

RAW MATERIAL

STUDIES IN BIBLICAL SEXUALITY

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APPENDIX 1

Abortion, the Unspoken

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Abortion, the Unspoken

There is a problem with studying the topic of abortion in this volume. Strictly speaking abortion is not a Biblical issue. There is a sum of one text which addresses any part of the issue directly, and that is in the Old Testament law code. Other texts are very indirect and are not altogether clear. Although abortion was widely known in the Roman Empire, somehow the New Testament contains no specific reference to the practice, and thus no comment.

However, the one legal text has an interesting history of its own which may inform the position of the church fathers who strictly opposed the practice of abortion.

The One Text

In modern legal tradition, and in Biblical law in its ancient context, the first and most important issue on abortion is the definition of a human life or person within the legal code. Is a fetus a legally protected “person” with a legally recognized life of its own? In *Roe vs. Wade* the U.S. Supreme Court defined person and life such that abortion became legal throughout the United States regardless of local prohibitions on the practice. One Biblical text likewise seems to define the fetus as property rather than a legal person.

The text is Exodus 21:22-25 in which a man accidentally causes a woman to miscarry by striking her. According to this text the miscarriage itself is handled by imposing a fine on the man who struck the pregnant woman. However, any damage caused to the woman results in the *lex talionis*: “a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot.” In this law the woman is a full person with equal status to the man who struck her. Any damage to her is inflicted equally on her assailant. But the fetus is property — property of the husband to whom the fine is paid. The fetus does not hold the legal status of a person whose life is equal to that of the assailant or the woman.

In Rabbinic tradition this one text is cited for the majority position that therapeutic abortion is acceptable, and even salutary. Non-therapeutic abortion is almost ignored, for the Rabbinic tradition places a very strong value on reproduction. Abortion as birth control is almost beyond the conceptual world of the Rabbinic tradition, an important exception being rape where abortion may be seen as therapeutic. The Rabbinic discussion is well represented in the

Babylonian Talmud, *Arakin* 7a-b. Here the Mishna states that a pregnant woman awaiting execution can be executed prior to giving birth unless she already is in labor. One rabbi even advocated killing the fetus first so it would not die with its mother. The rabbis did consider such issues as the fetus being the property of the husband and its potential inheritance rights, but consistently treated the fetus as part of the mother prior to birth. The fetus does not have the status of a person that a newborn achieves on the day of its birth. *Sanhedrin* 57b discusses Genesis 9:5-6 on bloodshed. By shifting a comma (so to speak) one Rabbi interpreted “in a man” as a reference to the fetus within the woman, but the other rabbis rejected this reinterpretation of the text. They did favor operating on a pregnant woman who died on Sabbath to save the child, so the fetus was not completely lacking in recognition. But a fetus was not recognized as a person in any Rabbinic law.

Though most Rabbinic texts are somewhat later than the 1st century, the Rabbinic reading may be found in the 1st century writer Josephus, *Antiquities* 4.278. However, Josephus holds the opposite position in *Contra Apion* 2.202 where abortion is classed with infanticide as murder, a position held by Greek-speaking Jews who depended on the Septuagint (see below).

Modern Evangelicals have attempted another reading of the Hebrew text which could remove it from the topic of abortion altogether (Fowler 147-149, 156-157). They point out that the terminology used is not common for miscarriage. Her “children” (ילדיה, *yeladeyha*) “come out” (יצא, *yatsa’u*). Only here in the Bible is the plural used for a fetus, a reading rejected by the Evangelical scholars. But the terminology is not common for birth either, unless twins are presupposed. For her (singular) children (plural) go forth (plural). The plural indicates a figure of speech rather than a direct description of birth. Evangelicals wish to understand this text as describing a live, premature birth rather than a miscarriage. Though such a reading might give the fetus full value as a human, it removes the mother from the equation of *lex talionis*, so that this text cannot be used to prove that women have equal value to men under Mosaic law. On multiple layers the abortion question tends also to be a question about the value of the woman.

It is notable that no Rabbinic commentator has seen the possibility of a live-birth reading in Exodus 21, including such careful readers of the text as Rashi, Rashbam and Ibn Ezra. All assume a miscarriage here and find no difficulty in this reading. Likewise, the Evangelical reading of this text has not convinced any major commentary on the text. Contextual uses of the terms in this chapter have lead most readers of the Hebrew text to understand a miscarriage in

the terms and phrasing of Exodus 21:22-25.

Also, close parallel laws may be found in Akkadian law codes, laws which also speak of miscarriage, not premature birth. The famous Laws of Hammurabi 209-214 give three cases for three classes of pregnant women who miscarry after being struck (Wright 2009, pp 176-186).¹ In all three ranks there is a fine for the miscarried fetus. However, if a woman of rank also dies the *lex talionis* calls for the execution of the killer's daughter (not the killer himself). For lower status women the fine for the woman's death is six to ten times that for the lost fetus. The Middle Assyrian Laws 50-53 are incomplete and complicated. For a woman of rank there is a fine for the loss of a fetus, execution if the woman also dies, and execution if the woman has no son and the fetus is male. Miscarriages of lower order women are fined, and if the woman aborts herself she is to be executed. It is notable that in these laws the fetus is seen as property. Though the woman's status varies with rank, a woman of full rank has a life equal to that of her (male) assailant, or her assailant's daughter.

Yet, the Evangelical reading of Exodus 21, though weak, is not impossible. One Biblical text should not provide sufficient base for a full ethical position, for it is far too easy to misunderstand or misapply a single text. There are other relevant Biblical texts, but they likewise do not support the pro-life position against abortion. For instance, life and death in the Bible are frequently defined through breath and the lack of breath (e.g. Gen 2:17; 6:17; 7:15,22; Ezk 37:5-10). This definition of life has a strong presence in Western society as well. Thus when the U.S. Supreme Court defined life in terms of whether the fetus/newborn is breathing or can breathe on its own, the court was building on a very old tradition. This tradition may be disputed, but not with Biblical texts. Also, Evangelicals often quote texts which speak of God's interest in an individual prior to birth. But the concept of divine foreknowledge also includes interest in people not yet conceived (Jer 1:5), so interest prior to birth does not equate to legal personhood of the unborn, or indeed the unconceived.

Usually ignored on this topic are the sex laws of Leviticus 20, another set of texts which may speak on the issue. In Leviticus 20:20-21 the penalty for two forms of incest is that the couple shall be childless. If we understand the term *'aririm* (עֲרִירִים) as "childless" -- the meaning almost universally accepted for this term, including in the Septuagint, the Syriac

¹ Wright demonstrates a close intertextuality between Exodus 20-23 and the Law of Hammurabi.

Peshitta and the Rabbinic commentators – we may have here a command to prevent the birth of any offspring in these incestuous unions. These unions could be fertile, making the issue a real one. The task of keeping the incest infertile is in the hands of the community. Probably execution of a pregnant incestuous woman is indicated, before she has a chance to give birth. If this is an accurate understanding of Leviticus 20, it adds weight to the conclusion that the fetus is not viewed in Israelite law as a person – an individual with a right to life separate from its mother.

In the modern discussion, usually these other texts are ignored, and attention is paid only to Exodus 21.

The One Text in the LXX

In the Septuagint the text of Exodus 21:22-25 is significantly different from the Hebrew. Where the Hebrew text of verse 23 states, “If there is harm” (to the woman) the Greek translation reads “If there is form” (to the fetus). No one has adequately explained how *'ason* (אסון) was translated as *exeikonismenon* (εξεικονισμενον). It is at least possible that the translator did not understand the term *'ason* and derived its meaning from context. Verse 22 reads, “and her offspring comes out, and there is no *'ason*,” and the translator could have concluded that *'ason* referred to the offspring rather than the woman. From this assumption the translator then guessed at a meaning which would refer to the miscarriage.

Likewise verse 22 has “there is no harm” (לא יהיה אסון) in the Hebrew but “there is no form” (μη εξεικονισμενον) in the Greek. *'Ason* is a rare term in Biblical Hebrew, with only three other occurrences – in Genesis 42:4,38; 44:29. In Genesis the LXX translator understood the term and used *malakia* (μαλακια, harm).

The Septuagint understanding works in verse 22, but the fit in verse 23 is not complete. A miscarriage almost never results in a live birth. Though “a life for a life” would make sense in the Greek, “an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot” makes no sense in reference to a miscarried fetus. Not only does a fetus lack teeth, but the other items are not lost individually in a miscarriage.

The difference in the Greek translation is significant for how the early church viewed abortion. In the Greek version if the fetus has recognizable human form it is therefore a legal person protected by the *lex talionis*. Throughout the Roman Empire many Greek-speaking Jews

had little or no knowledge of Hebrew and were completely dependent on the Septuagint. One major Greek-speaking Jewish author was the philosopher Philo of Alexandria who often treated the Greek translation of the Torah as inspired itself. Based on the Greek version of Exodus 21:22-25, Philo found most abortions to be utterly abhorrent and unacceptable. In contrast the Rabbinic tradition, which worked directly from the Hebrew text, did not understand the law as opposed to abortion (with rare dissent).

Philo's basic comments may be found in *Special Laws* 3.108-109 where he expands on the Septuagint term "form" with the perfect verb *memorphomenon* (μεμορφωμενον), specifying that the limbs must have recognizable shape (cf. *On Mating* 137). He even extended the law to cover domestic animals and women awaiting execution (*On Virtues* 137-139), in contrast to the rabbis. Should sacrificial animals or a condemned woman be found to be pregnant, Philo stated that they would be spared until after the birth because the unborn are not necessarily to share the fate of their mothers but rather have their own lives.

With very few exceptions the church from the 2nd century through the 15th century almost completely lacked access to the Hebrew text of the Old Testament. Rather, the church depended on the Greek translations and translations based on the Greek translations. The exceptions consisted of Origen, Jerome and occasional Jewish converts. Not only did the church depend on the Septuagint, it also depended on Jewish authors who wrote in Greek, Philo being a favorite of some influential writers such as Clement of Alexandria (e.g. *Stromata* 3.4). As a result the church fathers followed Philo's position on abortion. This included the Latin writers, for until Jerome's Vulgate they were dependant on the Old Latin, which in turn was based on the Septuagint. Thus the position of Philo and the Septuagint is found in Augustine (*Q. Exodi* 80). By the time Jerome restored the Hebrew reading of Exodus 21:22-23 through his Latin translation, the church position against abortion had gained a life of its own and was in no way dependent on Biblical texts.

Yet there were Church Fathers willing to go beyond the restrictions based on the Septuagint of Exodus 21:22-25. Basil for instance attacks all abortion, whether the fetus is formed or unformed (Letter 188.2). Even so, this letter testifies to the influence of Exodus 21 and Philo, as the terms Basil uses for "formed" (εκμεμορφωμενον) and "unformed" (ανεξεικονιστου) reflect the terminology of Philo and the Septuagint, respectively

At the other extreme is Gregory of Nyssa who makes a passing reference to the fetus in

On the Holy Spirit (also known as *Adversus Macedonianos*) 1320. Here he calls on the embryo (εμβρυον) for an illustration of something incomplete (ατλεσφορητον), which therefore is not a person (ανθρωπος) but only a potential person. Apparently for Gregory the fetus does not attain the status of person until it is “complete” and ready for birth. Clearly there was not one single position of the church fathers on the status of the fetus. Oddly, Basil and Gregory were brothers and were two of the three Cappadocian Fathers. For all their common ideas, on the personhood of the fetus they were diametrically opposed.

Though the New Testament neglects the topic of abortion, the procedure is condemned early in two works of the Apostolic Fathers which quote a common source, possibly a church baptismal vow or a catechism for converts. Didache 2.2 and Epistle of Barnabas 19.5 instruct the reader to not do abortion or infanticide (ου φονευσεις τεκνον εν φθορα, ουδε <παλιν> γεννηθεν αποκτενεις). Strictly speaking, the verb *pheno* (φενω) does not necessarily specify abortion, even in connection with “child” (τεκνον) and “destruction” (φθορα). But because the text goes on to say, “nor kill (the child) after it is born,” the previous phrase must refer to the child before birth. The phrase used here may have been a technical term for abortion current in the 2nd century.

The witness of Barnabas and the Didache indicates two things. First, that the church had an important tradition against abortion from a very early period. Second, abortion was common enough in the Roman Empire to inspire this early tradition outlawing the practice. Was the practice common enough to make the New Testament silence on abortion significant? Or should the early tradition take precedence over the silence of the Bible?

Greco-Roman Abortion

How common was abortion in the Roman Empire? Statistics are completely unavailable. All we have is the witness of the surviving texts which indicate widespread familiarity with the practice.

Apparently abortions had been performed among the Greeks as far back as the Classical period. For instance, Plato (*Republic* 5.9 / 461b) and Aristotle (*Politics* 7.14,16) required abortions in certain cases. We should remember that Greece in the Classical period also practiced infanticide, so there was no ethical question over destroying a fetus. Notably neither Plato nor Aristotle expresses concern for the woman who might be harmed by an abortion

procedure.

Although Plato felt that sex should be for procreation only, as discussed in Chapter 19, “The Church Tradition of the Necessary Evil,” this sentiment does not conflict with his stance on abortion. Plato did not favor contraception as an individual option. He did feel that the state had an interest in preventing certain unions from producing children, however. So abortion for Plato was to be a state-mandated form of population control, a control on those whose sexual practices have not stayed within the limits favored by Plato’s state.

Aristotle favored both abortion and infanticide for the sake of the community. He felt that abortions should be performed when either parent was too young or too old or when the pregnant woman was feeble or deformed. Aristotle limits abortion to early pregnancy, but also recommends infanticide for infants born deformed. Notably, although Aristotle describes the dangers of childbearing for women, especially those feeble or deformed, he mentions no hazards of abortion for the same. In fact, he assumes that abortion was a safer alternative to childbearing, which is very interesting.

Abortion drugs are specifically forbidden in the classic form of the Hippocratic Oath, though this prohibition perhaps should not be understood as absolute within its ancient context, or should be understood as somewhat sectarian with heavy Pythagorean influence (Edelstein 20). Greco-Roman attitudes on abortion, both supportive and opposed, are sporadic. Some opposition to abortion seems to treat the fetus as a person, others as the man’s property which the woman has no right to destroy.

Infanticide was accepted in Roman culture, though laws were passed forbidding abortion. Early in the Imperial period Caesar Augustus took measures against various forms of contraception, including abortion, out of fear that the Roman population would decline to dangerously low levels. In some cases abortion was seen as depriving the father-to-be of his property rights, assuming the pregnant woman was his wife and not merely a prostitute or someone else’s slave (e.g. Cicero, *Pro Cluentio* 11 [31-32]). Also abortions were used to cover up adultery and other illicit liaisons, and texts differ as to the ethics of abortion in these situations. However, no lasting law against abortion established itself in Roman law prior to the Christian period.

Although gynecological texts from the period seem to assume the abortion physician is male, Pliny claimed that abortion was invented by a woman (*Nat.Hist.* 10.83 / 172), and that

abortions were commonly practiced by women. Ovid implied self-inflicted abortions or possibly female practitioners (midwives) who performed the procedure (*Amores* 2.14). Ovid also implied that a significant number of women die or become dangerously ill due to the procedure, and Ovid approved of this danger. For Ovid the abortion itself was a crime and the woman deserved its risks. Juvenal (6.592-601) speaks of drug-induced abortions with disapproval. He then mentions infanticide also with disapproval, indicating that he understood the life of the fetus and infant itself was of value aside from its legitimacy or social status.

Clearly abortion was widely known, if not widely practiced, in Italy during the Republic and Imperial periods and in Greece during the Classical period. It may be inferred that the practice was widespread throughout the metropolitan centers of the Roman Empire in the 1st century. An abortion could occur through surgical means, but abortifacient herbal preparations were known and possibly were effective (Riddle, *op. cit.*). Some species of plants may have become endangered or extinct due to over-harvesting for their abortifacient properties. The surgical form of abortion was dangerous to the woman, and this danger was widely known. Abortifacients were deemed safer, but also were described as expensive and thus were the method of choice among rich women

The Ethical Argument

The reader is advised to read the Slavery section in *Slavery, Sabbath, War and Women* by Willard Swartley. Slavery is tacitly accepted throughout the Bible, from Genesis to Revelation. However, in the 19th century a very large segment of the church managed to find Biblical principles which made slavery utterly unacceptable among “true” Christians. These Biblical principles utterly trumped anything the Bible might say to accept or find neutral the practice of slavery. In Europe and North America the drive to end slavery was distinctly Christian.

Charles Williams summed it up this way. “It may be conceded that slavery is not, formally, anti-Christian, so long as the slave’s natural and supernatural rights are preserved. But the proper preservation of those rights is apt to make a nonsense of slavery.” (1939, p. 209) This was, tacitly, the ethical method of most conservative Christians who opposed slavery, even those who formally found themselves unable to declare slavery un-Biblical.

A similar ethical argument against abortion is the standard approach in modern churches and pro-life campaigns.

The basic goal of the anti-abortion argument is the establishment of the personhood of the unborn through non-Biblical proofs. These proofs rely heavily on the visual appearance of the fetus, the age at which the fingers form, when the heart begins beating, or when thumb-sucking begins. These images are juxtaposed with images of the discarded fetuses from abortions. The result is something like that of *Uncle Tom's Cabin*. Emotions are engaged which move slaves and fetuses from silent, abstract entities to living individuals facing intolerable fates. Having transformed the objects of discussion into individuals, the Biblical principles are then invoked and shown to be violated horribly.

But this method of opposition to abortion is properly open only to such churches which have found slavery unacceptable from a Biblical basis. Some churches have not yet been able to find slavery unacceptable on Biblical principles, but they use against abortion the hermeneutical methods which for two centuries they rejected for slavery.

Where there is a will there is a way to make the Bible comply, whether the topic is abortion, slavery, or any other ethical issue facing the church. But sometimes we need to stop and ask what it is that we are doing with the Word