

Parshat Emor 2022 – Judaism on Abortion (because of Roe v. Wade potential overturning) - May 13, 2022 – BAS – Rabbi Melissa Crespy (with thanks to Rabbi Susan Grossman’s teshuvah on “partial birth” abortion)

You all know that I generally speak about the parashah of the week, and that I don’t generally speak on political issues. I am breaking from my tradition today because my heart is heavy knowing that women’s constitutional rights to abortion may soon be overturned in the Supreme Court. So I take as my text today not Parshat Emor, but Exodus 21:22-23 – the source text for the halakhic view on abortion. My translation is from Everett Fox, which is more literal than our Humash.

“When two men scuffle and deal a blow to a pregnant woman, so that her children abort-forth, but other harm does not occur, he is to be fined, yes, fined, as the woman’s spouse imposes for him, but he is to give it only according to assessment. [Meaning – assessment by the judges.] But if harm should occur, then you are to give life in place of life.”

If the woman had died – it would be a capital offense according to the Torah. But if only the fetus dies, there is only a fine, as the fetus is not considered a person under the law. And in traditional rabbinic law also, the fetal life is not granted the rights and protections due human life until birth.

We also learn from the Mishnah (Oholot 7:6) that when the wellbeing of the mother, a fully human life, and that of the fetus are at odds, the Mishnah consistently finds favor in caring for the needs of the mother. The Mishnah states:

“If a woman is in hard labor, one dismembers the fetus within her, removing it limb by limb, because her life takes precedence over its life. Once its head has emerged, one does not touch it, because one does not set one life aside for another.”

These become key concepts in the discussion of abortion in Jewish law: that if the life, physical health, or mental health of the mother is threatened by the fetus, the fetus can be aborted even in late stages of pregnancy. Regarding the mental health of a woman being threatened, this is often caused by knowing that she is to give birth to a deformed baby, or a baby who will suffer and die in early childhood

because of a disease like Tay-Sachs. In a number of cited cases, abortion due to rape or adultery is permitted.

A fetus becomes fully human and its life becomes as valuable as that of its mother when either its head or the majority of the fetus's body emerges from its mother. It is important to note, however, that a number of poskim (halakhic decisors) would allow intervention even when the majority of the body or head has exited the mother's body, to save the mother's life and possibly to protect her health.

So, we have established a number of things here regarding Jewish legal views of abortion:

1. Abortion is not considered murder, because a fetus does not become a full human being until it emerges from the womb.
2. Abortion is permissible, and sometimes required, to save the life of a woman, to preserve her physical health, and at times to preserve her mental health.

Within Jewish law throughout the centuries, halakhic decisions have ranged from more lenient to more strict, but these two underlying basic concepts have not changed.

What is clear, however, is that life is considered precious in Judaism, and that we can violate almost all Jewish laws in order to save a life. Examples of laws that can be violated in order to save a life are the laws of Shabbat, which are generally very strict. Decisions about abortion should be taken very seriously, and it should not be done for convenience, or as a form of birth control.

What also becomes clear is that the Jewish view of abortion is very different than the Catholic view of abortion.

In Catholicism, the soul is considered to enter the body at conception, and thus abortion is considered murder. There is no sense of "ensoulment" in Judaism that has any bearing on the legal status of a fetus. Different rabbis over the centuries have differing views of when the "soul" enters a Jewish fetus, but none of them change the legal status of the fetus, which is considered a part of its mother's body, and not yet a human being.

And because Judaism does not believe in “Original Sin,” a Jewish fetus does not need to be baptized in order to “save it” from “everlasting punishment in eternal fire.” The Catholic belief that unbaptized fetuses were condemned to “eternal perdition” caused abortion to be considered worse than murder, and led, in the past, to extractions of fetuses from a deceased mother’s womb for purposes of baptism.

There are many reasons why a woman’s constitutional right to abortion should not be overturned. Among them are that rescinding this right will disproportionately affect the poorest and most vulnerable adults and children in our nation. Those who deem a fetus’s right to life are stopping right there. They are not providing food, clothing, housing, adequate education or healthcare to those fetuses once they are born. Protecting the most vulnerable in society is a strong Jewish value.

Another reason not to overrule the right to abortion is that we will see an increase in deaths of women due to botched up, back-room, illegal abortions.

There are many other reasons why this constitutional right should not be overturned, but the one I want to focus on this morning is that, in overturning women’s constitutional right to abortion, the Supreme Court will be deciding law based on a Christian - mainly Catholic and Evangelical – perspective on abortion. As I have shown earlier in this sermon, the Jewish perspective on abortion is very different than the Catholic perspective (and probably from the Evangelical perspective as well). We believe that a fetus is not a person, and therefore that abortion is not murder, and is permitted in many cases. We also believe that the mother’s life, physical health and mental health are important, and that they should guide whether an abortion is needed.

Now, this is not to say that the United States Supreme Court should follow Jewish law – but it is to say that all of us – Jews, non-fundamentalist Christians, Moslems, Buddhists, Catholics, Evangelicals, and atheists all have a constitutional right of Religious Freedom – and decisions about what women can and cannot do with their bodies should not be decided based on one fundamentalist, Christian perspective. If Catholics and other Christians believe that abortion is wrong, they should teach that to their flock, and encourage them to not to have abortions. But their religious teachings should not legally affect others who don’t practice

Catholicism or other forms of Christianity. Part of the greatness of this country is that we have freedom of religion. But that not only gives us the freedom to follow our own religion, it gives us the freedom from other people's religion.

I know the abortion issue is not just a religious issue, but also a political one, and I am no expert in politics. But if I were able, I would be down in Washington, D.C. on May 17, to join the rally protesting the likely overturning of a woman's constitutional right to choose, and I would encourage those who are able to join that rally. I also strongly encourage you to write or email our Senators and Congressmen and women to express your concern about the Supreme Court's overturning of this right.

I hope in this sermon I have given you a helpful background on the Jewish perspective on abortion. I am happy to share this sermon with any of you, and I hope it will help you protest what I believe is a great wrong in the making.

Shabbat Shalom.