

# Reform Judaism, Bioethics, and Abortion

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The determination that Reform Judaism is a polydoxy provides Reform with principles on the basis of which fundamental moral issues such as those presented by bioethics and abortion can be resolved. If Reform Judaism is to take its place among the significant religions of the world, not only must its nature be clearly defined, but it must be shown to have fundamental relevance to concrete moral concerns. The aim of the discussion that follows is to apply essential principles of Reform to basic bioethical questions and to the issue of abortion in order to evaluate their morality from a Reform perspective. Implicit here is a demonstration of the vital ethical importance that an authentic modernist Judaism possesses for the contemporary world.<sup>1</sup>

## I. Bioethics

With the advance of science and technology, significant new ethical problems have emerged. Perhaps nowhere are these problems more urgent than in contemporary biological research and its medical application. "Bioethics" is the name that has been given to the branch of "ethics" (which itself is a branch of philosophy) that deals with the moral problems to which the new biological knowledge and its medical application have given rise. As is the case generally in the field of ethics, fundamental among the questions of bioethics is this: What actions are morally right (moral) and what actions are morally wrong (immoral)? Also, as in the field of ethics generally, what is sought ultimately in bioethics is a fundamental criterion or fundamental criteria by which the moral rightness or wrongness of actions can be judged. Such a criterion or criteria are termed "moral principles." In sum, bioethics is the branch of ethics that seeks a moral principle or principles by

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which one can judge whether actions taken in pursuit of biological research and actions performed in treating or ministering to the sick (by physicians or other persons) are morally right or wrong. When Reform principles are employed to determine bioethical morality, we have what is properly termed "Reform Jewish bioethics." The aim of the discussion that follows is to analyze the principles of Reform Jewish bioethics.

### *A. Suicide and Reform Judaism*

No subject in bioethics is more fundamental than the issue of the morality of suicide. The term *suicide* as employed here refers to the act of taking one's own life voluntarily, deliberately, and while of sound mind. (No issue of morality is present if the act of suicide is performed involuntarily, accidentally, or while the person is of unsound mind. General agreement exists that moral judgments in such cases are inappropriate.) There are two basic questions regarding the morality of suicide: (1) Does a person possess a moral right to commit suicide? (2) If a person possesses a moral right to commit suicide, on what basis does one have this right, and if one does not have the right, why not? Once these basic questions with respect to suicide have been answered, a foundation will have been laid for the resolution of other bioethical issues.

To answer the question of the morality of suicide from the Reform viewpoint, we must begin with a statement on the basic principles of Reform relevant to the issue. Reform Judaism as a polydoxy is a religion that affirms the ultimate moral right of the individual person to exercise authority over her/himself. Stated in other terms, Reform asserts that every person is the ultimate owner of her/himself, with the moral right, consequently, to do with her/his mind or body that which she/he chooses to do. The Reform principle that every person is her/his own ultimate owner means that no other person or group of persons possesses a right to authority over her/him superior or equal to that which she/he has over her/himself. It must be emphasized that Reform restricts a person's ultimate moral right to authority to self-authority or autonomy. Since every person possesses this ultimate right to autonomy, no one has a moral right to exercise authority over another person without the latter's consent. Hence, according to Reform Judaism, the moral right of a person to exercise authority stops where another person's autonomy begins. From this it naturally follows that no person has a moral right to do anything to another person's mind or body without the latter's consent.<sup>2</sup>

It is not necessarily the case that the political community in which a Reform Jew resides will permit the full exercise of her/his moral rights in all spheres of life. When a political community in which a Reformer resides prohibits her/him from performing an action that Reform Judaism permits, the situation is described as one in which the Reformer has a moral right to perform the action, but not a legal one. In a democracy such as the United States, Reform Jews are for the most part able to act on their religious principles without difficulty. Religious communities can be organized in America in which individual members enjoy religious autonomy with respect to their theological beliefs and ritual observances. However, when we come to the matter of Reformers possessing the legal right to follow Reform Jewish principles with respect to bioethical issues, difficult problems arise.

Having said this, we return to the question of the morality of suicide. From the brief statement of the principles of Reform Judaism given above, it is evident that a Reform Jew has a moral right to commit suicide. Inasmuch as a person is her/his own ultimate owner and possesses, therefore, a fundamental right to self-authority, that is to do with her/himself as she/he wishes, one has the right to take one's own life. Performance of an action to which a person has a moral right is a moral action. It goes without saying that a Reform Jew who unsuccessfully attempts suicide has acted morally. One has equal self-authority to attempt suicide and fail as to attempt suicide and succeed.

Yet still another point flows from Reform principles. This is that a Reform Jew, as owner of her/himself, can transfer the moral right to do with her/himself as she/he wishes to another person so that the latter then has a moral right to do for or to the Reformer that which she/he delegates the other person to do. Hence a person to whom a Reform Jew has transferred the moral right to assist her/him to commit suicide has a moral right to render such assistance. The next point is equally clear. Since a Reform Jew has a moral right to take her/his own life and the authority to transfer this right to another, then a Reformer can give another person the moral right to take the Reformer's life.

An enumeration and restatement of the above points will contribute to clarifying the discussion that follows:

1. *A Reform Jew has a moral right to commit suicide.*
2. *An unsuccessful attempt to commit suicide by a Reform Jew is a moral action.*
3. *If a person assists, that is, aids and abets a Reform Jew to commit suicide at the request (which, of course, necessarily implies consent) of the latter, the former has behaved*

*morally. (An example of assisting a person to commit suicide is the case where a physician, at the request of the person, hands her/him a needle filled with a fatal substance with instructions on how to use it, and she/he then injects her/himself.)*

4. *If a person takes a Reform Jew's life at the request of the latter, then the former has performed a moral act. Another name for such an action is "voluntary euthanasia." (An example of this is the case where a physician, at the request of a person, injects a fatal substance into her/him. The only action of the Reformer is to request that her/his life be terminated by the physician.)*

### B. Suicide in Orthodox Judaism and Roman Catholicism

Our understanding of the foregoing analysis of the Reform position on suicide is deepened by a comparison with the view of Orthodox Judaism.<sup>3</sup> According to Orthodoxy, suicide is an abominably evil sin that is considered even worse than murder.<sup>4</sup> By the act of suicide a person expresses such heretical views as the denial of an afterlife and the providence of God (as Orthodoxy conceives God). The view is expressed by Orthodox authorities that for the sin of suicide a person is denied afterlife and doomed, therefore, to annihilation. A number of Orthodox laws carry out the condemnation of the person who has committed suicide. No mourning by the family is to be observed for the death of a person who has committed suicide. No funeral rites that honor the dead are to be performed for a suicide; such rites include the mourner rending his garment (*keri'a*) and the funeral oration (*hesped*). In addition, it is the custom of many Orthodox Jews to bury the suicide in a specially segregated section of the cemetery as a mark of shame.

As one would expect, inasmuch as suicide for Orthodoxy is a heinous sin, attempted suicide is a grave sin as well. Thus a person who attempts suicide is subject to the punishment of flogging (*makat mardut*). A revealing Orthodox law is that if suicides are widespread and constitute a threat to the Orthodox community, the community has the power not only to sentence those who have attempted suicide to flogging, but to imprisonment as well.

Voluntary euthanasia is a capital offense and mortal sin according to Orthodoxy. No matter how great a person's pain may be or how close to death she/he is, taking her/his life is the crime of murder under Orthodox religious law.

Examination of the Roman Catholic view on the morality of suicide is also instructive for a Reform Jew. According to Roman Catholicism, the act of suicide is intrinsically evil and a sin

against God (as the Catholics conceive deity). Suicides are not given ecclesiastical burial. A person who has attempted suicide is considered "irregular *ex delicto*" and is subject to various penalties. What deepens our insight into the Reform position, however, is not the fact that Roman Catholicism considers suicide a mortal sin, but the fundamental reason why. This reason is precisely described in *The Catholic Encyclopedia*:

Suicide perpetuated without God's consent always constitutes a grave injustice towards Him. To destroy a thing is to dispose of it as an absolute master and to act as one having full and independent dominion over it; but man does not possess this full and independent dominion over his life, since to be an owner one must be superior to his property. God has reserved to Himself direct dominion over life; He is the owner of its substance and He has given man only the serviceable dominion, the right of use, with the charge of protecting and preserving the substance, that is, life itself. Consequently suicide is an attempt against the dominion and right of ownership of the Creator.<sup>5</sup>

Roman Catholicism prohibits voluntary euthanasia for the same reason that it forbids suicide, and with the same vehemence. The following quotations from the *New Catholic Encyclopedia* plainly expresses Catholicism's moral outrage:

From the ethical viewpoint, [voluntary] euthanasia is immoral and unlawful because it is intrinsically evil and entails a direct violation of man's right to life and God's dominion over his creatures.

The right to life ... is inalienable, i.e., one that cannot lawfully be renounced [by the person whose life it is]. Man does not have absolute jurisdiction over his bodily life; it is a good given to him to use in the pursuit of his appointed end. His dominion over his body and his faculties is one of stewardship only. Hence no human being possesses the right to dispose of his life on his own authority. God alone, the author of life, has absolute dominion over it.

[Voluntary] [e]uthanasia, therefore, transgresses the supreme authority that God possesses over human beings. The rights of a patient, of the physician, of a guardian are all subordinated to the absolute right of God.<sup>6</sup>

The fundamental reason for the Roman Catholic view that suicide is a mortal sin is essentially similar to that of Orthodox Judaism although not so explicitly stated in the latter. Analyzed into its component parts, the reasoning (with presuppositions and implications included) underlying the Orthodox Jewish and Roman Catholic views on suicide proceeds in this manner:

1. *There is a theistic God who is the creator of the universe and all that is therein, which includes, of course, humankind.*

2. *By virtue of having created humankind, the theistic God is the ultimate owner of every human being and thereby possesses a right in each human superior to her/his own right in her/himself. Thus the theistic God, as the ultimate owner of humankind, has absolute authority to command humans how to behave.*
3. *The theistic God has commanded through an inerrant revelation that the human person is prohibited from destroying that which ultimately belongs to Him, namely, the human person's life, and has given to the Orthodox Jewish rabbinate (if one is an Orthodox Jew) or to the Roman Catholic hierarchy (if one is Roman Catholic) the right to enforce His prohibition over their communities.*

One sees here with exceptional clarity the essential distinction between Reform Judaism and orthodox religions such as Orthodox Judaism and Roman Catholicism. The Reform community denies that Orthodox Judaism or Roman Catholicism possesses an inerrant revelation from a creator God in which such a deity claims ultimate ownership of humans and prohibits them from committing suicide. Orthodox Judaism and Roman Catholicism both employ Scripture as their inerrant revelation from the theistic God that forbids suicide. However, critical examination (higher criticism in the broad sense), a method of analyzing Scripture to which Reform Jews subscribe, reveals that Scripture is an errant document that was written by fallible human beings. Hence no evidence exists to support a claim that the ultimate ownership of a human person is possessed by any being other than that human person her/himself, and, therefore, that person is free to do with her/his own existence as she/he chooses, which includes the moral right to take one's own life.

### *C. Suicide in American Jurisprudence*

One further consideration that contributes to our understanding of the Reform view regarding the morality of suicide is the legal status of suicide in the United States. We can here give only the briefest of summaries of the laws regarding suicide in American jurisprudence, but two general observations can be made at the outset. One is that different legal jurisdictions (such as the various states) can have, and often do have, different laws regarding suicide. The second is that laws regarding suicide have changed considerably since America was first established as a nation.

The law governing suicide in America at its inception was the "common law." A standard definition of the common law in the United States is "that portion of the common law of England

(including such acts of parliament as where applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States."<sup>7</sup> Under the common law, suicide is the crime of murder, that is, the person who has killed her/himself is guilty of having murdered a person even though it happens that she/he is the person who has been killed. In England at one time punishments for killing oneself included forfeiture of the suicide's estates, an ignominious burial, and even mutilation of the body. Also, under the common law, assisting another person to commit suicide is considered a crime of murder. According to the common law, a person cannot, by consenting to be killed by another person, prevent the latter from being guilty of murder if she/he carries out the act. Voluntary euthanasia, in other words, is murder; consent by the person who wishes to die does not remove criminal liability on the part of the one who takes the former's life.

By the 1970s, statutes had been passed in almost all states in America that abrogated the common law doctrine that suicide is a crime. Where suicide is not a crime, it follows that attempted suicide is no crime either. There is no uniformity, however, among the states in America regarding criminal liability for aiding and abetting a person to commit suicide. Where suicide remains a crime, assisting a suicide is clearly a crime. Yet, even where suicide is no longer a crime, assisting a suicide can be made a crime by statute.<sup>8</sup> Where there is uniformity in criminal law among the states is with respect to voluntary euthanasia. In all states a person who through an act of voluntary euthanasia takes the life of another person is guilty of felonious homicide.

Is there an underlying principle that runs through the common law and the various statutes of the states with respect to suicide and such acts related to suicide as aiding and abetting suicide and voluntary euthanasia? I believe there is. This principle is that the political community in which a person resides, or which otherwise has legal jurisdiction over her/him, is the ultimate owner of the person with a consequent right to authority over her/him superior to her/his own right to authority over her/himself. This being the case, the political community has the authority to dictate to a person what she/he can or cannot do with her/his "life," that is, the quality that distinguishes a vital being from a dead body. The analogy here to the Orthodox Jewish and Roman Catholic view that a creator God is the ultimate owner of the human being is striking; the creator God is replaced by the political community. There has not, despite the statutory changes among the various states decriminalizing suicide, been a fundamental abrogation of

the basic principle that the political community has a superior right over a person's "life" than the person whose "life" it is. Reform Judaism of logical and moral necessity must disagree with this concept, and a situation, therefore, can arise in which a person takes an action that a political community judges to be illegal but which Reform declares to be moral.

#### *D. Illustration*

A letter from a physician that in the recent past was printed anonymously in the *Journal of the American Medical Association* provides an opportunity to illustrate concretely the Reform position that suicide, as well as actions that derive from a person's right to suicide, are moral. Relevant excerpts from the letter are reproduced below:

The call came in the middle of the night. ... A nurse informed me that a patient was having difficulty getting rest, could I please see her. She was on 3 North. That was the gynecologic oncology unit, not my usual duty station.

I grabbed the chart from the nurses' station on my way to the patient's room, and the nurse gave me some hurried details: a 20-year-old girl named Debbie was dying of ovarian cancer. She was having unrelenting vomiting apparently as the result of an alcohol drip administered for sedation. As I approached the room, I could hear loud, labored breathing. I entered and saw an emaciated, dark-haired woman who appeared much older than 20. She was receiving nasal oxygen, had an IV, and was sitting in bed suffering from what was obviously severe air hunger. The chart noted her weight at 80 pounds. A second woman, also dark-haired but of middle age, stood at her right, holding her hand. Both looked up as I entered. The room seemed filled with the patient's desperate effort to survive. Her eyes were hollow, and she had suprasternal and intercostal retractions with her rapid aspirations. She had not eaten or slept in two days. She had not responded to chemotherapy and was being given supportive care only. It was a gallows scene, a cruel mockery of her youth and unfulfilled potential. Her only words to me were, "Let's get this over with."

I retreated with my thoughts to the nurses' station. The patient was tired and needed rest. I could give her rest. I could not give her health, but I could give her rest. I asked the nurse to draw 20 mg of morphine sulfate into a syringe. Enough, I thought, to do the job. I took the syringe into the room and told the two women I was going to give Debbie something that would let her rest and to say good-bye. Debbie looked at the syringe, then laid her head on the pillow with her eyes open, watching what was left of the world. I injected the morphine intravenously and watched to see if my calculations on its effects would be correct. Within seconds her breathing slowed to a normal rate, her eyes closed, and her features softened as she seemed restful at last. The older woman stroked the hair of the now sleep-

ing patient. I waited for the inevitable next effect of the respiratory drive. With clocklike certainty, within four minutes the breathing rate slowed even more, then became irregular, then ceased. The dark-haired woman stood erect and seemed relieved.

It's over, Debbie.<sup>9</sup>

Was the physician's act moral? From the Reform viewpoint, the response is contingent on the answer to one factual question: Did Debbie make a request to the physician that she/he take her life in her statement to her/him, "Let's get this over with"? Since, according to Reform, Debbie has a moral right to take her own life, and the authority to transfer this right to another person, if her statement is understood as a request that the physician terminate her existence, the physician's act constitutes voluntary euthanasia, which is moral. I understand Debbie to have made a request to the physician to take her life, and, therefore, my judgment as a Reform Jew is that the physician acted morally in doing so.

It is clear that the peripheral bioethical issues that have been proliferating are not resolved by the foregoing analysis (such as, for example, the just allocation of the limited supply of organs available for transplantation). Still, it does resolve the fundamental question of bioethics, namely, the morality of those acts that are dependent upon the exercise of personal self-authority.<sup>10</sup> Suicide, attempted suicide, aiding and abetting suicide, and euthanasia are all adjudged to be moral so long as they take place as the choice of the person who wishes her or his life terminated.

What is to be done when a person is incapable of requesting that her or his life be terminated owing to a sudden illness or accident? The only moral way, according to Reform, in which such a person's life can be taken is by testimony from those who are in a position to know that she/he explicitly stated she/he wished to have her/his existence terminated should her/his present state befall her/him, or that they can unequivocally infer from her/his past words, actions, or manner of living that she/he would request termination if she/her were able to do so.

Certainly a prudent Reform Jew who wishes to remove all possible guilt from those who would be required to make a decision on terminating her/his life should she/he be unable to do so, will leave precise written instructions that transfer to them authority over her/his existence to be exercised according to their judgment at such time as her/his instructions designate. It is true that Reform Judaism, in giving a person ultimate authority over her/himself, presents her/him with awesome challenges and responsibilities, but successfully met, they enrich immeasurably the quality of human existence.

## II. Abortion

### A. Definitions

Preliminary to proceeding to an inquiry into the morality of abortion from a Reform Jewish standpoint, the following terms require definition: *fetus*, *abortion*, *person* or *human being*, and *fetus-person*.

*Fetus*: The term *fetus* will refer to all stages of development of the fertilized ovum within a human womb from the moment of conception. This definition of the term *fetus* is most convenient for our purpose here and is widespread in legal and general use. Nevertheless, in order to avoid confusion, it must be pointed out that the several stages of development of the fertilized ovum to which we will refer as “the fetus” are generally divided for scientific purposes into three different groups referred to by the terms *fertilized ovum*, *embryo*, and *fetus*. Although there are some differences in usage to be found among scientific authorities, the three terms usually have the following meanings. The term *fertilized ovum* refers to the single-celled egg at the moment of conception. The term *embryo* refers to the developing fertilized ovum either from the time it becomes multi-cellular (almost immediately) or implanted in the uterus (the tenth day) until the end of the eighth or tenth week after conception. The term *fetus* refers to the developing entity within the human womb from the ninth or 11th week until the time of birth. To repeat, these three developmental phases, referred to in scientific literature as *fertilized ovum*, *embryo*, and *fetus*, will all be referred to here simply by the term *fetus*.

*Abortion*: The term *abortion* will refer to the deliberate act of terminating development of a fetus.

*Person* or *human being*: The terms *person* or *human being* will refer to beings who possess the right to be protected by the state and society so that such beings in the ordinary course of events may not be harmed or killed — except through judicial proceedings by the state — without legal liability and moral culpability.<sup>11</sup>

*Fetus-person*: An entity that is biologically a fetus as defined above, but which is considered a person by some individual or group based on their personal standard of humanness. For those who accept the concept of fetus-person, the fetus-person is a person who, consequently, possesses all the rights of a person.

### B. Reform Judaism and Abortion

This having been said, we can turn to the critical question for Reform Jews regarding abortion, namely, whether the fetus is a

person or a part of the female’s body in which it exists. If the fetus is regarded as a person, then no Reform Jew has the right to participate in an abortion since such an act terminates the existence of the fetus, and, if the fetus is taken as human, such termination is murder. Murder is, of course, prohibited by Reform Judaism as the quintessential violation of the basic principle that every person possesses ultimate ownership of her/his mind and body, and no one, therefore, has a moral right to do to another person that to which the latter does not consent.

We thus arrive at the basic problem that confronts Reform Jews in deciding upon the morality of abortion. Are we able to determine whether a fetus is a human being or a part of the female in which it exists; and, if we can do so, is the standard we use to make this judgment objective or subjective? An objective standard is one that is based upon an empirical or scientific judgment that is generally taken as persuasive to reasonable persons acting in good faith. A subjective standard is one that is based upon a judgment that is personal, such as one’s view of revelation, philosophy, or sentiment.

Since every Reform Jew possesses an ultimate moral right to autonomy, each possesses the authority to determine for her/himself what she/he believes true and valid. This includes the right to decide for her/himself the standard to use in determining if an entity is human. Even so, an objective standard for humanness that is accepted by the generality of humankind would be difficult for a Reformer to deny although she/he would have the right to do so. Indeed, such an objective standard would create a presumption of truth that would place an obligation of reasoned rebuttal upon one who would deny it. This is not the case regarding a subjective standard for humanness. No presumption of truth attaches to a standard that is grounded upon unobjective, non-scientific, personal decisions.

From the testimony of the religious, philosophic, and scientific communities of the world viewed as a whole, it is evident that there is no generally accepted objective standard for determining whether a fetus is a human being or part of the mother in which it exists. There exist only a mélange of subjective standards varying from one religionist to another, from one philosopher to another, and from one scientist to another. Consequently, since there is no objective standard for determining humanness, no impediment exists to deter the Reform Jew from deciding for her/himself whether a fetus is a human being or a part of the female in which it exists.<sup>12</sup> Reform Jews who decide that the fetus is a human being are under a personal obligation not to undergo abortions or perform abortions; Reformers who decide that the fetus is part of

the female in which it exists may undergo or perform (if requested by the pregnant female) abortions as they choose.

It cannot be emphasized too forcefully that any proposed objective standard for determining whether a fetus is a human being or part of a female's body must be one for whose validity the evidence is absolutely compelling. The reason is that the fetus is located within a person's body. According to Reform principles, as stated above, every person owns her/his own body, with the ultimate right, consequently, to determine what that body shall do and experience. This being the case, it is a Reform presumption that whatever exists within the confines of a person's body and is physically connected to it is part of that body, and therefore entirely under the authority of the person whose body it is. If some entity, a person or organization of persons, therefore, wishes to exercise authority over a fetus in a woman's body, the entity must prove convincingly either that the fetus is a person and not part of that body or that it possesses a moral right to authority over the woman's body superior to that of the woman whose body it is. No entity — state, religious institution, or individual — has taken even beginning steps to demonstrate objectively that a fetus is a person or that the entity possesses a moral right to override a woman's authority over her own body.

### *C. Orthodox Judaism, Roman Catholicism, and Abortion*

A comparison of Reform Judaism with Orthodox Judaism in respect to abortion will deepen our understanding of the basic issues involved in this inquiry. The basic difference between them is that Reform and Orthodoxy rest upon two essentially different moral foundations. In Reform, every person possesses self-authority in matters of morality, an ultimate right to make moral judgments for her/himself. In Orthodoxy, every person is subject to divine authority, that is the authority of a theistic God whose moral judgments Orthodoxy claims to know precisely but whose only concrete manifestation lies in the judgments of individual Orthodox rabbis. Accordingly, in Reform, the ultimate right to determine whether an abortion is morally permissible is vested in the woman who undergoes the abortion, whereas in Orthodoxy, the ultimate right to decide the morality of a woman's abortion resides in a rabbi's arbitrary judgment.

Oddly enough, despite the Orthodox position that its rabbis possess divine authority as well as explicit knowledge of God's moral decrees, there is no unanimity of opinion among them regarding abortion. Their many diverse positions support the proposition stated above that in the matter of determining the status of the

fetus and the morality of abortion there are only a variety of subjective standards over which religionists, philosophers, and scientists disagree. In truth, it is fair to say that given the variety of opinions on abortion that one Orthodox authority or another has asserted over the years, just about any woman who chooses to have an abortion could find some Orthodox authority that would sanction her request.

Since, over time, individual Orthodox authorities have spoken with different voices, it is impossible to present any one view on abortion as *the* Orthodox view. Hence we will simply enumerate some of the major positions taken by Orthodox authorities that bear on the question.

The point must first be made that in the Pentateuch (Torah), Orthodoxy's highest authority, nothing is stated about abortion. What laws there are relating to the status of the fetus clearly imply that it is not considered a human being. We can, therefore, reasonably maintain that the Pentateuch's view is that abortion is permissible. In Orthodoxy the authority next highest to the Pentateuch is the Talmud. For the Talmud, like the Pentateuch, a fetus is not a human being; a human being comes into existence only at birth. Accordingly, based on the Talmud, abortion is not a transgression. Despite the fact that the two highest authorities of Orthodoxy provide a sound foundation for the choice of abortion until the time of birth by their clear implication that a fetus is not a person, post-Talmudic rabbis who are accepted as authorities by Orthodoxy, and contemporary Orthodox rabbis, have come to a variety of different decisions regarding the morality of abortion. Among these decisions are the following:

1. *Abortion is prohibited, but does not constitute murder.*
2. *Abortion is permitted if the fetus endangers the mother's life.*
3. *Abortion is permitted even if the fetus does not endanger the mother's life, so long as she is ill and her recuperation will be facilitated by the abortion. Also, abortion is permitted if the pregnancy causes severe emotional or mental disturbance.*
4. *Abortion is permitted if the fetus has been conceived adulterously.*
5. *Abortion is not permissible even though there is a reasonable fear that the fetus has been harmed and the child that results will suffer mental and/or physical defects.<sup>13</sup>*

The variety of mutually exclusive opinions held by Orthodox authorities that the above enumeration displays is convincing evidence of the subjectivity and personal bias that underlies their decisions regarding abortion. The absence of a coherent Orthodox (or Rabbinic) moral theory regarding abortion contrasts sharply with the consistent doctrine put forth by the Reform position.

It is significant that the present position of Roman Catholicism on whether a fetus is a human being differs fundamentally not only from that of Reform Judaism but from those of Orthodox Judaism as well. Interestingly enough, there have been a number of different views even in Roman Catholicism (although, like Orthodox Judaism, Catholicism claims to know the mind of a theistic deity who, we would think, does not over time change his mind).<sup>14</sup> In 1869, however, Pope Sixtus laid down the decree that is today mandated by Canon Law. This is that the soul which makes an entity a human being is bestowed at the moment of conception. The result is that a fetus is a human being immediately upon fertilization, and no abortion, consequently, at any time for whatever reason is permissible; abortion is always unjustifiable homicide.

#### D. Reform's Challenge

Examined closely, the diversity of Orthodox Jewish and Roman Catholic views on abortion only support, to this writer's mind, the correctness of the Reform view that every person possesses ultimate authority to determine for her/himself if abortion is moral, and the right, therefore, to decide personally whether to undergo or perform one. The many different views expressed in Orthodoxy and Roman Catholicism for all practical purposes refute their claim to knowledge of the divine will regarding the morality of abortion. Moreover, the concept of ensoulment at conception upon which Roman Catholicism today relies so heavily requires belief in a view that is a naked assertion which has never been verified in any way. It is a violation of Reform Jewish principles and conscience to usurp a woman's right to self-authority in the matter of abortion; and no governmental decree can be accepted that violates the moral integrity and religious practices of Reform Jews.<sup>15</sup> No impulse in humans is a greater evil than the rage to exercise authority over others by imposing one's own ideology and morality upon them. It is this demonic lust with which Reform Jews are confronted, and which must be challenged and opposed as Jews have so often done in their long and anguished but heroic history.

#### NOTES

<sup>1</sup> Also implicit is a challenge to those who would deny that Reform Judaism is a polydoxy. What would they put forth as the fundamental principle(s) of Reform Judaism on the basis of which moral decisions can be made regarding

bioethical issues and abortion? A Reform Judaism that can neither be defined nor provide moral principles is empty and without meaning or value. For a comprehensive presentation of the nature of Reform Judaism, see A.J. Reines, *Polydoxy: Explorations in a Philosophy of Liberal Religion* (Buffalo, NY: Prometheus Books, 1987), pp. 13-28.

<sup>2</sup> This is the general rule, but circumstances can make application of the rule somewhat complex. For example, a Reform Jew has the moral right to take whatever action is necessary to defend her/his autonomy from someone who attempts to violate it. The violator, therefore, by her/his wrongful action has lost the right to autonomy to the degree necessary to prevent wrongful behavior toward others.

<sup>3</sup> The Bible and Talmud do not prohibit suicide. The view of Orthodox Judaism on suicide is post-Talmudic. Even so, Orthodox Jews find biblical justification for their view by interpreting biblical verses according to their own distinctive and non-critical exegesis (which to a Reform Jewish scholar is eisegesis).

<sup>4</sup> Under exceptional circumstances, such as to escape forced baptism, many, but not all, Orthodox authorities would excuse suicide.

<sup>5</sup> *The Catholic Encyclopedia*, vol. XIV, p. 326.

<sup>6</sup> *New Catholic Encyclopedia*, vol. 5, p. 639.

<sup>7</sup> *Black's Law Dictionary* (3rd edition), St. Paul, 1933, p. 368.

<sup>8</sup> There has been an effort underway in California to legalize assisting a suicide. Legislation proposing legalization was placed on the ballot, but narrowly defeated. There are plans to reintroduce the legislation. The English Suicide Act of 1961 legalized suicide but made aiding and abetting suicide a criminal offense.

<sup>9</sup> *Journal of the American Medical Association*, April 8, 1988, vol. 259 (part 14), pp. 2094-2098; cf. T.M. Healey, "It's Over, Debbie," *Connecticut Medicine*, June 1988. This letter received widespread attention in the press. The State's Attorney of Cook County, Illinois, wished to bring murder or manslaughter charges against the physician who ostensibly wrote the letter. The American Medical Association refused to reveal her/his identity, so legal proceedings were dropped. There has been speculation that the letter was fictitious. Whether this is so is irrelevant. The letter provides an excellent illustration of the problem of voluntary euthanasia. That JAMA chose to publish the letter reveals the depth of the problem.

<sup>10</sup> The fundamental moral problems of biological research are also resolved by the principle that every person possesses an ultimate right to self-authority. Hence no biological research that affects other persons can be carried out without the consent of those persons. (The consent must, of course, be "informed consent"; genuine consent cannot be given by a person who does not know what she/he is consenting to.) Although the moral problem of biological research is thus resolved, still the factual problems can present great difficulties. For example, different scientists can in good faith be sharply divided over whether a particular instance of research will affect other persons. Factual disagreements, consequently, present difficulties that moral principles cannot resolve. Thus, two scientists can agree that persons possess self-authority, and that one may not do anything to another person

without the latter's consent. Yet, if one claims that a certain act of biological research will not affect other persons, and the other disagrees, they will behave in opposite ways despite their agreement on the general principles of moral behavior. Much of the confusion that surrounds the morality of biological research stems from the failure to distinguish between questions of moral principles and questions of fact.

<sup>11</sup> An extraordinary event would be killing a person in self-defense, which would constitute "excusable homicide."

<sup>12</sup> For example, a Reform Jew may decide that birth is the criterion that distinguishes a person from a fetus. Accordingly, this Reformer could undergo or perform an abortion up to the time of birth. Another Reform Jew may decide viability distinguishes a person from a fetus. Such a Reformer would consider a fetus that is viable to be a fetus-person, and no abortion could then be undergone or performed. But when does a fetus become viable? Even here there is no firm answer. In *Roe vs. Wade*, Justice H. Blackmun's majority opinion observed that viability was around 28 weeks after conception, although it could occur even at 24 weeks. (To summarize *Roe vs. Wade*: during the first trimester, whether to undergo an abortion is solely the decision of the mother; from then until the point of viability, a state can regulate abortion only to advance the mother's health; from viability on, a state can restrict or prohibit abortion.) Today, however, 90 percent of those born at 28 weeks survive, and approximately 10 percent survive at 24 weeks. There is general medical agreement that viability will never drop below 23 or 24 weeks. Gordon Avery, head of neonatology at Children's Hospital in Washington, D.C., states that one-third of the survivors born at 26 weeks will have significant handicaps, and that over their lifetime, many or most of the others born at 26 weeks "will be a burden to their families, to society, and often to themselves" (*Wall Street Journal*, June 28, 1989, p. A16). It is evident, then, that with respect to any given fetus, a decision regarding the point of viability from 24-28 weeks, no matter how well-advised, will be arbitrary and subjective. Ultimately, this is not a moral problem for a Reform Jew, who has an absolute right to determine when or whether a fetus becomes a person — a right that terminates at birth. Still, someone who wishes to apply strictly a criterion of viability for personhood will, from 24 to 28 weeks, be unable to do so owing to the uncertainty of the point of viability.

<sup>13</sup> For a summary and bibliography of the views of Orthodox authorities on abortion see *Encyclopedia Judaica*, vol. 2, pp. 98-102.

<sup>14</sup> In point of fact, Roman Catholics, until relatively recent times, followed the teaching of Aristotle who maintained this position: at conception, a fetus was endowed with a vegetative soul, then several days later received an animal soul, and (the Peripatetics said) only on the 40th day (if a male) and the 80th day (if a female) was endowed with a rational soul. It was the last, rational ensoulment, that made the fetus into a fetus-person. Accordingly, for those Catholics who followed Aristotle's teaching before the decree of Pope Sixtus in 1869, abortion was permissible before its 40th or 80th day (depending upon sex) since the fetus could not at that time have become a fetus-person. Cf. *The Catholic Encyclopedia*, vol. 1, pp. 46f.

<sup>15</sup> It is not only the recent decision of the Supreme Court (*Webster vs. Reproductive Health Services Corp.*) affirming the right of the state of Missouri (and of all other states) to curtail sharply the right of women to abortion (granted them by *Roe vs. Wade*) that must be opposed, but the abortion laws of the State of Israel. Abortion and attempted abortion are prohibited by the Criminal Law Ordinance of 1936 (which was amended in 1966 to exclude self-abortion). The Israeli law is based on English law, not the Torah, and is contrary to the freedom a Reform Jew requires of a political democracy.