

Reproductive Justice

Every now and then some political or social earthquake awakens us and shakes us to our core. Everything stops and for the rest of our lives we remember where we were when we felt the initial shock. Hearing the news of the Supreme Court's decision to overturn Roe versus Wade in June is one such cataclysmic event in the history of our nation. There is no current issue in our country that is as polarizing and at the same time, private, as abortion and reproductive rights. Even before the Supreme Court overturned Roe v. Wade, but especially afterwards, the topic of terminating pregnancies has been front and center in American discourse. In the days and weeks following the high court's ruling that this issue should be left up to the states to decide, 14 states have since enacted either total or near total abortion bans and about half of the states are expected to enact bans on abortion or other gestational limits on the procedure in coming months. Our landscape has completely changed. This right which many of us took for granted for the past 50 years has crumbled. It is hard to think of another example that so clearly shows how everything is in flux. When the political pendulum swings one way, history shows us that it will eventually swing the other way. It's just a matter of time.

This is a deeply personal issue. It touches on matters of life and death, family planning, and philosophical questions such as when does life even begin. It is no wonder that many of us and our fellow Americans have such strong opinions. There is no other issue that causes such a visceral reaction than whether or not a mother should have the right to full bodily autonomy which includes making tough decisions about her pregnancy. I want to acknowledge how difficult and painful this decision was and continues to be for many of us. While there are certainly folks in our community who applaud the decision, either because they oppose a woman's right to access abortion or because they disagreed with Roe and feel the matter should be left to the states, the vast majority of American Jews¹ and our non-Jewish neighbors are devastated. I join all of you who are pained by this new reality. And I am saddened that the deep chasm which already exists in our country has been widened because of this

¹ 83% of American Jews support abortion in all/most cases according to the latest Pew study. I have seen upwards of 89% in other studies.

issue. At a time when we should be working on finding common ground and unifying, somehow our nation finds a way to pour more gasoline on an already large fire.

For the past several years I have led text studies on reproductive rights and the Jewish perspective on abortion. I have learned so much and even more since this past spring when I decided one of my High Holy Day sermons was going to address this topic. When I first began delving into this subject, I had no idea what I was going to learn, although I had an inkling that the Jewish perspective would be more tolerant of abortion than the Christian Right, but to what extent I did not know. I had hoped that my studies would pleasantly surprise me and make me feel even more proud to be a Jew. When this turned out to be the case, I was eager to share my findings with my students, both teens and adults. But this spring I dug even deeper and I want to share with you what our Jewish tradition has to say about this topic. Spoiler alert: the Jewish perspective is much more nuanced than I had previously thought. Our sacred texts, *halakha*, and modern responsa literature, when looked at in its totality, do not fall on one side or the other. Judaism is neither anti-abortion nor is it completely pro-choice, although it does approach the topic with more compassion for the mother than one may have thought.

In the spirit of not speaking too long this morning, I have selected just a fraction of the texts I studied to share with you.

According to Jewish tradition God owns all there is. Our bodies are a gift from God and they are simply on loan to us until we die. We have no shortage of mitzvot concerning the way we ought to take care of our bodies. Through these laws we learn how God expects us to use or not use our bodies. To put it bluntly, we do not have the right to govern our bodies any way we desire. “My body my choice” is not a Jewish statement. Nevertheless, there are no consequences if we choose to violate any of these commandments.

Next, Jewish tradition teaches that life does not begin in the womb, but when the fetus is partially out of the birth canal.² Up until the moment of birth a fetus is considered as part of the mother, no different than a thigh.

² Mishnah Ohalot 7:6

This is backed up in the Talmud where the sages teach that if a pregnant woman is about to be executed for a capital crime, one does not wait for her to give birth, but if she is in active labor and in the process of delivering her baby then the execution must stop.³ In addition, for the first forty days of gestation our rabbinic sources teach that the fetus is simply liquid.⁴ For many of our Catholic and Christian friends, life begins at the moment of conception.

We may not be a Christian nation, but it certainly feels like one a lot of the time. Conservative Christian voices dominate our country's discourse on reproductive choice.⁵ For many of them, they are only concerned with the potential life of the fetus. Women are thus dehumanized and treated merely as vessels for delivering new life. This is only problematic when other religious voices are left out of the conversation. The fewer the perspectives, the less nuanced and balanced the messaging will be. Perhaps some of us have been persuaded by these Christian voices since Jewish views do not get nearly as much airtime.

With these first two teachings, we have learned that, on the one hand, we may not do whatever we want with our bodies. Acts of self-harm, for instance, are prohibited, except to preserve one's life or health. And for many Jews, terminating a pregnancy, especially after forty days, is as if one is amputating a limb since the fetus is considered no different. On the other hand, we learn that life does not begin until birth, and at least for the first forty days of gestation, a fetus is no different than bodily fluid. During this period of time and even later when terminating a pregnancy is deemed required, Judaism does not view abortion as murder since a fetus, throughout its nine months developing in the womb, is not considered a full-fledged human being, but rather part of one.

³ BT Arakhin 7a

⁴ BT Yevamot 69b

⁵ According to a 2015 study, when the media discusses issues pertaining to contraception and abortion, the voices of Catholic leaders are six times as likely to be heard than women health professionals. See Rev. Debra W. Haffner, *A Time to Embrace: Why the Sexual and Reproductive Justice Movement Needs Religion* (Westport, CT: Religious Institute, 2015), 47.

Interestingly, the Torah does not discuss abortion, but it does present a situation where an accidental miscarriage occurs. In Exodus 21:22-25 we read a scenario where a pregnant woman is in the crosshairs of a fight between two men and loses her baby. The Torah teaches that if the mother survives but loses the fetus, the men must pay her husband monetary damages but if she also dies then the punishment is “life for life.” In other words, the rabbis from the Mishnah, and later, understand this text to teach that the fetus is more like property and not human life. The mother’s life is primary and more valued.⁶ The fetus is of lesser status.

For generations the rabbis have commented on these texts and one of the more interesting interpretations stems from a discussion in the Talmud. In Tractate Sanhedrin we read about the case of a *rodef*, or pursuer. This is a Jewish legal category of someone who has the intent to kill another person. If you identify such a person, you are obligated to kill them first, even if it’s a minor. Rav Hisda suggests that the fetus may act as a *rodef* in some situations but the rabbis disagree arguing that a fetus does not have intent to harm, whereas that’s the definition of a *rodef*. However, Maimonides, several centuries later, sides with Rav Hisda and his opinion has proven to be quite influential. Maimonides explains the fetus is a pursuer and so it should be aborted if necessary, except if the head is emerging.⁷ Maimonides is saying that abortion is only permissible if the fetus is a *rodef*. In other words, the fetus has to be threatening the mother’s life in order for it to be aborted. This is the only justification. There has to be a reason and that reason must concern the mother’s health. This sounds a lot like the most stringent abortion laws that are emerging across the country.

However, the majority of the later rabbinic authorities maintain that abortion should also be permitted even if there is no mortal danger from the pregnancy. Jacob Emden, an 18th century German talmudist, permitted abortion "as long as the fetus has not emerged from the womb,

⁶ What I find most interesting about this text is actually how it has been interpreted by our non-Jewish friends. The Septuagint, which is a 3rd century BCE Greek translation of the Torah, has served as the basis for the Christian Bible. With one major editorial change to the text that departs from the original Hebrew, the Septuagint teaches that if the fetus dies as a result of the accident, the punishment is also life for life.

⁷ Mishneh Torah, Murderer and the Preservation of Life 1:9

even if not in order to save the mother's life, but only to save her from the...great pain which the fetus causes her.”⁸ A similar view was adopted by the Chief Sephardic Rabbi of Pre-Mandate Palestine,⁹ namely that abortion is permitted “if intended to serve the mother's needs...even if not vital.” What these and so many other *halakhic* scholars are advocating is that abortion ought to be allowed whether the mother's physical or mental health will be compromised if she is forced to carry the fetus to term. This expanding of the law clearly includes instances of rape, incest, or whether the mother is underage. All of these examples, and then some, are likely to cause great mental anguish for the mother and our tradition recognizes the importance of the mother's mental health.¹⁰ Just when I thought Judaism was extremely restrictive I learn that the rabbis viewed mental health risks equivalent to physical health risks. This is what a compassionate approach looks like.¹¹

In his book, *Matters of Life and Death: A Jewish Approach to Life and Death*, Rabbi Elliot Dorff writes, “Although abortion is permitted in some circumstances and actually required in others, it is not viewed as a morally neutral matter of individual desire or an acceptable form of post-facto birth control. Contrary to what many contemporary Jews think, Jewish law restricts the legitimacy of abortion to a narrow range of cases; it does not give blanket permission to abort.”¹² When I consider Dorff's words with those of the rabbi's who came before him I am left with the feeling that Judaism is actually anti-choice, even though it allows ending a pregnancy on account of a mother's mental and emotional state. A pro-choice perspective supports full bodily autonomy and decision making. This was not an idea that the rabbis supported in the way some of us might. When I see friends post “Abortion is a Jewish Value” on their social media wall I

⁸ She'elat Yavez, 1:43

⁹ Chief Sefardic Rabbi Benzion Meir H̄ai Ouziel of Palestine/Israel 1939-1953

¹⁰ See Responsum L'vushai Mord'khai, 1913 where a mental health risk is equated to a physical health risk. Also, see Nishmat Avraham, Choshen Mishpat 425:23, p. 294 for further discussion on the emotional toll of carrying a baby from rape or incest.

¹¹ See also a responsum by Rabbi Israel Meri Mizrahi (Responsa Pri ha-Aretz, vol. 3 Jerusalem, 1899; Yoreh Deah, no. 2

¹² Elliot Dorff, *Matters of Life and Death: A Jewish Approach to Life and Death*. JPS, Philadelphia, 1998. p. 128

now understand that to be a falsehood. There is confusion amongst Jews as to what our tradition professes since Judaism simultaneously forbids abortion in most cases and yet requires it in others. It's actually the quintessential Jewish stance and I am bothered by it.

While many of our Jewish sources seem to support a right to abortion, at least more-so than what our country's conservative lawmakers want, what they are actually doing is promoting a justification framework. Such a framework allows abortion only under certain circumstances. It requires one justify their abortion. The problem is that this starts with the assumption that abortion is wrong and can only be permissible in specific cases. Those of us who try advocating the Jewish pro-choice argument using the justification approach are actually undermining our goals because this is the opposite of a woman's right to choose. We are saying, "Well, it depends on the circumstances whether or not she can choose to have an abortion." For mothers who say, "It's not the right time to have a baby" or "I don't have the resources to support a baby now," neither of these reasons are within the scope of acceptable criteria that our Jewish sources support, unless of course the mother's mental health is at risk.

One more issue that I consistently came across is summed up in a former leading conservative rabbi's words. It is also echoed in Dorff's as well. Rabbi Robert Gordis wrote in his 1978, *Love and Sex: A Modern Jewish Perspective*, "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."¹³ This common stereotype about individuals who have abortions and don't take the decision seriously is not only misogynistic, but it is extremely demeaning. It paints a picture of women as promiscuous, reckless, and unthoughtful. I am certain that the vast majority of women who make this decision do it with a very heavy heart.

¹³ Gordis, Robert. *Love and sex: A Modern Jewish perspective*. Farrar Straus Giroux. 1978

To assume that women get abortions all the time as a form of birth control is a myth that needs to be busted.¹⁴

One of the biggest problems I see with the Jewish perspective, as well as the ones shaping our country now, is the lack of women's voices. "That much of Judaism's sacred canon can be attributed to solely male authorship is problematic when discussing *any* topic, but doubly so when considering an issue that so directly affects women and individuals with uteruses."¹⁵

Let's recall that text from Exodus about the unintended miscarriage. Rabbi Emily Langowitz and Rabbi Joshua Fixer write, "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 conversations about this passage. Across the centuries, almost all of the voice of Jewish interpretation, and even many modern commentators, fail to acknowledge her story. The interpreters miss the opportunity to see her as a subject... 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)."¹⁶

Yes, it matters what our rabbis had to say, but we must remember that they were just regular men. These *halakhic* authorities of many generations ago were not asking the same questions about abortion that we are asking today. The painful methods they had at the time to terminate a pregnancy were also part of their considerations. And yet, we base much of our

¹⁴ According to the National Abortion Federation, "half of all women getting abortions report that contraception was used during the month they became pregnant. Some of these couples had used the method improperly; some had forgotten or neglected to use it on the particular occasion they conceived; and some had used a contraceptive that failed. No contraceptive method prevents pregnancy 100% of the time." Furthermore, "If abortion were used as a primary method of birth control, a typical woman would have at least two or three pregnancies per year -- 30 or more during her lifetime." see *Women Who Have Abortions* - National Abortion Federation. https://prochoice.org/wp-content/uploads/women_who_have_abortions.pdf

¹⁵ Limmer, S. M., Pesner, J. D., & Langowitz, E. (2019). "What Reproductive Justice Might Look Like." In *Moral resistance and spiritual authority: Our Jewish obligation to social justice* (p. 136). essay, Central Conference of American Rabbis.

¹⁶ Abortion and Reproductive Justice" (Excerpt of chapter in *The Social Justice Torah Commentary*), 2021

understanding of the topic within this patriarchal power structure who stigmatized abortions for non-medical reasons. If we want to have a better understanding of this issue in the context of Judaism I suggest we look to both the commentaries, especially those written by women, and also the personal stories of Jewish women. These ought to be the sources that guide us in forming our opinions, not only Maimonides and certainly not an evangelical Christian lawmaker. We must center the voices that have been marginalized from our tradition. By doing this and expanding the canon on reproductive justice, while still studying the traditional sources, we will get a much deeper understanding of what the Jewish perspective truly is.

My friends, as I said in my opening, we can take nothing for granted. Everything is always in flux and to live in a democracy means that we will be defeated often. This means we need to remain vigilant and fight for our freedoms. There is nothing automatic about freedom or rights. Justice requires that we get our hands dirty and stay in the fight, whether it is for reproductive rights, women's rights, LGBTQ+ rights, religious freedom, or minority rights. More than any other group of people, as Jews, we should understand how important these struggles are.

I want to end with remarks shared in *Kveller* by two Jewish women who both chose to terminate their pregnancies for different reasons. Sarah Tuttle-Singer is a writer currently living in Jerusalem. She wrote her story in *Kveller* back in 2012. It ends with the following words:

Look. I know that some of you will not agree with my decision. In fact, some of you will be sickened by it. But I did what many other 19-year-old girls would do: I chose to stay in school. I chose to teach Hebrew on Sundays and Wednesdays. I chose parties at Hillel and ZBT and dating and weekends with friends. And I chose not to bring an unwanted child into the world. And there are a thousand different reasons why I do not regret my decision to have an abortion freshman year, and I am grateful that I was able to make that choice in a safe way.

And I am grateful that my body healed quickly, and my heart... eventually.

And I am grateful that there were other Jewish women out there who understand that when you're young and scared, you need help.¹⁷

And finally, this is from part of an essay written by my colleague, Rabbi Jaclyn Cohen:

As a survivor of severe postpartum depression, it dawned on me that choosing not to have an abortion might potentially leave my son without a mother.

And so, I chose life. My life. My son's and my husband's lives. Our family's collective life. I took the science being offered me and I listened. As painful as it was, and as heartbroken as I felt, I listened.¹⁸

May we continue to listen to voices of women. May their voices echo the loudest in our hearts when we advocate for, study, or think about reproductive rights. Their words are words of Torah and it's time to raise them up.

¹⁷ Tuttle-Singer, S. (2012, May 29). *My Jewish Abortion*. Kveller. <https://www.kveller.com/my-jewish-abortion/>

¹⁸ Cohen, Rabbi Jaclyn. (2020, October 15). *I'm a Rabbi and a Mom. And I Had an Abortion*. Kveller. <https://www.kveller.com/im-a-rabbi-and-a-mom-and-i-had-an-abortion/>