

Some Key Sources on Abortion (Extended Source Sheet)



By Rabbi Danya Ruttenberg



National Council of Jewish Women

A few notes:

- Remember, as you prepare to teach these texts, that people of many genders can get pregnant--many (but not all) cisgendered women, some non-binary people, some trans men, and some other people whose identities are not reflected in the framework of binary gender. It may be worthwhile to be thoughtful about how you talk about these texts with regards to gender.
- It may also be helpful to remember that people with a diverse range of sexualities can get pregnant, and that there are many contexts in which those pregnancies may occur--some of which are in the context of marriage, some not, in some cases consent may not have been given, and so forth.

The texts are organized very generally by concept or points of contemporary relevance.

1) The Fetus Does Not Have the Status of Personhood; Causing a Miscarriage Incurs Monetary Damages, Not Capital Punishment for Manslaughter.

שמות כ"א:י"ב

(יב) מִכֶּה אִישׁ וּמָת מוֹת יוּמָת:

Exodus 21:12

(12) He who fatally strikes a man shall be put to death.

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שמות כ"א:כ"ב-כ"ה

(כב) וְכִי־יִנְצוּ אַנְשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיֵּצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אָסוֹן

עָנוּשׁ יַעֲנֶשׁ כַּאֲשֶׁר יִשִּׁית עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בַּפְּלָלִים: (כג)

וְאִם־אָסוֹן יִהְיֶה וְנָתַתָּה נַפְשׁ תַּחַת נַפֶּשׁ: (כד) עֵין תַּחַת לְעֵין שֵׁן תַּחַת

שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל: (כה) כּוֹיָה תַּחַת כּוֹיָה פֶּצַע תַּחַת

פֶּצַע חֲבוּרָה תַּחַת חֲבוּרָה: (ס)

Exodus 21:22-25

(22) 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. (23) But if other damage ensues, the penalty shall be life for life, (24) eye for eye, tooth for

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tooth, hand for hand, foot for foot, (25) burn for burn, wound for wound, bruise for bruise.

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סנהדרין פ"ז ב"י

דיני נפשות בפלוגתא דרבי ורבנן דתניא רבי אומר (שמות כא, כג)
ונתת נפש תחת נפש ממון

Sanhedrin 87b:10

In cases of **capital law**, the dispute concerning such a prohibition is **with regard to** the issue that is the subject of **the dispute** between **Rabbi Yehuda HaNasi and the Rabbis, as it is taught** in a *baraita* that **Rabbi Yehuda HaNasi says** with regard to that which is written: “If men struggle and they hurt a pregnant woman...and if there shall be a tragedy **you shall give a life for a life**” (Exodus 21:22–23), the reference is to **a monetary payment** for the life that he took. The tragedy referenced is the unintentional killing of the mother.

4

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משנה תורה, הלכות חובל ומזיק ד'א'
(א) הַנוֹגֵף אֶת הָאִשָּׁה וַיֵּצֵאוּ יְלָדֶיהָ אֶף עַל פִּי שְׂלֵא גַתְכֹּון חַיֵּב
לְשֵׁלִם דְּמֵי וְלָדוֹת לְבַעַל וְנִזְק וְצַעַר לְאִשָּׁה:

Mishneh Torah, One Who Injures a Person or Property 4:1

(1) One who strikes a woman and causes her to miscarry, even though this wasn't his intent, he must pay the value of the fetus to the [woman's] husband, and damage and pain to the woman.

2) The Full Status of Personhood Begins At a Viable Birth.

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משנה אהלות ז'ו'
(ו) הָאִשָּׁה שֶׁהִיא מִקְשָׁה לֵילֵד, מְחַתְכִין אֶת הַיֶּלֶד בְּמַעֲיָהּ וּמוֹצִיאִין
אוֹתוֹ אֲבָרִים אֲבָרִים, מִפְּנֵי שְׂחִיּוֹת קוֹדְמִין לְחִיּוֹ. יֵצֵא רַבּוֹ, אֵין

נוגְעִין בוֹ, שְׂאִין דּוֹחִין נֶפֶשׁ מִפְּנֵי נֶפֶשׁ:

Mishnah Oholot 7:6

(6) 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.

בראשית ב':ז'

(ז) וַיִּצְרֶה אֱלֹהִים אֶת־הָאָדָם עָפָר מִן־הָאֲדָמָה וַיִּפַּח בְּאַפָּיו נְשֻׁמַת חַיִּים וַיְהִי הָאָדָם לְנֶפֶשׁ חַיָּה:

Genesis 2:7

(7) the LORD God formed man from the dust of the earth. He blew into his nostrils the breath of life, and man became a living being.

רש"י על סנהדרין ע"ב ב:י"ד

יצא ראשו - באשה המקשה לילד ומסוכנת וקתני רישא החיה פושטת ידה וחותכתו ומוציאתו לאברים דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו אבל יצא ראשו אין נוגעים בו להורגו דהוה ליה כילוד ואין דוחין נפש מפני

נפש ואם תאמר מעשה דשבע בן בכרי (שמואל ב כ':כ"א) הנה
ראשו מושלך אליך דדחו נפש מפני נפש

Rashi on Sanhedrin 72b:14

its head came out: With a women that is experiencing difficulty giving birth and is in [mortal] danger. And it is taught in the first section [of this teaching], "the midwife extends her hand and cuts it up and extracts [the pieces];" as the entire time that that it has not gone out into the air of the world, it is not [considered] a soul, and [so] it is possible to kill it and to save its mother. But when its head came out, we cannot touch it to kill it, as it is like a born [baby]; and we do not push off one soul for the sake of another.

מכילתא דרבי ישמעאל כ"א:י"ב:ב'

(ב) מכה איש .. שומע אני אף בן שמונה במשמע – תלמוד לומר
מכה איש מגיד שאינו חייב עד שיהרוג בן קיימא.

Mekhilta d'Rabbi Yishmael 21:12:2

"And if a person strikes any nefesh of a person, and he dies, he shall be put to death." (Leviticus 24:17): I might think that an eight-month birth, (who is destined to die,) is also included. It is, therefore, written "If one strikes a man" — whereby we are apprised that he is not liable unless he kills one who is destined to live.

3) The Fetus Does Not Have Meaningful Status for the First Forty Days; Thereafter, It Is Considered Part of the Body of the Pregnant Person.

Note: Modern poskim count the 40 days noted in the texts below from conception. Given that our contemporary medical establishment counts pregnancy from last menstrual period, that would land the end of the 40 days at around 7-8 weeks' gestation as we count them today.

משנה נדה ג'ז'

(ז) הַמִּפְּלֹת לְיוֹם אַרְבָּעִים, אֵינָהּ חוֹשֶׁשֶׁת לְוֹלֵד. לְיוֹם אַרְבָּעִים
וְאַחַד, תֵּשֵׁב לְזָכָר וּלְנִקְבָּה וּלְנִדָּה. רַבִּי יִשְׁמַעֵאל אוֹמֵר, יוֹם
אַרְבָּעִים וְאַחַד, תֵּשֵׁב לְזָכָר וּלְנִדָּה. יוֹם שְׁמוֹנִים וְאַחַד, תֵּשֵׁב לְזָכָר
וּלְנִקְבָּה וּלְנִדָּה, שֶׁהַזָּכָר נִגְמָר לְאַרְבָּעִים וְאַחַד, וְהַנִּקְבָּה לְשְׁמוֹנִים
וְאַחַד. וְחֻכְמַיִם אוֹמְרִים, אֶחָד בְּרִית הַזָּכָר וְאַחַד בְּרִית הַנִּקְבָּה, זֶה
וְזֶה לְאַרְבָּעִים וְאַחַד:

Mishnah Niddah 3:7

(7) If a woman miscarried on the fortieth day, she need not be concerned that it was a valid childbirth. On the forty-first day, she sits as for both a male and a female and as for a menstruant. Rabbi Ishmael says: [if she miscarried on] the forty-first day she sits as for a male and as for a menstruant, But if on the eighty-first day she sits as for a male and a female and a menstruant, because a male is fully fashioned on the forty-first day and a female on the eighty-first day.

But the sages say: the fashioning of the male and the fashioning of the female both take forty-one days.

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יבמות ס"ט ב:ט'-י'

ובנישואין מי חששו והתניא בת כהן שנישאת לישראל ומת
טובלת ואוכלת בתרומה לערב אמר רב חסדא טובלת ואוכלת עד
ארבעים דאי לא מיעברא הא לא מיעברא ואי מיעברא עד
ארבעים מיא בעלמא היא

Yevamot 69b:9-10

The Gemara asks: **And about marriage were they concerned? Isn't it taught** in a *baraita*: In the case of **the daughter of a priest who married an Israelite and** her husband **died** on that same day, **she immerses** to purify herself, as she is ritually impure due to their intercourse, **and she may partake of *teruma* that same evening?** Evidently, the Sages were not concerned that she became pregnant from the initial act of intercourse, even that of marriage. **Rav Ḥisda said: She immerses and partakes of *teruma* only until forty days** after her husband's death, when there is still no reason for concern, **as if she is not pregnant then she is not pregnant. And if she is pregnant, until forty days from conception the fetus is merely water.** It is not yet considered a living being, and therefore it does not disqualify its mother from partaking of *teruma*.

גיטין כ"ג ב:ט'

חד אמר הא מני רבי היא דאמר המשחרר חצי עבדו קנה וחד
אמר מאי טעמא דרבי בהא קסבר עובר ירך אמו הוא ונעשה כמי
שהקנה לה אחד מאבריה:

Gittin 23b:9

One of them **said**: In accordance with **whose** opinion **is this?** **It is** in accordance with the opinion of **Rabbi** Yehuda HaNasi, **who says**: With regard to **one who emancipates half of his slave**, the slave **acquires** freedom for half of himself, **and one** of them added an explanation and **said**: **What is the reasoning of Rabbi** Yehuda HaNasi **for this** ruling? **He holds**: **A fetus is** considered as **its mother's thigh**, i.e., a part of its mother's body, **and it is as though** the master **transferred** ownership of **one of her limbs to her**. Since the maidservant is pregnant, the child is considered to be a part of her, and it is as though he emancipated a portion of her body. Therefore, the mother is not acting as an agent for the child, and this *halakha* does not present a difficulty for Rabbi Yoḥanan's opinion.

משנה ערכין א:ד'

(ד) הָאִשָּׁה שֶׁהִיא יוֹצֵאָה לְהַרְגֵּי, אֵין מִמֵּתִינִין לָהּ עַד שֶׁתֵּלֵד. יִשְׁבֶּה
עַל הַמִּשְׁבֵּר, מִמֵּתִינִין לָהּ עַד שֶׁתֵּלֵד. הָאִשָּׁה שֶׁנֶּהְרָגָה, נֶהְיִין
בְּשִׁעְרָה. בְּהֵמָה שֶׁנֶּהְרָגָה, אֲסוּרָה בְּהֵנִיָּה:

Mishnah Arakhin 1:4

(4) If a woman is about to be executed, they do not wait for her until she gives birth. But if she had already sat on the birthstool, they wait for her until she gives birth. If a woman has been put to death one may use her hair. If an animal has been put to death it is forbidden to make any use of it.

ערכין ז' א:י"ב

גמ' פשיטא גופה היא איצטריך ס"ד אמינא הואיל וכתוב (שמות
כא, כב) כאשר ישית עליו בעל האשה ממונא דבעל הוא ולא
ליפסדיה מיניה קמ"ל

Arakhin 7a:12

GEMARA: Isn't it **obvious** that the court executes the pregnant woman rather than waiting? After all, **it is her body!** The Gemara answers: It **was necessary** for the mishna to teach this, as it might **enter your mind to say** that **since it is written:** "And if men strive together, and hurt a woman with child, so that her offspring depart...he shall be fined, **as the woman's husband shall place upon him**" (Exodus 21:22), the fetus **is** considered to be the **property of the husband**. If so, the court should wait until she gives birth before executing her, **and not** cause **him to lose** the fetus. Consequently, the mishna **teaches us** that the court does not take this factor into account.

The gemara on the mishnah directly above it clarifies that the fetus is not the property of the husband, and, in the process, offers a powerful statement that has real resonance for today: “It’s obvious! It is her body!”

4) Abortion As Self-Defense

סנהדרין ע"ב ב:י"ג-י"ד

אמר רב הונא קטן הרודף ניתן להצילו בנפשו קסבר רודף אינו צריך התראה לא שנא גדול ולא שנא קטן איתביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש ואמאי רודף הוא שאני התם דמשמיה קא רדפי לה

Sanhedrin 72b:13-14

§ **Rav Huna says:** If a **minor was pursuing** another person in order to kill him, the pursued party **may be saved with** the pursuer’s **life**.

That is to say, one is permitted to save the pursued party by killing the minor who is pursuing him, and one does not say that since the minor lacks halakhic competence, he is not subject to punishment.

The Gemara explains: Rav Huna **maintains** that a **pursuer**, in general, **does not require forewarning**, and **there is no difference** with regard to this matter **between an adult and a minor**. The essence of the matter is rescuing the pursued party from death, and therefore the pursuer’s liability to receive the death penalty is irrelevant. **Rav Hisda raised an objection to Rav Huna** from a

baraita: 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, **because one life may not be pushed aside to save another life**. 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: This is not difficult, as **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.

משנה תורה, הלכות רוצח ושמירת נפש א'ט'
(ט) אף זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך
הורו חכמים שהעברה שהיא מקשה לילד מתר לחתוך העבר
במעיה בין בסם בין ביד מפני שהיא כרודף אחריה להרגה. ואם
משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו
טבעו של עולם:

Mishneh Torah, Murderer and the Preservation of Life 1:9

(9) This, indeed, is one of the negative mitzvot - not to take pity on the life of a rodef. 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.

Note the addition of another method of abortion in this halakha, above-
-”whether with a drug or by hand.”

5) A Few More Views, From the 18th c. to Today:

אמנם נדון השואל בא"א שזנתה שאלה הגונה היא. וקרוב בעיני
להתירה...וגם בעובר כשר הי' צד להקל לצורך גדול. כל כמה
דלא עקר. אפי' אינו משום פקוח נפש אמו. אלא להציל לה
מרעתו. שגורם לה כאב גדול וצ"ע.

Rabbi Jacob Emden Responsa She'elat Ya"vetz 1:43 (1739-1759)

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...

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.

This above 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.

It should be noted that ibn Ayyash refers to scenarios in which what we would now both call "self-managed abortion" and "medication abortion," are taking place--both of which are matters with strong contemporary resonance, and finds at least some situations in which to permit them.

Rabbi Mordechai Winkler, Levushei Mordekhai, Hoshen Mishpat 39 (1913)

Mental-health risk has been definitely equated with physical-health risk. This woman, in danger of losing her mental health unless the pregnancy is interrupted, would therefore accordingly qualify.

Rabbi Ben Zion Chai Uziel, Responsa Mishapte'ei Uziel 4:46 (1947-1964)

It is clear that abortion is not permitted without reason. That would be destructive and frustrative of the possibility of life. But for a reason, even if it is a slim reason, such as to prevent disgrace, then we have precedent and authority to permit it.

כשנשקפת סכנה לאשה בהמשכת ההריון יש להתיר הפלת העובר בשופי. גם כשמצב בריאותה של האשה רופף מאד ולשם רפואתה או השקטת מכאוביה הגדולים דרוש לבצע הפלת העובר, אע"פ שאין סכנה ממשית, גם כן יש מקום להתיר לעשות זאת, וכפי ראות עיני המורה המצב שלפניו.

Rabbi Eliezer Waldenberg, Tzitz Eliezer 9:51.3 (1967)

If there is a danger to the mother from continuing the pregnancy, one should permit abortion without hesitation. Also, if her health is poor and to cure her or to relieve her from great pain it is necessary to

abort the fetus, even if she is not in actual danger, there is room to permit it, based on the halachic authority's evaluation of the situation.

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ברור ופשוט הדבר בהלכה דישראל אינו נהרג על העוברין, ומלבד דעה יחידית סוברים הפוסקים שאיסור מיהא ישנו, אבל דעת הרבה מהפוסקים שהאיסור אינו אלא מדרבנן, או הוא רק משום גדר בנינו של עולם, אבל מחמת איבוד נפשות אין נדנוד כלל, ומשום כך מתיר בשו"ת מהרי"ט ט:צ"ז-צ"ט לסדר בישראלית הפלת וולד בכל היכא שהדבר נחוץ משום רפואת אמו, אפילו באין סיבה של פקו"נ לאם... ובכזאת, ויותר מזאת, צידד להתיר בהדיא בשו"ת שאילת יעב"ץ א:מג, וכותב בלשון: "וגם בעובר כשר יש צד להקל לצורך גדול כל כמה דלא עקר אפילו אינו משום פקוח נפש אמו, אלא להציל לה מרעתו שגורם לה כאב גדול." הרי בהדיא שדבר הצעת ההיתר בזה של היעב"ץ הוא אפילו כשליכא בכאן שאלת פקו"נ של האם, והמדובר רק כדי להצילה מכאב גדול שיש לה בגללו, ושכלל יש להקל בזה לצורך גדול. וא"כ הגע בעצמך האם יש צורך, צער וכאב, יותר גדול מזה של נידוננו, אשר יגרם לאם בהולד לה יצור כזה, שכולו אומר יסורים ומכאובים ומיתתו בטוח במשך מספר שנים, ועיני ההורים רואות וכלות באין לאל ידם להושיע? (וברור שלא

משנה ולא מפחית כלום באם הילוד הזה ילקח למוסד מיוחד ולא
יתנו גישה להורים עד מותו (. ומתוסף לזה פיתולי היסורים
והמכאובים של היילוד בעצמו... ויסורים וכאבים נפשיים המה
במדה מרובה הרבה יותר גדולים ויותר מכאיבים מיסורים
גופיים...

Rabbi Eliezer Waldenberg, Tzitz Eliezer 13:102 (1978)

It is clear and obvious as law that a Jew is not killed for a fetus. Aside from one view, the authorities rule that there is a prohibition, but many authorities believe that this prohibition is rabbinic, or it is under “building the world.” But there is no concern for destroying a life, and therefore Maharit 1:97-99 permits arrangement for a Jewish woman to abort a fetus where it is needed for the mother’s health, even without it being a matter of saving the mother’s life... And in such a case, and beyond this, Rabbi Yaakov Emden permitted, writing, “And even with a legitimate fetus, there is room to be lenient for great need, so long as it has not been uprooted [for birth], even without a need to save the mother’s life, but only to save her from her evil, which causes her great pain.” We see clearly that this permission of Rabbi Yaakov Emden is even when it is not a matter of saving the mother’s life, and it is only to save her from great pain because of the child, and that in general there is room to be lenient for great need. If so, ask yourself: Is there any need, pain or ache greater than in our case, which will cause the mother in birthing such a creation, whose

whole existence is suffering and pain, and whose death is certain in a matter of years, and whose parents watch and deteriorate without any power to save? (And certainly, it would not change or reduce anything if the child would be taken to a special institution without access for the parents until his death). And added to this are the suffering and pain of the child himself... And suffering and emotional pain in great measure are greater and more painful than physical pain...

Rabbi Kass Abelson, Proceedings of the Committee on Jewish Law and Standards, pp. 3-10 (1980-5)

There is clear precedent in the tradition...to permit abortion of a fetus to save a mother's life, to safeguard her health, or even for "a very thin reason," such as to spare her physical pain or mental anguish.

Rabbi Aharon Lichtenstein, "Abortion: A Halakhic Perspective," Tradition 25:4 (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 halakhic weight in other contexts, should be considered in making these decisions.



National Council of Jewish Women

The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. Learn more at [NCJW.org](https://www.ncjw.org)