

24th
Correspondence File

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Dear Larry:

I have been thinking about the problem you raised concerning Federation's decision to appear in court as Amicus favoring the present liberal abortion laws. And the more I think about it, the more unhappy I am with this policy.

Let me briefly outline the halakhic problems.

There are a number of elements that must be taken into consideration. In addition to the fundamental issue of foeticide, the question is complicated by two basic matters: the fact that the action contemplated affects all sectors of our society, both Jewish and non-Jewish; and, if we indeed find that such endorsement of current abortion legislation is halakhically offensive, the degree of culpability that can be assigned to this kind of action by Federations, namely, lending support to a legal brief. The first matter refers back to the dual legal system posited by Judaism: Noahide law for Gentiles, and Israelite law -- far more comprehensive and restrictive -- applying only to Jews. The second matter must be resolved on the basis of lifnei iver, which I will explain shortly.

1. Are non-Jews forbidden by Torah law to destroy an unborn child? That foeticide is a grave offense for Jews is too obvious to require documentation. A large modern literature has already accumulated on the subject. While there are important exceptions, such as where the health of the mother is significantly jeopardized, the Halakhah is strongly against abortions and, in most cases, considers them as murder, albeit not punishable by the courts.

The question of whether foeticide is covered in Noahide law is taken up in the Talmud (Sanh. 57b). R. Ishmael, in a baraita, holds that it is forbidden. Although an anonymous Tanna disagrees, the weight of halakhic opinion clearly favors R. Ishmael; see, for instance, Maimonides, Mil. Melakhim 9:4.

Interestingly, according to this authoritative view, abortion by non-Jews turns out to be even more severe in its ramifications

than when performed by Jews, for while Jews are punished for foeticide by "the law of Heaven," Noahides are punished by the courts. (The inclusion of a prohibition in the Noahide Code is part of the essential rationality of the law, according to the interpretation of R. Eliyah Benamozegh; see my recently published Faith and Doubt, p.286.)

Hence, the gravity of the Federation action is not reduced by limitation of its scope to Jews only. Abetting abortions amongst non-Jews is equally reprehensible. We are dealing here with a universal-rational moral principle.

2. The degree of culpability: encouraging a crime. Talmudic law considers this problem in the context of its exegesis of the verse, "Thou shalt not... put a stumbling block before the blind" (Lev. 19:14). The Oral Law broadens this precept from the purely physical situation implied by a literal reading of this verse, to include any form of participation in an immoral or proscribed act. Thus, in the classical case, a Nazirite (one who has vowed to abstain from wine of any grape product) stands on the other side of the river, and I have wine on this side. I cross the river in order to give him the wine. My action is a "stumbling-block" and the Nazirite is "blind" to his responsibilities and his duties. Hence, I am in violation of this Biblical law of placing a stumbling-block in the path of a blind man (Hebrew: lifnei ivver, to be abbreviated: L.I.).

Now, in our case, arguing in court for "liberal" abortion laws means, in effect, making available the commission of a crime to those who might otherwise not be in a position to perpetrate it. Such action is a violation of L.I.

However, it might be argued that these same women would find ~~other~~^{help}, and if ~~must~~^{help} be illegal, means to have the abortions performed, and the contemplated court action will have no practical effect.

This argument is untenable. Factually, many women will be dissuaded from foeticide if ~~it~~ will be prohibited by the criminal code of the state -- for whatever the reason might be. Second, if it really makes no practical difference, certainly such action by Federation should not be ventured in the face of the clear view of the Jewish tradition against abortions.

But let us take up the case of those women, whatever their number, who would make alternative arrangements for abortions. Is the Federation action free of opprobrium with regard to such persons, or does the stigma of L.I. apply to making abortions easier for such people too?

This is taken up by the Halakhah under the same rubric as that of the Nazirite. Am I prohibited from bringing the wine to him only when we stand on opposite sides of the river (i.e., where without my

my active involvement he could not, for all practical purposes, commit the sin), or does L.I. apply as well to a situation where we both stand on the same side of the river (i.e., where my action may facilitate his crime, but where he could perform it even without my intercession)?

Here we must first distinguish between two cases: where the "blind man" (i.e., the one I am assisting in the commission of a crime) is a Jew, and where he is a non-Jew.

Where the "blind man" is a Jew, and we are "on the same side of the river," we find these opinions. (In the following, I am omitting exact references for the sake of clarity and brevity, but I will be glad to provide them to you). Maimonides (according to the interpretation of R. Zevi Hirsh ~~Changes~~) holds that such action is Biblically prohibited (not as L.I., but in violation of the commandment to "rebuke" the sinner). The author of "Mishpetei Shmuel" permits it even according to Rabbinic law. Both of these are, however, minority opinions. The greatest weight of authoritative opinion sides with the Tosafot who hold that it is forbidden by Rabbinic law.

Where the violator is a Noahide - R. Moshe Isserles (the "Rema") holds that even "on the same side of the river" it is forbidden Biblically for a Jew to assist a non-Jew in violating the law. R. Shabbatai Cohen (the Shakh) permits it entirely. MaHriMat permits a Jewish doctor to abort a Noahide woman if other doctors are available who would do it -- apparently agreeing with the Shakh. Azulai, however, favors the decision of the Rema.

Hence
However, regarding those women who might under any circumstance arrange abortions, if they are Jewish, the weight of opinion considers our action Rabbinically prohibited. As far as the non-Jewish women are concerned, some authorities would not prohibit Jews from making abortions available to them while others would consider it Rabbinically forbidden.

Yet, as I indicated earlier, this latter question is moot, since there certainly will be a number of women who will refrain from having abortions performed in the event the present laws are repealed, and at least in their case we are dealing with a bona fide situation of L.I. "on opposite sides of the river."

It might, of course, be argued that court action of the kind contemplated is too remote and indirect to consider it a violation of L.I., as would be, for instance, handing the scalpel to the surgeon. I do not, however, consider this argument as having any merit whatever. Both actions achieve the same results. The elegance of the method of bringing the "wine" to the Nazirite is irrelevant.

Over and beyond these halakhic considerations, the sense of

the law is undoubtedly negative on abortions. The Torah looks askance at foeticide - certainly of Jews, and even non-Jews. For a Jewish communal organization to undertake political or legal action favoring almost blanket endorsement of abortions is both halakhically and morally unpardonable.

Federation is putting itself in the position of placing a stumbling block in the path of the morally blind.

I urge you to continue to do whatever you can to persuade Federation to withdraw from this unfortunate action, so offensive to the most basic canons of Jewish and universal morality, and thus help protect the good name of both Federation and the entire Jewish community.

Cordially,

RABBI NORMAN LAMM

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