

**The Status of the Human Fetus**  
**Prepared by Rabbi Annie Tucker in honor of Repro Shabbat**

**Exodus 21:22-25**

וְכִי־יִנְצוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלֶדֶיהָ וְלֹא יְהִי אֶסוֹן עָנוּשׁ יַעֲנֹשׁ כַּאֲשֶׁר יִשִּׁית עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בְּפִלְלִים : וְאִם־אֶסוֹן יְהִי וְנִתְּנָה נַפֶּשׁ תַּחַת נַפֶּשׁ : עַיִן תַּחַת עַיִן שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל : כִּוְיָה תַּחַת כִּוְיָה פֶּצַע תַּחַת פֶּצַע חַבּוּרָה תַּחַת חַבּוּרָה

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.

**Mishna Ohalot 7:6 (c. 200 CE)**

הָאִשָּׁה שֶׁהִיא מְקַשָּׁה לֵילֵד, מַחְתִּיכִין אֶת הַיּוֹלֵד בְּמַעֲיָהּ וּמוֹצִיאִין אוֹתוֹ אֲבָרִים אֲבָרִים, מִפְּנֵי שְׁחִיבָהּ קוֹדֵמִין לְחַיֵּיו. יֵצֵא רַבּוֹ, אֵין נוֹגְעִין בוֹ, שְׂאִין דּוֹחִין נֶפֶשׁ מִפְּנֵי נֶפֶשׁ :

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

**Rambam, Hilkhot Rotzeah u'Shmirat Nefesh 1:9 (1138-1204, Spain/Egypt)**

אִף זֶה מִצְוֹת לֹא תַעֲשֶׂה שְׂלֵא לְחוּס עַל נַפְשׁ הָרוֹדֵף. לְפִיכֵךְ הוֹרוּ חֲכָמִים שֶׁהַעֲבָרָה שֶׁהִיא מְקַשָּׁה לֵילֵד מִתֵּר לְחַתֵּף הַעֲבָר בְּמַעֲיָהּ בֵּין בָּסֵם בֵּין בַּיָּד מִפְּנֵי שֶׁהוּא כְּרוֹדֵף אַחֲרֶיהָ לְהַרְגָּהּ. וְאִם מְשֻׁהוּצִיא רֹאשׁוֹ אֵין נוֹגְעִין בוֹ שְׂאִין דּוֹחִין נֶפֶשׁ מִפְּנֵי נֶפֶשׁ וְזֶהוּ טַבְעוֹ שֶׁל עוֹלָם :

This is, moreover, a negative commandment, that we have not pity on the life of a pursuer. Consequently, the Sages have ruled that if a woman with child is having difficulty in giving birth, the child inside her may be taken out, either by drugs or by surgery, because it is regarded as one pursuing her and trying to kill her (*rodef*). But once its head has appeared, it must not be touched, for we may not set aside one human life to save another human life, and what is happening is the course of nature.

**Babylonian Talmud Sanhedrin 72b (c. 500 CE)**

אֵיתִיבֵיהּ רַב חֲסֵדָא לְרַב הוּנָא יֵצֵא רֹאשׁוֹ אֵין נוֹגְעִין בוֹ לְפִי שֶׁאֵין דּוֹחִין נֶפֶשׁ מִפְּנֵי נֶפֶשׁ וְאִם רֹדֵף הוּא שֶׁאֵין הַתָּם דַּמְשָׁמִיא קָא רַדְפֵי לֵה

Rav Hisda raised an objection to Rav Huna: If a woman was giving birth and her life was being endangered by the fetus, the life of the fetus may be sacrificed in order to save the mother. But once his head has emerged during the birthing process, he may not be harmed in order to save the mother. If one is permitted to save the pursued party by killing the minor who is pursuing him, why is this so? The fetus is a pursuer who is endangering his mother's life! The Gemara answers: It is different there, with regard to the woman giving birth, since she is being pursued by Heaven. Since the fetus is not acting of his own volition and endangering his mother of his own will, his life may not be taken in order to save his mother.

**Responsa She'elat Ya'vetz 1:43 (Rabbi Jacob Emden, 1697-1776, Germany)**

The questioner asks about an adulterous married woman (who is pregnant) is a good question. It appears to me 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 an evil associated with it that would cause her great pain...Therefore our ruling is: in general it is certainly forbidden to destroy a legitimate fetus, but in the

case before us of a married woman who has gone astray, I hereby state my humble opinion that it is permitted; perhaps it is even worthy of being regarded as a mitzvah.

### **CJLS Update on Abortion, December 29, 2021**

We seek a way to follow our tradition's nuanced views on abortion in a multicultural society, where the principles of different religions must be respected, and those who are pregnant and those who provide healing must have the right to follow their own conscience and religious traditions without restricting the right of others to follow their conscience and religious traditions. Jewish tradition values life almost above all else and very much encourages having children. However, even when abortion was greatly restricted, if not completely forbidden, in the U.S. (and the Western world), rabbis generally upheld a lenient attitude toward abortion when the mother's life or physical or mental health were at stake. Under those circumstances, when it became possible to abort using medication, that became the preferable option because it is generally less dangerous than surgery for the woman at the time of the abortion and with regard to her future ability to procreate.

That said, Jewish law also permits abortion to be done surgically, when the stage of the pregnancy and the mother's health, both physiological and psychological, require that. New medical technologies have developed that offer data about the fetus, and our rabbis permit abortion in cases where a child would be born so ill as not to survive long or would be severely and permanently disabled. Recently, certain abortion procedures have become the subject of political polemics. Nonetheless, keeping in mind the principles and guidelines of Jewish law, based on the Mishnah (Ohalot 7:6), we uphold the use of surgical abortion techniques even in the last stages of pregnancy ("late term intact dilation and extraction abortion") when that is necessary to preserve the mother's life or health or her ability to give birth in the future.

The United States Supreme Court held in *Roe* (1973) and in *Casey* (1992) that states are permitted to impose restrictions on a woman's right to abort based on fetal viability outside the womb. Thanks to advances in neonatology, the time during pregnancy when fetal viability occurs has moved earlier, from the third trimester (the 29th week out of 40), as in *Roe*, to as few as 23 weeks. The earlier that a baby is born, however, the less likely that it will survive and the more likely that if it does survive, it will suffer from abnormalities, many of which cannot be corrected. No hard-and-fast prognosis applies, for even babies born at full term may suffer from abnormalities of various sorts, and only very severe illness would be taken into consideration by Jewish law. Furthermore, as Chief Justice Roberts is quoted as saying, if the issue in American law is no longer viability, because of its complications, but rather the ability of the woman to choose whether to have a child or not, how long during the pregnancy should that right apply? Neither viability nor a woman's right to choose is the basis of Jewish law on abortion, although they play a role only indirectly; what matters in Jewish law is the woman's life and health, both physical and mental.

### **Rabbinical Assembly Resolution on Right to Legal and Accessible Abortion in the United States**

[www.rabbinicalassembly.org/story/resolution-right-legal-and-accessible-abortion-united-states-0](http://www.rabbinicalassembly.org/story/resolution-right-legal-and-accessible-abortion-united-states-0)

### **Rabbinical Assembly Statement on the Texas Abortion Law**

[www.rabbinicalassembly.org/story/statement-texas-abortion-law](http://www.rabbinicalassembly.org/story/statement-texas-abortion-law)

### **Teshuvah on Partial-Birth Abortion the Question of When Life Begins, Rabbi Susan Grossman, 2001**

[www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20052010/grossman\\_partial\\_birth.pdf](http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20052010/grossman_partial_birth.pdf)

### **Resources on Judaism and Reproductive Rights through the National Council of Jewish Women**

<https://rabbisforrepro.org/resources>