

# Jews And Abortion In Secular Law: More Light and Less Heat

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The upheaval caused by the recent leaked draft abortion opinion by Justice Alito tempts committed Jews to weigh in with *halacha's* view of abortion. We prefer to ask, "What does Jewish law want America's abortion laws to be?" The answer is not at all obviously the same as *halacha's* view of abortion; many times *halacha* wants and expects secular law to be less parochial, more focused on allowing coexistence of a multitude of communities than on foisting one right view on its citizens.

We present several factors – none with clear or unequivocal answers – we believe need to be evaluated before anyone articulates a view of what Jewish tradition wants of secular law on abortion. Just by laying out those factors, we hope readers will become more skeptical of those who speak with certainty in this area. What Jewish law wants of secular law, in this and many other sensitive areas, is hard to know. Everyone is entitled to an opinion, particularly those conversant with the relevant sources, but we would all be better off if we express those opinions with the awareness that ours is likely not the single correct one.

First, authorities on Jewish law disagree about the status of a fetus (if it can ever be a legal person before birth), as well as on the underlying prohibition of abortion (if it counts as a form of murder or some other issue). How we define the prohibition affects how and whether Jews should feel obligated to react to changes in secular law.

Definition aside, authorities on Jewish law differ widely on *when* the prohibition comes into play, some saying it does so at conception; forty days later; fetal viability (23-24 weeks); or some other time.

Third, many of those discussions by earlier halachic authorities intended to prescribe how a Jewish polity would act, either a community guided by Jewish law or a Jewish nation, such as Israel. In a secular nation such as the United States, we need to factor in Jewish tradition's dispute about the extent to which the laws around abortion for non-Jews differ from those for Jews and, if so, how.

Fourth, even if we could know the *halacha's* view with certainty, authorities disagree about what efforts that obligates for Jews. Some think Jews should work to move non-Jewish society closer to the Almighty, either because such lobbying



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makes Jews "a light onto the nations" or because the ills of society reach the Jewish community as well. Other think the political risks in such a path outweigh the benefits and we have no tradition of such activism.

Fifth (and related), some think Jews are safer when there are secular laws that maximize personal choice and freedom and Jews can then be surer the country's laws will not turn to banning some *halachic* requirement or permissible option. Better to let other people sin of their own choice than to risk finding ourselves in a country that forces Jews to sin, this view insists. The late authority on Jewish law, R. Moshe Feinstein (*Iggrot Moshe*, Volume 9, Hashkafa 4) asserted the impossibility of secular society ruling coercively for another person on his or her life or death questions. For many, abortion feels like such an issue as well.

On the other hand, even those who prefer personal choice generally might see abortion differently if they view the fetus as a person. Personal choice and safety from a theoretical worry about future legislation cannot lead us to permit murder.

Finally, a strain of Jewish thought argues for diminished involvement in secular disputes generally and thinks Jews should only protest when we are forced to conduct ourselves contrary to Jewish Law. No one is forced to have an abortion under a "pro-choice" rubric.

The Torah described Jews as a nation which dwells alone, but the diaspora makes it impossi-

ble to live this way completely. Jews have always made use of diverse models of cooperation and involvement with their host societies. The factors we have laid out should lead us to pause and ensure that claims about *halacha's* view come with careful consideration and an awareness of the complexity of the issue.

Any claim has to recognize an overall opposition to casual abortion, because every fetus is a potential or realized human life. Jewish tradition does clearly hope for as few abortions as possible. But Jewish tradition also recognizes the range of real-world complications which drive the decision to have an abortion, including maternal physical and mental health, terrible fetal illness, or impending death, and a host of other factors Jewish law authorities themselves would respect as quite possibly justifying an abortion.

Complicating the question further, our tradition sometimes mandates an abortion, and we would never want to live in a society that prohibits what Jewish law requires – a courtesy a pluralistic society should give to other faiths as well. Indeed, realizing that even Agudath Israel – no liberal organization! – has steadfastly refused to support restrictions on abortion that do not allow for religious exemptions surely inclines one to speak with care in the name of the Jewish tradition on this matter.

Were we all to learn to speak less precipitously, and to recognize the nuances of these issues, Jews would be making a true contribution to the secular abortion debate.