

61 BROADWAY
NEW YORK 6, N. Y.

Hellerstein
Did not answer

March 2, 1967

Rabbi Norman Lamm
The Jewish Center
131 West 86th Street
New York, New York

Dear Rabbi Lamm,

I enjoyed your letter, courtesy American Airlines, and I'm estopped to criticize anyone's penmanship.

The person who advances a proposition characterized as fundamental must answer, I think, to several questions:

1. Is the proposition truly fundamental? Were there no processes of reason, based on history, experience, precedent, logic or whatever, that led to the original formulation of the proposition.
2. When, and in what circumstances, was the proposition first stated? Is there authority directly on point in the Bible or in ancient formulations of the oral law? Or does the proposition depend on later formulation and, if so, upon what exegeses?
3. Can or should there be any adjustment, by the legislators receiving the position advocated, with other social needs?

My supposition in putting these questions is that many propositions, though they may be styled as fundamental and perhaps believed to be fundamental by those holding to them, are "less" fundamental than they seem, at least in terms that are relevant to the finding of a public consensus. In terms of the abortion debate, answers to the several questions above may expose to public debate the inner processes of legal (religious) decision and the methods and circumstances by which the rights and immunities of a human fetus were articulated in the first instance. Laying bare the considerations for, and the exegeses yielding, the first and successive formulations of the proposition that all fetuses are entitled equally with choate humans to the equal protection of the laws will remove the "fundamental" halo immunizing the propsoition from attack, and will enable the legislature to weigh the religious argument against other aspects of the public weal--e.g., the disproportionate number of fatalities arising from abortions sought out by the poor because of lack of safer alternatives.

The question, in my opinion, is not "when is a living object considered a human being." I would formulate it as whether the differences between a fetus of not more than a defined number of months and a human being are sufficient significant to permit the law to recognize the distinctions in fact made by many human beings. Most of those who have, or are willing, to suffer abortions are unwilling, I dare say, to commit infanticide or even euthanasia. They express, by this different attitude, an important distinction. The question in law, in my judgment, is to what degree and in what circumstances such a distinction will be

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permitted to be made. The law should not be oblivious, by assuming a posture of fundamentalism, to the distinctions people in fact make.

As ever,

A handwritten signature in blue ink, appearing to be 'Al' or 'Alvin', written in a cursive style.

Alvin K. Hellerstein