

**The Tears That Are Not Murder:
Judaism and Abortion
Parashat Vayakhel-Pekudei
March 19, 2004**

Shabbat Shalom. This night, I want to take a moment to introduce our guest speaker. What? You don't see a guest speaker? Well, in fact, I am going to do something I have not often done before. I am going to open with a very extensive quote. The following words come from a speech I heard a year ago, at the Reform Movement Religious Action Center's Consultation on Conscience in Washington D.C. They are from my colleague, Rabbi Barry Block, of Temple Beth El in San Antonio, Texas. This, as the opening of *my* remarks tonight, is what he had to say last March:

“Let's talk about sex. After all, sex is our detractors' favorite subject. The extremists who would control American life are just like teenagers, obsessed with sex. They truly seem to believe that , if America were run their way, teenagers would stop having sex. The religious right actually has our government spending tens of millions of dollars, in an attempt to roll back teen pregnancy and the spread of sexually transmitted diseases by discouraging the use of contraception.

“Of course, ‘abstinence-only sex education’ is not the only sexual topic on their minds. Our opponents would like to legislate homosexuality out of existence. [Side comment on that county in Tennessee.] They would restrict poor women's access to safe and effective birth control. They have successfully stopped our nation from working on population control, perhaps the greatest problem facing the planet, with an absolutely false argument about forced sterilization. They run hospitals that refuse emergency contraception to rape victims and will not provide tubal ligations or vasectomies to anybody. While they have not yet succeeded in overturning *Roe vs. Wade* [about which, much more when I return to my own words shortly], they have been victorious in limiting women's access to abortion through legislation, and even more, by the fear they have instilled in physicians and other health care providers.

“Make no mistake: the religious right's sexual agenda kills. They have blood on their hands, when a graduate of ‘abstinence-only sex education’ dies of AIDS because the instructor would not answer questions about condoms. They have blood on their hands, when children in third world countries starve to death, in part because of overpopulation made worse by our current President's refusal to

participate in global family planning. They have blood on their hands, when a gay teenager commits suicide in shame. They have blood on their hands, when a poor woman with cancer can't get an abortion, and therefore can't begin cancer treatment."

And now, I come back, to my own words, and my own experience. They have blood on their hands, when the rhetoric of hate and anger fans the flame of direct attack, and real murder.

It was late on a Friday night, in the fall of 1998. Synagogue was hours past, I was already in bed. The first we heard of anything unusual was the sound of helicopters hovering almost overhead. Then the phone rang. I knew something was wrong the minute I answered the phone, as the voice on the other end was that of a *shomer shabbat* Conservative colleague: "One of your congregants has just been shot," Bob Eisen told me. Which is how I found myself, fifteen minutes later, less than a mile away, near the home of Dr. Barnett Slepian.

Images stay with me still. Speaking on my cell phone with several of the national leaders of the Reform movement as I was driving towards the funeral, then turning a corner to enter a scene from another world: a hundred satellite dishes set up on the grounds across the street from the Funeral Home... and a hundred protesters screaming and waving signs, held at bay by the already embarrassed police of the town of Amherst, still making their message clear that he got what he deserved.

He got what he deserved? Bart Slepian was a fertility specialist, for God's sake. Less than 2% of his work was abortion-related. He counseled women against abortions whenever he could, and performed a legal and in my mind moral procedure to promote women's health, and to save women's lives.

Images: the Bishop of Erie, pounding his fist on the table. This is our Vietnam! he says. This is our civil rights movement! Images: an all male clergy, an all male hierarchy, an avowedly celibate sect dictating what women who don't make the same choices they did and are not even followers of their faith should do with their bodies.

Another image, not seen so much here, but familiar fare on the front-lines of the culture wars... churches, every November, filling their grass with a symbol of their message... tiny little crosses, all over the lawn. What will it take for synagogues to fight back? What will it take to convince the world that there are real values and religious conviction on the other side as well? Perhaps we should respond... with tiny white hangers, on the green grass of our lawn.

This week we read in the Torah a story of a gathering. "*Vayakhel Moshe et kol adat b'nai Yisrael...and Moses gathered the whole community of Israel.*" He convoked us. He brought us together. The root of *vayakhel* is the same as that of *kahal*, or *k'hilah*. The words mean "community." They imply a kind of cohesion, a connection to each other, a coming together.

As for us, on this and so many other questions, we seem so far apart. How... how can we come together?

Another memory. Just a few days after the assassination of Dr. Slepian, I received a call from a woman who identified herself only as Theresa. She said she was a member of a local Catholic church. She asked about the Jewish position on abortion. And I... made a mistake. I answered her.

We live in a world of terrorists. What I should have done was demand her last name, call her church, speak with her priest, see if she was legitimate... *then* call her back.

But perhaps it was not such a... terrible mistake to make. **For whether she was Jewish or not, whether we like it or not, whether, in fact, she would think of it this way or not, Theresa was asking a question of Torah. And almost above all else, for the study of Torah, for the ongoing pursuit of what it is that God demands of us, that is what we are about. It is who we are. It is why we are here. And: to answer a question of Torah is why we are here tonight.**

Abortion is always a controversial topic. There are those who don't want us to even mention the word. Because some people say that their opposition to abortion comes from God, others counter that God should have nothing to say on the subject.

Does God belong in the bedroom? You've seen the signs and the bumper stickers: not just "US out of El Salvador," or, a bit more alarmingly perhaps "U.S. out of North America," but "U.S. out of my uterus!" There are those who say the government should have nothing to say on this subject, and neither should our religious tradition.

But Torah touches all of life. Even -- perhaps especially -- the arena of sexuality. Indeed, because sexuality touches core human questions of creation and destruction, of potential and fulfillment, power and purpose it *is* Torah. Religion, after all, is *supposed* to deal with critical issues. If it just sticks to mumbled words in dusty spires it remains an empty shell, the halls not hallowed but hollow.

But because abortion is something that happens *in* a community not *to* a community, because it is a question that arises for *individual* women (and couples), and also because I am a Reform Jew, I believe that we must look to our tradition for insight rather than enforcement. Or, better put, since a *mitzvah* remains a *commandment* rather than a suggestion, we should look at our tradition for governance, indeed, but with the humble realization that different Jews will feel governed in different ways.

So: what is the Jewish view on abortion? Or must we ask about Jewish views?

The *Catholic* position on this subject is well known: life begins at conception. That is when the soul enters the new body, that is, at least since 1588, when the potential human life acquires full human status.

In our tradition, on the other hand, if a fetus had full human status from the moment of conception we would have a bit of a problem. For... what is it that God rested from on the seventh day? God rested from the work of *creation*. As God rested, Judaism enjoined us to not engage in anything on Shabbat that is an act of creation. By that logic, intimate relations between a husband and a wife should be *forbidden* on Shabbat -- where in fact the opposite is true. Friday night is considered.... the most appropriate time of the week! So...since the act of procreation must not be an act of creation in and of itself...full human life cannot begin at conception.

The classic starting point for the discussion of abortion in Jewish law is the following passage from the book of Exodus:

"If two men get into a fight and one of them shoves the other against the belly of a pregnant woman, so that her fruit departs, and yet no other harm follows, he shall surely be fined." (Exodus 21:22-23)

Fined, that is. Fined, not charged with accidental manslaughter. There was a penalty for accidental manslaughter in the Torah. This isn't it. A fetus therefore cannot have the same status as that of a human being. Removing a fetus cannot be called murder.

The Mishnah provides another key passage. It tells us that

"if a woman in labor has a life-threatening difficulty, one removes the embryo within her, even limb by limb, for her life takes precedence over its life. But once its greater part (its head) has emerged, it may not be harmed, for we do not set aside one life for another."

(Mishnah Ohalot 7:6)

While still a part of the mother, the fetus is not independent. If the fetus is a threat to the mother, it is to be removed. In some cases, the fetus is compared to a "pursuer" -- one who is coming against you to kill you may be killed first. But that accords the fetus the status of a person. In other places, the fetus is compared to a limb, which sometimes must be removed to save a life. Not may be. *Must* be. Here Jewish law is not *pro-choice*; an abortion to save the life of the mother is *required*. It is mandatory. To some extent it is fair to say that in Judaism abortion is either *required* or *forbidden*.

To save the life of the mother, even the most ultra-Orthodox authorities agree that abortion is required. That is starkly different than the Catholic position. It is not state law in Italy. And there are those who want to make it state law here -- that the fetus comes first. So: let us be clear. If this happens, the state would be choosing one religion's view of morality over another's. A direct conflict between faith traditions exists -- even in the classic "extreme" case.

But what does Jewish tradition say about abortions in other circumstances? Is it permitted for other reasons? Just what exactly does it mean that the fetus is a "threat" to the mother.

It is here that we part ways, and must speak of Jewish views on abortion. For a halachic consensus has emerged amongst Orthodox thinkers today that largely restricts abortion to saving the life of the mother. *Why* this happened has implications for the *entire structure* of the Orthodox world today, its view of Torah as ultimately univocal, its pursuit of a single truth instead of an ongoing conversation about what it is that God wants us to do. The question of how and why the Orthodox Jews of today came to a single restrictive position on non-therapeutic abortion is the subject of a brilliant essay by our Reform movement's own home grown, up and coming Talmud scholar Rabbi Mark Washofsky. It is a subject worthy of study in far more detail. But for tonight, what I must share with you is this: although Orthodoxy today seems to speak with one voice on the subject of elective abortion, it was not always so.

Early this century, Rabbi B. H. Uziel was presented a case of a woman threatened by deafness if she were to go through with her pregnancy. He allowed the abortion, on the grounds that the fetus was not an independent life. Rabbi Isaac Oelbaum of Toronto ruled that a four-week pregnant woman with a sickly older child who would not live unless breast fed could have an abortion to save the

child that she was nursing. This pregnancy posed no danger to the mother at all, but to another dependant upon her.

Older rulings exist as well, where the threat is psychological rather than physical. In the seventeenth century, Rabbi Israel Meir Mizrachi permitted an abortion when it was feared that the mother would otherwise suffer an attack of hysteria. Other authorities have allowed abortions in cases of thalidomide babies, Tay-Sachs disease confirmed through amniosynthesis, victims of rape, even mothers of large families where another child would harm the ability to care for the existing children.

In the Reform movement, applications of Jewish tradition to modern day situations take at least three forms. There are resolutions passed in assemblies of the constituent bodies of the Reform movement, the UAHC, the CCAR and WRJ. There is a CCAR Responsa committee which answers questions submitted from rabbis throughout the movement in the classic style of Jewish responsa literature.

And there are even more in-depth discussions, through such organizations as the Freehof Institute for Progressive Halacha, under whose auspices the Washofsky article I mentioned before appeared. The packets I have with me tonight contain samples of the first two of these categories, movement-wide resolutions, and two specific responsa.

The consensus opinion in the Reform movement has, perhaps unsurprisingly, followed the more liberal interpretations, that abortion is allowed in Judaism where the fetus poses a "threat" to the mother... not just a life-ending threat, but a life-damaging threat as well. And it has been the position of our movement, in keeping with our emphasis on individual autonomy and choice, that *only the individuals involved* can truly know what constitutes such a serious threat. After all, as Rabbi Washofsky writes in another place, "it is an odd form of morality that strips the individual of her power to choose a morally justifiable action. Yet that is precisely what happens when we operate under the misconception that morality is synonymous with the restriction of choice." **It should come as little surprise that Reform Judaism, pro-choice is so many other areas, is in favor of a woman making choices about her own body as well.**

We take a clear stand. But it is a nuanced stand. We stress that *therapeutic* abortion should be liberally applied, abortion for a reason should be available, but that abortion is not a casual matter. It remains destruction and loss, and we are forbidden to destroy anything without a *good* reason. Abortion is a sometimes necessary tragedy. And there are tears that are not murder.

That abortion has been the main form of birth control in the former Soviet Union for decades should be repugnant to all Jews, including those who are

otherwise pro-choice. And that there have been so many multiple millions of abortions in this country should trouble us as well.

Heated rhetoric distorts the debate. No one is pro-abortion, except the white supremacists who want to practice their own warped version of eugenics. And all of us should be "pro-life" in the true sense of the word.

The difference here is not between pro-life and pro-choice, but between utilitarians and absolutists, between those who believe that circumstances matter, and those who believe that full life begins at conception. Once an anti-abortion crusader has consented to an exemption for rape or incest, he or she is standing on the side of the utilitarians. They are admitting that, yes, reasons count. And that a fetus does not equal a full human being.

If we could somehow bridge the gap, we could find more common ground. For no one likes kids having kids. And no one enjoys abortion. If only we could work together...

All the evidence shows that where frank sex education occurs, teen sexual activity *goes down*, natural adolescent experimentation takes place in a healthier and more responsible way, and where teens are fully sexually active, the rates of STD's and unwanted pregnancies decrease. All the evidence shows that more mothers-to-be will make the choice to put their babies into the arms of eagerly waiting adoptive parents, where communities support and encourage that option

enough. *Real* education about the consequences of our actions – *including* but *not limited to* abstinence, and education about alternatives even where the procedure is permitted... both bring down the number of abortions.

It is not just politics. It is our Jewish tradition -- and my Reform Jewish tradition -- that believes in a country in which abortion is "safe, and legal, but rare."

This week's Torah portion refers to the artisans, the craftsmen, those who shaped and built the institutions of the community because they were filled with "the spirit of wisdom." If I recall correctly, I think that Lily is going to speak more on this subject tomorrow morning. What we can say tonight is that it is not just putting up a building that requires wisdom, but the shaping of a community. And more: it is wisdom to know that tough choices are best faced... one case at a time. To hold in our hands and our hearts the weighty issues, and to look in the eyes of the real people involved. Wisdom to know that we face hard choices... and wisdom to remember, in the end, whose choice it is.

Shabbat Shalom.