

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson Forty-One



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Lifecycle IV: Abortion

Lesson

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Introduction

Abortion is an issue that evokes strong responses from everyone. Unfortunately, the possibility for nuanced and sensitive discussion of the important questions involved is marred by the existence of two dogmatic camps: “pro-life” and “pro-choice.”

The Torah view of abortion does not fall clearly in either camp; both are contrary to the Torah view. From an ethical standpoint, the Torah views abortion negatively. The Zohar states:

Three drive the divine presence from this word and make it impossible for the Holy One, blessed is He, to fix His abode in the universe... And the [third] is one who destroys a fetus in the womb, for he destroys the craft of the Holy One, blessed be He, and his workmanship... on account of these abominations the Holy Spirit weeps...¹

Practically speaking, though, the approach to abortion is not so black-and-white. The eminent [Rabbi Dr. Tzvi Hersh Weinreb](#), former CEO and Executive Vice President Emeritus of the Orthodox Union, accurately described the Torah approach as follows:

... in actual practice the Torah view of abortion is very different from the conservative views of the Catholic Church and from the liberal views of [many] Jewish groups. It is nuanced, complex, and depends upon such a variety of factors that categorizing Torah Judaism as either pro-life or pro-choice is almost a caricature of our position.²

¹ Zohar Shemos 3b.

² “Orthodoxy in the Public Square” in *Tradition* 38:1 (Spring 2004), p. 34

Abortion is one of the few topics in the Noahide Laws for which there is extensive literature. The downside of so much being written is that even a cursory survey of the literature is far beyond the scope of this course.

A WARNING

Any practical questions of abortion must be asked to a competent [*posek*](#). Issues of life and death cannot be determined by most Rabbis, especially those who are experts in the Noahide laws. The question must be asked to an impartial noted authority in Jewish Law [*posek*]. Any *posek* capable of ruling on such issues will have expertise in the application of these laws to Noahides far beyond that of any expert or specialist in the Noahide laws.

Abortion in the Noahide Laws

Abortion falls under the category of murder within the Noahide laws. In Jewish law, abortion is also prohibited. However the details and sources of the prohibitions are different. They are so different that by studying the Jewish laws of abortion it is possible to come to the conclusion that killing a fetus is not murder for Noahides. The Talmud, however, teaches us that this is not so.

[Rebbi Yishmael](#)³ makes an observation on the following verse:⁴

One who spills the blood of man; by man shall his blood be spilt.

In Hebrew, this is an odd construction:

Shofeikh dam ha-adam ba-adam damo yishafeikh

It is ambiguous, able to take a comma in two possible places. The first possibility is:

Shofeikh dam ha-adam, ba-adam damo yishafeikh

Punctuated like this way, the verse yields the translation we have given above.

³ [Sanhedrin 57b](#).

⁴ Gen. 9:6.

However, an alternate punctuation results in an altogether different meaning:

Shofeikh dam ba-adam ba-adam, damo yishafeikh

*One who spills the blood of a **person who is within a person**, his blood shall be spilt.*

Regarding this reading, the Talmud states:

They [the sages] said in the name of Rabbi Yishmael: "Noahides are liable for killing a fetus. What is the reason for Rabbi Yishmael? For it states in the verse: 'One who spills the blood of a person who is within a person, his blood shall be spilt.' Which is a 'person who is within a person?' You would answer that this is a fetus."

The *halacha*, Torah law, follows the opinion of Rabbi Yishmael and the sages. Maimonides rules as such, writing:

A gentile who slays any soul, even a fetus in its mother's womb, is executed as penalty for its death.⁵

At What Point Is Abortion Prohibited?

The contemporary political and religious debates on abortion have hinged upon the definition of embryonic/fetal life. This factor is the most important, yet by no means exclusive, consideration shaping the Torah's approach to the issue.

Abortion during the first 40 days following conception

The Talmud indicates in many places⁶ that the embryo does not have the status of a "fetus" or a living being during the first 40 days following its conception. Rather, the embryo is termed *mayim bealma*, "only fluid." This is the *halacha*⁷ and reflects a general principle that Torah law is not concerned with that which is microscopic or barely visible. At this stage in its development, the embryo has no *halachic*, practical, existence. Therefore, should a Jewish woman miscarry at this stage she is not subject to the impurity described in Leviticus 12:2-5.⁸ As well, the spiritual impurities (*tumah*) associated with corpses are not assigned to a miscarried

⁵ [Hilchos Melachim 9:4](#).

⁶ [Yevamos 69b](#); [Niddah 30a](#); [Bechoros 47b](#).

⁷ See *Shulchan Aruch* YD 305:23.

⁸ See *Niddah* *ibid*.

embryo at this stage.⁹ This fact allows for the possibility of abortion during the first 40 days.

However, life is not so simple – after all, it among the Holy One’s greatest creations. The *Beer Halachos Gadolos*, one of the earliest and most important codes of Torah law, rules that a Jew may transgress Shabbat for the sake of saving an unborn life even during its first 40 days.¹⁰

The *Beer Halachos Gadolos* obviously considers the embryo “alive enough” to permit a Jew to transgress Shabbat on its behalf. It appears that there are different definitions of life for different purposes of Torah law.

During the first 40 days after conception an embryo:

- Is not considered life for the laws of miscarriages,¹¹
- Is not considered life for the laws of impurities caused by the dead,
- It is considered life enough to warrant violation of Shabbat in order to save it.

We must ask: Where is the threshold of life for the sake of the prohibition of abortion? This is a topic of *extensive* discussion.

Some *poskim* have taken a very simple approach: if we are permitted to violate Shabbat to save the embryo, it must be prohibited at that point to abort the embryo. The *Chavas Yair*¹² writes that it doesn’t make sense for Jews to be allowed to violate Shabbat to save a life that they could voluntarily terminate.

However, the reasons for permitting Shabbat violation for the life of the embryo may be more nuanced.

⁹ *Mishneh LaMelekh* to *Hilchos Tumas Meit* 2:1.

¹⁰ Cited in Nachmanides’s *Toras HaAdam, Shaar HaSakanah* II:29. *Rosh* and *Ran* also cite this as *halacha* in their commentaries to *Yoma* 82a.

¹¹ As mentioned above.

¹² 31.

**Human
trafficking &
abortion – what
do they have in
common?**

Rashi¹³ writes that the prohibition against selling someone into involuntary servitude applies even to an unborn child. Yet, the unborn child lacks full human status. Why then should it be included in this law?

Since the child will, as a matter of natural events, inevitably become fully human, it is treated as if fully human even at this point in its development.¹⁴ [Rav Issar Yehudah Unterman](#) proposed¹⁵ that this logic also underlies the *Beer Halachos Gadolos*'s permit to save an embryo during its first 40 days. In other words - the saving of *potential* life (an embryo during its first 40) is enough to warrant Jewish transgression of Shabbat.

According to this understanding, the fetus is not *actual*, yet only *potential* life during its first 40 days. Rav Unterman's thesis has significant support in earlier literature as well as from later *poskim*.

The implication of this approach for Noahides is important. From the Talmud's discussion of the Noahide prohibition of abortion, it is clear that Noahides are only liable for the taking of *actual* embryonic life, not *potential* embryonic life. This is indicated by the term "a *person* within a *person*" - one is only liable when the life of the fetus is comparable to that of the mother. Therefore, there may be no prohibition on Noahide abortion during the first 40 days after conception.

However, Rav Unterman's explanation is not accepted by all *poskim*.¹⁶ Alone, it is not enough to permit abortion during the first 40 days. However, it is a significant factor when combined with other mitigating concerns.

Abortion When the Mother is Endangered

When a woman's life or health is put at serious risk by pregnancy, may the pregnancy be terminated? There are a number of factors to take into account, four of which are especially important:

- 1) Must a Noahide give her life rather than transgress?

¹³ To Sanhedrin 85b.

¹⁴ The idea that an object that will inevitably reach a state of obligation is considered in such a state even now is a principle occurring many times in Torah law.

¹⁵ *Shevet MiYehudah* I:9.

¹⁶ See notes to the summary below.

- 2) What is the status of the life of the embryo/fetus?
- 3) Does the law of *rodef*, a pursuer, apply to Noahides?
- 4) Is the embryo/fetus considered a *rodef*?

We will examine these four questions in no particular order.

Die or Transgress?

II Kings 5:14-19 records that Naaman (a Noahide) asked Elisha if he had committed a transgression when visiting his master, the King of Aram. The king had placed his hand upon Naaman, forcing him to bow down before an idol. Elisha replied: “Go in peace.”

The Talmud, Sanhedrin 74b explains that Naaman’s question was if he should have given his life rather than transgress. After all, the king had to force Naaman down with his own hands. Had Naaman resisted completely, he would have been risking his life! Elisha’s reply, “go in peace,” indicates that Naaman did nothing wrong. From this incident (involving idolatry no less!) the Talmud learns *a fortiori* that a Noahide has no obligation to give her life in lieu of transgressing any of her laws.¹⁷ Therefore, a Noahide should be able to commit murder to save her life. By this reasoning, abortion is permitted to save the life of the mother (however, only the mother would be able to carry out the abortion, not another).

Does this apply to murder?

The problem with this line of thought is that murder may be the exception to this rule. The Talmud, Sanhedrin 74a states as a logical fact that “no man’s blood is redder than that of another.” In other words: we do not make relative comparisons as to the values of individual lives.

Maimonides elaborates on this idea as it pertains to Jews in [Hilchos Yesodei HaTorah, Chapter 5](#). The [Parshas Derakhim](#)¹⁸ notes that Maimonides views this concept as a universal principle, applicable to Jews and non-Jews. This interpretation of Maimonides is corroborated by the Jerusalem Talmud, Shabbos 14 and Avodah Zarah 2:5.

¹⁷ The Yad Ramah and Rashi had a slightly different version of the Talmud’s text. According to their reading it comes out that a Noahide may be required to give up his life rather than transgress in public. Naaman, however, was permitted to bow because he was in private. However, Tosafos had a different reading in which Noahides are never required to give up their lives for their mitzvos. This latter reading is corroborated by most other Rishonim, including Rabbeinu Tam, Chiddushei HaRan, and Maimonides. It appears to be the one held as correct by most poskim.

¹⁸ *Darsub II, d.h. VeDab.*

They clearly view this idea as a logical principle applying to all mankind. Assuming this is so, a woman would not be permitted to abort (murder) the fetus to save her own life.

Yet, Maimonides, in discussing the Noahide laws, writes the following:

*A gentile who is forced by another person to violate one of his commandments is permitted to transgress. Even if he is forced to worship false gods, he may worship them, **for gentiles are not commanded to sanctify God's name.***¹⁹

Without making any distinctions, Maimonides permits a Noahide to transgress any of the Noahide laws when her life is in danger. Many authorities reject the *Parshas Derakhim's* opinion based upon this passage, holding that Noahides may commit murder rather than suffer death (therefore permitting abortion to save the mother's life).²⁰

The *Sefer Mitzvos HaShem* and other contemporary *poskim* have suggested a compromise of sorts. In the section quoted above Maimonides is only writing as about whether or not Noahides have a biblical obligation to give their life rather than transgress. This is why he writes "...**gentiles are not commanded to sanctify God's name.**" However, Maimonides in *Hilchos Yesodei HaTorah* teaches that there is a logical, yet non-biblical reason for Noahides to give their lives rather than transgress murder.

Many *poskim* agree with the *Parshas Drakhim*. Whether or not a Noahide must die rather than commit murder is too uncertain a matter to help us in the case at hand.

Rodef: The Pursuer

*If a burglar is found tunneling into a home,
and is discovered and killed, there is no liability.*

Exodus 22:1

The Talmud, Sanhedrin 72a explains this verse. The assumption is the thief is armed and poses immediate danger to the residents of the house. Sanhedrin 73a cites further verses allowing, and even encouraging, the killing of one who poses immediate danger to another. This is known as the law of the *rodef*, the pursuer:

¹⁹ [Hilchos Melachim 10:2.](#)

²⁰ The *Parshas Derakhim* states this as a possibility and cites those who hold accordingly. See *Maharash Yafeh* on *Beresbis Rabbah* 44:5. See also *Maskil LeDovid* on *Parshas Vayishlach*.

If a person is actively endangering the life of another, the one causing the danger must be neutralized by whatever means necessary.

We must ask two questions on this law:

- 1) Does the law of *rodef* apply to Noahides, and
- 2) In the case of a pregnancy, when the woman's life is endangered by the fetus, does the fetus have the *din*, law, of a *rodef*, a pursuer?

Does *rodef* apply to Noahides?

On the first question, the Talmud, Sanhedrin 57a appears to assume that the law of *rodef* applies to Noahides.²¹ Most *poskim* concur, however they are uncertain as to who may kill the pursuer.²² Is it permitted only for one being pursued, or is any onlooker permitted to kill the pursuer?

Is the fetus a *rodef*?

The Mishnah in *Ohalos* 7:6 states:

If a woman's labor endangers her life, the fetus must be cut up within her womb and removed piecemeal, for her life takes precedence over its life. If its greater part has already come forth, it must not be touched, for its life cannot supersede her life.

The Mishnah does not tell us the reason for this ruling. However, the Talmud, discussing the law of the pursuer,²³ asks if a pursuer requires warning before he is killed. Along the way, they ask about our Mishnah, because a fetus cannot be warned:

Rav Chisda asked from the Mishnah: If a fetus is endangering the mother, we kill it. Once the head leaves the womb, we do not kill it. We do not kill one person to save another.

[Answer:] That case is different. There, baby has no choice. Heaven is threatening the life of the mother.

By asking if the fetus requires warning, the Talmud obviously assumes this is a case of a *rodef*, pursuer.

However, the Talmud's answer implies this is not a case of a pursuer because the baby has no intent nor is actively threatening the mother. Rather, the natural circumstances of birth are endangering the mother: "Heaven is threatening the life

²¹ See *Minchas Chinuch* 296:5. While most *poskim* agree in principle, the details are hotly debated.

²² See *Toldos Noah, Matza Chein* IV: 32 for an exhaustive overview of the sources.

²³ Sanhedrin 72b.

of the mother.” The fetus is, apparently, only a tool to accomplish heaven’s “pursuit.”

Rashi, understands that *rodef*, the law of a pursuer, is not the operative permit for aborting the fetus (indeed, the Mishnah doesn’t even mention it). Rashi writes that although the fetus is “alive enough” to render abortion prohibited, “as long as it has not emerged into the light of the world, it is not a [fully] human life.” According to Rashi the value of the fetus’s life does not trump that of the mother’s; the mother’s blood is redder than that of the fetus. This implies that the Talmud’s dictum of not comparing life-to-life only applies to life that has fully emerged into this world. Once the head of the baby has emerged, it is considered fully human, equal to mother, and cannot be killed.

Maimonides learns that the fetus is a pursuer:

*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.²⁴*

Why then does the emergence of the infant’s head change the law according to Maimonides?

Many have explained that Maimonides views the life of the mother and infant as equal even before the head of the baby emerges. Therefore, unlike Rashi, there can be no permit to kill the fetus unless it is a pursuer.

The emergence of the head thus removes the law of “pursuer” from the baby. It appears that once the head has emerged, the infant is considered fully independent of the mother and cannot be considered a pursuer at that point.

The [*Nodah BiYehudah*](#)²⁵ and many others²⁶ have explained that the fetus is not actively “pursing” the woman, but is only a passive tool of heaven’s pursuit. Once the head has emerged, the fetus is considered independent of the woman’s body

²⁴ [*Hilchos Rotzeach 1:9.*](#)

²⁵ *Tinyana* CM 59.

²⁶ *Chavas Yoair* 31; [*Chiddushei R' Chaim HaLevi, Rotzeach 1:9.*](#) [*Even HaAzel Rotzeach 1:9*](#) has a slightly altered understanding, however.

and it is only the circumstances of delivery, not the baby, that are endangering her life.

The Shulchan Aruch²⁷ establishes the Halacha like Maimonides. We should note, however, that there are numerous means of understanding Maimonides's reading of the Talmud. Some of these opinions have bizarre ramifications in Torah law and affect the laws for Noahides.²⁸

See the summary with footnotes, below, for a practical overview of what emerges from this lesson.

Summary of the Lesson

1. During the first 40 days after conception, all agree that the “life” of the embryo is markedly different than after 40 days.
2. Therefore, in a case of even non-lethal medical risk to the mother, the pregnancy may be terminated at this stage.²⁹ Other situations (rape, incest, medical risks to the fetus, etc.) may also permit abortion at this stage.³⁰ However, they must be dealt with on a case-by-case basis by a competent *posek*.
3. After 40 days, abortion of the fetus is considered murder in Noahide law.

²⁷ CM 452:2.

²⁸ There are some who prohibit abortions for Noahides under all conditions. However, these opinions are contrary to the majority of poskim. There are others who distinguish between cases of disease that endanger the pregnancy and danger resulting directly from the pregnancy. The following discuss the possible ramifications of Maimonides's reasoning on the halacha: Achiezer II:72; Sridei Eish III 342; Chemdas Yisrael, Maftechos ve-Hosafos p.32; Shu"t Koach Shor 20; Pachad Yitzchok (Lampronti), Erekh Nefalim 79b;

²⁹ [R. Ovadiah Yosef](#), Yabi'a Omer, IV Even Ha-Ezer 1: 8-10 even permits abortions in such cases through the first trimester. See also Igros Moshe CM II:69 & 71. [Seridei Eish](#) I:162. See also [Sheelas Yaavetz](#) 43. This is an extremely controversial responsum, yet may be permitted for Noahides. See also Toras Chesed Even HaEzer 42:32. There are many who rule very severely on this issue, but the hanhaga of poskim today appears more lenient. See Levushei Mordekhai CM 36; Koach Shor 21.

³⁰ *Seridei Eish* *ibid*.

4. If the mother's life is endangered by the fetus during this period, abortion may be permitted. This is because the fetus is considered a *rodef*, a pursuer.
5. In cases of medical complications for the fetus or other factors (such as rape, incest, etc.) a *posek* must be consulted. Typically, the further along the pregnancy, the higher the risk standards must be to permit termination. If it is medically determined that the fetus will not live for 30 days after birth, abortion may also be permitted.³¹
6. For Noahides, there is uncertainty as to who may kill a *rodef*. If at all possible, the mother should herself use chemical or pharmaceutical methods (under the strict guidance and assistance of a physician) to terminate the pregnancy when permitted.
7. If the doctor must actively terminate the pregnancy (i.e. embryotomy), it is better that the mother use a Jewish rather than non-Jewish doctor. This is will be discussed more in the live lesson.
8. Once the head has emerged from the womb, the baby may not be harmed in any way.

³¹ See *Hilchos Rotzeach* 2:6; *Maharam Shick* OH 142; *Minchas Chinuch* 34.