



# The Torah of Reproductive Freedom

*A loving reminder to review our language best practices when preparing to lead a text study.*

You can teach a text study using this Guided Source Sheet to walk people through some of the core texts on the Jewish approach to reproductive freedom. If you'd like, you can invite people to discuss some of the texts (whether in person or through breakout rooms) in hevruta (paired discussion) or small group conversation 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 storytelling resources, all found in the resources section of [JewsForAbortionAccess.org](https://JewsForAbortionAccess.org).

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 a few short first person narratives.

## Welcome

Abortion access is a major crisis now in the United States.

Since the fall of *Roe v. Wade* in the summer of 2022, many states have passed outright bans on abortion or imposed draconian limits. Right now, 58% of people who can get pregnant and are of reproductive age (40 million women and others) live in states hostile to abortion rights.

Abortion bans 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.)*

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## Getting Started

- If you're in a group, you can choose to break into pairs (hevrutot) 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.*

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## 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.

*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.*

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

### 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.*

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## 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?

Now, a key source on ending pregnancies:

### 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.

The Mishnah is an ancient oral tradition known as the “Oral Torah” and was redacted around 150-200 CE in the land of Israel

## Questions for Discussion

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?



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## Maimonides, Mishneh Torah, Murderer and the Preservation of Life 1:9, 12th c.

This, indeed, is one of the negative mitzvot - not to take pity on the life of a rodef [one who seeks to kill someone.] (That is to say, we are commanded to be proactive in cases of self-defense.) 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.

## Questions for Discussion

1. How does Maimonides understand the status of a case where the pregnant person's life is in danger? How are we to understand the nature of abortion in this situation?
2. What methods are valid for abortion, according to Maimonides?
3. How do we see him echoing the Mishnah?

## Rabbi Yehudah ibn Ayyash of Algeirs, 'She'eilot U'tshuvot' Beit Yehudah, part "Even haEzer," Siman 14, 1740.

I was asked and searched my heart/intellect to examine and explore what I had heard about a small group of women who become pregnant and do not want to give birth again, and who do not want to remain pregnant any more [once they had already conceived]. And some of these women, if they become pregnant while nursing [another child] and they suspect the ayin hara [evil eye] or danger of the new birth to the living child, and they make a medication and drugs that are known to them to terminate a child, and he will become a nefel– a nonviable fetus....Here [in the case of the women of this teshuva] there is suspicion about the pregnancy [and is potential for harm is acknowledged, and women are therefore permitted to ingest this medication]. Behold– we have before us exactly what everyone acknowledges [is an acceptable situation where an abortion would be permitted], to illustrate the danger to the [living] child, and [the mother] is permitted to drink an abortive drug, so it seems, according to my understanding of the issue.

Translation is by Rabbi Margaret Hughes-Robinson; you can find a full copy of the tshuvah [here](#), which links to a pdf of the Hebrew.



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## Questions for Discussion

1. How are the women in the community about which Ibn Ayyash is asked engaging in abortion care? What image do you have about what's happening?
2. Where does Ibn Ayyash factor in the father's permission in his response? The local doctors? What do you think that says about how he understands the situation?

### **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.



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**Rabbi Becky Silverstein, a great contemporary rabbi and co-founder of the Trans Halakha Project, 2022.**

The discussion of who is permitted to eat on Yom Kippur, the Jewish Day of Atonement, has much relevant wisdom to offer. Most Jewish people observe Yom Kippur by incorporating prayer into a set of rituals that includes a 25-hour fast. But what happens if someone is ill and cannot fast on Yom Kippur? The Talmud invokes a verse from the biblical Book of Proverbs, “Lev yodea marat nafsho,” or “The heart knows the bitterness of its soul,” to teach that the sick person is actually the expert who should make this decision. The text of the Talmud even says that nobody can possess more expertise on such a question than the sick person themselves... In this way, Judaism’s principle of “Lev yodea marat nafsho” authorizes as experts both pregnant people who want to end a pregnancy and trans people seeking gender-affirming care or the right to live as their true selves. It demands that we honor the self-knowledge of those individuals.

**Professor Michal Raucher, Associate Professor of Jewish Studies, Rutgers University, 2022.**

Unless you support a person’s right to bodily autonomy, then you are supporting a system wherein someone else determines what you or anyone else can do with their bodies. It does not matter whether that person is a lawmaker, a judge, a contemporary rabbi or one from 2,000 years ago. It does not matter whether that person would permit most abortions or even require some. A religious argument based on Jewish law and rabbinic texts only goes so far. [Unencumbered support for abortion justice] may not be an argument rooted in Jewish law, but it is a Jewish argument — and it’s time to make it.

## 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 does the last one or possibly two challenge the others? What do you think about that?
4. How do these sources interact with the real world of people today, and their needs, feelings, and reasons for terminating pregnancies?
5. How do these sources compare to the popular cultural and media narrative about religion and abortion?
6. What might some policy implications be of all of these sources, together?



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## 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.*

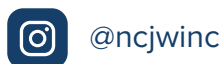
*Abortion is also an issue of Jewish values: abortion bans deepen every structural inequality that exists, and disproportionately harms those struggling financially, BIPOC individuals and communities, disabled people, young people, trans men and some nonbinary people, immigrants and others. We are commanded to create a more just society, and thus must fight for abortion access for everyone.*

*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.*

[jewsforabortionaccess.org](https://jewsforabortionaccess.org)



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