

The Torah of Reproductive Freedom



National Council of Jewish Women

This is a loving reminder to review our language best practices when preparing to lead a text study. You can find them [here](#).

About this Resource

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 *chevruta* (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 storytelling resources, all found in the resources section of [JewsForAbortionAccess.org](#).

We also have a [Courageous Conversation Guide](#) that does not feature Jewish texts but focuses instead 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. 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 *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.

This guide offers some traditional Jewish sources and some discussion questions that you may consider on your own or discuss with a friend — a *chevruta*, or study partner — or group.

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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Guidelines

- If you're in a group, you can choose to break into pairs (*chevrutot*) or groups of three, or you may discuss as a whole group.
- Have someone read each Jewish text out loud. (You can take turns.) You may be surprised by 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 discuss.
- Then look at the questions. You may discuss each question or just those you feel drawn to. Make sure you're clear on what the texts mean before you discuss their implications for today.
- Let the insights and connections flow!

Getting Started



ASK THE GROUP

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 had you made about what the Torah said about the status of the fetus? Does this text 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.



Note: 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.

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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 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, Assoc 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.

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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 are some possible policy implications of all of these sources together?



Questions for Wrap Up

1. Based on these sources, how might you describe the Jewish approach to abortion?
2. What's one thing you're taking away from this conversation?

Conclusion

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 harm 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; therefore, we 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

