

Jewish Perspectives on Abortion

Introduction: A Sensitive issue

The utility of Pro vs anti abortion

When does life begin? Is that the only question?

What kind of question is that?

Two presentations in the Torah (one midrashic)

1. Ex. 21, 22

וְכִי־יִנְצוּ אַנְשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיֵּצְאוּ יְלֶדֶיהָ וְלֹא יִהְיֶה אָסוֹן עָנוּשׁ יַעֲנֹשׁ כְּאִשֶּׁר יִשִּׁית עָלֶיהָ
בְּעַל הָאִשָּׁה וְנָתַן בְּפָלְלִים:

"If men fight and hurt a pregnant woman so that she miscarries, and yet no tragic death follows, he shall be surely fined such as the woman's husband demands and the judges estimate.

Rashi: No Tragic Death: For the woman.

ולא יהיה אסון – באשה.

2. Sanhedrin 57b

Ben Noach (gentile) re. Abortion

משום רבי ישמעאל אמרו אף על העוברין מאי טעמיה דרבי ישמעאל דכתיב (בראשית ט, ו) שופך דם האדם באדם דמו ישפך איזהו אדם שהוא באדם הוי אומר זה עובר שבמעו אמו

It is stated in that book of *Aggadot* that the Sages **said in the name of Rabbi Yishmael**: A descendant of Noah is executed **even for killing fetuses**. The Gemara asks: **What is the reason** for the opinion of **Rabbi Yishmael**? The Gemara answers: It is derived from that **which is written**: **"One who sheds the blood of a person, by a person [ba'adam] his blood shall be shed"** (Genesis 9:6). The word *ba'adam* literally means: In a person, and is interpreted homiletically: **What is a person that is in a person? You must say: This is a fetus that is in its mother's womb**. Accordingly, a descendant of Noah is liable for killing a fetus.

This is regarding a gentile. What about a Jew?

3. Sanhedrin 59a

לבני נח ולא נשנית בסיני לישראל נאמרה ולא לבני נח: אדרבה מדלא נישנית בסיני לבני נח נאמרה ולא לישראל
ליכא מידעם דלישראל שרי ולעובד כוכבים אסור

It is further stated in the *baraita* that a mitzva that was stated **with regard to the descendants of Noah and was not repeated at Sinai was stated for the Jewish people and not for the descendants of Noah**. The Gemara raises an objection: **On the contrary, from the fact that it was not repeated at Sinai**, clearly it can be derived that **it was stated for the descendants of Noah and not for the Jewish people**. The Gemara answers: **There is nothing that is permitted to a Jew and forbidden to a gentile**.

OK so abortion is forbidden for a gentile. Always?? And if it is forbidden for them, can it be permitted for us? What about this?

4. Arachin 7a

מתני' האשה שיצאה ליהרג אין ממתינין לה עד שתלד האשה שישיבה על המשבר ממתינין לה עד שתלד האשה שנהרגה נהנין בשערה בהמה שנהרגה אסורה בהנאה:

MISHNA: In the case of a pregnant **woman who is taken** by the court **to be executed**, the court **does not wait to execute her until she gives birth**. Rather, she is killed immediately. But with regard to **a woman taken to be executed who sat on the travailing chair [hamashber]** in the throes of labor, the court **waits to execute her until she gives birth**. In the case of **a woman who was killed** through court-imposed capital punishment, **one may derive benefit from her hair**. But in the case of **an animal that was killed** through court-imposed execution, e.g., for goring a person, **deriving benefit from the animal is prohibited**.

And what about this?

5. Mishnah, Ohalot 7, 6

האשה שהיא מקשה לילד, מחתכין את הולד במעיה ומוציאין אותו אברים אברים, מפני שחיייה קודמין לחייו. יצא רבו, אין נוגעין בו, שאין דוחין נפש מפני נפש:

If a woman is having trouble giving birth, they cut up the child in her womb and brings it forth limb by limb, because her life comes before the life of [the child]. But if the greater part has come out, one may not touch it, for one may not set aside one person's life for that of another.

5a. Rambam on that mishnah;

זה כולו פשוט אין צריך ביאור:

It is all simple. It does not need explanation.

5b. Rashi: דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו
As long as he has not come out to the air of the world it is not a life, and you can kill to and to save the mother.

Answer to the contradictions

6. Tosaphot Sanhederin 59a

מיהו קשה דאמרינן בפרק בן סורר ומורה (לקמן סנהדרין דף עב:) יצא ראשו אין נוגעין בו דאין דוחין נפש מפני נפש אבל קודם שיצא ראשו החי' פושטת ידה וחתכתו לאברים ומוציאה כדי להציל את אמו וכה"ג בעובד כוכבים אסור כיון שהזזהו על העוברים וי"ל דהא נמי בישראל מצוה כדי להציל ואפשר דאפילו בעובד כוכבים שרי:

With a Jew it is also a mitzvah to save and it could be that for a gentile this would be permitted too.

Could it be permitted?

7. Tosaphot Nidda 44a

וא"ת אם תמצי לומר דמותר להורגו בבטן אפי' מתה אמו ולא הוי כמונח בקופסא אמאי מחללין עליו את השבת שמביאין סכין דרך ר"ה לקרוע האם כדמוכח בפ' קמא דערכין (דף ז:) וי"ל דמכל מקום משום פקוח נפש מחללין עליו את השבת אף ע"ג דמותר להרגו דהא גוסס בידי אדם ההורגו פטור כדאמר פרק הנשרפין (סנהדרין עח.) דרוב גוססים למיתה ומחללין את השבת עליו כדאמר פרק בתרא דיומא (ד' פד:) דאין מהלכין בפקוח נפש אחר הרוב:

To save a life you may violate shabbat for a fetus even though it is permitted to kill him, we don't follow majority when it comes to saving a life.

8. **Meshech Chochmah:** It is forbidden to both Jew and gentile but the punishments are different.

The Rambam's position

9. **First let's see the Gemara in Sanhedrin 72b**

איתיביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש ואמאי רודף הוא שאני התם דמשמיא קא רדפי לה

Rav H̄isda raised an objection to Rav Huna from a *baraita*: If a woman was giving birth and her life was being endangered by the fetus, the life of the fetus may be sacrificed in order to save the mother. But once his head has emerged during the birthing process, he may not be harmed in order to save the mother, because one life may not be pushed aside to save another life. If one is permitted to save the pursued party by killing the minor who is pursuing him, why is this so? The fetus is a pursuer who is endangering his mother's life. The Gemara answers: This is not difficult, as it is different there, with regard to the woman giving birth, since she is being pursued by Heaven. Since the fetus is not acting of his own volition and endangering his mother of his own will, his life may not be taken in order to save his mother.

Now let's see the Rambam

10. **Rotzeach ushmirat hanefesh 1, 9 (Laws of Murder and guarding of life)**

אף זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך הורו חכמים שהעברה שהיא מקשה לילד מתר לחתך העבר במעיה בין בסם בין ביד מפני שהוא כרודף אחריה להרגה. ואם משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם:

This, indeed, is one of the negative mitzvot - not to take pity on the life of a rodef.

On this basis, our Sages ruled that when complications arise and a pregnant woman cannot give birth, it is permitted to abort the fetus in her womb, whether with a knife or with drugs. For the fetus is considered a rodef of its mother.

If the head of the fetus emerges, it should not be touched, because one life should not be sacrificed for another. Although the mother may die, this is the nature of the world.

The Contrast:

Talmud: Before he comes out, one may kill him. Rashi: He is not a life

When the head comes out, it is not rodef. You can't kill the newborn.

Rambam: Before he comes out he is a rodef, you can kill him.

After he comes out he is a life.

How can a baby be a pursuer? He knows not what she does?

11. A gemara to help explain the Rambam: Bava Kama 117b

ההוא גברא דאקדים ואסיק חמרא למברא קמי דסליקו אינשי במברא בעי לאטבועי אתא ההוא גברא מלח ליה לחמרא דההוא גברא ושדייה לנהרא וטבע אתא לקמיה דרבה פטריה אמר ליה אביי והא מציל עצמו בממון חבירו הוא א"ל האי מעיקרא רודף הוה

The Gemara relates another incident: There was a **certain man who hastened and brought his donkey** onboard a **ferry [lemavra] before other people boarded the ferry**. The donkey began to move around and **was about** to cause the boat **to sink**. **A certain other man came and pushed the donkey of that first man into the river, and it drowned**. The case **came before Rabba**, and Rabba **exempted him** from payment. **Abaye said to him: But this individual is saving himself with another's property**, and he should therefore be liable to pay. Rabba **said to him: This** owner of the donkey **was** considered **a pursuer from the outset**, as he endangered the other travelers. It is permitted to stop a pursuer by any means necessary, including by destroying his property.

12. Explaining the Rambam: Rav Chaim Brisker

Two dinim/aspects of rodef

Saving life in general

Saving the pursued (Reb Chaim)

Or

Saving the pursued

Punishing the pursuer (Tani)

Or

Saving from pursuer who is guilty

Saving from pursuer who is not conscious, i.e. Donkey, Baby (Rav Asher Weiss, Even Haazel)

12. Maharit

Studied with the Seder Hayom, son of Mabit, a disputant of Rav Yosef Karo
Head of Yeshiva in Tzfat, Headed his father's shul, Became Chief Rabbi, Constantinople,
Teacher of the Keneset Hagedola, Many students, Wrote 3 volumes, Teshuvot,
Wrote on Kidushin, Shabbat, Ktubot, Wrote on Tzurat Habayit, beit ha-mikdash

Teshuvot I 97

שאלה עובר רך אמו בפרק שני דגיטין גבי עבד ובפרק כיצד מערימין ובפרק הפרה ועיין ס"פ מרובה ובפ' הבע"י

ובפ"ב דחולין אין מזמנין גוי על בני מעיים וכתב שם התוספות נהי דפטור על הנפלי' אבל לא שרי וכו' דהא דאסור מדין חבלה הוא

Question: A fetus is the thigh of his mother... and Tosaphot say there that while one is exempt for destroying a fetus it is not permitted (Maharit adds) for it is forbidden as injuring. (one is not allowed to injure someone or yourself, Pen yosif, lest you add lashes to the lashed...)

Ibid. I 99

וזכרני שראיתי להרשב"א ז"ל בתשובה שהעיד על הרמב"ן ז"ל שנתעסק עם גויה אחת שתתעבר בשכר ולהתעסק עמה שתפיל פרי בטנה איבוד נפשות אין כאן דאפילו בישראל נפלים לאו נפש הוא וממון הוא דחייב רחמנא דמי וולדות לבעל דכתיב כאשר ישית עליו בעל האשה

And I recall that the Rashba said in a responsa that he testified that the Ramban engaged with a gentile to become pregnant and to engage in her abortion, it is not taking of life, for even with a Jew it is not a life, and one is simply obligated to pay the husband as it says in Exodus 21...

Jewish Approaches to Abortion

- R. Moshe: a form of murder
- Mizrahi: no death penalty because maybe it won't live

Tosaphot: forbidden. Why?

- A. Chavot Yair 31: Destruction of seed
- B. Maharit and Radbaz: injuring the body
- C. Maharit: monetary damage
- D. Maharam Shik: Chatzi shiur qualitative half measure.
- E. Potential person Ran Chulin 19 pgs of Rif: אין שהוא ירך אמו אין עובר זה שהוא עתיד לחיות אע"פ שהוא ירך אמו אין לנו לדון כטרפה
This fetus who is destined to live, even though he is (merely) a part of his mother's thigh, we do not judge him like a terefa (one who is about to die).
- F. Noda byhuda: because it is forbidden to a goy. It is a person in a person.
R. Elchanan Wasserman: no, that's just an argument not the reason.

Last generation many were strict, Rav Moshe, Rav Shlomo Zalman, the Rav said he couldn't go against the Rambam...

Most poskim today follow Maharit

Including Rav Asher Weiss : Rambam one liner plus Rashi>Rambam

Behag : Save a baby on Shabbat so he can keep future Shabbatot

R Asher Weiss: balance Behag with Archin 7

Rabbi Jeremy Weider

Stay out of others' business

Vs. it's a mutual issue

Not black and white

Ultra- sound doesn't prove anything! It's a question of definition of life

Difficult metaphysical question

Not simple

Provide support for such women in such situations

Allowing poskim to decide

Complex issue not for the government? Or a moral issue which requires a law?

When is it permitted? Rav: before 40 it is just injury, after that it is murder. Toras Chesed: R. Shneur Zalman Freudken, 19th cent. : Until the birth it is not a life. Some say, till ninth month. Tzitz Eliezer, 3 months
Rav Shlomo Zalman: You don't have to follow me.

Are psychological concerns the same as dangers?

Rav Yosef Engel, last page of Yevamot: Yes! Sadness can lead to illness or early death!