

Exodus 21: 12-29

¹² He who fatally strikes a man shall be put to death. ¹³ If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee. ¹⁴ When a man schemes against another and kills him treacherously, you shall take him from My very altar to be put to death. ¹⁵ He who strikes his father or his mother shall be put to death. ¹⁶ He who kidnaps a man — whether he has sold him or is still holding him — shall be put to death. ¹⁷ He who insults his father or his mother shall be put to death. ¹⁸ When men quarrel and one strikes the other with stone or fist, and he does not die but has to take to his bed — ¹⁹ if he then gets up and walks outdoors upon his staff, the assailant shall go unpunished, except that he must pay for his idleness and his cure. ²⁰ When a man strikes his slave, male or female, with a rod, and he dies there and then, he must be avenged. ²¹ But if he survives a day or two, he is not to be avenged, since he is the other's property. 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. ²⁶ When a man strikes the eye of his slave, male or female, and destroys it, he shall let him go free on account of his eye. ²⁷ If he knocks out the tooth of his slave, male or female, he shall let him go free on account of his tooth. ²⁸ When an ox gores a man or a woman to death, the ox shall be stoned and its flesh shall not be eaten, but the owner of the ox is not to be punished. ²⁹ If, however, that ox has been in the habit of goring, and its owner, though warned, has failed to guard it, and it kills a man or a woman — the ox shall be stoned and its owner, too, shall be put to death. (NJPS)

Babylonian Talmud Sanhedrin 57b

Genesis 9:1-7 (JPS translation, 1917): ¹ And God blessed Noah and his sons, and said unto them: 'Be fruitful, and multiply, and replenish the earth. ² And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon all the fishes of the sea: into your hand are they delivered. ³ Every moving thing that liveth shall be for food for you; as the green herb have I given you all. ⁴ Only flesh with the life thereof, which is the blood thereof, shall ye not eat. ⁵ And surely your blood of your lives will I require; at the hand of every beast will I require it; and at the hand of man, even at the hand of every man's brother, will I require the life of man. ⁶ Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made He man. ⁷ And you, be ye fruitful, and multiply; swarm in the earth, and multiply therein.'

Rabbi Jacob ben Acha found it written in the scholars' Book of Legends: A non-Jew is executed on the ruling of one judge, on the testimony of one witness, without a formal warning, on the evidence of a man, but not of a woman, even if he the witness be a relation. On the authority of Rabbi Ishmael it was said: He is executed even for the murder of an embryo.

Whence do we know all this? — Rabbi Judah answered: The Torah says, And surely your blood of your lives will I require. This shows that even one judge [may try a non-Jew]. At the hand of every living thing will I require it; even without an admonition having been given; And at the hand of man: even on the testimony of one witness; at the hand of man: but not at the hand [i.e., on the testimony] of a woman; his brother: teaching that even a relation may testify.

On the authority of Rabbi Ishmael it was said: [He is executed] even for the murder of an embryo. What is Rabbi Ishmael's reason? Because it is written, Whoso sheddeth the blood of man within man, shall his blood be shed. What is a man within another man? — An embryo in his mother's womb. But the first Tanna [who excludes the murder of an embryo from capital punishment] is a Tanna of the school of Manasseh, who maintains that every death penalty decreed for the non-Jews is by strangulation. He connects the [second] 'man' with the latter half of the sentence, and interprets thus: Whoso sheddeth man's blood, within man [i.e., within him], shall his blood be shed. Now, how can man's blood be shed, and yet be retained within him? By strangulation.

Text 2: Sanhedrin 84b

Exodus 21:12 (JPS translation, 1917): ¹² He that smiteth a man, so that he dieth, shall surely be put to death.

Numbers 35:19-21, 29-30 (JPS translation, 1917): ¹⁹ The blood-avenger shall himself put the murderer to death; when he meeteth him, he shall put him to death. ²⁰ And if he thrust him of hatred, or hurled at him anything, lying in wait, so that he died; ²¹ or in enmity smote him with his hand, that he died; he that smote him shall surely be put to death: he is a murderer; the blood-avenger shall put the murderer to death when he meeteth him. .. ²⁹ And these things shall be for a statute of judgment unto you throughout your generations in all your dwellings. ³⁰ Whoso killeth any soul, the murderer shall be slain at the mouth of witnesses; but one witness shall not testify against any person that he die.

Now, it is necessary that both 'He that smiteth a man' and 'whoso killeth any soul' be written. For had the Torah written only, 'He that smiteth a man, that he die', I should have thought that it applies to the slaying of an adult only, since such is himself bound by law, but not to the slaying of a minor; therefore the Torah writes, 'Whoso killeth any soul.' Whilst had the Torah written only, 'Who killeth any soul,' I should have thought that it applies even to a (*nefel*) miscarriage or an 'eight months child' therefore the former verse is necessary too to exclude these.

Mishnah Oholot 7:6

If a woman is having trouble giving birth, they cut up the child in her womb and brings it forth limb by limb, because her life comes before the life of [the child]. But if the greater part has come out, one may not touch it, for one may not set aside one person's life for that of another.

Maimonides (1135-1204), Hilchot Rotzeah 1:9

This is, moreover, a negative commandment, that we have no pity on the life of a pursuer. Consequently, the Sages have ruled that if a woman with child is having difficulty in giving birth, the child inside her may be taken out, either by drugs or by surgery, because it is regarded as one pursuing her and trying to kill her. But once its head has appeared, it must not be touched, for we may not set aside one human life to save another human life, and what is happening is the course of nature.

Menachem Meiri (1249 – c. 1310), TJ Sanh. 8:9, 26c

[When the mother's life is endangered, she herself may destroy the fetus – even if its greater part has emerged] for even if in the eyes of others the law of a fetus is not as the law of a pursuer, the mother may yet regard the fetus as pursuing her.

Rabbi Yair Hayyim Bachrach (1639-1702), Responsa Ifavvot Ya'ir

[A married woman committed adultery and became pregnant. She had pangs of remorse and wanted to do penance. She asked whether she could swallow a drug in order to get rid of the "fruit" in her womb. In answer, Rabbi Bachrach made it clear immediately that:]

The question of the permissibility of abortion has nothing to do with the legitimacy of the child to be born. The only question involved is whether abortion is accounted as taking a life or not. [Rabbi Bachrach drew distinctions between the various stages of the development of the fetus, i.e., forty days after conception, three months after conception, concluding that] It might be theoretically permitted at the early stages of the pregnancy, but we do not do so because of the custom adopted both by the Jewish and the general community against immorality.

Rabbi Meir Eisenstadt (1670-1744), *Panim Me'iroi*

If a woman has difficulty in giving birth because the child came out feet first, is it permitted to cut up the child limb by limb in order to save the mother?

[As per Rabbi Isaac Klein: This seems to be the very question explicitly answered in the Mishnah. The only problem that is introduced is a discrepancy between the Mishnah and Maimonides. Whereas the Mishnah states that if the greater part of the child has come out of the mother's body, we do not take the life of the child in order to save the mother, Maimonides says that if the head of the child or the majority thereof came out first, it is considered as born and we do not take its life in order to save the mother. The commentators tried to resolve this contradiction by saying that extrusion of the head or the major part thereof, or, in cases when the head came last, the extrusion of the majority of the body, constitutes birth. Eisenstadt then poses the question:]

If at this stage death could result to both if we let nature take its course, is it still forbidden to take the life of the child in order to save the mother?

[He leaves the question unanswered.]

Rabbi Eliezer Deutsch (1850-1916), *Responsa Peri Hasadeh* (paraphrased)

[A woman who had been pregnant a few weeks began to spit blood. Expert physicians insisted that she take a drug in order to induce a miscarriage for, should she wait, it would not only become necessary to take out the child by cutting it up, it would also endanger the life of the mother; if they acted immediately, it would be possible to bring forth the child with a drug. Is it permissible to do so? Rabbi Deutsch answered that]

In this case it is certainly permitted to take a drug in order to induce a miscarriage. There is a distinction between the various stages in the development of the fetus, *gufa abarina* ("a separate body"), *ne'ekar havlad* ("the fetus has become detached"), between the use of drugs and the use of surgery, and between another person doing it or the woman herself. 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, (Czechoslovakia/Canada) *Ifayyei Sarah* (approx. 1949)

[Question: A woman had a "weak" child. According to the doctors, it would not live unless it was breast fed by the mother. The mother had been pregnant for four weeks and had felt a change in her milk. Could she destroy the child she was carrying by means of an injection, she inquired, in order to save the child she was nursing?]

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.

Rabbi Gedaliah Felder, *Kol Torah* 1959, (Toronto)

Question: A pregnant woman was afflicted with cancer of the lungs. The doctors said that if a premature birth was not affected, the cancer would spread faster and hasten her death. Is it permissible to have an abortion where the mother is saved only temporarily?

Rabbi Isaac Klein, “A Teshuvah on Abortion” (1959), CJLS

Being a living thing and being a separate entity are two separate matters. Even if it is a living thing we can say that the fetus is *pars viscera matris* or to use the talmudic expression, *ubar yerekh immo hu*. The fetus is, thus, accounted as the loin of its mother. When abortion is therapeutic there can be no objection to it because, as in any surgery, we sacrifice the part for the whole. This is the attitude the Rabbis have taken. Abortion is forbidden. Though it is not considered murder, it does mean the destruction of potential life. If, however, the purpose is therapeutic, this objection is removed.

Rabbi Ben Zion Bokser & Rabbi Kassel Abelson, “A Statement on the Permissibility of Abortion” (1983), CJLS

Jewish tradition is sensitive to the sanctity of life, and does not permit abortion on demand. However, it sanctions abortion under some circumstances because it does not regard the fetus as an autonomous person. This is based partly on the Bible (Exodus 21:22-23), which prescribes monetary damages where a person injures a pregnant woman, causing a miscarriage. The Mishnah (Ohalot 7:6) explicitly indicates that one is to abort a fetus if the continuation of pregnancy might imperil the life of the mother. Later authorities have differed as to how far we might go in defining the peril to the mother in order to justify an abortion. The Rabbinical Assembly Committee on Jewish Law and Standards takes the view that an abortion is justifiable if a continuation of pregnancy might cause the mother severe physical or psychological harm, or when the fetus is judged by competent medical opinion as severely defective. The fetus is a life in the process of development, and the decision to abort it should never be taken lightly. Before reaching her final decision, the mother should consult with the father, other members of her family, her physician, her spiritual leader and any other person who can help her in assessing the many grave legal and moral issues involved.

Assorted Excerpts from Other Halachic Opinions

Jacob Emden 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 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 taint of bastardy does not attach to her offspring (She'elat Yavez, loc. cit., S.V. Yuhasin

Benzion Meir Hai Ouziel: "abortion is prohibited if merely intended for its own sake, but permitted if intended to serve the mother's needs ... even if not vital"; and who accordingly 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.).

In the Kovno ghetto, at the time of the Holocaust, the Germans decreed that every Jewish woman falling pregnant shall be killed together with her fetus. As a result, in 1942 **Rabbi Ephraim Oshry** decided that an abortion was permissible in order to save a pregnant woman from the consequences of the decree (Mi-Ma'amakim, no. 20).

R. Eliezer Waldenberg –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 its 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" (Zif Eliezer, 13:102).

T'khine for Planned Parenthood

Shared by Ariana Katz, student at the Reconstructionist Rabbinical College and volunteer chaplain at Planned Parenthood of Southeast Pennsylvania. -- <http://www.ritualwell.org/ritual/tkhine-planned-parenthood>

Tkhines, Yiddish women's prayers, originated in Europe in the 16th century. Written in Yiddish, *tkhines* span the breadth of high synagogue worship to the holy moments at home (a prayer for a child's first lost tooth), to the mundane tasks of life (baking *challah* for *Shabbat*). It is the *tkhines* written most clearly by women, for women, that are glimpses into their worldview, priorities, needs from prayer, and conceptions of Divinity. We know that people of all genders access the medical care provided by Planned Parenthood clinics across the United States. When clinics are targeted by violent legislation and violent armed acts of terrorism, it is a direct attack on the care and services for women. So, a *tkhine* for Planned Parenthood, a prayer for all of us who seek care there, a prayer for service providers and volunteers. A *tkhine*, a prayer written in the vernacular by the same people who need them so explicitly.

Ribono shel olam, ruler of the universe,
Who planted the tree of knowledge in the garden,
to know between good and evil¹,
Who granted human beings free choice.
Be with me in this time.
Holder, Guard, keep us safe.

Ribono shel olam, Rachel is weeping for her children²,
She pours out her grief.
I am awash in her tears.
Lift up the neshamot, the souls, of our fallen,
Comfort their families.
Memory, Eternal, remember us.

Ribono shel olam,
who knows of birth and death and the life that exists between,
Bless our healers,
Bless our health,
Bless our hands as we work to heal this brokenness.
Bless our treatments as they bring *chayyim tovim*, good life, on us all.
Shield our caregivers from harm-
For our rabbis teach us, that one on their way to perform one of your holy commandments
is themselves shielded from harm³.
Healer, Soother, treat us.

Ribono shel olam,
Our Well, our source, who brings renewal and sustenance.
You are the deep well I draw from.
The well where *Rebecca* stood,
The waters that *Miriam* caused to pour forth.
The waters of the Nile that *Yocheved* trusted.

Ribono shel olam,
bless these sacred spaces of decision⁴.

1 Genesis 2:9. There is debate on whether the Tree of Life and the Tree of Knowledge of Good and Evil are the same tree, or separate. For many, the Tree of Knowledge of Good and Evil refers to carnal knowledge, due to the shame which is part of the immediate fallout from eating of the tree (Etz Chayyim)

2 Jeremiah 31:15

3 Talmud Bavli i Pesachim 8a "R. Elazar taught that harm will not befall a *Shali'ach* (someone on the way to do a *Mitzvah*!"

4 Religious Coalition for Reproductive Choice

Ritual for Abortion

Deborah Eisenbach-Budner with Rabbi Susan Schnur

Prayer excerpted from article “Ambivalence – When the Abortion on the Table is Your Own” (lilith.org/articles/our-reproductive-selves/).

Before our first trip to the clinic, I had looked for Jewish prayers or rituals that sanctified abortion, but the little I found addressed only losses that followed “medically necessary” procedures. I knew I needed to bring a sense of *kedusha*, of blessing and wholeness, to the abortion while I was experiencing it, but even as I lay on the operating table squeezing Steven’s hand so hard that his knuckles turned white, I was unable to access that *kedusha*. Then something happened.

My presentness to the physical pain, my acknowledgment of the power I was assuming through my decision to end potential life, and my understanding that I was not alone in this journey ... coalesced, without my help, into words:

***Brucha Aht Rachamaima, sheh’ozeret lanu,
livchor chayyim. Amen.***
**Bless You, Rachama’ima, Compassionate Nurturer of Life,
who helps us choose life. Amen.**

Deborah Eisenbach-Budner has worked as an Education Director in synagogues for the last two decades. She has a special commitment to ritual innovation that enfranchises marginalized Jews (orange on the *seder* plate and eighth blessing for inclusion of LGBT folks) or honors human experience previously invisible in Jewish life. She is also working on the spirituality of parenting and other everyday occupations.

I said the words to Steven and asked him to whisper them over and over in my ear. To me, a *bracha* — a prayer — represents the pinnacle of presentness. Then I asked for the gas (I was so “present” that I gave my body permission to have an easier ride), and the pain became bearable.

Addressed in the feminine — “*Brucha Aht*” — to “*Rachama’ima*,” a name for God that first birthed itself, 30 years ago, among a small group of women, including me, who were writing one of the first feminist *Haggadot*.

Rachamaima combines three Hebrew words: *rechem* (womb); *rachamim* (compassion; related etymologically to “womb”); and *ima* (mother). Divinity here is a compassionate, female gestator of life. Imagining God in this way came out of a process I called “spiritual activism.”

“*Sheh-ozeret lanu*” [“who helps us”] reflects my theological stance: that there is something “out there” besides us sentient humans. “It” doesn’t have a plan, “it” doesn’t choose life, but it “helps us” — partners and enables us — to see our job, our role, where we need to go. We know about this “something” beyond us that contributes to the world because it happens *through* us.

The words “You” and “us”: During the abortion, my partner kept whispering the prayer in my ear, over and over, the syllables incantatory. “You” and “us” eradicated my feelings of being, somehow, the only one. They connected me to Divinity, to my partner, and to every woman who ever chose to have an abortion or will one day do so.

The prayer’s message is radically different from the *Kaddish* or from the words Jews say in response to a death — “*Dayan ha-emet!*” [“God is the righteous judge!”] — which don’t engage relationally with us, which don’t join us in our sorrow. The *Kaddish* resolves the unresolvable problem of mortality and anguishing loss by simply trumping it (“Let the glory of God be extolled, let His great name be hallowed, let His great name be blessed.”). My female prayer, on the contrary, is an embrace.

“*Livchor*” — “to choose.” The first time I went to the abortion clinic, I couldn’t go through with it and left with my pregnancy still intact. During the six days that followed, I came to terms with the awesome charter of my choice. Okay, this is inescapable, I told myself. I can’t pretend I’m not doing it. “Pro-choice,” “pro-life” — I was taking responsibility for my power.