

It seems like for over a month, every Shabbat I've led has had a special theme, each of them worthy and important – Martin Luther King Shabbat, Board Installation Shabbat, HIAS Refugee Shabbat . . . so it was with some trepidation that I saw that the National Council of Jewish Women and Truah, and a bunch of other organization that I affiliate with or respect were calling for synagogues to observe this as “Repro Shabbat” – a Shabbat dedicated to “to highlight our tradition's teachings on reproductive freedom.”

I confess that my ambivalence – not about reproductive freedom, but about designating this Shabbat as such – actually increased when I realized that this Shabbat was chosen because of a text in Parashat Mishpatim, this week's Torah portion, which is often used as a proof text for why Jewish tradition does not consider a fetus to be a full human being. It's really one verse, Exodus 21:22, and it reads “When people 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.”

This comes in the context of laws that demand the death penalty for killing another person: the immediately preceding verses describe how someone who kills their slave is liable for the death penalty, and the subsequent verses describe how when an ox gores someone to death, both the ox and its owner are killed if the ox had been in the habit of attacking people. I understand how verse 22 can be politically deployed with the logic that causing the death of a fetus does not make one liable for the death penalty, therefore, killing a fetus must not be the same thing as killing a human.

As a currently pregnant woman, though, this does not work for me. Listen to the verse again: “When people 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.” This is hardly a text about women's bodily autonomy. The pregnant woman's needs and feelings are irrelevant, she's not even the one who receives the payment. If we read the Talmudic discussion in Bava Kamma on this, it feels even more problematic. How is the fine supposed to be assessed? The sages suggest “The court **appraises** the value of **the woman** by calculating **how much she** would be **worth** if sold as a maidservant **before giving birth, and how much she** would be **worth after giving birth.**”¹ Since a pregnant woman would be more valuable than a woman who had just miscarried, that difference is the value of the fine.

Now, lest we think that the Talmud is uniquely objectifying pregnant women, this in the context of many Talmudic discussions that calculate the fines for physical harm by assessing difference between the hypothetical worth of a person if they were to have been sold as a slave before or after they were injured. In Torah study yesterday, Judy Sapon-Borson pointed out that this isn't so different from how insurance company algorithms calculate appropriate payouts. Nonetheless, I don't want to base any theory of reproductive rights on the complete objectification of human beings.

And I confess, this I think is a larger challenge of the movement for reproductive freedom. It is too easy to objectify the fetus, to say, “Oh it's not a person.” And as a political strategy, I understand why people do this. But that strategy marginalizes women's experiences, too. I would never tell a woman mourning a miscarriage not to worry, that fetus wasn't a person, anyway.

¹ Bava Kamma 49a

There is another text, that I think gets closer to the heart of the matter: the Mishnah Oholot 7:6 teaches, “If a woman is having trouble giving birth, they cut up the fetus in her womb and bring it forth limb by limb, because her life takes precedence over its life. 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.” A discussion in Masechet Sanhedrin in the Talmud clarifies that this is based not a reckoning of a fetus’s life as inherently less valuable, but based on the general right of self-defense against any who would cause us harm – even a fetus that doesn’t mean to.

What counts as “harm,” of course is infinitely arguable, and has been argued in halachic debates for centuries, but in Jewish legal discourse, mental and emotional harm are also considered grounds for abortion. As the Orthodox Union – not a particularly progressive body – published in response to this past summer’s *Dobbs vs. Jackson Women’s Health* ruling:

“As people of faith, we see life as a precious gift granted to us and maintained within us by God. Jewish law places paramount value on choosing life and mandates—not as a right but as a responsibility—safeguarding our own lives and the lives of others by behaving in a healthy and secure manner, doing everything in our power to save lives, and refraining from endangering others. This concern for even potential life extends to the unborn fetus and to the terminally ill.

The “right to choose” (as well as the “right to die”)—are thus completely at odds with our religious and halachic values. Legislation and court rulings that enshrine such rights concern us deeply on a societal level.

Yet, that same mandate to preserve life requires us to be concerned for the life of the mother. Jewish law prioritizes the life of the pregnant mother over the life of the fetus such that where the pregnancy critically endangers the physical health or mental health of the mother, an abortion may be authorized, if not mandated, by Halacha and should be available to all women irrespective of their economic status. Legislation and court rulings, federally or in any state, that absolutely ban abortion without regard for the health of the mother would literally limit our ability to live our lives in accordance with our responsibility to preserve life.”

I don’t often agree with the Orthodox Union, but here’s what I appreciate about their statement: Judaism, as the statement suggests, is far less focused on individual rights – ever – than on our collective responsibility for the mutual flourishing of all life.

There is plenty to critique about the forced pregnancy movement that calls itself “pro-life,” but too often, the movement for reproductive freedom uses language that denies that sacred potential of life. And too often, we have relied upon abortion be the tool that we use to fix larger societal problems, such as violence and sexual coercion against women, lack of contraceptive resources and adequate sex education, and most criminally a lack of critical social supports for pregnant people and families with young children.

So it turns out we are observing “Repro shabbat.” And that makes sense. The placards outside our building proclaim rightly that abortion bans are against our religion. But I hope it’s also clear that “the Jewish view on abortion” will actually never fit on a placard, and more than any mother’s feelings about the fetus she carries could fit on a placard.

Shabbat shalom .