

REPRO SHABBAT

JAN 28-29, 2022



NCJW™

National Council of Jewish Women

Text Study & Discussion Guides

During Repro Shabbat, you can teach a text study using our [The Torah of Reproductive Freedom discussion guide](#) to walk people through some of the core texts on the Jewish approach to reproductive freedom. It can be used in breakout rooms for *hevruta* (paired) or small group discussion on a few of the texts before coming back together to discuss as a large group. If you'd like to curate your own sources, [this](#) Extended Source Sheet may be a useful starting place.

These sources can be paired with some of the We Testify storytelling resources, all found below.

We also have a [Courageous Conversation Guide](#) that does not feature Jewish texts, but that, rather, focuses on inviting participants to reflect on their own reproductive experiences and choices through the lens of two short first person narratives.

The Torah of Reproductive Freedom

Welcome

Abortion is a battleground issue in the United States.

Proposals to limit or block access to reproductive health care in many or most states reflect a specific Christian definition of the beginning of life, and limit the termination of pregnancy even in instances where Jewish law not only permits, but even requires it.

Learning the sources that undergird Judaism's approach to reproductive rights can help illuminate one of the major struggles of our day in new and, sometimes, surprising ways.

Here are some traditional Jewish sources, and some discussion questions that you may consider on your own, or discuss with a friend--a *hevruta*, or study partner--or group of people.

(One content note: These texts talk, not surprisingly, about pregnant women. In the context of our contemporary gender categories, it might be useful to remember that, while many (but not all) cisgender women can get pregnant, so too can some non-binary people, some trans men, and some other people whose identities are not reflected in the framework of binary gender.)

Getting Started

- If you're in a group, you can choose to break into pairs (*hevrotot*) or groups of three, or to discuss as a whole group.
- Have someone read each Jewish text out loud (you can take turns.) You'd be surprised how the act of reading it out loud changes how you process the information.
- Some sections have more than one text before the questions. If so, read all of the texts before you get to the discussion.
- Then look at the questions. Go through them one by one, or go towards the questions you feel most drawn to. Allow the conversation to unfold. Just make sure you're clear on what the texts mean before you get into their implications for today or anything of the sort.
- Let the insights and connections flow!

Before We Begin

What's one word to describe how you're feeling about the prospect of diving into this text study?

Let's begin by looking at the foundational verses in the Torah with regards to Judaism's approach to abortion:

Exodus 21:22-25

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.

In other words, if someone accidentally causes a miscarriage to take place, they are obligated to pay financial reparations only; the case is not treated as manslaughter or murder, which would demand the death penalty. The "other damage" that would demand the death penalty ("life for life") would be the death of the pregnant person (or some other serious punishment relating to the damage caused--"eye for eye, tooth for tooth...") Causing the termination of a pregnancy is not, in the Torah, considered murder.

Questions for Discussion

1. What is the distinction between the two kinds of punishments described in these texts? What does the distinction tell us about how pregnancy was regarded in the ancient world? What are the implications for our day?
2. Does this text surprise you in any way? What kinds of assumptions might you have made about what the Torah would have written about the status of the fetus--and does this reflect those assumptions?

The next two sources look more closely at the status of the fetus:

Babylonian Talmud, Yevamot 69b

If she is found pregnant, until the fortieth day it is mere fluid.

The Babylonian Talmud is the foundational text of Rabbinic law and culture, developed from approx. 200-500 CE in what's now Iraq.

Modern decisors of Jewish law count the 40 days as beginning from conception. Given that contemporary medical practice is to count pregnancy gestation from the last menstrual period--not conception--the end of those 40 days lands at about 7 or 8 weeks of pregnancy, by our current accounting.

Babylonian Talmud, Gittin 23b

What is the reason for Rabbi Yehuda HaNasi's position [in the above conversation]? He holds that a fetus is considered as its mother's thigh [that is, as part of the pregnant person's body]. In the middle of a Talmudic debate about whether a fetus--after the first 40 days--is considered separate from the pregnant person, we see a clear statement by Rabbi Yehuda HaNasi who, as redactor of the Mishnah, holds great authority.

Questions for Discussion

1. What do you think the Rabbis meant when they said that the fetus is "mere fluid"? Was this a statement about legal status? Was it related to the prevalence of early miscarriages? Was it a larger philosophical claim? Something else?
2. How does this text line up (or not line up) with claims that life begins at birth?
3. Does knowing that 66% of abortions in the United States today happen within the first 8 weeks' gestation--those 40 Talmudic days--impact how you read or understand this text?
4. What is the second text here trying to say about the nature of pregnancy?
5. How is that different from--and/or similar to--the prevalent cultural narratives that we have about what pregnancy is?
6. What might the implications be for this outlook for abortion policy?

Mishnah Oholot 7:6

If a woman is having trouble giving birth, they cut up the fetus in her womb and bring it forth limb by limb, because her life comes before the life of [the fetus]. But if the greater part [of the fetus/baby] has come out [of the person giving birth], one may not touch it, for one may not set aside one person's life for that of another.

1. What are the priorities that inform whose life takes precedence during a difficult labor? Whose rights are primary?
2. At what point does the fetus attain the status of personhood, according to this mishnah?

Here are a few more recent texts that show some of the ways in which these texts above have been applied:

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...

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.

Questions for Discussion

1. How do these texts build on the sources you’ve seen so far?
2. How do they extend them?
3. How do these sources interact with the real world of people today, and their needs, feelings, and reasons for terminating pregnancies?
4. How do these sources compare to the popular cultural and media narrative about religion and abortion?
5. What might some policy implications be of all of these sources, together?

Wrapping Up

How might you describe the Jewish approach to abortion, based on these sources?

What’s one thing you’re taking away from this conversation?

Abortion is not only permitted in Jewish law, but it is required when the life of the pregnant person is in danger.

Our access to reproductive health care is guaranteed not only by the Fourteenth Amendment - the right to equality and privacy - but also by the First Amendment’s guarantee that no one religion or religious interpretation will be enshrined in law or regulation.

We must not remain idle while barriers to health care place any individual’s health, well-being, autonomy, or economic security at risk.

Reproductive freedom is a Jewish issue.

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