

# **HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY**

## **172 - MULTIFETAL REDUCTION OU ISRAEL CENTER - SUMMER 2020**

- In previous shiurim we looked at the halachic and hashkafic issues surrounding abortion<sup>1</sup>. The main focus in those shiurim was the halachic status of a developing fetus and the possible grounds for termination during pregnancy<sup>2</sup>.
- In this shiur we will focus on the issue of multifetal reduction - where the core issue is often not the health of the mother, but whether one can/must terminate fetuses in order to enable the other fetuses to survive.
- Is it permissible to abort some of the fetuses in a multiple gestation so that the others stand a reasonable chance of living? If so, how should we choose which ones to abort?
- It is important to remember that, unlike a standard case of abortion, where the question is often saving the life or health of the mother, or terminating a severely ill fetus, here neither of these factors need apply. One may be seeking to terminate a perfectly healthy fetus to increase the chance of another fetus surviving.<sup>3</sup>

### **A] MEDICAL BACKGROUND<sup>4</sup>**

- Normally, a woman produces one mature ovum per month and fertilization usually results in the growth of one fetus. Under natural circumstances, multiple pregnancies are rare<sup>5</sup>.
- However, over the last 50<sup>6</sup> years, with the rise of fertility treatments, it is common for a woman to take ovulatory drugs which cause hyperovulation - production of multiple mature ova. These multiple eggs may be allowed to proceed naturally through the fallopian tubes to be fertilized or they may be extracted and used for in vitro fertilization. In the former case, a multiple pregnancy may occur without other intervention. In the latter, a decision must be made as to how many eggs to implant following the IVF procedure.
- Because of the high cost of treatment and the historically low success rate of such treatments (although this is constantly improving), a decision is often made to implant several fertilized eggs. The expectation is that only a few of the eggs will result in a viable pregnancy and that, hopefully, at most one or two children will be born.
- Occasionally, however, an undesired result of the treatment is that a woman can become pregnant with multiple (sometimes up to seven) fetuses. Such multiple gestations bring significantly increased risk<sup>7</sup> for many types of complications<sup>8</sup>, including gestational diabetes, premature delivery, eclampsia (severe high blood pressure and seizures), birth defects and long-term disability. These women are often also required to spend much of the pregnancy in bed to minimize the risk of complications, which increases with every extra fetus.
- In addition to risk to the mother, multiple gestation also brings an increased risk of miscarriage, ending the lives of all of the fetuses.
- As a result, physicians normally recommend selectively aborting some of the fetuses - multifetal pregnancy reduction (MPR) - to reduce the pregnancy to twins or triplets at most. In the wider medical world, MPR is common with triplets and usually recommended for quadruplets. It is not uncommon for it to be suggested even for twins<sup>9</sup>.
- MPR is normally performed between 9 and 15 weeks of gestation.

1. Shiurim 57 and 58, in summer 2017. These source sheets can be downloaded at:  
<http://rabbimanning.com/wp-content/uploads/2017/08/Abortion-Part-1.pdf> and <http://rabbimanning.com/wp-content/uploads/2017/08/Abortion-Part-2.pdf>  
 The audio shiurim can be found at:  
<http://rabbimanning.com/wp-content/uploads/2017/08/Abortion-Part-1.mp3> and <http://rabbimanning.com/wp-content/uploads/2017/08/Abortion-Part-2.mp3>

2. This included a discussion of danger to the mother's life, danger to her physical and mental health, deformed or sick fetuses, cases of rape, the abortion of a mamzer fetus and others.

3. The Committee on Ethics of the American College of Obstetrics and Gynecology points out this distinction between multifetal pregnancy reduction and selective termination of an abnormal fetus: "[I]nsofar as the intention of selective termination is different from that of other multifetal reductions, its ethical rationale is importantly distinctive. That is, the intention in selective termination is to avoid having a child with a known medical problem, whereas the intention in multifetal reduction is to prevent problems that are secondary to multifetal gestation and premature birth." *Multifetal pregnancy reduction and selective fetal termination. Opinion Number 94, April 1991*

4. See Dr Daniel Eisenberg at <https://www.jewishmedicalethics.com/> and <https://www.aish.com/ci/sam/48949016.html>. Some of the material in this source sheet was taken from his medical and halachic analysis.

5. Without fertility treatment, the likelihood of multiple births is roughly as follows:  
 Sibling Twins - 1 in 83; Identical Twins - 1 in 250; Sibling Triplets - 1 in 7,000; Identical Triplets - 1 in 62,500; Sibling Quadruplets - 1 in 572,000; Identical Quadruplets - 1 in 15,625,000; Sibling Quintuplets - 1 in 47,000,000. Identical Quintuplets - 1 in 3.9 billion.  
 See [https://en.wikipedia.org/wiki/Multiple\\_birth](https://en.wikipedia.org/wiki/Multiple_birth) and <https://www.raisingmultiples.org/faqs/faq-what-are-the-odds-of-having-a-multiple-birth/>

6. The first IVF baby was born on July 25 1978.

7. For a more detailed list of the risks involved see <http://nleresources.com/wp-content/uploads/2019/06/Appendix-C-Multifetal-pregnancy-risks-and-outcomes-of-reduction.docx>

8. Additionally, women receiving this type of treatment are often older, which brings added complications.

9. In the absence of severe medical complications, the poskim would not normally consider MPR for twins, or often even for triplets.

**B] OTHER RELIGIOUS POSITIONS**

1. The Pontifical Council for the Family, having been invited to express its position on so-called "fetal reduction," after consulting with the Congregation for the Doctrine of the Faith, publishes the following Declaration.  
.... every embryo must be considered and treated as a human person in respect of his or her eminent dignity (Cong. Doct. Faith, Inst. Donum Vitae, I, 1), from the first moment of conception the unborn must be accorded fundamental human rights, and above all, the right to life, which cannot be violated in any way. .... we must therefore affirm that "fetal reduction" is the same as selective abortion. It consists precisely in the direct and willful elimination of an innocent human being (John Paul II, Enc. Evangelium Vitae, 57). It therefore, whether willed as an end or only utilized as a means, always constitutes a grave moral disorder (John Paul II, Enc. Evangelium Vitae, 62). .... Fetal reduction, as it is the willful elimination of a human life, cannot be justified .... on the basis of the principle of the so-called "lesser evil" .... [From the Vatican, July 12, 2000]

<https://www.catholicculture.org/culture/library/view.cfm?recnum=2887>

- The Protestant position depends on sect, but is normally more permissive.
- The Islamic position is more complex and fetal reduction will sometimes be permitted.<sup>10</sup>
- In many cases, other faith leaders will advise couples to avoid multiple implantations, or to try and carry the multiple fetuses to term.

**C] THE STATUS OF A FETUS IN HALACHA****C1] THE FETUS IN CHUMASH**

2. וְכִי יִנָּצוּ אֲנָשִׁים וְנָגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יָלְדֶיהָ וְלֹא יִהְיֶה אֶסוֹן עָנֹשׁ יִעָנֵשׁ (רש"י - לשלם דמי ולדות לזעל) פֶּאֶשֶׁר יָשִׁית עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בְּפִלְלִים: וְאִם אֶסוֹן יִהְיֶה (רש"י - זלזול) וְנִתְּנָה נֶפֶשׁ תַּחַת נֶפֶשׁ

שמות כא:כב, כג

*The fetus is directly referred to in the Torah in the context of accidental physical injury to a pregnant woman, causing her to lose her baby. The Chumash distinguishes between a case where there is of 'ason' (death) and where there is no 'ason'. In the case of 'ason', which certainly includes where the woman dies<sup>11</sup> from the injury, this will be treated as a case of homicide. However, for the killing of the unborn child, the Torah refers to a 'punishment'.*

3. עֲנוֹשׁ יִעָנֵשׁ - מִמּוֹן. אֵתָהּ אוֹמֵר מִמּוֹן, אוֹ אֵינוֹ אֵלָא מִיִּתָּהּ? הֲרֵי אֵתָהּ דָן - נֹאמֵר כֹּאן עֲנוֹשׁ וְנֹאמֵר לֵהֲלֹן (דברים כב:ט) וְעָנֵשׁוּ אֹתוֹ. מֵה לֵהֲלֹן מִמּוֹן, אִף כֹּאן מִמּוֹן

מכילתא דרבי ישמעאל משפטים - מס' דניקין פרשה ח

*Chazal explain that the punishment is financial compensation, payable to to parent of the unborn child<sup>12</sup>. It is clear therefore that the killing of the unborn child, in this context at least, is not considered homicide.*

4. Now if two men fight and strike a pregnant woman and her child comes forth not fully formed, he shall be punished with a fine. According as the husband of the woman might impose, he shall pay with judicial assessment. But if it is fully formed, he shall pay life for life.

Septuagint, Shemot 21:22-23 (NETS translation<sup>13</sup>)

5. (108) But if any one has a contest with a woman who is pregnant, and strike her a blow on her belly, and she miscarries, if the child which was conceived within her is still unfashioned and unformed, he shall be punished by a fine... But if the child which was conceived had assumed a distinct Shape in all its parts, having received all its proper connective and distinctive qualities, he shall die; (109) for such a creature as that is a man ... requiring nothing more than to be released and sent out into the world.

Philo, Special Laws III

*Fascinatingly, the non halachic Second Temple position<sup>14</sup> on this draws a distinction between a fully formed fetus<sup>15</sup> and earlier stages gestation.*

10. Abortion to save the mother is permitted in Islam. Abortion for other reasons is usually prohibited, especially after 16 weeks. See *Permissibility of Multifetal Pregnancy Reduction from The Shiite Point of View*, Atefeh Zabih Bidgoli, M.D and Faezeh Azimzadeh Ardbilii, Ph.D at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5134754/>

11. This is the Rabbinic understanding of אֶסוֹן - as referring to the life of the mother. However, the Septuagint and Hellenist Jewish tradition take a different position - see below.

12. See Rashi on this verse.

13. See <http://ccat.sas.upenn.edu/nets/edition/> for full resources.

14. There is a large literature on the relationship between Hellenist Second Temple interpretation and that of Chazal, which formed the corpus of halacha. There is also considerable debate as to the extent to which early Christian positions developed from the Hellenist Jewish position.

15. A human fetus looks like a person from around 10 weeks gestation and is fully formed by around 20 weeks.

C2] IS ABORTION MURDER?

6. מִכָּה אִישׁ וְמוֹת מוֹת יוֹמָת

שמות כא:ב

*The prohibition of murder in the Torah, which attracts the death penalty, refers to striking an 'ish'.*

7. **מכה איש**. אין לי אלא שהכה את האיש. הכה את האשה ואת הקטן מנין? ת"ל (ויקרא כד:יז) **וְאִישׁ כִּי יַכֶּה כָּל-נֶפֶשׁ אָדָם [מוֹת יוֹמָת]** להביא את שהכה את האשה ואת הקטן ... שומעני אף בן שמונה במשמעו? ת"ל 'מכה איש'. מגיד שאינו חייב עד שיהרוג בן קיימא.

מכילתא דרבי ישמעאל משפטים - מס' דנויקין פרשה ד ד"ה מכה איש

*Whilst 'ish' here DOES include women and children, Chazal explain that it specifically excludes from the death penalty the killing of a fetus. This does NOT however mean that it is not murder<sup>16</sup>, since some murder is technically exempted from the death penalty. It certainly does not suggest that it is permitted!*

8. תנוק בן יום אחד ... וההורגו חייב ...

משנה נדה ה:ג

*The killing of a baby, even at one day old, is full-blown murder which is liable to the death penalty<sup>17</sup>.*

9. בן נח נהרג ... משום רבי ישמעאל אמרו: אף על העוברין. ... מאי טעמיה דרבי ישמעאל? - דכתיב (בראשית ט:ו) **שֹׁפֵךְ דַּם הָאָדָם כְּדַם הָאָדָם** כי נפשו יפוך כי בצלם אלקים עשה את האדם. איזהו אדם שהוא באדם<sup>18</sup> - הוי אומר זה עובר שבמעי אמו.

סנהדרין נ:

*Chazal learned that, in the 7 Noachide laws, the prohibition of murder for non-Jews does include killing a fetus.*

10. בן נח שהרג נפש אפילו עובר במעי אמו נהרג עליו

רמב"ם הלכות מלכים פרק ט הלכה ד

*The Rambam rules this as the halacha - a non-Jew who kills a fetus is a murderer and is subject to the death penalty.*

11. הנה בדבר הריגת עובר במעי אמו בישראל מפורש בתוס' סנהדרין (נט. ד"ה ליכא) דאסור בפשיטות באיסור רציחה. משום דליכא מידעם דלישראל שרי ולעכו"ם אסור. וכל כך פשיטא להו דהוא אסור ובאיסור רציחה ...

שר"ת אגרות משה חלק חו"מ ב סימן סט

*The position of R. Moshe Feinstein<sup>19</sup> is that it is ALSO murder for a Jew to kill a fetus. He bases this on Tosafot who raise the talmudic concept of 'leica midi' - since the Jewish people were elevated at Har Sinai to a higher level of kedusha than the nations of the world, it cannot be that something which is forbidden to a non-Jew could be permitted to a Jew! Since it is considered murder for a non-Jew to kill a fetus, it MUST also be prohibited as murder for a Jew.*C3] ONE LIFE VS ANOTHER - FETUS VS MOTHER

12. האשה שהיא מקשה לילד - מחתכין את הולד במעיה ומוציאין אותו אברים אברים, מפני שחיה קודמין לחייו. יצא רובו - אין נוגעין בו שאין דוחין נפש מפני נפש

משנה מסכת אהלות פרק ז משנה ו

*The principal halachic source dealing with abortion for medical reasons is a Mishna in Ohalot. This states that a fetus must be killed in order to save the life of the mother. However, (in a breach birth) once the majority of the new-born has emerged from the mother at birth, it may no longer be killed to save the mother since 'one life cannot be taken to save another'. In a normal delivery, once the majority of the head has emerged, the baby may not be harmed. This is ruled in halacha and abortion is always mandated in order to save the life of the mother.*

- But if abortion is murder, how can a fetus be killed to save the life of the mother. Surely one may not take one life to save another!?

16. Indeed the Mizrahi on this verse understands the crime to be murder.

17. Again, this does not indicate that termination of a fetus is NOT murder, simply that it is exempt from the death penalty.

18. The Netziv comments that a fetus is not normally classified as an 'adam' (eg for tzara'at) but this case of 'adam b'adam' IS a reference to a fetus.

19. This is also the position of other recent poskim, including R. Chaim Ozer Grodzinsky. For more details, see my shiurim on Abortion referred to above.

13. ... דכל זמן שלא ילא לאויר העולם לאו נפש הוא וניתן להורגו ולהליל את אמו. אבל ילא ראשו – אין נוגעים בו להורגו, דכוח ליה כילוד. ואין דוחין נפש מפני נפש

רש"י סנהדרין עב: ד"ה יצא

Rashi understands that the permission to kill a fetus where the life of the mother is threatened, is based on the fact that, before birth, the fetus is not defined as a 'nefesh' - a living being<sup>20</sup> - and so can be killed to save a living person. Once the baby has emerged, however, it IS considered to be a living being and thus cannot be killed to save another person.

14. ורוצח גופיה מנא לן? סברא היא. דההוא דאתא לקמיה דרבה, אמר ליה: אמר לי מרי דוראי: קטליה לפלניא, ואי לא קטילנא לך. אמר ליה: נקטלך ולא תקטול. מאי חזית דדמא דידך סומק טפי? דילמא דמא דההוא גברא סומק טפי.

יומא פב:

Chazal state that a person may not murder to save their own life. Who can say that one life is more valuable than the other? Even if we categorize abortion as murder, it seem clear from the Mishna in Ohalot (above) that we DO kill a fetus to save a mother. As such the status of the fetus is of a lower level of 'life' than someone already born.<sup>21</sup>

• However, on this basis, how could we justify killing one fetus to save another<sup>22</sup>. Even if a fetus is a 'lesser' form of life than the mother, it is an equivalent to another fetus. How would one chose between them - ואין דוחין נפש מפני נפש.<sup>23</sup>

#### C4] THE FETUS AS A 'RODEF'

15. יצא ראשו אין נוגעין בו, לפי שאין דוחין נפש מפני נפש. ואמאי? רודף הוא! - שאני התם, דמשמיא קא רדפי לה

סנהדרין עב:

The Gemara asks why one is not allowed to kill a child even AFTER it begins to emerge from the mother, since the child is threatening the life of the mother. This permission would be on the basis of the halachic concept of 'rodef' - a pursuer. One is obligated to kill a pursuer who is threatening the life of another person. Why not then kill the partially-born baby? The Gemara answers that this is not a true case of a rodef. Since the baby is a natural cause of danger, it is as if the mother were being pursued 'by heaven' and we may not intervene by killing the baby.

• Note that the 'lower-grade' status of rodef is not because the fetus is innocent (as argued by Catholicism) but because it is natural. According to many poskim<sup>24</sup>, an innocent rodef would still be a rodef - eg if A is about to shoot B, mistakenly thinking he is an animal, one is justified in killing A if there is no other way to stop him.

16. הרי זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך הורו חכמים שהעובר שהיא מקשה לילד מותר לחתוך העובר במיעיה בין בסם בין ביד מפני שהוא כרודף אחריה להורגה. ואם משהוציא ראשו, אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם.

רמב"ם הלכות רוצח ושמירת הנפש פרק א הלכה ט

Although we saw above that Rashi explains the justification for aborting a fetus to save the mother since the fetus is not a 'nefesh', the Rambam does not take the same position. Rather, he explains that the fetus is like a rodef<sup>25</sup> and we can kill it until it emerges from the womb.

• The problem is that this line of argument appears to be rejected by the gemara!! Is the heter to kill a fetus based on the fetus not being 'alive', or it being a 'pursuer' (which implies that the fetus is alive/a 'person')?

20. This has other broader implications, such as for the laws of inheritance.

21. One suggestion made by the Minchat Chinuch (296:24) is that we would normally NOT weigh life against other life since, normally, we cannot judge between one life and another. But maybe in the case of a fetus we can. Although a fetus may be alive to a significant degree, even to the point that it could be murder to kill it according to some poskim, we can still say that the life of the fetus is 'less' than the life of the mother.

22. This may also depend on the logic behind the sevara of 'mei chazit'. One approach (by Talmidei Rabbeinu Yona Avoda Zara 28b s.v. *dilma*) is that, since we do not know which life is more valuable, a person may not be the one to decide who will live and who will die. But if the king said to A 'kill B or I will kill you both', he would be permitted to kill him. So too, in the case of the fetuses, all the fetus will die if there is no intervention, the logic of mei chazit may not apply.

23. One might argue, based on the Rashi above, that a fetus is not a nefesh at all. As such, the principle of נפש מפני נפש may simply not apply. If so, one would need to look to other considerations as to whether termination is possible and, if so, how to chose which embryo to terminate.

24. This is the position of the Chazon Ish (Sanhedrin 25) and R. Moshe Feinstein (Igrot Moshe CM 2:71). The position of the Minchat Chinuch (Mitzva 296) is however that the halachic status of rodef only applies to an intentional pursuer. He understands this gemara to mean that the baby is not classified as a rodef since it is unaware of its actions. Rav Moshe understands that the baby is not a rodef since Heaven put the baby there so that both would live, and now circumstances have determined that both baby and mother are threatening each other and it is impossible to say which is pursuing which (see also Yerushalmi Shabbat 14:4). As such, it is impossible to know which one to kill. Applying this logic to MPR could indicate that, whilst there are many grounds to permit MPR when the life of the mother is threatened. But if the mother's life is not endangered but the fetus simply threaten each other's wellbeing, each is a rodef to the other and one would not be permitted to chose between them. For more details on these sources see <http://nleresources.com/multifetal-pregnancy-reduction-in-halacha/#.XuyjTGzZPY>

25. Note that Rambam says 'kerodef' - the baby is not a true rodef in the halachic sense, but akin to one and has a status of a quasi-rodef.

- One resolution is that the Rambam effectively needs both criteria to be satisfied before the fetus may be killed:- (i) the fetus must be pre-'nefesh'; and (ii) must also be a pursuer<sup>26</sup> (or at least a quasi-pursuer).<sup>27</sup>
- Another resolution is that there are three stages for the Rambam. (i) Before fetal engagement (where the widest part of the baby's presenting part (usually the head) enters the pelvic brim), the fetus is simply a 'part of the mother' and abortion is permitted to save the mother on the grounds that the fetus is not 'alive'; (ii) After fetal engagement, but before birth, the fetus has ceased to be part of the mother and killing it to save the mother is permitted on the joint grounds that the fetus is not yet alive and is a quasi-pursuer. (iii) After partial emergence, the baby IS considered alive and the weak ground of quasi-pursuer alone is not enough to permit an abortion, even to save the mother.
- In any event, if a fetus could be classified as *rodef* where it is threatening the life of the mother, it could perhaps also be classified as a *rodef* where it is threatening the life of another fetus. This would justify its termination. The problem will be deciding which fetus is the rodef and which is the victim. In the halachic rubric of *rodef*, if BOTH parties are pursuing each other - eg in the case of an armed duel<sup>28</sup> - one would not be permitted to intervene.
- On this basis, although Rav Moshe Feinstein did not specifically write on the question of MPR, it is possible<sup>29</sup> that he would have ruled that a fetus which endangers another fetus may not be terminated, unless there is also danger to the life of the mother.

## C5] THE LESSER STATUS OF A 'PREEMBRYO'

- There is considerable discussion<sup>30</sup> as to the halachic status of a preembryo - ie a fertilized egg stored in a lab prior to implantation in the mother. As we saw in source 9 above, the full status of fetus is predicated on it being an 'adam shebeadam' - a person inside a person<sup>31</sup>. As such an preembryo would have a lesser status<sup>32</sup>.
- However, this will not help in the case of multifetal reduction since the fetuses are already implanted.

## D] OTHER HALACHIC PERSPECTIVES ON THE PROHIBITION OF ABORTION

- All poskim regard abortion as halachically prohibited in a most situations. However, there is considerable disagreement as to the nature of this prohibition. We have seen above that one line of thought considers feticide as akin to murder, albeit without a capital penalty in the case of a Jew carrying out the termination.
- The vast majority of poskim take the view that abortion is prohibited as a Torah law. Although many poskim do NOT consider it to be murder, they would classify it as one or more of the following:
  - the prohibition of *hashchatat zera* - destruction of seed - in that it wastefully destroys that which could potentially become viable life.
  - an unjustified act of *chavala* - unlawful wounding, whether of the mother or of the fetus.
  - a breach of the Torah mitzvot to protect and preserve life and well-being - derived from *lo ta'amod al dam rayecha* and/or *hashavat aveida*.
- A minority of poskim take the view that abortion is a rabbinic prohibition<sup>33</sup>.
- Clearly the seriousness of the prohibition will determine the conditions under which that prohibition can be set aside. Whilst quasi-murder cannot be sanctioned under any circumstances (except to save the life of the mother), other kinds of prohibition may be set aside in a broader range of situations (relating to the physical and mental health of the mother, the condition of the fetus etc).<sup>34</sup>

26. Based on this understanding, some poskim make a distinction between a pregnancy which directly threatens the mother's life, where abortion would be allowed, and a situation where the pregnancy exacerbates an existing condition in the mother (e.g. organ failure) where it is less easy to permit the abortion. We do not invoke the heter of *rodef* where the risk is indirect. For example, if A is in line to take the last dose of life-saving medicine and B, who is standing behind him, will therefore die, A is not considered a *rodef* who can be killed to save B!

27. Another implication to the *rodef* analysis is the situation where the baby MAY be a threat to the life of the mother. A *rodef* must be killed preemptively only if there is a clear and present danger. As such, if the baby may, or may not, threaten the life of the mother - and one would have to determine the relevant statistical cut off - the *rodef* principle will not apply to the fetus. On the other hand, if the principal operative factor is that the fetus is not 'alive' and terminating the fetus is not murder, just as we mandate breaking almost every Torah prohibition even if there is a small likelihood of danger to life, so too here we will permit termination of the fetus.

28. Or, as we saw in the analysis of Rav Moshe Feinstein in the case of the mother and the baby who is already halachically 'born', but not yet emerged fully from the mother.

29. He may of course have accepted one of the other arguments we have seen to permit MPR.

30. See *The Preembryo in Halacha*, R. Yitzchak Breitowitz - <https://www.jlaw.com/Articles/preemb.html>

31. A preembryo may also refer to a fertilized embryo inside the mother, which has not yet implanted in the uterus. This will be relevant in questions concerning the 'morning after pill', which can work by preventing implantation. (It can also prevent ovulation or fertilization, which is relevant in the halachic considerations). Such a preembryo may more clearly be defined as a 'person within a person'. See my shiur (#58) on Abortion for more details.

32. Its destruction would however be not be sanctioned in all circumstances since it is still a potential life - see below. Even the needless destruction of sperm (a lesser degree of potential life than a preembryo) is prohibited in halacha. Clearly, much will depend on the definition of 'needless' and the specific circumstances that demand the destruction of the sperm or preembryo.

33. Perhaps a Rabbinic *gezeira* since it is akin to murder.

34. For more on this see my shiurim on abortion and the article by R. Breitowitz mentioned in the footnotes above.

**E] APPROACHES TO PERMIT MULTIFETAL REDUCTION IN HALACHA****E1] THE FETUS BEFORE 40 DAYS**

17. מתני'. המפלת ליום מ' - אינה חוששת לולד, ליום מ"א - תשב לזכר ולנקבה ולנדה

נדה ל.

*The Mishna in Nidda states that a miscarriage before day 40 of gestation does not cause tumat yoledet.*

18. אמר רב חסדא: ... עד ארבעים מיה בעלמא היא

יבמות סט.

*Chazal explain<sup>35</sup> that, until 40 days gestation, the embryo is considered halachically as mere 'bodily fluids' of the mother. This is ruled in halacha<sup>36</sup>.*

- According to most poskim, there would still be at least a Rabbinic prohibition in terminating a pre-day 40 embryo<sup>37</sup>. Nevertheless, there will be many more circumstances<sup>38</sup> in which one could halachically justify terminating such a fetus (especially if weak or diseased) to enable the others to live.
- In practice, fetal reduction is often done between 9 and 15 weeks gestation - well after the 40 day cut-off.

**E2] THE NEEDS OF THE MANY vs THE NEEDS OF THE ONE**

19. סיעה של בני אדם שאמרו להם גוים תנו לנו אחד מכם ונהרגהו ואם לאו הרי אנו הורגין את כולכם - יהרגו כולן ואל ימסרו

להן נפש אחת מישראל. אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי יתנו להן ואל יהרגו כולן.

אמר ר' יהודה במי דברים אמורים? בזמן שהוא מבפנים והן מבחוץ. אבל בזמן שהוא מבפנים והן מבפנים הואיל והוא נהרג והן נהרגין יתנוהו להן ואל יהרגו כולן ..... ר' שמעון אומר - כך אמרה להם כל המורד במלכות בית דוד חייב מיתה

תוספתא תרומות פרק ז הלכה כ

*The Tosefta deals with the dilemma of taking one life to save many. It gives a few positions<sup>39</sup>:*

- the Tana Kama rules that an individual may NOT be handed over to die EVEN to save many lives. However, if the individual is specified, as in the case of Sheva ben Bichri, that person may be given over to save the life of many others.
- Rabbi Yehuda<sup>40</sup> rules that the individual may be handed over if they are going to die anyway.
- Rabbi Shimon rules that the individual may be handed over ONLY if they are also independently liable to the death penalty, as with Sheva ben Bichri.

20. תני - סיעות בני אדם שהיו מהלכין בדרך פגעו להן גוים ואמרו תנו לנו אחד מכם ונהרוג אותנו ואם לאו הרי אנו הורגים את

כולכם, אפי' כולן נהרגים לא ימסרו נפש אחת מישראל. ייחדו להן אחד כגון שבע בן בכרי ימסרו אותנו ואל ייהרגו. א"ר

שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי. ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי

תלמוד ירושלמי (וילנא) מסכת תרומות פרק ח

*This issue is not raised in the Bavli but it is discussed in the Yerushalmi. There, it is clear that the ONLY case in which someone can be handed over is where they are specified. Reish Lakish<sup>41</sup> and R' Yochanan disagree on whether there is an additional requirement that they must be guilty like Sheva ben Bichri.*

35. The context of this discussion is a bat Cohen who has become pregnant (through rape or seduction) from a non-Cohen. She is not allowed to eat teruma once it is established that she is pregnant with a non-Cohen fetus. This does NOT however apply until 40 days gestation.

36. Shach CM 210:2. So too, a pregnancy which ends before 40 days gestation does not cause tumat yoledet or tumat met, and does not constitute a 'birth' for pidyon haben. R' Chaim Ozer Grodzinski (Shu't Achiezer 3:65) rules that a non-Jew is not liable to capital punishment for terminating a pre-40 day embryo. For a Jew, it would not be a Torah prohibition, but would still be a Rabbinic prohibition.

37. Since It is permitted to break Shabbat to save such an embryo, it would be perverse if there were no halachic prohibition at all in terminating it.

38. See Rabbi Mordechai Eliyahu, Techumin Vol. 11, 1990, p. 272.

39. For the other positions and a fuller analysis of this topic see my shiur on Driverless Cars at <http://rabbimanning.com/wp-content/uploads/2018/02/Driverless-Cars.pdf>

40. When R. Yehuda appears with this formulation of 'bema devarim amurim', the tradition is that he is not coming to being a different opinion, but to clarify the position of the Tana Kama. Nevertheless, it is not clear if this clarification of Rabbi Yehuda is stricter than original reading of the Tana Kama - ie EVEN if someone is specified, maybe you can only hand them over ONLY if they additionally satisfy the criteria that they will die anyway. Or, maybe R. Yehuda is coming to be lenient and qualifying the first case of the Tana Kama - where the person was not specified. R. Yehuda may permit handing over a random unspecified person if they were going to die anyway.

41. According to Reish Lakish, even if the individual is specified and even if he will die anyway, he cannot be handed over. Why? There are number of ways to understand the machloket between R. Yochanan and Reish Lakish. (i) Does R. Yochanan take a more utilitarian and consequentialist approach which looks practically at the greater good, whereas Reish Lakish take a more deontological and categorical approach, which sees the prohibition of murder as absolute? (ii) The Maharam Chaviv suggests that the Reish Lakish is concerned for the unlikely possibility that the person handed over would not die anyway (ie the aggressors may change their mind and not kill). R. Yochanan assumes the much more likely scenario that the person will inevitably die. (iii) Maybe Reish Lakish rules that the issue does not directly flow from the question of 'whose blood is redder', but from a separate prohibition on assisting the enemies of Klal Yisrael; (iv) maybe the machloket is about 'chayei sha'ah' - temporary life. R. Yochanan is not as concerned for chayei sha'ah but Reish Lakish is more concerned. See also a shiur by R. Aryeh Leibowitz: *Self-Driving Cars - A Halachic and Philosophical Dilemma*, available at <https://www.yutorah.org/sidebar/lecture.cfm/890155/rabbi-aryeh-leibowitz/self-driving-cars-the-philosophic-trolley-dilemma-what-does-halacha-say/>

21. ... ואין דוחין נפש מפני נפש. ואם תאמר מעשה דשצט צן צכרי (שמואל ב' ס') הנה ראשו משקף אליו דדחו נפש מפני נפש! התם משום דאפילו לא מסרוהו לו היה נהרג צעיר כשיתפשנה יואצ וכן נהרגין עמו. אצל אס היה הוא ניגול אף על פי שכן נהרגין לא היו רשאין למסרו כדי להגיל עצמן. אי נמי: משום דמורד צמלכות הוה, וככי מפרש לה צתוספתא דתרומות פ"ז.

רש"י סנהדרין עב:

*Rashi<sup>42</sup> brings different opinions. He first explain, like R. Yehuda in the Tosefta, that Sheva ben Bichri could be handed over since he was (i) specified and (ii) would die anyway. He then explains like R. Shimon - that Sheva ben Bichri could only be handed over since he was guilty of rebellion.*

22. ... ויראה בר' יוחנן שהרי כל שנחלקו שניהם הלכה כמותו וכ"ש בתלמוד שלו. ... הא כל להצלת רבים אפילו לא נתחייב מיתה או שנתחייב ולא בדיננו הואיל וייחדוהו מותר. ....

בית הבחירה (מאירי) מסכת סנהדרין דף עב עמוד ב

*The Meiri rules like R. Yochanan<sup>43</sup>. As such a specified individual may be handed over, even if innocent.*

23. ... אם אמרו להם עובדי כוכבים תנו לנו אחד מכם ונהרגנו ואם לאו נהרוג כולכם, יהרגו כולם ואל ימסרו להם נפש אחת מישראל. ואם יחדוהו להם ואמרו תנו לנו פלוני או נהרוג את כולכם, אם היה מחוייב מיתה כשבע בן בכרי יתנו אותו להם. ואין מורין להם כן לכתחלה. ואם אינו חייב מיתה יהרגו כולן ואל ימסרו להם נפש אחת מישראל.

רמב"ם יסודי התורה פרק ה הלכה ה

*However, the Rambam rules like Reish Lakish!<sup>44</sup>*

24. תנו לנו אחד מכם ונהרגנו – לא יתנו להם אחד מכם אלא א"כ יחדוהו ואמרו: תנו לנו פלוני. ויש אומרים דאפילו צכ"ג אין למסרו אלא"כ חייב מיתה כשצט צן צכרי.

רמ"א שולחן ערוך יורה דעה סימן קנז

*The Rema in Shulchan Aruch brings both opinions.<sup>45</sup>*

- We saw above that the justification for not killing to save another is based on the s'vara of 'mei chazit' - who say that the blood of one is redder than that of the other? On that basis, what if the person being handed over was objectively less 'alive' - eg a treifa or a fetus<sup>46</sup>. Can one then say that one person's blood really IS 'redder' than the other?<sup>47</sup>
- The Hagoth HaRemach<sup>48</sup> explains that where one person is to be handed over in order to save the rest, and that person will die in any event, his blood IS 'less red' than that of the others. This is because he will definitely die, whereas the others may live.<sup>49</sup>
- R. Yitzchak Zilberstein<sup>50</sup> compares multifetal reduction to the case in the Tosefta in Terumot and rules that if (according to some views) it is permitted to hand over a person to save others if they will all die otherwise, it will be permitted to kill a fetus in order to save other fetuses on the basis that, otherwise, they would all die anyway<sup>51</sup>. As long as the fetuses are in utero they are not subject to the prohibition of choosing one life over another.<sup>52</sup>

42. This is dealing with the halacha that a fetus may be killed to save the life of the mother. However, as we saw above, where the majority of the a baby has emerged during birth, it may NOT be killed, even to save the life of the the mother.

43. Which is normal in a machloket between R. Yochanan and Reish Lakish (according to the Meiri, especially in the Yerushalmi, which was edited and compiled by R. Yochanan).

44. The Beit Yosef (YD 157) questions why the Rambam would rule like Reish Lakish over R. Yochanan.

45. The Acharonim differ as to which side the Rema leans towards. The Bach understands that he inclines to the Rambam but the Chazon Ish disagrees.

46. Eg if one was given a choice of killing a fetus or being killed. In WWI, a halachic question was brought in the case of a German officer who raped a Jewish girl, who became pregnant. He took her to a Jewish doctor and demanded that the doctor abort the baby. When the doctor refused, he took out a gun and threatened to kill the doctor if he did not proceed with the abortion. Does the doctor have to give up his life rather than perform the abortion?

47. This is the subject of debate. The Meiri rules that a treifa (someone with a life-threatening illness) may be handed over to save the lives of others, even where not specified. The Minchat Chinuch (295-296:24) rules that one may kill a fetus to save a life. However, the Nodah Beyehuda (Tanina C.M. 59) rules that one may not kill either a treifa or a fetus to save a life (other than the life of the mother).

48. Quoted in the Kesef Mishne on Yesodei HaTorah 5:5.

49. This is even more true if the individual is also liable to the death penalty in any event. In that case he is, as it were, triple dead - he will be executed for a capital crime, or will be killed to save the lives of the others, or will be killed in the general massacre of everyone.

50. A prominent contemporary posek and expert in medical ethics. He is the Av Beit Din of the Ramat Elchanan neighborhood of Bnei Brak and Rav of Mayanei Hayeshua Hospital in Bnei Brak.

51. If this is NOT the case medically, then this would not apply.

52. This is especially true according to the view of the Meiri (above) who permits handing over a treifa on the basis that they are no longer viable in the long term, and thus their blood IS clearly 'less red'. This would also certainly be true of a fetus (although, here, all the fetuses would be on the same 'level'),

### E3] THE CASE OF THE TRACTOR IN THE RUBBLE

• Rabbi Zilberstein also compares multifetal reduction to case of using a tractor to save people trapped in the rubble of a collapsed building. Where they will all die if nothing is done, he argues that some poskim would permit the use of the tractor to plow through the rubble. Even if some people will be killed sooner by the tractor, many people may be saved who would have died. Similarly, since all of the fetuses will likely die<sup>53</sup>, he argues that it is permissible to kill a few prematurely to save the rest.

• R. Hershel Schachter<sup>54</sup> explains that, even according to Rav Moshe who considers abortion to be murder, since there is near certainty that all the fetuses will die without MPR, they are considered non-viable and the prohibition of murder will not apply.

### E4] THE FETUS AS RODEF

Rav Shlomo Zalman Auerbach was approached with two cases<sup>55</sup>, one involving a woman pregnant with sextuplets and the other involving a woman whose pelvis was too small to support her quadruplet pregnancy. He permitted multifetal reduction where continuing the pregnancy carried a high risk of ending in miscarriage. He ruled that each fetus had the status of a *rodef* and the termination could be carried out even 40 days gestation, if the medical advice was that this was safer.

### E5] LENIENCY DUE TO A LOWER PROHIBITION OF ABORTION

Rabbi Chaim David Halevi<sup>56</sup> argues that, since there is a strong body of halachic opinion which does NOT regard abortion as murder, multifetal reduction is permissible if by not performing the reduction, the fetuses will be born prematurely and with severe mental or physical defects. He allows reduction to the point necessary to enable the remaining fetuses to be born healthy. This is a significant step beyond MPR to save the life of other fetuses.

### F] HOW MANY AND WHICH FETUS SHOULD BE TERMINATED?

• The usual medical and halachic advice would be to abort whichever fetuses maximize the chances of success for the procedure, while minimizing risk to the remaining fetuses.<sup>57</sup> Medically, this will often mean that the most accessible fetus at the time of the operation will be the one to be aborted, since this will present the lowest risk of complications.

• If one of the fetuses is sick or abnormal, this alone is not a basis for choosing it for termination, unless the defect is a cause of risk to the mother and for the other fetuses. A relevant halachic question would be whether it would otherwise be permitted to abort such a defective fetus.

• If, however, one fetus is abnormal to the point that it might die in utero and thus endanger the other healthy fetuses<sup>58</sup>, some poskim rule that it is permissible to abort it in order to save the healthy ones.<sup>59</sup>

• Ultimately, this is mostly a medical issue to be evaluated by the physician in each case.

• Clearly, however, the minimal number of fetuses should be aborted as is required in the medical interests of the mother and the other fetuses.<sup>60</sup>

• No poskim permit fetal reduction for personal convenience, or as a matter of choice, such as reducing from twins to singletons.<sup>61</sup>

53. Again, if this is NOT the case, this consideration may not apply.

54. *Fetal Reduction*; YUTorah.org, March 2002 - <https://www.yutorah.org/lectures/lecture.cfm/729712/rabbi-hershel-schachter/fetal-reduction/>

55. See Nishmat Avraham, Choshen Mishpat, 425:2 (A:25), (Eng p. 295).

56. Rabbi Chaim David Halevi, *Induced abortion of multiple fetuses and the status of test-tube babies*, Cassia, volume 8, 1995, pa. 3-6.

57. See Nishmat Avraham *ibid*.

58. Rav Eliyashiv permitted MPR where the probability of all fetuses perishing was more than 50%.

59. See R. Nachum Rabinovitz, *Techumin* Vol. 17, 1997, p. 340. See also *Shu't Tzitz Eliezer* 20:2 who writes that Rav Eliyashiv agreed with this.

60. For a story relating to the psak of Rav Vosner who permitted a fetus to be aborted through MPR, following which the fetus appeared to him in a dream to complain (!), see [https://download.yutorah.org/2019/RavEisensteinJanuary31-eo92yrlxil%20-%20hut1cqo9el.mp3#\\_ga=2.46333807.959757426.1592568159-1396410270.1535122734](https://download.yutorah.org/2019/RavEisensteinJanuary31-eo92yrlxil%20-%20hut1cqo9el.mp3#_ga=2.46333807.959757426.1592568159-1396410270.1535122734) at minute 14:30.

61. For further detailed reading on these issues see:

*Multifetal Pregnancy Reduction in Halacha* by Avi Lasdun, Ph.D. at:

<http://nleresources.com/multifetal-pregnancy-reduction-in-halacha/#.XuyjTGgzZPY> and at <https://outorah.org/p/42976/>.

Dr Lasdun asks in that material that the learning of his sources should be l'ilui nishmat his brother - Rabbi Yosef Lasdun zt"l א' ישראל יוסף אליהו בן ר' טוביה הלוי זצ"ל