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ABORTION IN JUDAISM

Abortion in Judaism presents a complete Jewish legal history of abortion from the earliest relevant biblical references through the end of the twentieth century. For the first time, almost every Jewish text relevant to the abortion issue is explored in detail. These texts are investigated in historical sequence, thereby elucidating the development inherent within the Jewish approach to abortion. Following an examination of the foundational sources, contemporary responses from across the Jewish spectrum are introduced in order to probe their place in this history, as well as to discern the directions in which they would have the law proceed. The impact of Jewish abortion law upon Israeli legislative enactments is evaluated, along with the social outcomes of such legislation. Finally, the work considers the insights that this thematic history provides into Jewish ethical principles, as well as into the role of *halakhah* within Judaism.

DANIEL SCHIFF is the Jewish Education Institute Community Scholar in Pittsburgh, and Rabbi of B'nai Israel in White Oak, Pennsylvania. His articles have appeared in a number of books and journals.

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Preface

At the core of Judaism is the legal system known as *halakhah*, from the Hebrew meaning “to go” or “to walk.” Originating at Sinai, *halakhah* shapes Jewish life and, ideally, directs Jews towards righteous and exalted conduct. Yet even this legal system, seen to be based in divine revelation, is not exempt from its share of complex questions, uncertainties, and disagreements about the appropriate path to follow. In those occasional circumstances when the correct legal ruling is unclear, *halakhic* authorities formulate responses through the application of precedents and principles to the situation under consideration. This task, accomplished as it is by gifted but fallible human beings, at times produces differing interpretations and rulings such that the law generates various solutions that cannot be neatly reconciled. While, in time, the *halakhah* usually converges on a path that comes to be regarded as normative, this “right way” is rarely so obvious that it can be determined with ease, nor can alternative potential legal options be dismissed without reservation.

The issue of abortion presents the *halakhah* with exactly this type of challenge. While there is fundamental agreement on the broad parameters of the distinctive Jewish attitude to abortion, legal clarity on critical particulars – a low priority for many centuries – has proven to be a difficult goal to attain. This reality makes the thought of the rabbis – as they grapple with a delineated textual tradition, wrenching actual moral dilemmas, and a diversity of developing responses – particularly intriguing.

For this reason I have chosen to write a historical account of the development of the Jewish response to abortion. It is, of course, relatively unusual to explore *halakhic* issues through the lens of historical reflection. The methodical study of history is, after all, essentially a modern enterprise involving analyzing, comparing, and contrasting events from differing epochs. *Halakhic* subjects, conversely, are typically explored according to topic, without regard to time-period. Thus, the examination

of a particular *halakhic* question might consider the positions of the Talmudic rabbis, Rashi, Maimonides, Caro, and contemporary figures as if they were all sitting around the same table, rather than spread across two millennia. This approach is useful when trying to fathom the assorted insights that bear upon a discrete legal problem. It does not, however, attempt to survey the broader view of how one generation reacts to a range of issues within a given field, and how subsequent generations deal with the legal inheritance transmitted to them, within altered contextual settings.

This volume, then, provides an account of the Jewish legal response to abortion through the centuries. It is a history replete with unexpected developments. Alongside important ethical insights there are unforeseen prohibitions, significant divisions on pivotal issues, bold departures from inherited assumptions, forgery allegations, and unsettled conundrums. The absorbing saga of the Jewish reaction to abortion unfolds through a succession of vastly different historical conditions, from the wandering in the desert to the contemporary state of Israel, and gives eloquent testimony to the flexibility and the adaptability that appear to be enduring strengths of the *halakhic* system.

Two cautions are in order. First, this is a history of the response of Judaism to abortion, not that of Jews. There is, consequently, no attempt to describe the varied emotions and feelings that Jews have on the delicate matter of abortion. Rather, I have restricted my analysis to those legal statements that have contributed to the *halakhic* picture of abortion, together with those reflective observations that offer commentary on the law and on its coherence and conduciveness.

Second, this work should not be used as a Jewish legal handbook in individual cases. In large measure, this book is a study of the *she'eilot uteshuvot* (questions and answers) literature, the rabbinic responsa, which have been penned through the centuries and apply the law to those specific inquiries that have not received a previous reply that could be considered adequate. Hence, I have encapsulated rabbinic rulings on the suitability of abortions in numerous situations like those that could arise in personal experience. Jewish law, however, counsels that every case is different and must be judged on its own merits. This is particularly so in the matter of abortion, where the consequences of any decision inevitably are weighty. *Halakhah*, it must be stressed, cannot be self-administered from a knowledge of general conclusions. A competent rabbinic authority must be consulted in order to determine the *halakhic* answer to any real-life abortion question.

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