

Abortion
Kol Nidre 5782
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Congregation Bet Ha'am
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I did something for the first time in my rabbinic career a week ago. I decided to scrap my original sermon for this evening. In my second year of rabbinical school, I had colleagues serving in student pulpits at the High Holy Days in September 2001. After 9/11, they each had to pivot and deliver the sermon for the moment. That year I was leading children's services at a temple in Albany, so I wasn't affected, but a week ago, I realized that this was that moment for me. This, instead, is the sermon for this moment. I need to speak to you tonight about abortion.

Now, I imagine that the vast majority of our congregation supports access to abortion on some level. If, however, you are among those who don't, I truly hope you'll listen. If you are among those who care so deeply about this issue, that you think I'm preaching to the choir, then hear this as a call to use your voice. For some, this topic is too traumatic. I respect if you need to step away from the service for the next few minutes.

I've been told in my career, at times, that Reform Judaism is just the Democratic Party with holidays. While I respect that for some activism isn't part of Judaism, I respectfully reject that notion. Abraham spoke out for the sake of the innocent in Sodom and Gomorrah. Sarah welcomed strangers who, as it turned out, brought her a blessing. The prophets spoke truth to power, condemning the injustices of their era. The Torah commands us to feed the hungry, pay workers a fair wage on time, and to rebuke our neighbors when they aren't observing these *mitzvot* and others. If that isn't an activist text, I don't know what is. Still, while abortion is a political issue in our country, abortion is a *religious* issue in Judaism. So, that's where I want to start tonight.

While our tradition includes a spectrum of six genders, the ancient rabbis only envisioned that women could become pregnant. We know today that people of a variety of genders can become pregnant and that access to abortion isn't only an issue facing women. It is also an issue that affects trans, non-binary, and gender non-conforming people. So, when the Sages speak of women regarding abortion, we know to apply their wisdom to all people who can become pregnant.

The Biblical basis for *halakhah* (Jewish law) regarding abortion can be found in the Torah in *Parashat Mishpatim*. Exodus 21 relates a scenario in which two men are fighting and one strikes the other's wife, who is pregnant. If the blow causes a miscarriage, he is liable for loss of property and must pay the husband. If, however, the blow causes the wife's death, then capital punishment is required. Unlike the mother, whose death is a capital crime, the loss of the fetus, "is a crime of causing loss and destruction, analogous to property damage."¹ The fetus and the mother are treated differently because, according to Jewish law, "the woman is a living person, a *nefesh*... the fetus is not a person in this sense."²

In the Mishnah,³ we read that the fetus is still considered part of its mother's body, "even when it begins its path toward independent life, that is, when the birth process starts."⁴ The fetus does not become a *nefesh* (a living person) until birth has taken place, which the Sages define as when the head emerges or the majority of its body in a breach birth or Caesarean section. Because of this, abortion is permitted in Jewish law in order to save the life of the person who is pregnant. "Once the fetus has emerged it has the same status as the mother and then, even if it threatens the mother's life, it may not be touched. This is because the fundamental principle of capital law

¹ Rachel Biale, *Women and Jewish Law*, New York: Schocken Books, 1984, p. 220.

² Ibid.

³ *Oholot* 7:6.

⁴ Ibid, p. 221.

in the Halakhah is that one may not set one life over another.”⁵ The same passage also states that if the pregnant person’s life is in danger, her life takes precedence over the fetus and an abortion is required. Because the text clearly prohibits setting one life over another, then it seems clear that abortion is permitted because the fetus is not considered a living person by Jewish law.

In the Talmud, in Tractate Arakhin,⁶ the Sages consider a case regarding the execution of a woman who is pregnant. At first glance, it seems horrific to us. They prohibit delaying the execution until the birth of the child because they view delaying execution as a form of torture and not only permit, but require an abortion seemingly out of concern for her being disgraced. Rachel Biale, in her book *Women and Jewish Law*, writes, “The practical importance of the ruling in Arakhin is not of course for cases of execution, but for other cases where the mother is in great distress due to the pregnancy.”⁷ This text then becomes the basis in Jewish law that abortion is not only permitted in cases where the pregnant person’s life is in physical danger, but also in order to prevent psychological suffering.

Abortion was fairly straightforward in Jewish law, requiring it when the mother’s life was in danger and permitting it to prevent mental anguish, until a ruling by Maimonides in the 12th century. Where previously the fetus was not regarded as a life, Maimonides connects abortion *halakhah* with *din ha-rodef*, the law regarding pursuers, which obligates us to stop someone who is pursuing another if the other’s life is threatened, even if it means killing the pursuer. In *din ha-rodef*, the law regarding pursuers, the pursuer is a *nefesh*, a living person, in their own right. So, while earlier Jewish law did not regard the fetus as a life, by applying *din ha-rodef* to abortion, Maimonides sees the fetus as a life, in a sense. Still, he, “states that it is prohibited to take pity on

⁵ Ibid.

⁶ Arakhin 7a-b

⁷ Biale, p. 225.

the pursuer and refrain from killing him. He must be killed in order to save the victim. This law is Maimonides' justification for killing a fetus when the birth threatens the mother's life."⁸ His view is restrictive, limiting abortion only to when the pregnant person's life is in danger, which contradicts the Talmud and Rashi who support taking emotional well-being into consideration.

In general, Jewish tradition has followed the opinion of the Talmud and Rashi, permitting abortion both to save the life of the person who is pregnant as well as to protect their emotional well-being. Rabbi Issar Unterman, who served as chief rabbi of Israel in the 1960s and 1970s ruled in favor of allowing circumstances of emotional distress to qualify as a case of *din ha-rodef* in order to permit abortion. While the vast majority of *halakhah* on abortion concerns the mother's life, modern rabbis and Jewish legal authorities have considered, as well, the life of the fetus. Rabbi Eliezer Waldenberg, a prominent Jerusalem rabbi, ruled that aborting a fetus with Tay-Sachs is permitted to mitigate pain and suffering for the mother. Tay-Sachs is, "a rare inherited condition that mainly affects babies and young children. It stops the nerves from working properly and is usually fatal."⁹

Jewish law does not permit abortion in all cases. "Judaism teaches that the body is ultimately the property of God and is merely on loan to human beings. Multiple prohibitions in Jewish law ... collectively serve to reject the idea that individuals enjoy an unfettered right to make choices regarding their own bodies."¹⁰ According to *halakhah*, there must be serious cause for an abortion. *Halakah*, "does recognize as a fundamental principle the right of [a person] to

⁸ Ibid, p. 230.

⁹ <https://www.nhs.uk/conditions/tay-sachs-disease/>.

¹⁰ *Abortion and Judaism*, My Jewish Learning, <https://www.myjewishlearning.com/article/abortion-in-jewish-thought/>.

protect [their] life by abortion. It is part of the right, and duty, of self-preservation (*pikuach nefesh*).”¹¹

Both the Conservative and Reform movements have been outspoken voices in the fight for access to safe and legal abortion for at least the past 60 years. And while Orthodox organizations, “do not support broad legal protections for abortion,” even the ultra-Orthodox Agudath Israel of America,” opposes restrictions on abortion that do not include a religious exemption.

As Reform Jews, *halakhah* informs our lives. Reform Judaism was founded upon the premise of informed choice and we are called to learn about the *mitzvot* that guide us in bringing meaning to our lives. Regarding abortion, we are informed not only by the laws that permit and even require abortion in certain instances, but also by our texts of justice that call us to engage in *tikkun olam*, the repair of our world.

As Michele Goodwin, Chancellor’s Professor of Law at the University of California, Irvine, writes for the ACLU, “It is worth reflecting on the racist origins of the anti-abortion movement in the United States, which date back to the ideologies of slavery. Just like slavery, anti-abortion efforts are rooted in white supremacy, the exploitation of Black women, and placing women’s bodies in service to men. Just like slavery, maximizing wealth and consolidating power motivated the anti-abortion enterprise.”¹²

“Today, as people debate whether anti-abortion platforms benefit Black women, the clear answer is no. The U.S. leads the developed world in maternal and infant mortality. The U.S. ranks around 50th in the world for maternal safety. Nationally, for Black women, the maternal death

¹¹ Biale, p. 238.

¹² Michele Goodwin, *The Racist History of Abortion and Midwifery Bans*, ACLU, <https://www.aclu.org/news/racial-justice/the-racist-history-of-abortion-and-midwifery-bans/>, July 1, 2020.

rate is nearly four times that of white women, and 10 to 17 times worse in some states... Sadly, pregnancy has become a death sentence for many in the very places that make reproductive health care access the most fraught and hard to reach.”¹³ “Women who want an abortion but are denied one are more likely to spend years living in poverty.”¹⁴ Unwanted pregnancy carried to term quadruples the odds that parent and child will live below the federal poverty line.

The attack on *Roe v. Wade* isn’t only an attack on abortion rights. It’s also an attack on our right to privacy. On the basis of *Roe v Wade*, the Supreme Court overturned Texas’s anti-sodomy laws in 2003. “*Roe v Wade* allowed SCOTUS to overturn state laws that criminalized private, consensual acts that especially targeted LGBT+ people. The gutting of *Roe v Wade* imperils every menstruating person in the US, every person who engages in sex, and every person who values our constitutional right to privacy.”¹⁵

When I was serving as a rabbi in Minnesota, I regularly engaged with the Religious Coalition for Reproductive Choice to support access to abortion. In particular, I helped to organize an annual multi-faith prayer service, which we held each year on Good Friday, when the local Catholic Diocese would bus in hundreds of protestors to rally outside Planned Parenthood in St. Paul. I often said that one of the reasons I was committed to the issue was because it was a place for me truly to be an ally. As a cisgender, white, gay man, I am unlikely ever to be personally involved in a choice to terminate a pregnancy.

In spite of this work, it occurred to me the other day that I do not personally know the stories of any people in my life who have chosen to have an abortion, with only one exception. During the decade-long period before coming to Bet Ha’am, when I was primarily working with

¹³ Ibid.

¹⁴ Ronnie Cohen, *Denial of abortion leads to economic hardship for low-income women*, Reuters, <https://www.reuters.com/article/us-health-abortion-hardship-idUSKBN1F731Z/>.

¹⁵ Alexandria Ocasio-Cortez, Twitter, September 8, 2021.

youth in four different states, I had one teenage youth grouper who came to me when she learned she was pregnant, because she wanted to terminate the pregnancy. Ultimately, before she could make that decision, she had a miscarriage. I have come to realize that we need to hear these stories. There is so much shame associated with abortion that people who have chosen to have one rarely tell their stories. We know that the marriage equality campaign was won on storytelling. Abortion is something that we need to talk about openly. No one should feel shame around this issue. Certainly not in this community.

In light of my sermon on Rosh Hashanah morning about *makhloket l'shem shamayim*, disagreements that are for the sake of heaven, it's also important for us to understand the position of those who oppose abortion. There are some, many perhaps, whose motivation to restrict access to abortion is rooted in racism, subjugation of minorities, and efforts to keep the poor poor. But there are many who oppose abortion on a religious basis, but there are ways for us to work together to achieve a common good.

"In Christianity there is a totally different development based on the same source, Exodus 21:22. This development hinges on a different translation of the phrase, 'but no other misfortune ensues.'"¹⁶ The word translated here as misfortune, and sometimes as disaster or damage, *מִיֹּזֶם* in Hebrew, "was translated by the Septuagint as referring to the fetus and its stage of development."¹⁷ As a result, in Christian theology, there is a difference between a fetus that is formed and one that is not yet. The Church Fathers ruled that a fetus takes form at the fortieth day, but this was later amended and life was considered to begin at conception because an abortion would result in a soul doomed to hell because it hadn't been baptized. This, "reflects the

¹⁶ Biale, p. 220.

¹⁷ Tirzah Meacham, *Abortion*, Jewish Women's Archive, <https://jwa.org/encyclopedia/article/abortion/>, July 14, 2021.

two opposing schools of Greek philosophy: the Academy, represented by Plato/Aristotle, who held that human status [is] obtained at fetal formation, and the Stoics, who held that the fetus is dependent on the mother... Abortion makes baptism impossible for Christians, leaving the fetus damned eternally by original sin. Ensoulment is not a *halakhic* issue since full human status in Judaism pertains only at the birth.”¹⁸

Still, in spite of this fundamental difference between the Jewish and Christian views on when life begins and the impact of abortion on the soul of the potential child, there is common ground that we can find with those who oppose abortion. “Researchers from the University of Washington found that adolescents who receive comprehensive sex education are significantly less likely to become pregnant than adolescents who receive abstinence-only-until-marriage or no formal sex education.”¹⁹ By supporting and advocating for comprehensive sex education for our children, we will reduce both pregnancy and abortion rates. We also have to add our voices in support of keeping abortion safe, legal, and accessible. “Anti-abortion forces depend on exhausting the majority of us who support abortion rights. They have been relentless in their longevity and creativity to erode abortion access, and they are counting on our collective sense of desperation and horror to permanently debilitate us.”²⁰ If this season teaches us anything, it teaches us to recommit ourselves to our values, to supporting those on the margins of society, and to doing our part to bring about *tikkun olam*, the repair of our world. *G’mar chatimah tovah*, may you be sealed for blessing in the Book of Life.

¹⁸ Biale, p. 2.

¹⁹ Marshall Bright, *Study Finds that Comprehensive Sex Education Reduces Teen Pregnancy*, ACLU, <https://www.aclu.org/blog/reproductive-freedom/study-finds-comprehensive-sex-education-reduces-teen-pregnancy>, March 28, 2008.

²⁰ Lauren Rankin, *How to Help Save Abortion Rights after Amy Coney Barrett's Supreme Court Confirmation*, Teen Vogue, <https://www.teenvogue.com/story/how-to-help-save-abortion-rights>, September 24, 2020.