

Personhood of the Fetus: Torah Takes a Stand

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Rabbi Barry Block

Abortion opponents will try anything. This month, here in Arkansas, our Legislature, in its infinite wisdom, banned an abortion procedure that doesn't even happen!

Not too long ago, the folks who will go to any length to restrict a woman's reproductive liberty tried passing a so-called "personhood" amendment in several states. The proposal would have declared an embryo to be a person from the moment that the egg is fertilized.

These "personhood" amendments failed, even in Mississippi. Voters came to realize that extreme consequences. For example, if a fetus has the same status as a mother, one could not legally or morally terminate a pregnancy in those rare cases when one must do so to save a woman's life.

Also, several forms of birth control would have been rendered illegal. You see, the medical definition of pregnancy is the implantation of the fertilized egg on the wall of the uterus. Contraceptives like birth control pills and IUD's, which prevent eggs from becoming fertilized, may also function to stop a fertilized egg from attaching to the uterus.

Voters wisely decided against dangerously conferring the full human rights upon a fertilized egg.

Often, the abortion debate has been framed by a question that asks, "When does life begin?" That's the wrong question. Of course, a fetus is living. The question is whether it's a person, an independent human being.

Our ancient rabbis struggled to determine when the human soul enters the developing human being. You may be surprised to know that some of our sages placed that moment as late as forty days after birth!

Be that as it may, our sages wanted to be sure that the fetus wasn't accorded all the rights of a person. Their fears were the same as the first reason that voters defeated the "personhood amendment." In the Mishnah, the rabbis rule that, if pregnancy is threatening a mother's life, the fetus is to be destroyed at any stage of pregnancy.

From there, rabbinic teaching on the matter diverges.

Some follow Maimonides, who compares the fetus threatening the mother's life is to a pursuer, like one person trying who is trying to kill another. Maimonides seems to be treating the fetus as a person. He and those who follow his logic permit abortion only to save the life of the mother, or perhaps to prevent severe physical harm to her.

The Talmud, on the other hand, makes a more simple argument: The fetus that threatens the mother's life must be destroyed because the mother is a person and the fetus is not. The Talmud compares the fetus to a limb of its mother. Just as we must have our arm amputated if a tumor on our arm is life-threatening, we must similarly end a life-threatening pregnancy. On the other hand, just as we are not permitted to have our leg amputated for a frivolous reason, we are forbidden to end an advanced pregnancy without a good, solid reason. Jewish law tends to follow this line of reasoning; Orthodox authorities have historically permitted abortion to prevent any significant damage to a woman's well-being.

So, who is right? Maimonides or the rabbis of the Talmud? Is the fetus like a person, seeking the mother's demise? Or is the fetus better compared to its mother's limb?

Maimonides was the greatest physician of his day, after all, in addition to being a rabbi and philosopher. Still, his logic fails. Unlike a person attempting murder, a fetus cannot decide to do its mother harm.

Moreover, the Talmudic rabbis' view is supported by the Torah itself, by this week's Torah portion, in the passage that Bonnie and Sam read for us tonight.

Let's review the critical verse. The Torah presents the case of two men fighting. One of them crashes into a pregnant woman, so hard that she miscarries. The punishment is a fine. Then, the rabbis imagine the exact same scenario, except that, this time, the pregnant woman dies. A fine won't do now; the wrongdoer is to be put to death.

The Torah has now taken a stand: The fetus is not a person. Its destruction does not bring the punishment that would fit killing another living human being. Still, the fetus isn't nothing, and the Torah treats killing it without good reason as a crime. That wrongdoing is the reason for the fine.

You may be interested to know that the Talmud treats an embryo at the first stages of pregnancy as even less than its mother's limb. Prior to the fortieth

day of development, the embryo is “like water.” We may infer that early pregnancy may be terminated even absent significant cause.

By coincidence, earlier today, a congregant forwarded an email by a pundit named Ben Shapiro, who claims, among other things, that “the Torah opposes abortion.” The congregant who did the forwarding doesn’t agree with Shapiro any more than I do. Shapiro doesn’t offer the basis for his assertion that “the Torah opposes abortion.” The passage we read tonight is the only place that the Torah addresses the status of the fetus in any way.

Still, if Shapiro had written that Judaism forbids abortion after the first forty days of pregnancy, except in cases of significant threat to the mother’s well-being, he would have been correct. Why, then, we might ask, are so many Jews, and American Jewish organizations, pro-choice? Why does the State of Israel protect a woman’s right to choose, and why does the Reform Movement lobby to preserve reproductive freedom?

The answer is that neither the United States nor Israel is a theocracy. In neither country does Judaism or any other religion have the final word.

If a woman came to my office, seeking Jewish advice about whether to undergo an abortion, I would study the breadth of Jewish teachings on the subject with her. If the pregnancy were more advanced than a month or so, and presented no substantial threat to her, I would tell her that Judaism doesn’t permit the abortion. As a Reform Jew, I would hope that she would take that teaching into account in her struggle to make her own decision.

If the question is the law of the land, though, I would not ask that our faith’s teaching be enshrined into law any more than I would want any other religion’s doctrine to become the law of the land. Reproductive liberty is required in a free country governed by democracy.

A fetus is not a person. Pregnant women, though, are fully human. Children who are born into poverty are people. Young people consigned to substandard schools are people. Homeless boys and girls, mothers and fathers are people.

Our society, and especially our elected officials, would do well to focus on the needs of human beings, and leave the fetus to its mother. That may even be the will of God.

Amen.