

The Jewish View on Abortion, A Review

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For those of you who may not have heard, we're having a bit of a fight about access to abortion here in Texas. But no one seems to be noticing that if this bill passes it may force Jews to do something that is against our religion. The Texas legislature is trying to outlaw abortions after 20 weeks of gestation...even if it poses a threat to the mother's life...even if the fetus is not viable...even if the mother simply doesn't want the child.

Here's the Jewish view:

It all comes from this Torah passage:

When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined, according to what the woman's husband demands. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn wound for wound, bruise for bruise. (Exodus 21:22-25)

Let's unpack this text. A miscarriage is compensated as bodily damage of less seriousness than losing a tooth. An adult tooth cannot be regrown, but the woman can, theoretically, become pregnant again.

The sages make it clear that the mother's life is more important than the fetus':

If a woman suffers hard labor, the fetus is cut up within her body and taken out piece by piece because the living takes precedence over the baby's life. If the majority of the fetus' body has come forth (i.e., the head has emerged totally from the mother's body), one life does not take precedence over another life. (M. Oholot 7:6)

The fetus, as the sages explain, has the status of a woman's limb until the head is out of her body. (Anyone who's given birth or witnessed the same understands that once the head is out of the body, the hardest part of the work is done.) Until then, **THE MOTHER'S LIFE TAKES PRECEDENCE**. If she has dangerously high blood pressure, we may abort. If she's diagnosed with cancer and needs immediate chemo and radiation, we may abort. If the fetus is not viable, we may abort. If she's dangerously depressed, we may abort. If she cannot afford to feed the children she already has, we may abort. Even if the fetus has reached 40 weeks of gestational age, if the labor is dangerous to the mother, we abort. The mother is alive. She takes precedence over the fetus.

I hope these texts make it very clear what the Jewish view on abortion is. While we are commanded to choose life (Deuteronomy 30:19) we understand that "life" and "death" are not binary categories. We rarely get to pick just life or death. Far more often, we have to cobble together a solution that yields the most life/the best quality of life. Abortion is probably never a beautiful choice. But it can often be the right one. And Judaism values the mother's life over the fetus'.

Discussion Questions

1. I'm sure you noticed that, in the Torah text, the recompense for miscarriage is paid to the woman's husband. In biblical times, the wife, and most certainly her reproductive abilities, were thought to be the husband's property. If she were not married (single, widowed or divorced), the recompense is made to her. Have these attitudes changed at all over the centuries? If so, how?
2. The Torah text here is the basis for what is called *lex taliones*, the "eye for eye" principle. In its day, this was actually a liberalizing ruling. Up until then, if you took out someone's eye, they could kill you. The sages, it should be noted, hated this rule and, in short order, interpreted it to

mean that you received monetary compensation instead of actually inflicting wound for wound. Here we see the sages' tendency to reach a solution that yields "more life". Do you agree that, until the child is born, it is considered simply a part of the mother's body? Why or why not?

3. I'd like to hear from the lawyers. If the Texas law is passed, can Jews apply for exemption from it on the basis that it goes against their religion? Would the law be an infringement of the separation of church and state? Just interested.

Looking forward to your insights, as always!