

Parshat Mishpatim - Jewish Perspectives on Abortion

Exodus 21:22-25

And should men quarrel and hit a pregnant woman, and she miscarries but there is no fatality, he shall surely be punished, when the woman's husband makes demands of him, and he shall give [restitution] according to the judges' [orders]. But if there is a fatality, you shall give a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise.

Mishnah Oholot 7:6

A woman who was having trouble giving birth, they cut up the fetus inside her and take it out limb by limb, because her life comes before its life. If most of it had come out already they do not touch it because we do not push off one life for another.

Babylonian Talmud Sanhedrin 57b

The Sages 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.

Tosafot on Chullin 33a

This Gemara implies that there is nothing that is permissible to a Jew that is forbidden to a non-Jew... A Noahide is executed for killing a fetus, and a Jew is not executed, and although he is exempt, nevertheless it is not permissible to do so.

Rabbi Isaac Shor Responsa Koach Shor 20

It is not to be supposed that the Torah would consider the embryo as a person for them (non-Jew) but not a person for us. The fetus is not a person for them either; the Torah merely was more severe in its practical ruling in their regard.... Hence, an abortion would be permissible to them, in order to protect the mother, just as it is for us.

Arakhin 7a:11-16

MISHNAH. If a woman is about to be executed, one does not wait for her until she gives birth: but if she had already sat on the birthstool, one waits for her until she gives birth...

GEMARA. But that is self-evident, for it is her body! ...

"But if she had already sat on the birthstool..." What is the reason? — As soon as it moves [from its place in the womb] it is another body. Rav Yehudah said in the name of Shmuel: If a woman is about to be executed one strikes her against her womb so that the child may die first, to avoid her being disgraced...

שמות כ"א:כ"ב-כ"ה

וְכִי־יִנָּצוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אֶסּוֹן עָנוּשׁ וְעָנֹשׁ פְּאֻשֵׁר יִשִּׁית עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בְּפָלְלִים: וְאִם־אֶסּוֹן יִהְיֶה וְנִתְּתָה נַפְשׁוֹ תַּחַת נַפְשׁוֹ: עַיִן תַּחַת עַיִן שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל: כְּוִיָּה תַּחַת כְּוִיָּה פְּצַע תַּחַת פְּצַע חַבּוּרָה תַּחַת חַבּוּרָה:

משנה אהלות ז:ו'

הַאִשָּׁה שֶׁהִיא מְקֻשָּׁה לֵילֵד, מִחֲתֻכִּין אֶת הַנֶּלֶד בְּמַעֲיָה וּמוֹצֵי־אֵין אוֹתוֹ אֲבָרִים אֲבָרִים, מִפְּנֵי שְׁחִיטָה קוֹדֵמִין לְחֵיָיו. יֵצֵא רַבּוֹ, אֵין נוֹגְעִין בוֹ, שְׂאֵין דוֹחִין נַפְשׁוֹ מִפְּנֵי נַפְשׁוֹ:

סנהדרין נז:

משום רבי ישמעאל אמרו אף על העוברין מאי טעמיה דרבי ישמעאל דכתיב (בראשית ט, ו) שופך דם האדם באדם דמו ישפך איזהו אדם שהוא באדם הוי אומר זה עובר שבמעו אמן

תוספות על חולין ל"ג

אחד עובד כוכבים ואחד ישראל מותרין בו - משמע דטעמא משום דליכא מידי דלישראל שרי ולעובד כוכבים אסור... ואע"ג דבן נח נהרג על העוברים כדאמר התם וישאל אינו נהרג נהי דפטור מ"מ לא שרי

ש"ת כח שור סימן כ

דזה רחוק מפני השכל לגבי דידן לא חשבה התורה עובר לנפש ולגבי דידה חשבה התורה עובר לנפש... רק צ"ל גם לגבי דידה לא מקרי העובר נפש כמו לגבי דידן רק התורה החמירה על הנוכרים אף על רציחת עובר אף שאינן מקרי נפש... לכן רשאין לדחותו מפני נפש האם כמו לדידן

ערכין ז' א:ל"ז-נ"ד

מתני' האשה שיצאה ליהרג אין ממתנין לה עד שתלד האשה שישבה על המשבר ממתנין לה עד שתלד...

גמ' פשיטא גופה היא ... ישבה על המשבר וכו': מ"ט כיון דעקר גופא אחרינא הוא: אמר רב יהודה אמר שמואל האשה היצאה ליהרג מכין אותה כנגד בית הריון כדי שימות הוולד תחילה כדי שלא תבא לידי ניוול

Bava Kamma 78b

a fetus is considered as its mother's thigh

Maimonides Mishneh Torah, Laws of Injury and Damages 5:1

A man is forbidden to injure himself or another.

Babylonian Talmud Niddah 13a

Rabbi Yitzhak and Rabbi Ami say: One who emits semen for naught is considered as **though he sheds blood, as it is stated:** "But draw near here, you sons of the sorceress, the seed of the adulterer and the harlot...Are you not children of transgression, a seed of falsehood, **you that inflame yourselves among the terebinths, under every leafy tree, that slay [shohatei] the children in the valleys, under the clefts of the rocks?**" (Isaiah 57:3-5). **Do not read** this word as *shohatei*; rather, read it as *sohatei*, i.e., one who squeezes out [*sohet*] semen is considered to have shed the blood of the children who could have been born from that seed.

Niddah 30a

Mishna. If a woman miscarries on day 40 (from conception) – she need not concern herself with the ritual impurity of childbirth (lit., with a child).

Yevamot 69b

In the case of **the daughter of a priest who married an Israelite** and her husband **died** on that same day, **she immerses** to purify herself, as she is ritually impure due to their intercourse, **and she may partake of teruma that same evening?** Evidently, the Sages were not concerned that she became pregnant from the initial act of intercourse, even that of marriage. **Rav H̄isda said: She immerses and partakes of teruma only until forty days after her husband's death, when there is still no reason for concern, as if she is not pregnant then she is not pregnant. And if she is pregnant, 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.

Sanhedrin 72b

Rav Huna says: If a minor was pursuing another person in order to kill him, the pursued party **may be saved by** taking the pursuer's life. ... **Rav H̄isda raised an objection to Rav Huna** from a *baraita*: If a woman was giving birth and her life was being endangered by the fetus, the life of the fetus may be sacrificed in order to save the mother. But once **his head has emerged** during the birthing process, **he may not be harmed** in order to save the mother, **because one life may not be pushed aside to save another life.** If one is permitted to save the pursued party by killing the minor who is pursuing him, **why** is this so? The fetus **is a pursuer** who is endangering his mother's life. The Gemara answers: This is not difficult, as **it is different there**, with regard to the woman giving birth, **since she is being pursued by Heaven.** Since the fetus is not acting of his own volition and endangering his mother of his own will, his life may not be taken in order to save his mother.

Rashi on Sanhedrin 72b

The entire time that that it has not gone out into the air of the world, it is not [considered] a life, and [so] it is permissible to kill it and to save its mother. But when its head came out, we cannot touch it to kill it, as it is like a born [baby]; and we do not push off one life for the sake of another.

בבא קמא ע"ה:

עובר ירך אמו

משנה תורה, הלכות חובל ומזיק ה'א:

אסור לאדם להקבל בין בעצמו בין בפקדו.

נדה יג.

רבי יצחק ורבי אמי אמרי כאילו שופך דמים שנאמר (ישעיהו נז, ה) הנחמים באלים תחת כל עץ רענן שוחטי הילדים בנחלים תחת סעיפי הסלעים אל תקרי שוחטי אלא סוחטי

נדה ל.

מתני' המפלת ליום מ' אינה חוששת לולד

יבמות ס"ט:

בת כהן שנישאת לישראל ומת טובלת ואוכלת בתרומה לערב אמר רב חסדא טובלת ואוכלת עד ארבעים דאי לא מיעברא הא לא מיעברא ואי מיעברא עד ארבעים מיא בעלמא היא

סנהדרין ע"ב:

אמר רב הונא קטן הרודף ניתן להצילו בנפשו... איתיביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש ואמאי רודף הוא שאני התם דמשמאי קא רדפי לה

רש"י עד סנהדרין ע"ב:

דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו אבל יצא ראשו אין נוגעין בו להורגו דהוה ליה כילוד ואין דוחין נפש מפני נפש

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

This, indeed, is one of the negative commandments - 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 like a pursuer 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.

Rabbi Joseph Trani Responsa of Maharit, 1:99

And from the fact that the Gemara (Arakhin 7a) says, "It is obvious!" [that we can abort the fetus of the woman who is condemned], it implies that as far as taking a [fetal] life is concerned, there is not the slightest issue of concern... Therefore, regarding a Jewish woman, in a case of the mother's need, it would appear that it is permissible to assist them to have an abortion, since it is for the sake of the mother's health.

Rabbi Jacob Emden, Responsa Shelat Yavetz, I 43

Question: Regarding what you asked – is there a violation to destroy a fetus in the womb of a mother who is pregnant due to fornication, both in the case of a single woman and the case of a married woman.

Response: In the book Havot Yair (following responsum 31) I have found that the author was asked about a married woman who became pregnant due to adultery, and after the act she had regret, etc., if she is allowed to swallow some medicine that will cause her to abort (lit., destroy the corrupt seed within her)...

Now, regarding the author's attempt to demonstrate in that responsum that there was there was an element of violation based on the sin of wasting of seed, this can be rejected... [F]or a (legitimate) purpose it is permissible, even to "waste seed" and to spill it on the ground... this serious prohibition is permitted in the case of the mitzvah need, as I have written elsewhere, and there is no need to write at more length.

Rabbi Ben Zion Iziel Mishpetei Uziel Volume IV, Choshen Mishpat 47

Any situation in which the intention is for the mother's need, even if it is a weak need... is permissible

Rabbi Issur Yehuda Untermann, "On the Matter of Saving the Life of a Fetus", Noam 6 pp 1-11

In the matter before us, it is certainly not permissible to perform an abortion for fear that rubella will harm the child, because a prohibition that is a kind of murder due to uncertain outcomes should not be allowed. Furthermore, it seems to me that even in the event that it is clearly known [which is not common at all] that the child will be disabled in body or mind - it is also forbidden to abort him, just as it is forbidden to kill a person with a defect, except that killing a fetus is not subject to a capital crime because of a limiting clause in the biblical verse... There still exists severe prohibition in this, from of being akin to murder

משנה תורה, הלכות רוצח ושמירת נפש

א'ט'

אף זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך הורו חכמים שקהעברה שיהיא מקשה לילד מתר לחתף העבר במעיה בין בסם בין ביד מפני שהוא פרוץ אחריה להרה. ואם משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם:

שו"ת מהרי"ט, א:צט

ומדפריך פשיטא משמע דמחמת איבוד נפשות אין נדנדוד כלל... הילכך בישראלית מפני צורך אמו נראה שמותר להתעסק עמהם שתפילנה כיון דרפואת אמו היא

שו"ת שאילת יעבץ חלק א סימן מג

ששאלת אם יש איסור לקלקל עובר בבטן אמו שזינתה. בין פנויה בין אשת איש. תשובה בס' חות יאיר (אחר סי' ל"א) מצאתי שנשאל הרב בעל הס' על אשת איש הרה לזנונים. ואחר המעשה נתחרטה כו' אם רשאה לגמוע דבר מאבקת רוכל לשלשל זרע המקולל אשר בקרבה... ובמה שהתעסק הרב ז"ל בתשו' הנז' להראות פנים לאיסור. ללמדו מעון הוצאת ש"ז לבטלה. יש לדחות... ואיברא לצורך אף להוציא זרע לבטלה להשחיתו על הארץ שרי... דאיסור חמור זה הותר מכללו אצל צורך מצוה. כמ"ש במ"א בס"ד ואין להאריך

משפטי עוזיאל חושן משפט מ"ז

כל שהוא מתכוון לצורך האם אעפ"י שהוא צורך קלוש... מותר

הרב איסר יהודה אונטרמן 'בעניין פיקוח

נפש של עובר', נועם ו, עמ' א-יא

בעניין שלפנינו בודאי שאסור לעשות הפלה בשביל חשש שמא תפגע מחלת האדמת בוולד, מפני שאין להתיר איסור שהוא מעין רציחה מפני חששות. יתר על כן, נראה לענ"ד באמת שאפילו במקרה שידוע בבירור [מה שלא שכיח כלל וכלל] כי הולד יהא פגום בגופו או בנפשו – גם כן אסור להפילו, כמו שאסור להרוג בעל מום, אלא שבעובר אין חייבין עליו מיתה ממייעוטא דקרא... אבל איסור חמור יש בזה, מאביזריהו דרציחה

Rabbi Eliezer Waldenberg Tzitz Eliezer, 13:102 1975

The question is regarding terminating a pregnancy because of the Tay-Sachs disease... The technology today which allows testing for this disease cannot give reliable results prior to three months into the pregnancy. Thus his question is if one can view such a disease with such severe and certain consequences, sufficient severity to allow for a termination of the pregnancy even after three months....

It is clear that capital punishment is not prescribed for abortion, and with the exception of a single opinion, the decisors conclude that there is nevertheless some form of a prohibition. ... Therefore, Maharit, in his responsum, permitted abortion for a Jewish woman whenever the matter was necessary for her health even when her life was not at stake....

And therefore ask yourself where is there a greater need regarding pain and suffering greater than the woman in our case which will be inflicted upon her if she gives birth to such a being whose very being is one of pain and suffering and his death is certain within a few years... and added to that is the pain and suffering of the infant. This would seem to be the classic case in which abortion may be permitted, and it doesn't matter what type of pain and suffering is endured, physical or emotional, as emotional pain and suffering is to a large extent much greater than physical pain and suffering

Rabbi Moshe Feinstein Iggrot Moshe, Choshen Mishpat, 2:69 Day after Sukkot. 1976.

Regarding Killing a fetus...in Maimonides it is even more explicit that killing a fetus is actual murder...Therefore, regarding the law, it is prohibited under the prohibition of "Thou shalt not murder" to abort a fetus, with the single exception that one who kills it is exempt from the death penalty... And because of this I ruled that even if the doctors are saying that there is a possibility that the mother may die if the fetus is not killed ... would be forbidden until the doctors assess that the likelihood of her death is almost definite...

I have written all this because of the great calamity in the world that many governments have allowed the killing of fetuses, among them political leaders in the State of Israel, and countless of fetuses have already been killed, and in these days the greatest need is to make a fence around the Torah, how much more so not to make leniencies regarding the prohibition of murder that is so severe.

RA, 2005. 'Abortion: The Jewish View - RABBI DAVID M. FELDMAN, Rabbinical Assembly of America.

The subsequent rabbinic tradition seems to align itself either to the right, in the direction of Maimonides, or to the left, in the direction of Rashi. The first approach can be identified especially with the late Chief Rabbi of Israel, Issar Unterman, who sees any abortion as "akin to homicide" and therefore allowable only in cases of corresponding gravity, such as saving the life of the mother. This approach then builds down from that strict position to embrace a broader interpretation of life-saving situations, which include a threat to her health, for example, as well as a threat to her life. The second approach, associated with another former Chief Rabbi of Israel, Ben Zion Uziel, and others, assumes that no real prohibition against abortion exists and builds up from that lenient position to safeguard against indiscriminate abortion.

שו"ת ציץ אליעזר י"ג:ק"א יא סיון

תשל"ה

השאלה היא, אודות הפסקת הריון בגלל המחלה הנקראת תיי – סקס... הטכניקה בה ניתן כיום לבצע בדיקות מעבדה אלה, אינה נותנת תוצאות לפני תום שלשה חדשי הריון. לזאת נפשו בשאלתו, אם: האם לראות במחלה זו אשר תוצאותיה כה חמורות וכה וודאיות, מספיק חמור בכדי לאפשר הפסקת הריון גם אחרי שלשה חדשים...

ברור ופשוט הדבר בהלכה, דישראל אינו נהרג על העוברין, ומלבד דעה יחידית סוברים הפוסקים שאיסור מיהא ישנו... ומשום כך מתיר בשו"ת מהר"ט ח"ט סי' צ"ז – צ"ט לסדר בישראלית הפלת ולד בכל היכא שהדבר נחוי משום רפואת אמו, אפילו באין סיבה של פקו"נ לאם...

וא"כ הגע בעצמך האם יש צורך, צער וכאב, יותר גדול מזה של נידוננו, אשר יגרם לאם בהולד לה יצור כזה, שכולו אומר יסורים ומכאובים ומיתתו בטוח במשך מספר שנים?...

נראה שזהו המקרה הקלאסי ביותר שיש להתיר. ולא משנה באיזה צורה מתבטאים הכאבים והיסורים, גופיים, או נפשיים. ויסורים וכאבים נפשיים המה במדה מרובה הרבה יותר גדולים ויותר מכאיבים מיסורים גופיים...

שו"ת אגרות משה חושן משפט ב:סט

אסרו"ח סוכות תשל"ז...

הנה בדבר הריגת עובר במעי אמו בישראל... וברמב"ם פ"א מהלכות רוצח ה"ט מפורש עוד יותר דהריגת עובר הוא רציחה ממש... ולכן לדינא... איכא איסור רציחה מלא תרצח גם על עובר ורק שפטור ההורגו ממיתה, ... ומטעם זה הוריתי שאף שהרופאים אומרים שיש חשש שמא תמות האם כשלא יהרגו את העובר... אסור עד שתהיה האומדנא להרופאים גדולה קרוב לודאי שתמות האם....

כתבתי כל זה לענין הפרצה הגדולה בעולם שהמלכיות דהרבה מדינות התירו להרוג עוברים ובתוכם גם ראשי המדינה במדינת ישראל וכבר נהרגו עוברים לאין מספר שבזה"ז הא עוד יש צורך לעשות סיג לתורה, וכ"ש שלא לעשות קולות באיסור רציחה החמור ביותר

Rabbi Susan Grossman, "Partial Birth Abortion" and the Question of When Human Life Begins

[W]hen faced with tragic information about fetal deformities, prospective parents should remember that all children, regardless of any disabilities, are children of God, equally deserving of dignity, love and care as precious human beings. There have been many advances in our ability to treat various childhood illnesses and disabilities.... Nevertheless, not every woman or family is emotionally or physically capable of coping with the knowledge of having a disabled or terminally ill child. Sufficient precedents in Jewish law exist to permit the abortion of a severely deformed fetus, even in the latest stages of pregnancy. Similarly, while Jewish law does not condone abortion as a form of birth control, abortion is permitted to protect the physical and mental health and well being of the mother. Jewish law as it developed reflects a tightening of justifications for abortion, i.e. a greater hesitancy to permit abortion without significant cause, as the pregnancy proceeds from conception into the last trimester. However, sufficient precedents exist to permit abortion where there is a serious risk to the health of the mother, or in the face of severe fetal abnormalities, even in the last stages of pregnancy. Serious health risk need not be immediately life threatening. Anything which could cause long term damage to the woman or risk further complications without appropriate medical intervention would be sufficient to justify an abortion, just as such barometers are used to justify any serious surgery under Jewish law.

CCAR RESPONSA Contemporary American Reform Responsa 16. WHEN IS ABORTION PERMITTED? (January 1985)

The Reform Movement has had a long history of liberalism on many social and family matters. We feel that the pattern of tradition, until the most recent generation, has demonstrated a liberal approach to abortion and has definitely permitted it in case of any danger to the life of the mother. That danger may be physical or psychological. When this occurs at any time during the pregnancy, we would not hesitate to permit an abortion. This would also include cases of incest and rape if the mother wishes to have an abortion. ...

We agree with the traditional authorities that abortions should be approached cautiously throughout the life of the fetus....

It is clear from all of this that traditional authorities would be most lenient with abortions within the first forty days. After that time, there is a difference of opinion. Those who are within the broadest range of permissibility permit abortion at any time before birth, if there is a serious danger to the health of the mother or the child. We would be in agreement with that liberal stance. We do not encourage abortion, nor favor it for trivial reasons, or sanction it "on demand."

Rabbi. Alvin Reises, "Reform Judaism, Bioethics and Abortion," Journal of Reform Judaism, 1990

Since every Reform Jew possesses an ultimate moral right to autonomy, each possesses the authority to determine for her/himself what she/he believes true and valid. This includes the right to decide for her/himself the standard to use in determining if an entity is human. Even so, an objective standard for humanness that is accepted by the generality of humankind would be difficult for a Reformer to deny although she/he would have the right to do so....

From the testimony of the religious, philosophic, and scientific communities of the world viewed as a whole, it is evident that there is no generally accepted objective standard for determining whether a fetus is a human being or part of the mother in which it exists. ...

Examined closely, the diversity of Orthodox Jewish and Roman Catholic views on abortion only support, to this writer's mind, the correctness of the Reform view that every person possesses ultimate authority to determine for her/himself if abortion is moral, and the right, therefore, to decide personally whether to undergo or perform one. ...No impulse in humans is a greater evil than the rage to exercise authority over others by imposing one's own ideology and morality upon them. It is this demonic lust with which Reform Jews are confronted, and which must be challenged and opposed as Jews have so often done in their long and anguished but heroic history.