

Abortion Rights: Judaism Sees the Pregnant Person

Shabbat Mishpatim 5783

February 17, 2023

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I used to joke that raising Robert and Daniel was “an experiment in geriatric parenting.” There was truth in that characterization, but the **whole** truth was more painful. Toni’s and my struggle with infertility was not a secret, but it took place many years before we moved to Little Rock, so it is mostly unknown here.

After failing to conceive the natural way, we tried everything. We were blessedly able to access outstanding infertility treatment, but we went through—and, it must be said, Toni **endured**—multiple rounds of in-vitro fertilization before Robert was successfully conceived.

Twice during those years, we received good news: Toni was pregnant! Then, days later, something wasn’t right. Ultrasounds found the embryos dangerously lodged in Toni’s fallopian tubes, a condition known as an ectopic pregnancy. Mayo Clinic explains: “An ectopic pregnancy can’t proceed normally. The fertilized egg can’t survive, and the growing tissue may cause life-threatening bleeding, if untreated.”ⁱ In both cases, Toni was given medication that safely terminated the pregnancies, not without physical pain and discomfort.

The psychological pain and trauma were worse. All around us were constant reminders of our childlessness: Our peers were having babies, and I often officiated at a *Brit Milah* or Baby Naming. We did not know then that we would be blessed with two sons. For Toni, having to undergo procedures to end very much wanted pregnancies was excruciating, even as she knew full well that there was no alternative. For both of us, the pain of the losses was unbearable.

Decades later, the memories of that period’s pain have dulled, for me at least, replaced by the joys and challenges of parenting. Reflecting a quarter century later, I am grateful that Toni’s doctor was able to end those life-threatening pregnancies safely. And, given the landscape of abortion rights in America today, I am thankful that neither we nor Toni’s doctor had to jump through legal hoops, dangerously delay the procedure, contemplate getting on an airplane to access life-saving medical care, or worry that the doctor might go to prison.

We were also comforted by the knowledge that those abortions were not only permitted but required in our Jewish tradition. The Talmud characterizes an early pregnancy, up to forty days after conception, as “mere fluid,”ⁱⁱ suggesting that it may be terminated for any reason. That particular text did not comfort us; those embryonic pregnancies were our hope for the future of our family, not “mere

fluid.” Still, the Mishnah, for eighteen hundred years now, has clearly stated that a pregnancy that threatens the pregnant person’s life must be terminated, medically or surgically, not only in the early days after conception, but right up until birth.ⁱⁱⁱ

Even Arkansas law permits abortion to save a mother’s life. However, last month, a New York *Times* investigation found that “Louisiana, which has exceptions for protecting the life or health of the patient and for deadly birth defects...has reported zero abortions since its ban took effect. Mississippi, with exceptions for rape and protecting the life of the patient, has reported no more than two.” Findings in Alabama, Kentucky, Missouri, and Texas were similar.^{iv} (Arkansas was not mentioned.) I am terrified to imagine what would have happened if today’s laws were in effect in the late 1990s—or, more to the point, what would happen to a person suffering an ectopic pregnancy right here in Arkansas today, particularly if that person were a poor woman of color, or were a transgender or nonbinary person, all groups that tend to lack equal access to excellent medical care and who would not likely have the resources to travel hundreds of miles to the nearest state with more permissive abortion laws.

Jewish teaching about abortion begins with a story about a pregnant person, a narrative found in this week’s Torah portion, *Mishpatim*. The unnamed pregnant woman in question is an innocent bystander when two men engage in a physical altercation, one knocking into the pregnant woman. We learn that, if she suffers a miscarriage, the man who is responsible must pay a fine. However, if she is harmed, the man’s punishment is more severe and is commensurate with the woman’s injury.^v From this text, we learn that killing a fetus is a crime—at least in this case, when the pregnant person is not endangered by the pregnancy and isn’t seeking its termination. However, we also learn that killing a fetus is not murder, as the man’s punishment is considerably less if only the fetus dies than if the woman is also killed or injured.

That’s one way of looking at the passage anyway. Another is to note that the pregnant woman’s life and health are the primary indicators of the man’s punishment. From the Torah onward, Judaism looks at the pregnant person to determine the appropriateness of terminating the pregnancy. Writing in *The Social Justice Torah Commentary*, Rabbis Joshua Fixler and Emily Langowitz remind us of the Mishnaic ruling that a pregnancy must be terminated if the pregnant person’s life is threatened, and then add: “Later commentators debate...the breadth or narrowness of the definition of a threat to the life of a woman [that is sufficient to terminate the pregnancy]. Some are more permissive of the range of emotional as well as physical impacts that could justify the abortion, while others understand the instances of permissibility with excruciating parsimony.”^{vi}

Rabbis Fixler and Langowitz ask us to think deeply about the pregnant woman of *Parashat Mishpatim*. Not only is she unnamed, she is “all but absent from subsequent conversation about this passage.” Commentators, Fixler and Langowitz charge, “miss the opportunity to see her as a subject, rather than an object.” And that matters. “To see the woman...as merely a hypothetical in a legal case study is to deny that cases such as these were very real to the people who experienced them.”^{vii}

One way to combat this silence is to hear stories of those who have needed an abortion. I have shared one from my own family, just as Rabbi Fixler tells the story of his grandmother’s illegal abortion, decades before *Roe v. Wade*. She contracted German measles, which can cause birth defects, and “the joyous laughter was drained from [a wanted] pregnancy.”^{viii} Last spring, on the steps of our state’s Capitol, I heard stories of brave people who told of terminating their pregnancies. Not all of those pregnancies were planned. Not all were ended because of a threat to the pregnant person’s life or physical health, a fetal anomaly, rape, or incest. Still, each of the brave people who rose to speak of their abortion said that the ability to terminate their pregnancy had saved their life.

Like the termination of Toni’s and my ectopic pregnancies, none of those abortions was easy for the pregnant person involved. Toni and I had no choice, but most of those people faced an array of options, all of which would negatively impact their lives and wellbeing.

Our Jewish tradition, from the Torah to this very day, insists that the pregnant person must be our central concern when the question of abortion is raised—not just pregnant people in general, but each specific person, their situation, and their needs. Let us open our ears and our hearts to hear those stories, in all their painful variety. Only the pregnant person, in discussion with their own conscience and/or whomever they choose to consult, can determine what they need. Let the laws of Arkansas, and across this “free country,” offer grace and justice to pregnant people, who must be at the center of every decision about abortion.

The sign in my yard reads, “Abortion bans are against my religion.” Now, you know why.

Amen.

ⁱ [Ectopic pregnancy - Symptoms and causes - Mayo Clinic.](#)

ⁱⁱ B.T. Yevamot 69b.

ⁱⁱⁱ M. Oholot 7.6.

^{iv} Amy Schoenfeld Walker, “Most Abortion Bans Include Exceptions. In Practice, Few Are Granted,” *The New York Times*, January 21, 2023, [Most Abortion Bans Include Exceptions. In Practice, Few Are Granted. - The New York Times \(nytimes.com\)](https://www.nytimes.com/2023/01/21/us/politics/abortion-bans-exceptions.html).

^v Exodus 21:22-25.

^{vi} Rabbi Joshua R.S. Fixler and Rabbi Emily Langowitz, “Stricken from the Text: Sacred Stories of Reproductive Justice,” *The Social Justice Torah Commentary*, New York: CCAR Press, 2021, p. 107.

^{vii} Fixler and Langowitz, p. 108.

^{viii} Fixler and Langowitz, p. 105.