

Jewish Perspectives on Reproductive Health

Source Sheet by Rabbi Michael Fessler

1. Personhood of Fetus - Biblical Roots

Exodus 21:22-25

(22) When men fight, and one of them pushes a pregnant woman and a miscarriage results, **but no other damage ensues**, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning. (23) But if other damage ensues, the penalty shall be life for life, (24) eye for eye, tooth for tooth, hand for hand, foot for foot, (25) burn for burn, wound for wound, bruise for bruise.

שמות כ"א:כ"ב-כ"ה

(כב) וְכִי־יִנְצְוּ אֲנָשִׁים וְנָגְפוּ אִשָּׁה
הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יְהִיָּה אֶסְרוֹן
עָנוּשׁ יַעֲנֹשׁ כַּאֲשֶׁר יִשְׁיֵת עָלָיו בְּעַל
הָאִשָּׁה וְנָתַן בְּפָלְקִים: (כג)
וְאִם־אֶסְרוֹן יְהִיָּה וְנָתַתָּה נַפֶּשׁ תַּחַת
נַפֶּשׁ: (כד) עַיִן תַּחַת עַיִן שֵׁן תַּחַת שֵׁן
יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל: (כה)
כּוֹיָה תַּחַת כּוֹיָה פֶּצַע תַּחַת פֶּצַע
חֲבוּרָה תַּחַת חֲבוּרָה: (ס)

The Jewish tradition reads the first situation as being a miscarriage without further harm to the woman, and the second being where the woman suffers further injury.

The Christian tradition reads this differently. In the Septuagint, the Greek translation of the Bible, the Hebrew word *ason* in "there is no *ason* (harm/disaster)" was replaced by the Greek *exeikonismenon*, meaning "it is not in the form." This translation/interpretation yields a teaching that an early, unformed pregnancy is subject to monetary fine, but once the fetus has taken shape, this is a case of manslaughter or murder. Augustine and Aquinas drew

this line at quickening. (Catholicism abandoned this distinction in the late 19th century.)

2. Jewish View on Stages of Pregnancy and their Moral Standing

Yevamot 69b:10

If she is found pregnant, until the fortieth day it is considered mere fluid.

יבמות ס"ט ב:ל"י

ואי מיעברא עד ארבעים מיה
בעלמא היא

Gittin 23b:9

Rabbi Yehuda HaNasi holds: A fetus is considered as its mother's thigh, i.e., a part of its mother's body

גיטין כ"ג ב:ט'

... דרבי בהא קסבר עובר ירך אמו

Mishnah Oholot 7:6

(6) A woman who was having trouble giving birth, they cut up the fetus inside her and take it out limb by limb, because her life comes before its life. If most of it had come out already, they do not touch it because we do not push off one life for another.

משנה אהלות ז':ו'

(ו) הָאִשָּׁה שֶׁהִיא מְקַשָּׁה לֵילֵד,
מִחֲתָכִין אֶת הַגּוֹלֵד בְּמַעֲיָהּ וּמוֹצִיִּין
אוֹתוֹ אֲבָרִים אֲבָרִים, מִפְּנֵי שְׁחִיָּהּ
קוֹדֵמִין לְחַיֵּיו. יֵצֵא רַבּוֹ, אִין נוֹגְעִין
בוֹ, שְׂאִין דּוֹחִין נְפֶשׁ מִפְּנֵי נְפֶשׁ:

Mishneh Torah, Murderer and the Preservation of Life 1:9

(9) ... It is a negative commandment that one should not protect the life of a *rodef* (pursuer). For this reason, the sages ruled that in the case of a pregnant woman in a dangerous labor, it is permissible to dismember the fetus in her womb - whether with a drug or by hand because it is like a *rodef* pursuing her to kill her. However, once his head has emerged one may not touch him, as we do not set aside one *nefesh* [soul] for another, and this is the natural way of the world.

משנה תורה, הלכות רוצח

ושמירת נפש א' ט'

(ט) אף זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך הורו חכמים שהעברה שהיא מקשה לילד מתר לחתה העבר במעיה בין בסם בין ביד מפני שהוא כרודף אחריה להרגה. ואם משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם:

3. Grounds Justifying Abortion in Traditional Jewish Law

Later commentators debate in great detail the implications of this text, particularly the breadth or narrowness of the definition of a threat to the life of the woman. Some are more permissive of a range of emotional as well as physical impacts that could justify an abortion, while others are extremely restrictive. But all perspectives in traditional Judaism can imagine some instances when an abortion would be permitted and even required.

Some examples of the spectrum:

Rabbi Eliezer Deutsch, 1850-1916. In the case of a woman with dangerous complications of pregnancy, expert physicians advised her to take a drug to cause an abortion - waiting until things got worse would endanger her life. He

said, "It is permitted in this case for three reasons: (a) Before three months after the conception there is not even a fetus; (b) There was no overt act involved in this case, i.e., surgery; and (c) The woman herself was doing it and it is thus an act of self-preservation."

Rabbi Yitzhak Oelbaum, 1949. A woman had a sick infant who needed mother's milk to survive. She conceived again, and at 4 weeks her milk started to dry up. Was it permissible to have an abortion in order to save her infant's life? "Regarding the reliability of doctors in these matters, they sometimes exaggerate, and we must assess whether a proper formula for bottle-feeding could be substituted. If there was expert evidence that danger might result if the abortion was not performed, then it is permitted."

Jacob Emden (1697-1776) permitted abortion "as long as the fetus has not emerged from the womb, even if not in order to save the mother's life, but only to save her from the harassment and great pain which the fetus causes her" (She'elat Yavez, 1:43).

Jacob Emden also permitted abortion to a married woman made pregnant through her adultery, since the offspring would be a mamzer (see Mamzer), but not to an unmarried woman who becomes pregnant, since the child would be unaffected by that status. (She'elat Yavez, loc. cit., S.V. Yuhasin)

Benzion Meir Hai Ouziel (1880-1953): "abortion is prohibited if merely intended for its own sake, but permitted if intended to serve the mother's needs ... even if not vital"; decided that abortion was permissible to save the mother from the deafness which would result, according to medical opinion, from her continued pregnancy (Mishpetei Uziel, loc. cit.).

R. Eliezer Waldenberg (1915-2006) –In the case of a fetus suffering from Tay-Sachs disease R. Waldenberg ruled: "it is permissible ... to perform an abortion, even until the seventh month of her pregnancy, immediately upon it becoming absolutely clear that such a child will be born thus... Consequently, if there is a case in which the halakhah would permit abortion for a great need and in order to alleviate pain and distress, this would appear to be a classic one. Whether the suffering is physical or mental is irrelevant, since in many

instances mental suffering is greater and more painful than physical distress" (Ziz Eliezer, 13:102).

(There is substantial debate in the Orthodox community about degree and kind of risk. In practice, women often go to a *posek* known to rule stringently or leniently depending on her desires in the matter.)

4. Conservative Movement

1. Robert Gordis, Love and Sex: A Modern Jewish Perspective, 1978

Abortion should be “legally available but ethically restricted. Though the abortion of a fetus is not equivalent to taking an actual life, it does represent the destruction of potential life and must not be undertaken lightly.”

2. CJLS Resolution on Reproductive Freedom, 2007

Whereas Judaism does not believe that personhood and human rights begin with conception, but with birth; Whereas Jewish law does not condone or permit abortion for contraceptive purposes, but where the life or health of the mother are in jeopardy;

Whereas the Committee on Jewish Law and Standards of the Rabbinical Assembly has affirmed the right of a woman to choose an abortion in cases where “continuation of a pregnancy might cause the mother severe physical or psychological harm, or where the fetus is judged by competent medical opinion as severely defective....”

3. Elliot Dorff, “Conservative Judaism on Abortion and Related Issues.” in Bagheri A. (Eds.) Abortion. Springer, 2021

Grounded in its commitment to be historically authentic in integrating tradition with modernity, the Conservative movement, like the Torah and

Rabbinic sources, sees the fetus as “simply liquid” during the first forty days of gestation and “like the thigh of its mother” from then until birth. As a result, the Conservative movement generally forbids abortion as an act of self-injury. At the same time, when the woman’s life or physical or mental health is at stake, an abortion may be required or permitted, depending on the circumstances. Furthermore, now that we know significant facts about the status of the fetus in the uterus, abortions are also permitted if the fetus has a lethal or debilitating disease and the mother responds to that news, after consultation, with an assertion that she cannot mentally tolerate carrying the fetus to term and then either raising it or giving it up for adoption...[He continued to criticize what he sees as less justifiable abortions, invoking, among other issues, Jewish demography.]

4. CJLS Update on Abortion, 2021 Recently, certain abortion procedures have become the subject of political polemics. Nonetheless, keeping in mind the principles and guidelines of Jewish law, based on the Mishnah (Ohalot 7:6), we uphold the use of surgical abortion techniques even in the last stages of pregnancy ("late term intact dilation and extraction abortion") when that is necessary to preserve the mother’s life or health or her ability to give birth in the future.

5. Placing Women’s Lives and Stories at the Center

R. Emily Langowitz and R. Joshua R. S. Fixler, “Abortion and Reproductive Justice” (Excerpt of chapter in *The Social Justice Torah Commentary*), 2021

These texts and their subsequent interpretations are a vital resource for all of us who seek to affirm Jewish support for the choice to terminate a pregnancy and to advocate from a Jewish perspective for laws that protect reproductive choice. And we are called to go further; the law is only one facet of a full and holistic justice...The text in Exodus 21 begins with an act of violence perpetrated against a pregnant woman, and yet this woman is all but absent from subsequent conversation about this passage. Across the centuries, almost all of the voices of Jewish interpretation, and even many modern

commentators, fail to acknowledge her story. The interpreters miss the opportunity to see her as subject, rather than object. To see the woman in this text as merely a hypothetical in a legal case study is to deny that cases such as these were very real to the people who experienced them. To reach a full sense of justice in our understanding of abortion, we must pair *mishpatim* (laws) with *sipurim* (stories).

6. Toward a Bodily Autonomy Approach

Eating On Yom Kippur - Yoma, 82a.

If a **sick person** (*choleh*) requires food, one feeds the *choleh* according to the advice of experts who determine that the *choleh* requires food. And if there are no experts present, one feeds the *choleh* according to the *choleh*'s own instructions, until the *choleh* says enough.

Rabbi Yannai said: If a *choleh* says they need to eat, and a doctor says they do not need to eat, one listens to the *choleh*. Why is this? It is because the verse states: “The heart knows the bitterness of its soul” (Proverbs 14:10)...

Mar bar Rav Ashi said: Any instance where a *choleh* says "I need to eat," even if there are one hundred doctors who say that the *choleh* does not need to eat, we listen to the *choleh* and feed them, as it is stated: “The heart knows the bitterness of its soul” (Proverbs 14:10).