



## **From Justification to Justice: New Jewish Sources on Abortion**

***Dr. Michal Raucher***

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## Part I: Justification

### 1. Robert Gordis, *Love and Sex: A Modern Jewish Perspective*, 1978

Abortion should be “legally available but ethically restricted. Though the abortion of a fetus is not equivalent to taking an actual life, it does represent the destruction of potential life and must not be undertaken lightly.”

### 2. Gerson D. Cohen, *Address to Women’s League Convention*, 1980

You and I are in agreement with most of the things that the Moral Majority stands for: religious standards, religious community, strict family standards, great concern over the question of abortion, over the moral breakdown of this country in our time.”

### 3. CJLS *Resolution on Reproductive Freedom*, 2007

Whereas Judaism does not believe that personhood and human rights begin with conception, but with birth;

Whereas Jewish law does not condone or permit abortion for contraceptive purposes, but where the life or health of the mother are in jeopardy;

Whereas the Committee on Jewish Law and Standards of the Rabbinical Assembly has affirmed the right of a woman to choose an abortion in cases where “continuation of a pregnancy might cause the mother severe physical or psychological harm, or where the fetus is judged by competent medical opinion as severely defective;”

### 4. Elliot Dorff, “Conservative Judaism on Abortion and Related Issues.” in Bagheri A. (Eds.) *Abortion*. Springer, 2021

Grounded in its commitment to be historically authentic in integrating tradition with modernity, the Conservative movement, like the Torah and Rabbinic sources, sees the fetus as “simply liquid” during the first forty days of gestation and “like the thigh of its mother” from then until birth. As a result, the Conservative movement generally forbids abortion as an act of self-injury. At the same time, when the woman’s life or physical or mental health is at stake, an abortion may be required or permitted, depending on the circumstances. Furthermore, now that we know significant facts about the status of the fetus in the uterus, abortions are also permitted if the fetus has a lethal or debilitating disease and the mother responds to that news, after consultation, with an assertion that she cannot mentally tolerate carrying the fetus to term and then either raising it or giving it up for adoption. **Non-Orthodox Jews, however, commonly misunderstand the tradition to permit abortion whenever the mother wants one, leading to far too many abortions among Jews, especially in light of the demographic crisis in which Jews currently find themselves.**

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

שמות כ"א: כ"ב-כ"ה

(כב) וְכִי יִנְצְוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אֶסּוֹן עָנוּשׁ יַעֲזֹשׁ בְּאִשָּׁר יִשִּׁית עָלֶיהָ בְּעַל הָאִשָּׁה וְנָתַן בַּפְּלָלִים: (כג) וְאִם־אֶסּוֹן יִהְיֶה וְנִתְּתָה נַפְשׁ תַּחַת נַפְשׁ: (כד) עַיִן תַּחַת עֵינֹן שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל: (כה) כְּוִיָּה תַּחַת כְּוִיָּה פֶּצַע תַּחַת פֶּצַע חֲבוּרָה תַּחַת חֲבוּרָה: (ס)

## 6. CJLS Update on Abortion, 2021

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.

## 7. 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.

משנה אהלות ז' ו'

(ו) הָאִשָּׁה שֶׁהִיא מְקַשָּׁה לֵילֵד, מְחַתְּכִין אֶת הַנֶּלֶד בְּמַעֲיָהּ וּמוֹצִיָּאִין אוֹתוֹ אַבְרִים אַבְרִים, מִפְּנֵי שְׁחִיבָהּ קוֹדְמִין לַחַיִּיו. יֵצֵא רַבּוֹ, אֵין נוֹגְעִין בּוֹ, שְׂאִין דּוֹחִין נַפְשׁ מִפְּנֵי נַפְשׁ:

## 8. 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**

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 איתיביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש ואמאי רודף הוא שאני התם דמשמיה קא רדפי לה

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.

**9. 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.

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 לחותף העבר במעיה בין בסם בין בגד מפני שהוא קרודף אחריה להרגה. ואם משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם :

## Part II: Justice

### 10. R. Emily Langowitz and R. Joshua R. S. Fixler, “Abortion and Reproductive Justice” (Excerpt of chapter in *The Social Justice Torah Commentary*), 2021

<https://reformjudaism.org/blog/abortion-and-reproductive-justice-jewish-perspective>

These texts and their subsequent interpretations are a vital resource for all of us who seek to affirm Jewish support for the choice to terminate a pregnancy and to advocate from a Jewish perspective for laws that protect reproductive choice. And we are called to go further; the law is only one facet of a full and holistic justice...The text in Exodus 21 begins with an act of violence perpetrated against a pregnant woman, and yet this woman is all but absent from subsequent conversation about this passage. Across the centuries, almost all of the voices of Jewish interpretation, and even many modern commentators, fail to acknowledge her story. The interpreters miss the opportunity to see her as subject, rather than object. To see the woman in this text 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. To reach a full sense of justice in our understanding of abortion, we must pair *mishpatim* (laws) with *sipurim* (stories).

### 11. Jodi Rudoren, “My Abortion Story,” *The Forward*, 2021

<https://forward.com/news/476361/my-abortion-story-because-its-true-and-we-should-not-be-afraid-to-talk/>

The scan had found our fetus had club feet and what is known as the “lemon sign” on the brain. Neural-tube defects are one of the things the spina bifida test is supposed to uncover — turns out there are a decent number of false negatives. The doctors said “severe,” but could not be much more precise.

If we continued with the pregnancy, they said, the baby’s physical limitations could range from just those club feet to a lifetime in a wheelchair. Intellectually, we could be looking at anything from maybe graduating high school to profound cognitive disabilities.

And we had to decide quickly — I was approaching the threshold for fetal viability, when abortion is outlawed or prohibited in many states.

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A friend whose son was born with a neurological condition pulled some strings to get Gary and me a meeting the next day with the head of pediatric neurosurgery at Columbia, Dr. Neil Feldstein. He told us that if we continued the pregnancy, the baby would likely need an operation within 24 hours of birth, and several more after that. He wasn’t trying to convince us either way, but he made the situation sound pretty grim.

“Who keeps these pregnancies?” I asked.

People who believe abortion is murder, is the blunt answer I remember Dr. Feldstein giving. And, he added, those are the parents who would be your peers as you raised the child.

I imagine it’s not really that simple; the whole point of choice is that you decide what is right for

you for whatever reasons are meaningful to you. I'm sure there are people who would not describe abortion as murder but nonetheless accept as fate having a profoundly disabled child — and people who do not find out about such disabilities before birth or early enough to safely and legally terminate.

We knew instantly, though, that we are not those people.

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In the few days since the ultrasound, we had entered a new universe of traumatic pregnancies and heart-wrenching choices. Acquaintances and colleagues poured forth with stories of their infertility struggles, late-term miscarriages and stillbirths, diagnoses of birth defects and more. It was comforting — and overwhelming. Online, there were endless resources and communities devoted to discussing these decisions and their aftermaths.

Many of these forlorn would-be parents had held their aborted or stillborn fetuses, given them names, created funeral-like ceremonies, so I asked our Conservative rabbi what, if anything, Jewish law had to say about such a situation. Could we possibly have to sit shiva or say kaddish?

No, he said clearly. The aborted fetus should be considered medical waste, not a person. No name, no Jewish burial — unless doing those things would help us cope, in which case it probably wasn't prohibited.

## **12. Adrienne Singer, excerpt from 'I made the choice': 9 readers share their (Jewish) abortion stories, The Forward, 2021**

<https://forward.com/opinion/476705/i-made-the-choice-9-readers-share-their-jewish-abortion-stories/>

It was 1977. I was 41 years old and a single woman with two elderly and challenged parents who would never physically or monetarily have been able to offer me any type of help. I had no living sisters or brothers. I worked paycheck to paycheck. The gentleman who impregnated me lived on another continent.

I met him while touring Asia. We spent a lot of time together as tourists, and on the last evening I had with him, I was stricken with sadness to have to say goodbye. It resulted in a romantic evening. The next day I was on my way back to the U.S.

A month later, I learned that I was pregnant. A friend who was friends with a doctor told this doctor about my situation, and without ever even seeing me, he arranged for a pregnancy test and it was positive. His nurse called me and said to go to an abortion clinic.

As a pregnant woman, I was “in love” with this fetus. I loved being pregnant. I felt glowing all over. I would have loved to have had this baby, but my sensible side overpowered me, and I knew I would be in a difficult situation if I didn't work steadily and had to find the money to support my child and manage my life.

I had no one to talk to. I didn't belong to a temple at the time, nor did I have a gynecologist. I

took a day off work and I went to the abortion clinic. They were very kind. When the fetus was removed from my body, I felt dead for several days. This depression went on for a few months.

**13. Patricia Bronstein, excerpt from ‘I made the choice’: 9 readers share their (Jewish) abortion stories, The Forward, 2021**

<https://forward.com/opinion/476705/i-made-the-choice-9-readers-share-their-jewish-abortion-stories/>

I had an abortion at age 32. I was married, but had known from high school that I did not want to have a child. Roe was a law by then. It was very early in the pregnancy, it was easy to schedule and I have never been sorry. I still do not have children.

**14. Sarah Tuttle-Singer, “My Jewish Abortion,” Kveller, 2012**

<https://www.kveller.com/my-jewish-abortion/>

It’s no secret why frightened looking girls walk into the social worker’s office on the second floor of the Student Health Center at UC Berkeley.

And while I sat there, vaguely nauseous and needing to pee (for the third time that hour) I avoided eye contact with the students walking by. After all, Nice Jewish Girls don’t get knocked up freshman year of college...

At that moment, I had a grand total of \$12.97 to tide me over until December 1st.

And I knew asking my parents for money would break their hearts.

“Hypothetically speaking, what if someone doesn’t have enough money?” I asked.

The social worker looked at me, her eyes alighting on the silver Jewish star necklace I was wearing.

“Are you Jewish?”

I nodded. My face flushed, and I looked down at my shaking hands. I taught Hebrew school at my synagogue. I received the Rabbi’s Scholarship for Outstanding Work in the Jewish Community. I kept kosher. And I was 19 and pregnant.

“Ok that’s good, because there is a philanthropic Jewish women’s group that offers a scholarship of \$250 to help cover costs. Would you be interested in that sort of thing?”

I wondered if I would have to write an essay or give them my SAT scores or show them my Bat Mitzvah certificate.

“How would I qualify?”

“By being pregnant, and by not wanting to be pregnant. And by being Jewish,” she replied.

“Look, I’ll contact the president of the organization, and I can have a check made out to you by the end of the week. Sound good?”

It sounded great. And not because I had found a way to finance my abortion. But because for the first time since I found out I was pregnant, I realized that I wasn't the first—nor would I be the last—knocked up Nice Jewish Girl.

**15. Steph Herold, “What it’s like to be a Jew of color—and abortion activist—in the Trump Era,” 2017**

<https://www.kveller.com/what-its-like-to-be-a-jew-of-color-and-abortion-activist-in-the-trump-era/>

The first time Anise Simon talked about her abortion with someone was at a [mikveh](#) in Los Angeles. The attendant asked her what she was hoping to get out of her ritual bath experience, and her story came bubbling out.

“I unloaded that I’d been in an abusive relationship and I was struggling with it, but I’d been in a place where I’d come to find joy in searching for answers,” she told me. She remembers the mikveh attendant recounting stories of strong women in Jewish history, including stories of dysfunctional families in religious mythology.

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[NARAL pro-choice Texas Board Member Candice] Russell found compassion from her Jewish community when talking about her abortion. When she shared her abortion story with a woman sitting next to her during Yom Kippur services, the congregant wrapped her arms around her in support. This experience buoyed Russell’s determination to disrupt the false idea that religious people are always anti-abortion. “We as Jews have a responsibility to fight against abortion stigma and show people that you can be a strong person of faith, and love people who have abortions,” she says.

Both women contextualize their abortions as parenting decisions deeply rooted in their identities as Jews and people of color. Simon shared, “As someone with generational trauma connected to colonialism, the Holocaust, and slavery, I want to do as much as I can to give my children, who will be very much wanted, a safe home that is violence free.”

**16. Avital Chizhick-Goldschmidt, “My Dark Secret: Orthodox Women Reveal Their Abortion Stories,” The Forward, 2018**

*27 years old, 2<sup>nd</sup> pregnancy, 21 weeks, New Jersey*

At a routine ultrasound, we discovered that our baby had trisomy 13 and numerous deformities: a cleft palate, extra digits, as well as defects in the brain and heart, among other issues. We were recommended, by specialists, to terminate.

I had never in my life thought I would have to contemplate having an abortion. We went to a *posek*, who agreed that we should go ahead with it — to save both mother and child from suffering.

Every minute was nauseating torture. The idea of carrying the baby another 20 weeks — only to have it die — was terrifying.

When I got to the hospital and said why I was there, one of the nurses looked at me with such disdain that I wanted to die. Another nurse took me in and cared for me.

Delivering the baby was another hell. My rabbi came and took the body, had it prepared and buried. I went home to deal with lying to everyone that I'd had a miscarriage. Even though I know I did everything right, asked all the right professionals, I knew people would be aghast.

And so I keep my secret.

**17. Avital Chizhick-Goldschmidt, "My Dark Secret: Orthodox Women Reveal Their Abortion Stories," The Forward, 2018**

*24 years old, 1<sup>st</sup> pregnancy, 8 weeks, USA*

We were in *shana rishona* (first year of marriage). My husband was already abusive at the time.

When I told him I was pregnant, he informed me that I would be getting an abortion, and that we would tell no one. He explained that if I had the baby, he would divorce me, and I wouldn't be able to finish school. We had very few friends in the Jewish community; he didn't like any of the rabbis, and when I suggested to talk to my *rav* from before we were married, he refused. I felt that I didn't have an option.

I had a medical abortion. That night, he went out with friends, and I stayed home and terminated it with the second set of pills. I was alone, and started miscarrying, blood everywhere. At that moment, I wanted to die.

I felt isolated, after that, in the community. I was ashamed of my secret, of the abortion, of not talking to my *rav*.

It would be several more years of abuse before I finally left him and started over.

I never got pregnant again, which made it so much harder. But baruch Hashem, I did not have a child with this man.

While halachically abortion is complicated, the taboo of talking about it is dangerous. If you have chosen or have been forced to have an abortion, you should not be shamed into keeping silent for fear of being judged and disowned. We must teach women and men that in this situation, the rabbis should not and will not treat you badly, they will guide you — do not be afraid of seeking rabbinic counsel.

**18. Rabbi Rachael Pass. "My Abortion was a blessing," JTA, 2021**

<https://www.jta.org/2021/09/03/opinion/my-abortion-was-a-blessing-as-a-rabbi-i-will-fight-for-others-to-be-able-to-make-their-own-sacred-choice>

I took my pregnancy test on Rosh Chodesh Cheshvan, and whispered the blessing "asher yatzar et ha'adam b'chochmah," who created human beings with wisdom, when it read positive.

That night, I attended a required class Shabbat program at Kehilat Romemu on the Upper West Side, where I discovered that morning sickness could indeed happen at night in a shul bathroom.

I prayed. I read every piece of Jewish literature on abortion that I could find. I read every opinion article on the internet about “why I’m happy I had an abortion” or “how I came to regret my abortion.” I made a pros and cons list. I consulted the would-be father and my rabbinic mentor, Rabbi Jen Gubitz. I cried on the phone with my mom. Ultimately, I made the choice using the instinctual wisdom inside myself, heeding nobody’s opinion but my own. And perhaps God’s.

We Jews are commanded, in lines that appear in this week’s Torah portion: “I have put before you today blessing and curse, life and death. Uvacharta v’chayyim, Choose life.”

**19. Rabbi Jaclyn Cohen. “I’m a Rabbi and a mom. And I had an Abortion,” Kveller, 2020**

[https://www.kveller.com/im-a-rabbi-and-a-mom-and-i-had-an-abortion/?utm\\_source=JTA\\_Maropost&utm\\_campaign=JTA\\_special&utm\\_medium=email&utm\\_web=1161-43676-608582](https://www.kveller.com/im-a-rabbi-and-a-mom-and-i-had-an-abortion/?utm_source=JTA_Maropost&utm_campaign=JTA_special&utm_medium=email&utm_web=1161-43676-608582)

And so the following day — yes, my 36th birthday — it finally clicked into place that this was real. I had to face it. I needed to schedule a D&C (dilation and curettage) surgery.

If I didn’t — if I chose instead to let nature run its course — I was told I would be putting my own life at risk. I would open myself to numerous physical complications and unlimited emotional anguish. As a survivor of severe postpartum depression, it dawned on me that choosing *not* to have an abortion might potentially leave my son without a mother.

And so, I chose life. *My* life. My son’s and my husband’s lives. Our family’s collective life. I took the science being offered me and I listened. As painful as it was, and as heartbroken as I felt, I *listened*. I recalled my own education, from adolescence up through rabbinical school, on Judaism’s nuanced approach to abortion. In the Mishnah, our post-biblical pre-Talmudic sacred text, we read: “If a woman is in hard labor [that threatens her life]... her life takes precedence over its life.” In other words, the health and well-being of the mother is of utmost importance, even through childbirth.

While entire denominations, Jewish communities, and religious leaders take varied approaches to the topic of abortion, for a wide majority of us there exists one universal, shared truth: Jewish tradition — my faith — honors a woman’s right to choose.

My faith honors *my* right to choose my future.

**20. Women’s League for Conservative Judaism, Resolution, 1976**

Women’s League for Conservative Judaism believes that freedom of choice is inherent in the civil rights of women. We also believe that the welfare of the mother must always be our primary concern.

We therefore urge our sisterhoods to oppose any legislative attempts through Constitutional amendments, the deprivation of Medicaid, family services and other current welfare services, to weaken the force of the Supreme Court’s decision permitting abortions.