spinal chord as a criterion. He states that historically none of these criteria were valid, and at no point in the Talmud are they considered to indicate death. It then follows that anyone killing such a person has committed murder. And, therefore, anyone disconnecting the respirator or "pulling the plug" has committed murder.

Does the physician have an obligation to connect a patient who cannot breathe on his own to a respirator? Ray Feinstein deals with this question indirectly. In a responsum he discusses the violation of halachah concerning the performance of heart transplants. He calls such an operation double murder. The donor, whom physicians admit has some form of vitality, undergoes surgery to remove a heart so that a murder has occurred by cutting short whatever minutes, hours, or day of life are remaining to him. Since all recipients of heart transplants have died within months of the operation, the recipient is, in effect, committing suicide. With his own disabled heart he could have perhaps continued to live for months or years as is common with many heart patients.

In the discussion of this matter of the heart transplant operation, Rav Feinstein focuses on the question of connecting the donor to a respirator to extend his life until the recipient is readied for the operation. Rav Feinstein states that in such a case, in addition to the prohibition of double murder, there are further prohibitions.

It is forbidden to take any measures to extend temporarily a person's life — even if, in so doing, that individual would be experiencing agonizing pain. Although we cannot take any active measures to shorten the life of one in pain for it would be euthanasia — murder, we nevertheless do not have to be party to extending his pain. Ray Feinstein marshals Talmudic evidence to support his opinion which he shares with Bais Yaakov who rules that medication be denied a terminal patient who has only hours to live and is experiencing excruciating pain.

Responsa Shvus Yaakov, however, disagrees. He writes that in Talmud Avodah Zoroh 12b and Yoma 85a a mortally wounded person, who can only survive temporarily (יושב עישית), is to be saved even on the Sabbath when the Sabbath laws would be violated. Such conduct is the accepted law even if the injured person experiences excruciating pain.

This position is adopted even if some symptoms of death have set in. Even though we say, "The majority of gosesim (persons who are about to die within three days) die," nevertheless, we must make every effort and take all measures, even desecrating the Sabbath, if necessary, to save him. The same position is adopted by the Issor Vo-Heter.

Similarly, the Smag and Smak rule that if a man is found mortally wounded, his brain is crushed, and he can live only a short amount of time, we are instructed to take all measures, even in violation of the Sabbath, to save him temporarily. For in Talmud Smochos we learn that if one shuts the eyelids of a goses, it is as though he spilled his blood. In Smochos, the Talmud is discussing the case of the goses, while the Smag and Smak discuss an individual who had some of the symptoms of death set in. Nevertheless, in their judgment, such an individual should be saved.

Rav Feinstein chooses to explain the situation such that in these instances the mortally wounded person was breathing on his own. However, if he were unable to breathe on his own and all that can be accomplished is a temporary respite under excruciating pain, one should not then extend the victim's suffering by connecting him to a respirator. However, it follows that if we do not know if it is only a temporary respite and this man can possibly live days, weeks, or months, Ray Feinstein
agrees that he should be hooked up to the respirator. Likewise, refurnishing the oxygen tanks is mandatory according to Rav Feinstein, if there is the slightest possibility that this man can live longer than temporarily, even though he is in excruciating pain. If he is not in pain, even if he can live no more than minutes, one is obligated to hook him up to a respirator and furnish oxygen tanks as they are used up.

Since it is impossible to know for certain if anyone can live only briefly, minutes or hours, days or months, Rav Feinstein will agree that every patient should be hooked up to a respirator and the oxygen tanks be changed when necessary. Nowadays, the dispensing of drugs to relieve the pain has greatly diminished the likelihood of the extension of life in painful circumstances.

In the hypothetical case of the heart transplant, Rav Feinstein’s patient is being connected to the respirator for someone else’s benefit: namely, in order to keep the heart alive until it is removed. Under such circumstances Rav Feinstein forbids having the patient hooked up to a respirator. However, if connecting him to the respirator is done for his own benefit, possibly to extend his own life, then Rav Feinstein definitely considers it mandatory to hook him up and to furnish oxygen tanks as they are used up.

Rav Piekarski agrees with the Shuvas Yaakov. Rav Waldenberg in his responsa, Tsits Eliezer, writes that one is not allowed even to pray that a suffering patient in excruciating pain die in order to prevent him from suffering. The reasoning is that as long as a person is alive, even temporary life even in extreme pain, there is hope that either existing therapy or new research can develop some cure for him and for relief of his pain. Once a person is dead, nothing can bring him back. This appears to be likewise the position of the Maharsha, which we discussed in Chapter I.

There is a distinction to be made between reflex movements and true signs of life. The Rambam discusses a person whose collar bone is broken such that it is fatal or whose head is severed. Even if he displays signs of movement, he is merely having reflex movement of his limbs or organs but is considered as dead, and he defiles spiritually as one who is dead. Kohanim, therefore, are under obligation not to come into contact with such a person or be under the same roof with him.

However, this person is considered living in every other respect. Anyone killing him has committed murder according to Rav Piekarski and Dr. Yaakov Levi. Furthermore, a patient who displays all body functions and is alive in every respect cannot be compared to one whose head has been severed or who has had his collar bone severed such that it is fatal. In the latter cases the victim expires within moments, while in the former, the patient connected to the respirator can survive indefinitely. Thus, his bodily functions are not reflex movements, but they are evidence of life.

While the critical consideration is breathing and heart function, even if generated by artificial means (man-made machine), any one sign of life ascertained by naked observation or by aid of medical instruments is sufficient to place the person in the status of living, according to all authorities.

In life-saving matters we don’t follow the majority. In cases of sudden “death” one must account for the possibility of fainting and unconsciousness rather than death. Temporary deadening of all vital signs can be the result of shock and weakness. Such a man or woman can be compared to an embryo in its mother’s womb. Would the embryo prior to the time it can remain alive on its own suddenly be aborted, it would die. Even though the embryo cannot breathe by itself within its mother, it still is forbidden and a cardinal violation of the Torah to abort the embryo. Certainly, in the case of a human being who has a running track and history of life, it is blatant murder to pull the plug or remove a vital organ for the sake of another human.

For this critically ill patient who quite possibly has no more than hours or days to survive, his remaining time, although short, is precious to him. Therefore, to him this tiny and limited world is the entire universe. No one in the universe except G-d can remove this speck of the world or remove life from him. The fact that the other man can survive indefinitely by cannibalizing the terminal patient is no justification for his murder. The Rambam explicitly forbids the curing of one patient at the cost of killing another because we cannot put aside (terminating) one life for (the sake of saving) another life according to the rule.

One can take another’s property or money to save a
life, if he repays the money or property. But one can never repay another man for his life.

Removal of a Life Sustaining System

It is certainly murder to pull the plug from a dying patient because doctors have given up on his or her recovery. Only G-d can give life and resurrect the dead. Therefore, only He can decide when a man or woman should pass on to the other world until he is again resurrected.

According to the Talmud and Shulchan Aruch it was customary to place salt on the tongue of a dying man to prevent him from expiring. It was also believed that praying for him and making a loud noise would prevent him from dying. But it is permissible to remove the salt, stop praying, or stop the noise since in all the cases cited, the item removed is in no way vital or critical for the second by second survival of the terminal patient. On the other hand, removing a pillow is forbidden since, by moving the patient, one can possibly hasten his death.

Nothing is gained or lost in reality—physically—by the patient if he or she does not have the salt, the prayers, or the noise. But, if the life sustaining system is removed, the patient suffocates. Likewise, removing vital nourishment from terminal patients or denying them medicine that fights the disease in order to hasten death is strictly forbidden. It is murder.

In a situation in which the terminally ill patient is suffering, G-d should be petitioned to heal him from his pain. But never should one pray that the patient, G-d forbid, should die or actively take any measures by removing the plug or denying vital nourishment or drugs.

May G-d help the doctors as his agents by providing them with new breakthroughs in the fields of cancer, heart disease, liver and lung ailments, and all other killers to wipe them off the face of the earth. We pray that G-d, in His mercy, will have men discover a cure for all terminal patients in response to their prayers and new breakthroughs in science and medicine that take place every hour of the year.

Notes to Chapter VII

1. See Rav Shilo Refoel, Torah She Beal Peh Vol. 18, pp. 89-94 for essay. Responsa Machne Chaim, Part 2, Choshen Mishpat, No. 3 says one may not sacrifice a baby to save the mother. The doctor should do nothing. Responsa Panim Meiros, Part 3, No. 8 remains in doubt quoted by Tosfos Rabbi Akiva Eiger, Oholos 7:6. Tiferes Yisroel: Boaz, Oholos 7:6 says probably yes. Responsa Meharam Schick Yoreh Deah, No. 145 says yes. Responsa Igros Moshe (Rav Feinstein), Yoreh Deah, Part 2, No. 60 probably says yes. Although he doesn’t spell it out explicitly, Rav Feinstein’s ruling in the case of the community that can be saved in order to enjoy a normal life span at the expense of the rodef’s temporary respite from death is applicable to the case at hand. The baby is a sofeq nefel. It is doubtful if he will live thirty days. He has no running track of living. We don’t sacrifice the mother’s superior claim to longevity to the doubtful ability of the child to survive.

2. Yerushalmi Trumos 8:10.

3. Rav Feinstein discusses three categories of authority: 1) When the Sanhedrin was in power, it was the duty of Jews to hand over a criminal to the court. 2) If there is a king (Jewish or non-Jewish), one need not hand him over. However, if there is a Jewish deity working for the king, who is ordered to catch the criminal and refuses, he is mored bemalchus, guilty of rebellion. 3) If the authority is arbitrary and has singled out an innocent Jew without basis, it is the duty of every Jew to help him to escape. If, by helping him, the community is put in danger, we have the case of the rodef. Thus, we have the argument between Rav Yochanan and Resh Lakish. Responsa Igros Moshe, Yoreh Deah, Part 2, No. 60.


6. Talmud Bavli Sanhedrin 74a and Pesachim 25.

7. Rashi explains in Talmud Sanhedrin 74a ‘DU in ‘IC ‘IC ‘IC. "Who in the world can claim that his blood is redder?" (his life is superior). Therefore, he cannot kill another for blood, since the same logic applies to the one he wished to save at his expense. Therefore, he should not take any action. This explains why, once the child’s head emerges and there is a conflict between saving the life of the mother at the expense of the child, there is a question as to the action to take. Perhaps the doctor should take no action rather than sacrifice him to save the mother. An Orthodox rabbi who is a posek—arbiter of Jewish law—should be consulted on this matter. Physicians are advised to consult with a posek in advance to ascertain how they should act and under what circumstances. The ruling depends on many complex factors that cannot be discussed adequately in a book of this nature. Responsa Chasam Sofer in his Responsa on Yoreh Deah (No. 13) rules that according to the Rambam the Sabbath (and all Torah laws) except idolatry, adultery, and murder can be violated to save the life of a non-Jew. A non-Jew can violate all his seven Noahide Principles except murder in order to save himself. See Rambam, “laws of Kings” 10:2 and Mishne Lemelech Chinos Chinuch No. 296. The same law that both lives are equal applies for a Jew or a non-Jew. See Chinos Chinuch, Mitsvos No. 296 on question of murder. See Mishne Lemelech on Rambam, “laws of Kings” 10:2 quoting the opinion of Perek Derech Ho-irim that a non-Jew must sacrifice his life rather than commit murder. The rationale of “Who says that your blood is redder than another’s blood?” applies to the non-Jew if he is to take action and kill.

8. Quoted by Keseif Mishnah on Rambam, “hilchos Yesodei Hatorah” 5:5.

9. This reasoning explains why the Rambam in his Sefer Ha-Mitsvos did not list living and fighting for Eretz Yisrael as an independent mitzvah. The Rambam possibly maintained that the Jew collectively—the community—has that obligation of fighting for survival everywhere in the world, not only in Eretz Yisrael. He does not exclude fighting...
for survival in Eretz Yisrael which definitely is a mitzvah, but the emphasis is on survival of the Jew and not necessarily of land. Land is always subordinated since it is to be used for as was proved in World War II when there was no room anywhere for Jews attempting to land itself.

10. If anyone comes to kill you, arise earlier, and kill him (save yourself), Shulchan Aruch, Choshen Mishpat 425:1. This rule should be followed even chance for survival. Certainly, one must save himself when there is a possibility the Jews can secure a victory. This was the rationale that prompted Samson to kill blinded him. He exclaimed, "Let me die, but together with the Philistines" (Judges 16:30). See also Rambam, "Laws of Shabbos" 2:23 and 24, Talmud Sanhedrin 73; 25. In his responsa Part I, No. 60. See what he writes about Tosef. See also Harav Efrayim Oshri, Tsemech Tsedek Hayoshon, concentration camp experience for such an attitude. Also Tsemech Tsedek Hayoshon, No. 19.


14. See Talmud Taanis 18b in Rashi and Talmud Bava Basra 10b in Rashi.


16. Regarding the question of an individual's responsibility of risking his life in time of war to save others, see Rav Eliezer Waldenberg, Tsits Eliezer, Vol. 12, No. 57, and Minchos Chinchut, Mitzvos 296.

18. Talmud Erchin 7a-b.
19. Talmud Bava Metzia 2a-b, 3a-b.
20. Talmud Erchin 7a-b.
22. See Rambam, "Laws of Murder and Preservation of Life" 2:7 from Talmud Sanhedrin 78.

23. There is a difference between jeopardizing one's life for another in time of war (or when threatened) and donating a vital organ to save another's life. In the former case, the individual does not give explicit permission to be killed (although he is in a position of danger and might possibly be killed). In the latter case, a person who signs away his organs actually commits suicide by giving the doctors permission to murder him. It is permissible, however, to put oneself in a position of limited danger to save another person, for example by donating one lung. In such a case, there is greater danger for the donor than if he had two lungs, yet he is not immediately going to die by donating this organ since a person can live with only one lung.

24. In his responsa, Yoreh Deah, No. 338.
25. In his responsa Part VI, No. 91.
IN MEMORIAM
PERYN SETH COMINSKY

The essence of a man can never be understood in terms of fragmented data pertaining to the life he lived. It can only be understood in a holistic sense, in a dynamic sense, as a moving, vital force which emanates from him toward all human beings, and is felt and internalized by those who know and love him. This essence, then, is the spirit that keeps him eternally living in our hearts.

Although Peryn Cominsky's stay on earth was very brief, he somehow understood the meaning of life and the role he was chosen to take. He seemed to know the precious ingredients needed in his relationship to mankind. His individuality, coupled with his courage to do what he believed was good, brought him to a level of humanitarianism that transcended much of the superficiality and materialistic conformity of our day.

He was a good friend who appreciated and recognized the contributions that others made. Not only did he become totally involved in his own interests, but was equally involved in the pursuits and achievements of others. He was wise enough to know that a good sense of humor was a universal quality, which earned him the love, warmth and respect of so many who came to know him. His determination to make people happy was a way of life.

Such is the essence of Peryn Cominsky, beloved husband, son and brother, whose spirit and love will live in our hearts forever.
אין תרגום当地人.
The above organization will be Orthodox Jewish, governed in all its functions by the Shulchan Aruch and responsa as interpreted by the Poskim (Orthodox arbiters of Jewish Law — Halachah)

This status can never be changed.

ACTIVITIES

I. Talmudic and post-Talmudic research institute for Torah and applied Jewish Law.

A. Publication of dissertations, journals, and books on Jewish problems and their solutions from the halachic perspective based upon the Talmud, commentaries, responsa, codes, and other Rabbinic writings. The publications must have the approbation of at least one Rosh Yeshivah, Dean, or lecturer in an Orthodox Yeshiva.

B. Scholarships and fellowships to be awarded to Talmudic scholars presently studying in Orthodox Jewish Bais Medrish of Yeshivos & Rabbinical Seminary or Kollel (graduate Torah Law School) for a minimum of five years. These scholars must be willing to devote a study session ("Seder") to the learning of any one code of the four codes of the Shulchan Aruch (compendium of Jewish jurisprudence). Learning of the Talmud, commentaries and responsa in conjunction with the volume of codes under study would meet this requirement provided that the code is then also studied. In addition, the recipient must agree to write a dissertation, theses, or book in any language, or translate a Hebrew text into another language, or translate into Hebrew a text from another language which deals with halachah or Torah studies. A number of scholars can collaborate on one study and thesis.
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II. The New Yeshivah
A. The giving of lectures and seminars for pre-adolescents, adolescents, adults, and senior citizens. The learning material will be geared to those individuals with a minimum of Jewish religious and cultural background.

B. Establishment of morning and/or afternoon and/or evening classes and retreats for adolescents, adults, and senior citizens who have a minimum of Jewish background with separate groups for boys and for girls.

C. Establishment of a University without Walls for all ages and all levels, geared to those with a minimum of Jewish religious and cultural background and education. Instruction will be conducted through correspondence courses, cassettes, closed circuit TV, radio, books, and other printed media on all topics of Judaica (with an emphasis on Torah and Halachah — Jewish Law).

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