SEVEN MITSVOT OF BENE NOAH (#3): Abortion and Homicide?

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We explained previously the third of the Seven Noahic Precepts: homicide. We said that the categorization of murder is stricter for the Noahic law than for the Mosaic law. For the Noahic law, for example, instigation to homicide, commission of homicide, homicide by abandonment, etc., all qualify as homicide. Today we will see that, unlike the Mosaic law, for the Noahic law, abortion is also considered homicide.

First we must understand what is the source of this consideration, which is not arbitrary but textual.

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God said to Noah: “Whoever sheds the blood of man within a man, his blood shall be shed; because in the image of God, man was made. (Genesis 9: 5) “

As the reader will appreciate, we translate the Hebrew word ba-adam, not as “by another man,” as we did before, alluding to “agency”, but “within a man.” Both translations are faithful to the literal meaning of this phrase (preposition + noun), and both interpretations are applied by the Jewish tradition to define “homicide” in the Noahic law. The phrase a man within a man (“man” not as “male” but in the broad sense of a human being) can refer exclusively to the fetus in the mother’s womb. In the Noahic law, therefore, abortion is condemned with capital punishment.

Abortion is also prohibited in Jewish law, but it is not classified as homicide. Let’s explain this a little better. The classic case of abortion discussed in the Talmud deals with a situation in which the life of the mother, who is about to give birth, is in danger. And the only way to save the mother’s life is by sacrificing the unborn baby. In this case, the rabbinic sources (Mishna Aholot, 7: 6) unambiguously state that the fetus must be sacrificed in order to save the life of the mother. The Mishna implies that in this situation the unborn baby is considered, from a legal point of view “a

potential (obviously involuntary) murderer" with respect to his mother. Therefore the principle of the right of "self-defense" is applied here (habba lehorgeja hashkem lehorgo,Sanhedrin 72a).

But the sages of the Talmud also wondered what happens if the baby is already in the process of his or her birth. For example, if the baby has already his head out, and at that time the doctors state that the mother's life is in danger, do we still apply the same criteria of self-defense, and we sacrifice the life of the baby to save the life of the mother? The Sages understood that this is a different situation, because although the baby continues to threaten the life of the mother, now mother and baby are in an equal status in terms of their rights. Once the baby is born, or even when his head or most of her body is already out, his life cannot be sacrificed and doctors must do everything possible to save both lives.

From here it is clearly seen that before being born, the legal rights of the baby are "less" than those of the mother, since the unborn baby is not yet classified as a legal "person". And therefore, although non-therapeutic abortion is prohibited, it is not classified as homicide. This is not a philosophical question (when does life begin, etc …) but legal: at what point the baby is considered to be a person, with absolutely full rights, including the right of self-defense.

For Jewish law, therefore, the prohibition of abortion is framed within the category of personal injury or mutilation (□□□□), not murder (□□□, although there are some contemporary rabbis who disagree on this point). Because before being born the individual is considered yerekh imo, that is, a dependent limb of the mother, without legal rights of his own.

However (and I am aware that what I am writing now will seem a bit confusing) according to the Jewish tradition, abortion IS considered homicide for a non-Jew, that is, for the Noahic Law (curiously, but for different reasons,Jewish tradition coincides at this point with the ecclesiastical opinion, which considers abortion as homicide for its followers).

The million-dollar question is: Why does Jewish law determine that for the Gentile society, abortion is considered homicide, while for the Mosaic (Jewish) law , abortion is considered as bodily harm or mutilation?

In this and other similar cases in which the law for Gentiles is stricter than Mosaic law, Rabbi Benamozegh suggests that we need to see the socio-cultural context of these laws. Abortion was very common and accepted in the non Jewish society of antiquity. Rabbi Benamozegh q quotes as examples the testimonies of Aristotle and Juvenal, which described the licentiousness with which Greek and Roman societies tolerated abortion (and infanticide). In Jewish society, however, abortion was virtually non-existent.
In this way, by maximizing abortion's punishment—with capital punishment by viewing it as homicide—the strictest Noahic law aims to extirpate this terrible practice of the Gentile society and create a new consciousness and revaluation of the sanctity of a human life.