

Abortion

by: Rabbi Jeremy Rosen

New York's Reproductive Health Act was [signed](#) into law by Democratic Gov. Andrew Cuomo on Jan.

22, to a standing ovation and acclaim by State Legislators. This new law allows abortion on the basis of "reasonable and good faith professional judgment based on the facts of the patient's case" – "the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health."

The law allows women to have an abortion up to 24 weeks without question. After 24 weeks, such decisions must be made with a determination that there is an "absence of fetal viability" or that the procedure is "necessary to protect the patient's life or health." That determination must be made by a "health care practitioner licensed, certified, or authorized" under state law "acting within his or her lawful scope of practice." New York's new law does not explicitly define "health."

The context was, and is, a fear that a conservative Supreme Court might revoke or limit the famous Roe v. Wade decision to allow abortions. Although there is no chance of that decision being overturned, and most supreme Judges have said they do not intend to, the headlong rush to remove as many restrictions as possible is seen as a crucial plank in the Democratic, left wing and secular electorate.

I agree with the idea of minimum state interference in private lives and choices. I believe people have the right to make their own decisions regardless of sex or inclination. With sadness, I recognize there can be valid reasons for abortions that I do not always consider to be ethically wrong under Jewish Law. However, I do not agree that one can have an abortion on demand and right up until birth simply because the mother might not feel well or for trivial reasons and of course that depends entirely on subjective judgments. And if that is an exaggerated description of the new situation in

New York and similar states, the fact is that this is what the new law allows in practice.

And now to Jewish Law and Ethics. According to the Talmud, the fetus is recognized as such only after 40 days from conception. Before that, it is regarded as liquid and has no legal status. Interestingly, the child's heartbeat can be detected around that time. Therefore, any act to end pregnancy during that period does not offend Jewish Law. After that time, only the threat to the life of the mother allows for an abortion on the grounds of self-defense. The fetus counts as a limb of the mother which may be removed to save her. Once most of the body has emerged, the fetus has the same status as any other human being.

In recent years many rabbis have allowed abortions of fetuses which are unviable (they would not be able to survive unaided outside the womb). Some have also allowed abortions where the mental state of the mother is so severe that carrying to full term might endanger her mental stability. As is clear, therefore, 24 weeks or later for abortion of choice contravenes Jewish Law.

All the New York Law now requires is that a single medically qualified individual agrees and then one can abort all the way up to full term.

There is a surprising anomaly in Jewish Law. On abortion, Jewish law is much more open and flexible than many other religions and ideologies. But according to the Talmud, all non-Jews have a moral obligation to abide by the Seven Commandments given to Noah. One of them is not to murder. Jewish Law interprets infanticide as murder. But whereas Torah law is relatively lenient for Jews, it is much stricter for non-Jews where any kind of abortion is forbidden except in cases of the mother's actual life being in danger. Why is it stricter for non-Jews?

The reason most often given is that, as morally advanced societies are expected to have a heightened sense of the sanctity of life, pagan societies routinely were guilty of infanticide and had less regard for human life. They needed more limitations, safeguards and protections- not fewer.

I used to find this offensive to the many non-Jews I knew who had a very highly developed sense of morality (obviously not those who condoned, and still condone, anti-Semitism and Nazi atrocities). But now I wonder if I was wrong. It seems that today's dominant view is to not care very much at all about what happens to unborn children. Many apparently moral men and women are prepared to condone cutting a living organism out of a mother's womb in the name of intersectionality and political correctness. Although opponents of abortion often exaggerate and go too far the other way, there is enough evidence of babies born viable and left to die, if not actually murdered, to make me wonder what kind of morality the Western World subscribes to.

There is a fascinating debate in the Talmud in Sanhedrin between Antoninus and Rebi Yehudah the Prince (the Head of the Jewish community some eighteen hundred years ago in the Land of Israel). We don't know whether Antoninus was a real Roman or a symbolic one. Some say he was Marcus Aurelius who was that rare phenomenon of a sensitive and wise emperor. Others say he is a Roman spokesman for Christianity. Either way, they actually consorted and debated in a civilized manner.

The question is: when does the soul enter the human body? Antoninus says at conception. Rebi Yehuda Hanassi says only when the fetus is fully formed. It looks like this was as relevant then as now. Antoninus was the representative of all that was morally good and caring in the non-Jewish world. In this debate, it is the Jewish spokesman who is more in tune with our modern thinking while representing a traditional Jewish perspective.

I was educated to think that we tend to become more civilized over time. Not necessarily so. The abortion issue in the USA today illustrates everything the religious right claims – that society has gone mad and lost its moral bearings.