

Reproductive Justice After the Repeal of Roe

Sarah, Hagar, Rivkah, Rachel, Leah – the stories of our foremothers are filled with remembrances of the challenges, sometimes life-threatening, that they faced in conceiving and giving birth. The story of Moses, his mother Yocheved, his sister Miriam, along with Bitya, Pharaoh's daughter who raised him, brings this theme to dramatic heights in the Exodus narratives. The drama of their lives centered around their role as mothers of an emerging clan, a family to become a nation, built on the foundation of their very abilities to bear children and to nurture the next generation.

Anita Diamant's extraordinary book-long midrash, *The Red Tent*, recalled the women of these early generations of our people. What an honor these women conferred upon all of us.

Our foremothers knew of the challenges of pregnancy for all women and the dangers of childbirth for many. Losing a pregnancy was a sad and tragic event, and even more so, the loss of little ones in infancy, and both were relatively common in ages past.

Now we are living in a time when pregnancy, and a women's agency over her body are being challenged in ways that our ancestors could never have imagined. We are living through a distressing political environment that casts women's experiences of birth control, pregnancy, childbirth and women's healthcare in rigid, Christian fundamentalist religious terms.

Many among us, women here, may find ourselves thinking of our own pregnancy and childbirth experiences. I was blessed to bring three babies into this world. But if I had not had emergency caesarian sections for the first two, and a planned C section for the third, I would have died. I am reminded of the principle in Jewish law which is based on the value that the *life of the mother takes precedence over those unborn*, according to Jewish law.

Back in the early 1990's when I was leading a congregation in SW Michigan, I was honored to serve as president of Planned Parenthood of Southwestern Michigan in Benton Harbor. During that time, our neighboring affiliate in Kalamazoo – the one where abortions were performed -- was bombed. We knew there was the potential for violence and that our task was to build a robust network of support to help them to secure their facilities, and ours. We were there to help women and to keep them safe.

But even then, it never occurred to us that the right to an abortion would ever possibly be taken from us; that women would lose agency over their bodies in 21st century America. It was unimaginable that the forces of right-wing religious extremism would ascend to the highest court in the land and take away such a fundamental freedom.

I am sure that there are women among us today who chose abortion and endured the fear and sadness that comes with that loss. This isn't typically

something we share with others outside our closest circles of friends and family, if that. Yet, I imagine that many of us know friends or family who needed and received abortion. I remember a family member who was born into a Catholic family asking my mother to help her get an abortion since it was understood that she could not tell her family of origin. I know this was a very difficult choice, but for her, it was necessary given her life circumstances. I remember a close friend who, in graduate school became pregnant unexpectedly and felt the need to go for an abortion so she could complete her studies and be ready for when she would start a family. It was a mournful time for her. At least she had bodily autonomy and the legal right to make this choice, as did other friends and family who made the same difficult decision

This is the time of year for us to remember and refresh our commitment to the values given to us through our Jewish tradition. So what does Judaism have to say about abortion? Two colleagues, writing a column entitled “*Abortion and Reproductive Justice: A Jewish Perspective*,” offered a succinct and powerful summary of the Jewish issues around abortion right. The first tidbit is illustrative:

A study by the Pew Research Center found that 83 percent of American Jews say that abortion should be legal in all or most cases.¹ American Jews’ widespread support for permissive abortion

¹Pew Research Center, “Views about Abortion among Jews,” Religious Landscape Study, 2014, <https://www.pewforum.org/religious-landscape-study/religious-tradition/jewish/views-about-abortion/>

laws finds grounding in Jewish tradition's approach to pregnancy and its end. In the Torah we learn first about the termination of a pregnancy in Parashat Mishpatim in the book of Exodus, our tradition's earliest guidance on the termination of a pregnancy:

When individuals 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, 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. (Exodus 21:22–25)

This teaching has been understood for countless generations to teach that a woman has the full status of a person, a *nefesh/soul*, while the fetus—though valued—has a lesser status as a “potential life.”

In the next stage of Jewish thought, in the Mishnah, the teaching goes further. We are taught that if a woman's life is threatened in childbirth, the fetus in her womb can be destroyed if it means that is the only way to save her life. We, the Jewish people, are committed to the value of life as a primary gift from Gd. And yet, the sages describe what must happen if necessary: “taking it out limb from limb, for her life comes before the

fetus's life.”² The mother's life takes precedence over the unborn, a potential life.

While later commentators debate the implications of this text, particularly the breadth or narrowness of the definition of a threat to the life of the woman, still, no matter how the teaching may be understood, in the end, Judaism nonetheless allows for abortion or even requires it *to save the mother's life*.

While the fetus is certainly recognized as having the potential to *become* human, its potential for life is realized *only after* birth, even to 31 days of life after birth, to ensure that it would likely survive outside the womb. Rashi, the great 12th century commentator on the Bible and Talmud, speaks of the fetus in this way: the fetus is “*lav nefesh hu* – it is not a person.” The Talmud refers to the fetus as “*ubar yerech imo* – the fetus is as the thigh of its mother.” The fetus is considered to be part of the pregnant women's body.

The political landscape in which the abortion debate is located today evokes confusion and consternation in its use of language. What does it mean to ***choose life***, as our tradition commands?

In the book of Deuteronomy, we read:

² Mishnah Ohalot 7:6.

I call heaven and earth as witness:
 I have placed before you this day life and death, blessing and curse.
Therefore choose life, that you and your descendants may live.

These words have been co-opted by those with a different view of what it means to *choose life*. The slogans of the “pro-life” movement, held aloft in posters and pasted as bumper stickers, are intended to direct women who face “the most painful and personal choices in their lives” to bring their pregnancies to term, to bear children even when it threatens their lives.

Judaism is unequivocally “*pro-life*” in that *we value both actualized and potential lives*. But the sages of **this** generation have steered us far away from using that term in a political environment where “pro-life” has come to mean “anti-abortion.” ***This negates the complexity and power of Jewish law***. Alongside that, it sets us apart, without the right to make decisions about pregnancy based on the teachings of our own religious tradition. Since Judaism allows for abortion under some circumstances, we are called to advocate for civil laws that protect a woman’s right to choose, to access birth control and abortion services when needed.

While politically “pro-life” advocates today say they are standing up for LIFE, the *pro-life* movement has become so extreme as to be clouded with constant threats of violence. The “pro-life” movement has not only usurped a biblical term that means something quite different in our tradition, it has

also cast aspersions on the medical professionals who help women in tragically difficult situations when abortions are needed.

The violence, such as that at our Michigan Planned Parenthood and many other places, serves to create broader chasms between the two sides, and is tearing our country apart. I heard the pain in a story told to me by my friend and colleague Rabbi Michael Feshbach. He wrote:

I have seen the murderous hand and bone-chilling hate of the so-called pro-life movement up close. I have seen real blood spilled by those who are filled with righteous rage and absolute certainty that God is on their side.

The phone rang late on a Friday night years ago in Buffalo. [Julie] {His wife} answered, then handed it to me with a look of great concern. It was a Shomer Shabbat Conservative rabbi at the shul down the street, and Julie knew he would not be calling unless it was a real emergency. I took the phone and heard my colleague tell me “One of your congregants has just been shot.”

I stepped out and heard the helicopters, blades chopping the air and lights roaming the street. It would be years before the murderer was caught, but even as I was walking the short few blocks to the Slepian home, I knew it was a moment which would change our lives.

Barnett Slepian was an OB-GYN, shot through a window in his home after Shabbat services. And he was a fertility specialist! He loved bringing babies into the world. He often explored alternative options

with patients asking about abortion. His work in saving women's lives by terminating pregnancies never exceeded two percent of his practice. And all the large font headlines managed to say about him was "Abortion Doctor Killed!"

A few days later I took another call. This one came after all the religious school assemblies comforting kids whose classmates had lost a father, helping them make sense of what was going on. It came after a funeral pushing past throngs turning beet red from screaming, spitting, shaking in fury and holding signs saying he got what he deserved. It came after the cameras went away and the celebrity politicians who came for shiva went back home, when the community began to take stock of who it was, and what came next.

The call was from a young woman who identified herself as a member of a local Catholic church. And she wanted to know about the Jewish position on abortion. She seemed sincere, with no apparent rage or rancor. I was being asked a question of Torah. And I remembered that I was a rabbi.

As Judaism holds that abortion is permitted or even commanded if the fetus poses a threat to the mother, there is certainly some subjectivity in how this is applied. Some rabbinic authorities will say that abortion is permitted even in cases of lesser injury. This may include the impact on older children of a continued pregnancy or the emotional state and

psychological factors for the mother, especially given possibly difficult diagnoses from pre-natal tests, as well as conception arising from coercion.

For the Jewish community, the protection of access to abortion has been also be understood under the **First Amendment's free exercise of religion clause**. With Jewish views regarding the permissibility of abortion in certain circumstances, a law that limits a woman's right to choose limits a Jewish woman's ability to make a decision in accordance with her religious beliefs. "In fact, since that Judaism understands these issues differently can be a powerful antidote to the pervasive sense that religious voices are only to be found on one side of this debate."³

In Jewish life, circumstances count. This means that difficult decisions in tragic times must be made by a woman with her health providers, and especially, with the support of her moral and spiritual tradition. A woman in distress would do well to consult her rabbi once she has consulted her physician.

Let's be clear: this is not just about religious freedom, though as Jews, that is a fundamental right we need to preserve. Even more, with Roe gone,

³ Ibid

women will die. The implications of Dobbs are staggering. What, then, can we do?

We can support organizations such as Planned Parenthood, NARAL, and National Council for Jewish Women, which hosts jewsforabortionaccess.org. We may be called upon for other forms assistance, such as aid in transportation across state lines, support for clinics under fire – even advocacy to preserve medical education and training in specific procedures.

וּבְחֵרָתְךָ בַּחַיִּים לְמַעַן תִּתְּנָה אֶתָּה וְזֶרְעֶךָ

What does it mean, to choose life? This is to command us to care about and for each other. Today's America is starkly different from the one in which those of my generation grew up. There are two vastly different visions and sets of values before us now and the stakes are very high. Life, and death; blessing, and curse. Let us not stand idly by as women will die. This is our moment for action.

May this New Year, filled with memories of ancient family stories where life and death, childbirth and loss are retold, remind us of what is possible. We can help to repair our broken world with a passionate call for justice and true religious freedom in America. May no more violent acts of protest by anti-choice activists succeed, and may no more women die, so that respect for women's bodily agency and religious freedom will be restored and preserved. May this be year for a new America for American Jews.