

When does life begin
Kol Nidrei 2022
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In our country, there's a raging debate as to when does life itself actually begin. In Jewish tradition, as a rabbi, I can definitely say this, the fetus is not considered viable until after he/she graduates from medical school.

A rabbi, a priest and a minister are discussing when life begins. The priest says: "In our religion, life begins at conception." The minister says: "We disagree. We believe that life begins when the fetus is viable outside of the mother's womb." The rabbi responds: "You both are wrong. In our religion, life begins when all of the children are married off."¹

When Shane was younger, I would tell him in an exasperated voice that it's not too late for me to have a late term abortion. It was just another way of saying, "I brought you into this world and I can take you out!" Joking aside, he was a good kid and a better teenager than I ever was. The question though of when does life begin is a very serious issue with major repercussions for people in the United States and for those in our community.

As Reform Jews, our Yom Kippur morning Torah portion, out the book of Deuteronomy states,

הַעֲדֹתִי בְכֶם הַיּוֹם אֶת-הַשָּׁמַיִם וְאֶת-הָאָרֶץ
I call heaven and earth to witness against you this day:

הַחַיִּים וְהַמָּוֹת נָתַתִּי לְפָנֶיךָ הַבְּרָכָה וְהַקְּלָלָה
I have put before you life and death, blessing and curse.

וּבְחַרְתָּ בַחַיִּים לְמַעַן תְּחַיֶּה אֶתְּךָ וְזַרְעֶךָ
Choose life—if you and your offspring would live— (Deut 30:19)

Life and death are fundamental motifs of our High Holy Days and especially on Yom Kippur. We are bidden to choose life. However, when does life itself begin? The Supreme Court this past June, overturned 50 years of precedent, by reversing its 1973 ruling on Roe v Wade, and doing away with the constitutional right to abortion. By this act, they dumped this explosive issue on to state legislatures. Right now, we have a crazy patch work of differing laws around our country. For example, there's a complete ban on abortion, even in cases of incest or rape, in Idaho, South Dakota, Wisconsin, Texas, Oklahoma, Louisiana, Arkansas, Missouri, Mississippi, Alabama, Tennessee, & Kentucky. In Ohio and Georgia, abortion is banned at six weeks. In Florida it's at fifteen weeks. Other the other side, abortion is legal in Washington, Oregon,

California, Alaska, New Mexico, Minnesota, Illinois, New York, Massachusetts, Maine, Vermont, & New Jersey. There are court cases pending in Arizona, Utah, Wyoming, and Iowa to name just a few. And there are attempts to take out the right of abortion or to insert it into state constitutions. This past August in Kansas, there was an attempt to remove from the state constitution a right to an abortion. This initiative surprisingly failed. And in Michigan, there were enough signatures to add to the November ballot a constitutional amendment that would establish an individual right to reproductive freedom, however, it was blocked because there “wasn’t enough spacing between words.” I understand that it has now been added once again.

On the one side, we have those who believe that life starts at conception. This view is championed by the Catholic Church and some Christian denominations, therefore anything that stops the embryo from developing into a fetus is nothing less than murder. To be sure, if one truly believes that it is a full-fledged life, then perhaps it is logical to deny any kind of abortion regardless of how the fetus came to exist. On the other side are those who don’t believe a fetus has the same rights as one who is born and therefore the women’s life and health take priority.

I am sure you have your own views on this controversial topic. But what does Judaism teach about when life begins and when one can have an abortion? It turns out to be a lot. Some of you have heard me speak of this especially during our Reproductive rights Shabbatot over the last few years.

Well, we need to start with our holiest work, the Torah. In Exodus, we see two men fighting. One has his pregnant wife with him. The other man pushes the pregnant woman so forcibly that she miscarries. What is the consequence of this? Does the man have to forfeit his life as the Torah teaches only a verse later, “a life for a life, eye for eye, a tooth for tooth?” No, the Torah states that if 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.”² And so, the man who caused the miscarriage doesn’t lose his life, he merely has to pay a fine. This demonstrates that Torah looks at miscarriage as a loss to the husband as opposed to murder. This is the only example in our sacred Torah of any kind of abortion.

When we come to rabbinical Judaism, these are the works that came after our Bible, we have so many different teachings. One famous one comes from the Talmud where “Rav Hisda said...And if she is pregnant, *עד ארבעים מיה בעלמא היא* until forty days from conception the fetus is merely water. It is not yet considered a living being.”³ Let’s take that in. From the rabbis’ perspective, the first 40 days after conception are inconsequential. The embryo is not a living being. While obstetricians may disagree today, this is how our rabbis viewed the initial almost 6 weeks of pregnancy. And so, from a Jewish perspective, one could easily take the morning after pill or seek an abortion within six weeks.

Our texts don't end there though they continue with another famous teaching out of the Talmud where Rabbi Yehuda HaNasi holds: A fetus is considered as its mother's thigh, i.e., a part of its mother's body, and it is as though the master transferred ownership of one of her limbs to her.⁴ This teaching is also reinforced in a capital execution case where a pregnant woman has been sentenced to death. What do they do according to the Mishneh and Talmud? Do they wait for her to give birth? No, only if she is in process of giving birth otherwise, they strike at her womb so that the fetus dies first and then they commence with her sentence. This sounds awful but the reasoning is so she isn't disgraced with publicly bleeding.⁵

This teaching makes the point that the fetus is not considered a separate life apart from the woman. In the Mishneh and later asserted by Maimonides in the Middle Ages, we see a situation where a woman is at the end of her pregnancy but her life is at risk. And so, what do you do? As long as the greater part of the fetus' body has not emerged from the mother, then it literally can be dismembered from the inside because in the words of Maimonides, it is considered a *rodef*, i.e., one who is pursuing the mother to kill her. In cases of a *rodef*, if one is coming at you with a deadly weapon, you are allowed to defend yourself even by taking his/her life. In this case, the baby is threatening the mother's life, and so one can literally kill to save the mother.⁶

These texts that I have shared with you may convey that Judaism places no restrictions on abortion but that isn't true. Judaism is not permissive when it comes to this act and we do have texts that teach accordingly. The Talmud warns about killing a fetus. "Said in the name of Rabbi Yishmael: A descendant of Noah is executed even for killing fetuses. The Gemara asks: What is the reason for the opinion of Rabbi Yishmael? The Gemara answers: It is derived from that which is written: "One who sheds the blood of a person, by a person [*ba'adam*] his blood shall be shed" (Genesis 9:6). The word *ba'adam* literally means: In a person, and is interpreted homiletically: What is a person that is in a person? You must say: This is a fetus that is in its mother's womb. Accordingly, a descendant of Noah is liable for killing a fetus.⁷

Other prominent Jewish authorities such as Soloveitchik, an influential twentieth century rabbi, asserted that the fetus is protected under *pikuah nefesh* unless it is endangering a woman's life. Issar Unterman, chief rabbi of Israel in the 1960's and 1970's, said that it is forbidden to kill the fetus unless it is threatening the life of the mother or where the pregnancy is leading the woman to have suicidal intentions.⁸ And so you see even with those rabbis who seek to avoid abortions, they still allow them for the life of the woman or if the pregnancy is making her want to take her own life.

On the other side, there are other Orthodox authorities such as Ben Zion Uziel, 20th century chief rabbi in Israel who allows abortion when a woman's physical health is comprised. Rabbi

Jacob Emden, a leading German Orthodox rabbi, writing in the eighteenth century, allows a married woman who became pregnant with other man, to abort. Rabbi Aharon Lichtenstein in the twentieth century takes into account *kevod ha-beriyot* (dignity of persons), *shalom bayit* (domestic peace) and *tza'ar* (pain), which all carry significant [Jewish legal] weight in other contexts, should be considered in making these decisions. Eliezer Waldenberg, 20th c. leading authority on medicine and Jewish law takes into account the psychological suffering of the woman especially if the fetus has Tay-Sachs. ⁹

I've been sharing a lot of information with you tonight to demonstrate the complexity of Jewish views on abortion but also the areas of clarity as well. In a nutshell, abortion is permitted in Judaism especially early on in the pregnancy or when the physical or psychological health of the woman is in jeopardy. Yes, there is a wide latitude as to how a rabbi will define health but this places the decision of whether to have an abortion or not with the woman in consultation with her rabbi. For us as progressive Jews, I would say abortion is to be determined by the woman with her family, doctor, therapist and consulting our Jewish values.

And so the laws in many of the states in our country are against Jewish principles. I understand that Congregation L'Dor Va-Dor of Boynton Beach in Florida is currently suing the state for violating the religious freedom of Jews by prohibiting abortion after fifteen weeks. The lawsuit states that the Florida law, "violates Jewish teachings, which state abortion "is required if necessary to protect the health, mental or physical well-being of the woman" and for other reasons."¹⁰

We live in a multi-cultural, religious, ethnic, and racial country where there are many differing approaches as to when life begins and when an abortion is permissible. Given the immense difference especially along religious and moral lines, it seems so clear that this important decision must be left to a woman, her family, in consultation with medical and mental health experts, and of course her own religious values.

What is scary for me is that doctors of good conscience may delay treatment of women because of fear of law suits. We know from the medical community that abortions are an integral part of women's health. According to The American College of Obstetricians and Gynecologists, "Many factors influence or necessitate a woman's decision to have an abortion. They include, but are not limited to, contraceptive failure, barriers to contraceptive use and access, rape, incest, intimate partner violence, fetal anomalies, illness during pregnancy, and exposure to teratogenic medications. Pregnancy complications, including placental abruption, bleeding from placenta previa, preeclampsia or eclampsia, and cardiac or renal conditions, may be so severe that abortion is the only measure to preserve a woman's health or save her life."¹¹

I am fearful that there will be an exodus of gynecologists and obstetricians out of states with bans on abortion. We are already hearing stories of doctors who are afraid to treat their patients promptly but have to wait until their lives are in peril. I am fearful that many women will not have access to quality reproductive care. Sadly, in areas with severe abortion restrictions, contraception may be harder to access. And tragically, those most impacted are those with the fewest resources and options. These are the women who can't take time off from work, who can't afford to take a 'vacation' to a state that allows her the care that she needs, and will put women at risk of injury and even death. Don't get me wrong, I am not in favor of abortions for all, all the time. I'd rather limit the need for it wherever possible. So that young people of any age can easily access condoms, birth control and other contraception. That women have support and choices over their bodies and that children can be born to those who wish to have them or who are willing to put them up for adoption.

I had an interesting exchange with my father in law, years ago on this topic. Lee is a Missouri synod Lutheran, i.e., very conservative. In our conversation, I asked him what would he think if the government were to mandate that a woman must have an abortion under certain circumstances. Would this be right? He said, "of course not." And then, I asked, "Do you think that this decision should be made by the woman seeking counsel from her pastor in conversation with her family?" He readily agreed. I then exclaimed, "Congratulations, you are pro-choice." He didn't appreciate how this conversation ended.

What does choice mean? Choice means that one can make the hard decision to abort a pregnancy but it can also mean one can choose to keep it, carry it to term, raise the child, or give it to another family who will love it as their own. This is what choice means.

We are taught that life and death hang in the balance during Yom Kippur. I pray for the health of the women around our country and that their lives will be full and healthy. I pray for our people to put the choice of abortion back into the hands of those who will face the consequences, individuals and their families. And I pray that we will support the women, their babies, and strive to give the next generation a good quality of life. During this very sacred day of Yom Kippur, God gives us the choice of life and may we be able to support the lives of others and the very personal decisions they must make.

Notes

1 When Does Life Begin? August 24, 2014 | by Aish.com

2 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. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise. Exodus 21:22-25

3 First 40 days since conception- Talmud-it's merely water

Rav Hisda said: ...And if she is pregnant, מֵאָה בְּעֶלְמָא הִיא until forty days from conception the fetus is merely water. It is not yet considered a living being, and therefore it does not disqualify its mother from partaking of *teruma*. (Sacrificial offering) Yevamot 69 B

⁴ **Fetus is part of women's body-** regarding slave going free

Rabbi Yehuda HaNasi holds: A fetus is considered as its mother's thigh, i.e., a part of its mother's body, and it is as though the master transferred ownership of one of her limbs to her. Since the maidservant is pregnant, the child is considered to be a part of her, and it is as though he emancipated a portion of her body.. Gittin 23 B

5 Fetus is part of mother's body –in case of execution

MISHNA: In the case of a pregnant woman who is taken by the court to be executed, the court does not wait to execute her until she gives birth. Rather, she is killed immediately. But with regard to a woman taken to be executed who sat on the travailing chair in the throes of labor, the court waits to execute her until she gives birth...

GEMARA: Isn't it obvious that the court executes the pregnant woman rather than waiting? After all, it is part of her body.

The Mishna teaches: With regard to a woman taken to be executed who sat on the travailing chair in the throes of labor, the court waits to execute her until she gives birth. The Gemara asks: What is the reason for delaying the execution in this case?

The Gemara answers: Once the fetus uproots from its place and begins to leave the woman's body, it is considered an independent body and may not be killed together with the mother.

Rav Yehuda says that Shmuel says: In the case of a pregnant woman who is taken by the court to be executed, one strikes her opposite the womb, i.e., on the abdomen, so that the fetus dies first and so that she not suffer disgrace as a result of publicly bleeding from labor.

Arachim 7 a-7 b

6... **For life of woman, can dismember fetus even up till birth**

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. Mishnah Oholot 7:6

When fetus is endangering woman's life- fetus as a 'pursuer'

This, indeed, is one of the negative mitzvot - not to take pity on the life of a rodef. On this basis, our Sages ruled that when complications arise and a pregnant woman cannot give birth, it is permitted to abort the fetus in her womb, whether with a knife or with drugs. For the fetus is considered a rodef of its mother. If the head of the fetus emerges, it should not be touched, because one life should not be sacrificed for another. Although the mother may die, this is the nature of the world. Maimonides, Mishneh Torah, Hilkot Rotzeach 1:9

7 **Fetus is a person and killing it is murder**

Said in the name of Rabbi Yishmael: A descendant of Noah is executed **even for killing fetuses.** The Gemara asks: **What is the reason** for the opinion of **Rabbi Yishmael?** The Gemara answers: It is derived from that **which is written: "One who sheds the blood of a person, by a person [*ba'adam*] his blood shall be shed"**(**Genesis 9:6**). The word *ba'adam* literally means: In a person, and is interpreted homiletically: **What is a person that is in a person? You must say: This is a fetus that is in its mother's womb.** Accordingly, a descendant of Noah is liable for killing a fetus. Sanhedrin 57 B

8 **Only abort when endangering woman's life otherwise its murder**

"Soloveitchik states emphatically that the fetus is considered a nefesh and therefore is protected by the law of pikuah nefesh and by the law which forbids choosing one life over another. Only because the fetus is a pursuer may you save the mother through killing it." (Women and Jewish law by Rachel Biale pg. 232)

"Issar Unterman, chief rabbi of Israel in the 1960s and 1970s, advanced the same principle as Soloveitchik:

the fetus may be killed only because it becomes a pursuer; otherwise killing a fetus "is within the category of murder...and without the reason of 'pursuer' it is altogether forbidden to kill the fetus. However, Unterman modifies his strict position by allowing certain circumstances of emotional distress to qualify as pursuit for murder by the fetus. The circumstances are those where pregnancy and birth may cause the mother such distress that she will have suicidal intentions. (pg. 232-232)

9 Can abort for quality of woman's life

“You have checked with me about a question brought before you where a woman who was suffering some ailment in her ear because pregnant and then became dangerously ill and the doctors told her that if she does not abort her fetus she should become totally deaf in both ears. She and her husband fear God and keep His laws and they ask if they are permitted to follow the doctors' orders and abort the fetus by means of drugs, in order to save her from total deafness for the rest of her life... We learn in this matter that according to the doctors the fetus will cause its mother deafness for the rest of her life, and there is no greater disgrace than that, for it will ruin the rest of her life, make her miserable all her days and make her undesirable in the eyes of her husband. Therefore, it is my humble opinion that she should be permitted to abort her fetus through highly qualified doctors who will guarantee ahead of time that her life will be preserved, as much as this is possible.”

“At any rate, it is very clear that they did not permit killing a fetus other than when there is a need for it, even if the need is a slim one such as when it would disgrace the mother. But without need it is certainly prohibited, because it is a destruction and prevention of the possibility of life for a nefesh in Israel.” Ben Zion Uziel, 20th century chief rabbi in Israel

Rabbi Jacob Emden, a leading German Orthodox rabbi, writing ca. 1750

The questioner asks about an adulterous married woman [who is pregnant, and this] is a good question. It appears to me [appropriate] to permit her [to abort]... And even in the case of a legitimate fetus there is reason to be lenient if there is a great need, as long as the fetus has not begun to emerge; even if the mother's life is not in jeopardy, but only so as to save her from woe associated with it that would cause her great pain... Repro Shabbat Toolkit - Torah (squarespace.com)

Rabbi Aharon Lichtenstein, an influential French/American/Israeli Orthodox rabbi, writing in 1991

Here it is clear that saving a life is not the only sanction for permitting an abortion. This is evident from the Talmudic passage that permits a nursing mother to cohabit using a mokh (a barrier of cotton or wool) to prevent pregnancy... Since this prohibition is waived to facilitate normal family relations (which is why the emission in this context is not “wasteful”), it would follow that other ethical and humane factors may also be taken into account.

It would seem to me that issues such as kevod ha-beriyot (dignity of persons), shalom bayit (domestic peace) and tza'ar (pain), which all carry significant [Jewish legal] weight in other contexts, should be considered in making these decisions. Repro Shabbat Toolkit - Torah (squarespace.com)

Lenient ruling for Tay-Sachs

“One should permit...abortion as soon as it becomes evident without doubt from the test that, indeed, such a baby shall be born, even until the seventh month of her pregnancy...If indeed, we may permit an abortion according the Halakha because of “great need” and because of pain and suffering, it seems that this is the classic case for such permission. And it is irrelevant in what way the pain and suffering is expressed, whether it is physical or psychological. Indeed, psychological suffering is in many ways much greater than the suffering of the flesh.”

Eliezer Waldenberg, (20th c. leading authority on medicine and Jewish law) Tzitz Eliezer, Part 13.

10 <https://www.npr.org/2022/06/15/1105229512/florida-abortion-law-synagogue-lawsuit-15-weeks>

11 <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare>