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ABORTION AND HALAKHAH

TO THE EDITOR OF TRADITION:

Regarding Rabbi Carmy's article entitled "Halakhah and Philosophical Approaches to Abortion" (Tradition, Spring 1977), I think there is some reason to question the feasibility of bridging the gap between halakhah and secular law with regard to abortion. This is not because I would wish to place abortion in the same category as kashrut as opposed to that of geneivah, but simply because the halakhah approaches ethical laws (such as geneivah and abortion) from a perspective different from that of a secular legislative body.

This is not to say that the latter is rational and the former irrational—far from it. But since the dawning of the notion of the natural rights of man, enlightened governments such as our own have been curtailing our personal freedoms only when such freedoms conflicted with the rights of others. Jewish law, on the contrary, is based not on rights but on duties, on the commandments of God. We are free when the Torah is silent, but the emphasis in our lives is not to be found in our freedom; it lies in our responsibilities. It is not the case that we have a right to do as we please unless a conflict of rights arises; we strive to live under the yoke of Torah.

Halakhic ethical laws are quite rational within this context. They teach respect for others (as opposed to respect for the rights of others), and even love. But there is no more sense in talking about the rights of the fetus than of the rights of an enemy to have his lost ox returned or his ass relieved of its burden. Just as these mitsvot must be viewed from the perspective of one's duty towards his fellow man, so must the prohibition of abortion be seen, so that the question of the humanity of the fetus is relevant not to its right to life but to our obligations towards it.

Although in his final footnote, Rabbi Carmy disparages the ontology of Michael Tooley's article "Abortion and Infanticide," Tooley does succeed, I think, in showing that the fetus's having a right to life does not follow in any obvious...
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way from its being human. Whereas this point would not affect the Torah position on abortion, since the humanity of the fetus is itself sufficient for the Torah to require of the rest of us an adoption of a specific code of ethics towards it, it certainly does complicate matters for secular law: If being human does not entail having rights, then the freedom of humans with rights may not have to be curtailed with respect to all humans; some humans may simply not have rights against others.

In my view, a duty-oriented ethic is vastly superior to a rights-oriented one, but nevertheless to impose the former upon the latter will require more than a philosophical essay.

Roslyn Weiss
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Shalom Carmy Replies:

I agree with Mrs. Weiss and with Tooley that a being's having the right to life does not necessarily follow from the mere fact of its humanity, but rather from its being human in some morally relevant way. We all agree that the average adult is human in this morally relevant way; for this reason it is a grievous wrong (murder, to wit) to take his or her life without justification. What about beings who are not obviously human in the morally relevant way? Tooley maintains that a human being does not become human in the morally relevant way (i.e. being a "person") until some stage of development subsequent to birth. He therefore condones abortion and infanticide. In other words, killing a fetus or a newborn baby is more similar to killing a dog than to killing an adult human being, from the perspective of the morally relevant criteria of humanity.

This kind of ontology is a form of disguised moral judgment. One first presents a set of properties one considers to be necessary constituents of the type of human life which ought not to be taken without justification; from this ontology one then "deduces" the legitimacy of taking human life that does not meet one's standards. That such reasoning is circular, involving an appeal to intuitions regarding the properties that make a human life "sacred" (in the sense that it is inviolable) does not mean that it is invalid. But neither does it justify rejecting my view that there is no property, other than humanity itself, that must be attributed to human life for the latter to be "sacred."

Those who disagree may attempt to persuade me that the fetus becomes a human being at a different stage in its history than that which I accept, or that the fetus, at a particular stage, resembles, or differs from, "regular" human beings in ways that are morally relevant to the prohibition of unjustified killing, and that imply a position other than mine. For my part, I maintain that the ontology implicit in the halakhah (as I have attempted to reconstruct it) is at least as plausible as any proposed
in the philosophical literature. I may succeed or fail to persuade others of this view, but that is no reason to refrain from presenting it to the secular legislator.

One salient point (in addition to Wade's arguments, cited, with a measure of sympathy, in the note to which Mrs. Weiss alludes) is especially pertinent to Tooley's position: namely, his endorsement of post-natal abortion (i.e. infanticide). Does the consensus of enlightened secular thinking indeed hold that infants have no right to life? In fact, most philosophical pro-abortionists are embarrassed by this consequence of Tooley's ontology and strive mightily (albeit with little success) to avoid it. Is an ethical doctrine so obviously at variance with common belief beyond challenge? If Tooley's views, with their full implications, were happily accepted by most thoughtful people (or even by most pro-abortionists) I might concede the futility of further discussion. I believe that this is not the case, thank God, at the present time.

II

None of this debate — call it ethical, call it ontological — has anything to do with Mrs. Weiss' dichotomy between duty-ethics and rights-ethics. Two people who agree in their metaethics may yet disagree about the ontological status of the fetus; one might maintain that at stage $S$ of its development the fetus has the right not to be killed without justification (or alternatively that all other people have the duty not to deprive the fetus of life), while the other maintains, within the same metaethical framework, that at stage $S$ the fetus does not have the right to life (all other people do not have the duty not to deprive it of life). Conversely, two people might disagree in their metaethical perspectives, yet agree that at stage $S$ the fetus may not be killed without justification: it doesn't matter whether the prohibition is based upon the rights of the fetus or the duties of the would-be abortionist.

To be sure, there is a stand in pro-abortion philosophical writing that stresses a woman's right to do as she pleases with her own body regardless of the consequences to the fetus (or, for that matter, any human being dependent for his or her existence on the protracted use of another's body). Thus Judith Thomson argues that the mother may expel the fetus from her body as a property-owner would evict a squatter. Whatever we conclude about Thomson's position, however, the gap between her views and those of the anti-abortionist does not derive, logically, from the opposition of rights vs. duties. It is, rather, a matter of where to draw the lines properly in certain specific situations. Is the mother obligated to house the fetus for nine long months or not? Have we the right to regain the total control of our body from another human being who will die unless we continue to accommodate him or her? The anti-abortionist believes there is such a duty; the dependent human being has a claim to continu-
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ation of our life-preserving service under the ordinary circumstances of pregnancy. Thomson considers the mother's submission to the fetal "tenancy" an act of supererogation.

III

Granted, there is a sense in which Mrs. Weiss' distinction captures the difference in perspective between halakhic ethics and secular jurisprudence: the former emphasizing duty, responsibility, the yoke of Torah; the latter committed to freedom, to rights limited only by the rights of others. For Mrs. Weiss it is apparently unnecessary to investigate, on a case by case basis, the halakhah, its internal structure and implications, it is unnecessary to examine the intuitions and assumptions (not always internally consistent) of secular thought, before judging the possibility of contact between the two perspectives. One need only invoke the abstract, unbridgeable conflict of weltanschauungen and then rule out in advance any further investigation.

With this dogmatic approach I must disagree. The precise "cash value" of the rights vs. duties distinction is by no means obvious; we should err egregiously to elevate this generalization to the status of an a priori law governing the relationship of halakhic and secular jurisprudence. For many, if not most, of the burning moral problems of the day (e.g. euthanasia, suicide, sexual ethics) I suspect the distance between the Torah's teachings and the prevalent secular outlooks is qualitative and deters mediation. I believe, for reasons as detailed as my original article, that this is not the case with regard to some of the major issues connected with abortion.

Shalom Carmy
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HOLOCAUST

TO THE EDITOR OF TRADITION:

It is with a double measure of trepidation that I venture to comment on Michael Wyschogrod's critique of Irving Greenberg's views of the Holocaust (TRADITION, Vol. 16 No. 1). For, in addition to the usual hazards of "placing one's head between great mountains," there is the distinct possibility that by rashly adopting the role of ketuv hashlishi, I might not be contributing much to my personal friendship with both individuals. The issues, however, are too important to be ignored.

(1) I find myself in agreement with Wyschogrod's conclusion that the Holocaust was not a "revelational event."

(2) I cannot accept Wyschogrod's contention, however, that there are no "sane lessons to be drawn from the Holocaust."

(3) Wyschogrod draws a sharp distinction between the events behind the Festivals and the Sabbath which demonstrate the saving attribute of G-d and which are revelational and an event such as the Destruction of the Temple which
he claims is not revelational. This is difficult to accept even by Wyschogrod’s own criteria. The Destruction of the First Temple was foretold by the Prophets and was regarded as a punitive act of G-d (“Because of our sins were we driven from our land”) and may be considered “revelational,” if you will, of G-d’s attribute of justice.

I wish to suggest that Wyschogrod was misled in his analysis by accepting and working with Greenberg’s ambiguous term, “revelational events.” This term has at least three distinct meanings:

(1) An event in which a Divine revelation is given to man. This is exemplified by the giving of the Torah at Mt. Sinai where the “event” was essentially the revelation itself. According to Judaism there has been only one such public event. To experience such an event is of necessity to have a prophetic experience. This is the kernel of truth in Wyschogrod’s associating revelational events with prophecy.

(2) An event which is perceived as the special agency of God. Such events of special Providence are contrasted to all other events which occur in the world which since they are known to God are events of general Providence. Events of this former type include the Exodus, the Splitting of the Red Sea and the Destruction of the Temples. These events occur primarily for their consequences. They bring about certain conditions desired by the Lord of History. Israel is liberated and united into a people. Israel is saved from destruction. Israel is deprived of its national home and scattered over the world. Since, however, these events are acts of God, they are “revelational” in the sense that, correctly interpreted, they reveal to man not only truths about God: His loving kindness, His saving power, His faithfulness, His justice and wrath, but they also reveal truths about God’s relationship to Israel and the world: that Israel is God’s First Born, that Israel exists in a Covenant relationship, that Israel was given Statehood on condition only, that Israel’s destiny encompasses all men. These founding events of Jewish history were incorporated into Scripture so that we have prophetic description and evaluation of these events and often they are predicted. But even in regard to a central Biblical event such as the Splitting of the Red Sea, it seems clear that those present experienced “the great hand” of the Lord from the event itself and not because they asked Moses what it was all about. To be sure, their perceptions were confirmed by the prophetic authority of Moses. However, even after the cessation of prophecy, Judaism accepts the possibility of events which can be seen as acts of special providence. These were the events of Purim (although the Megillah which records the events of Purim was judged as written with ruach hakodesh, Mordechai and Esther experienced the events without prophetic aid) and the event of Chanukah. I remain convinced that
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the establishment of the State of Israel and the Six Day War in our own day are also events which must be seen as acts of God, acts of special Divine providence. Once they are so perceived they may be said to "reveal" to us many truths about God's faithfulness, our continued stay in Galut, etc.

For the perception of acts of special providence, we are not dependent upon prophecy. Wyschogrod is surely correct that in the absence of prophetic insight all events remain equivocal as to their ultimate agency and significance. True, we have no certainty. But in this respect the Six Day War is no better and no worse than Chanukah and Purim. (I have attempted to show elsewhere [The Religious Dimensions of Israel published by Synagogue Council of America, 1968] that one can identify certain objective properties of historic events which make them candidates for a faith-perception as acts of God.)

We arrive at the same conclusion as Wyschogrod. The Holocaust is not a special act of God's providence. Not because there is no longer prophecy (there wasn't any during Chanukah) and not because it was not a saving act (neither was the Destruction of the Temple) but because the Holocaust was an act of utter depravity and insanity serving no conceivable purpose which in no way can be ascribed to God. Therefore, the Holocaust cannot be a "revelational act," either in sense #1 or in sense #2. (3) There is a degenerate meaning of the term "revelational event" which ceases to be theological and is simply an overly dramatic locution for saying that there are some lessons to be learned from the event. But for such uses, one is best advised to drop the term "revelational."

I can see nothing objectionable in the claim that there are lessons to be learned from the Holocaust, in this sense, or rather that the event tends to confirm some long-suspected beliefs. Here are some possibilities.

(a) Evil is more deep seated in man than a great many liberals would like to believe. Man's education must consist of something more than information.

(b) Assimilation by the Jew as a means of escaping his destiny does not seem to work. National states persist in considering him an alien.

(c) The Jew has no future in the Diaspora. In the words of Eliezer Berkovitz, "The Holocaust has destroyed the Galut."

Michael Wyschogrod has earned our gratitude for speaking out clearly and incisively (See also his article in Judaism, Summer, 1971) in an area where utterances originally tolerated as sentiment and emotion were beginning to be regarded as theological positions. We shall continue to be haunted and obsessed by the Holocaust. But even if we fail to find out what it was it is surely important to know what it was not.

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