

The Jewish View: Abortion, Contraception, and When Life Begins

Sources

A. Exodus 21:22-23

And if men strive together and hurt a woman with child, so that her fruit depart and yet no harm follow, he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. But if any harm follow, then thou shalt give life for life.

B. Mekhilta Exodus, Nezikin 8

"Yet no harm follow" refers to harm to the woman: "he shall surely be fined" refers to compensation for the loss of the fetus.

C. Sanhedrin 84b

It was necessary for the Torah to write "he that smiteth a man [ish] so that he dieth shall surely be put to death" [Exod. 21:12]. For had the Torah written only "whoso killeth any person [nefesh] the murderer shall be slain" [Num. 35:30], one would have concluded that capital punishment is applied to one who kills a fetus.

D. Mishnah, Ohalot 7:6

If a woman in labor has a [life-threatening] difficulty, one dismembers the embryo within her, removing it limb by limb, for her life takes precedence over its life. But once its greater part [Tosetia Yevamot 9: "head"], has emerged it may not be harmed, for we do not set aside one life for another.

E. Sanhedrin 72b

"Once the head has emerged it may not be harmed." Why, is he not a pursuer? The answer is that it is considered to be from heaven that she is pursued.

F. Rashi, Sanhedrin 72b

"... removing it limb by limb." This is because as long as it has not emerged into the world it is not a human being [lau nefesh hu], and therefore it can be killed in order to save its mother.

G. Maimonides, M. T. Hilkhot Rozeiah 1:9

This too is a negative commandment: not to have compassion on the life of the pursuer. Therefore the sages ruled that when a woman has difficulty in labor one may dismember the embryo within her, either with drugs or surgery, because he is like a pursuer seeking to kill her. But once the head has emerged, he may not be harmed, for we do not set aside one life for another. This is the natural course of the world.

H. Arakhin 7a

Mishnah: The execution of a pregnant woman who is condemned to death is not postponed until after she gives birth. But once she is on the birthstool, the execution is postponed until after she gives birth.

Gemara: Said R. Judah in the name of Samuel: "Before such a woman is executed she is struck across her abdomen, so that the fetus will die prior to the execution, to prevent her dishonor at the time of execution." . . . Said R. Nahman in the name of Samuel: "When a woman dies on the Sabbath while she is on the birthstool, one brings a knife to cut open her abdomen and remove the fetus . . . even if one must carry the knife by way of the public domain."

I. Nahmanides, Torat ha-Adam, p. 29

According to the *Baal Halakhot Gedolot* the reason for bringing the knife is that according to the Torah one desecrates one Sabbath so that one will be able to fulfill many Sabbaths. Therefore the opinion of the *Halakhot Gedolot* is that the Sabbath is desecrated even to save a fetus that is less than forty days in the womb, and which has no life at all. But there are those who assert that one should not desecrate the Sabbath to save a fetus . . . but when she dies on the birthstool the fetus is considered to be born already, no longer her limb and not dependent on her, but alive and prevented from emerging, as the door is closed before him. Thus, because it lacks only prior status as living, and we are lenient when it comes to saving lives [we can desecrate the Sabbath to save it].

J. Rabbi Uziel:

It is clear that abortion is not permitted without reason. That would be destructive and frustrative of the possibility of life. But for a reason, even if it is a slim reason (*la'an kailsif*), such as to prevent her *niyuv*, then we have precedent and authority to permit it.

K. L'vushvei Mordecai (1913):

Mental-health risk has been definitely equated to physical-health risk. This woman who is in danger of losing her mental health unless the pregnancy is interrupted, therefore, would accordingly qualify. 109

2.

Resp. Alfakana D'Anyas, No. 169.

Whatever the author of *Resp. L'vushvei Mord'khai* wrote in order to permit an abortion was only because of fear of mental anguish for the mother. But for fear of what *might* be the child's lot—"the secrets of God are none of your business."

N. Genesis 38:6–10:

...*Judah said to Onan, Join with your brother's wife and do your duty by her as a brother-in-law, and provide offspring for your brother. But Onan, knowing that the seed would not count as his, let it go to waste (for naught) whenever he joined with his brother's wife, so as not to provide offspring for his brother. What he did was displeasing to the Lord, Who took his life also.*

O. Rabbi Moshe Feinstein Iggeret Moshe OH 1:63:

...with respect to [the destruction of] seed *for naught*, which is forbidden, the definition of *for naught* is not “nullified from the possibility of procreation such that it is impossible to procreate through such an emission”; rather, the definition of *for naught* is literal, “for no need at all.” However, when there is a valid need, for example to fulfill the mitzvah of pleasure [within marriage], even in a case when it would be impossible to procreate through such an emission, it is not considered *for naught* and, thus, is permissible.

P. Tosefta Yevamot 8:2: A man is forbidden to drink the cup of roots in order to sterilize himself but a woman may drink the cup of roots in order to sterilize herself

Q. Yevamot 12 b: Rav Bibi taught before Rav Nahman: Three women use an absorbent—a child, a pregnant woman and a nursing mother. A child—lest she become pregnant and die. A pregnant woman—lest her fetus become a *sandal*. A nursing mother—lest she wean her child prematurely and he dies...these are the words of Rabbi Meir. The Sages say, Either [of these women] have intercourse in the usual way; mercy will come from the heavens as it is said, —God protects the innocent.

R. Rabbi Asher ben Yehiel (the Rosh, 14 C):

[A woman who uses a mohl] engages in sexual activity in the same way as everyone else; even though his seed will not implant, it is analogous to [intercourse with] a barren woman, a post-menopausal woman or a woman too young to become pregnant [all of which are permitted].

S. Rabbi David Hoffman (19C Germany):

That a physician or midwife seals the entrance to the womb with an appropriate covering, in this I see no basis for or suggestion of a prohibition since it does not destroy the seed but rather it prevents the seed from entering the womb.

T. Yevamot 69b: ... If she is found pregnant, the semen, until the fortieth day, is only a mere fluid (*maya dalma*).

U. Yevamot 12b: R. Safra said: [Bearing] children serves as a sufficient determinant of adulthood [even in the absence of classic markers or chronological age]. Some say that [bearing] children represents a better determinant of adulthood [than classic markers or chronological age].

V. CJLS: Rabbi Miriam Berkovitz and Mark Popovsky: The CJLS has already adopted several responsa holding that an embryo in a laboratory does not have the status of a fetus because implantation represents a necessary condition for pregnancy. We find no significant halakhic difference between a fertilized egg in a Petri dish and one in a fallopian tube. Neither can properly be considered as on a trajectory towards life until implantation has occurred—an outcome that is far from certain and depends on other factors in both cases.