

Sermon | Parshat Mishpatim
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Myth-Busting Mishpatim on Repro Shabbat

From 2003-2016 there was a show on the Discovery channel called "MythBusters" where each episode was dedicated to testing the validity of two or more popular beliefs. You can find plenty of clips on YouTube ranging from "Can a car fly with the power of water?" to "Can you catch an arrow?" The show was witty and entertaining, and included just the right amount of scientific and engineering language to make it palatable for the average viewer. For me, the real excitement came when the hosts were able to bust one of these popular myths. Surprisingly, I have come to realize over the years that being a congregational rabbi includes a fair amount of "myth-busting," of explaining Judaism to people, both Jewish and otherwise, in an effort to clarify parts of our tradition. Here are a few Jewish examples of myth-busting that I have had to repeat for learners of all ages: (1) Despite what you might have been told in Hebrew school, there is no *halakha* that requires you to kiss a kippah when it falls on the ground; (2) Despite the custom of your grandparents, you have not fully *kashered* that fork by burying it in the planter in your house; (3) Despite what you might have heard, food isn't kosher because a rabbi blessed it; and (4) Despite what American politicians might say, abortion is not a sin.

Yes, we just moved in a very different direction. The truth is that none of the above are nuanced statements, even if they are all technically true and authentically Jewish statements. As with most matters of Judaism and Jewish law, there is a lot more that can (and perhaps should) be said about each of these matters. To take them at face-value is to minimize and undervalue the wealth of wisdom that Judaism has to offer to its adherents and to the world.

Therefore, I want to take this opportunity today to elaborate upon that final statement—abortion is not a sin—and demonstrate to you all on this Sisterhood Shabbat and Repro Shabbat, a day marked by the National Council of Jewish Women, to affirm that reproductive freedom is a Jewish value.

This week's parsha, Mishpatim, includes the verses upon which Jewish laws relies in order to legislate the permissibility of abortion. (If you would like to follow along in the text, we begin on page 459 of the *Etz Hayim humash*.) The narrowest interpretation affirms that abortion is not a sin, and the broadest one says that a pregnant individual has absolute autonomy to choose to terminate a pregnancy. We derive these interpretations primarily from the juxtaposition of two texts, both from Exodus 21. The first verse (Exodus 21:12 on p. 459) says, מִכֶּה אִישׁ וְאִשָּׁה מוֹת יוּמָת, "One who fatally strikes another shall be put to death." In other words, murder is punishable by the death penalty. Juxtapose that with verses from later in the same chapter (Exodus 21:22 on p. 461), "When [two or more] parties 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." In this case, the punishment for inadvertently causing the termination of someone else's pregnancy is to pay a fine; it is not a capital crime and it is not considered murder. If the fetus were considered to be a full human being, then causing its "death" would be punishable in the same way that murder is punishable. Since that is not the case, Judaism does not consider abortion to be murder, and later interpretations continue to build on this foundational principle, going so far as to suggest that terminating a pregnancy is not a sin at all, but is instead the autonomous choice of the

person carrying the fetus, and in some cases even obligatory in order to protect their own health and wellbeing.

As the years went by, generations of rabbis and scholars built upon these earliest interpretations of the text. For example, the Mishnah in Ohalot 7:6 describes in graphic detail that a fetus can be cut up inside of the womb in order to save the life of the mother, as long as its head or most of its body has not yet emerged. In such circumstances where the mother's life is at risk, the fetus is treated as a *rodef*, as one who is chasing after someone to kill them, to which *halakha* responds by obligating others to thwart the designs of the *rodef* by taking extreme measures and neutralizing them before they can harm another.¹

But not all matters are of life and death. Sometimes, there is a less severe threat to the pregnant person's life, and nevertheless the rabbis continued to demonstrate what we might see as great leniency in permitting the termination of pregnancy. In the 18th century, Rabbi Jacob Emden, a leading German rabbi and talmudist, wrote in his responsum that a woman can terminate a pregnancy that resulted from an adulterous relationship, and she may do so in other cases as well if keeping the pregnancy would cause her *koev gadol*, if it would cause great pain. Here, it is clear that that pain is not necessarily physical, but perhaps emotional and psychological. In the early 20th century, Rabbi Mordechai Winkler affirmed that mental health concerns are as significant as physical health concerns, and must be taken just as seriously in considering whether the termination of a pregnancy is permissible. Later in the 20th century, Rabbi Eliezer Waldenburg, the *Tzitz Eliezer*, known for being an expert in medical matters concerning Jewish law, wrote in a *teshuvah* that any risk at all to the pregnant person is

¹ Bavli Sanhedrin 72b.

sufficient grounds to terminate the pregnancy—the life of the mother needs not be literally in danger to justify an abortion. I bring these sources to you to demonstrate that the Jewish approach to abortion has become more and more expansive over time. The rabbis of our tradition have consistently sought the broadest interpretation of the law in order to permit the termination of a pregnancy. And I remind you that none of the rabbis named thus far were Reform, or Conservative, or progressive by any means. These were staunchly Orthodox rabbis, interpreting Jewish law through a traditional framework, and concluding precisely what I said earlier: abortion is not murder. On the contrary, the termination of a pregnancy is permitted, sometimes even obligatory.

Before concluding I want to offer one more voice to the conversation. One of my colleagues, Rabbi Margo Hughes-Robinson, wrote in *Zeramim: An Online Journal of Applied Jewish Thought*, about a *teshuvah* of Rabbi Yehuda ibn Ayyash, the head rabbi of the beit din of Algiers in the mid 18th century.² Ibn Ayyash learned about a group of women in his region who would make and then take a medication that would terminate a pregnancy, and he was asked to opine on the matter. The short answer is that there is no prohibition on terminating a pregnancy, especially when the pregnant person has concerns about themselves or about their already living children—and these matters need not be those of life and death. But what Rabbi Hughes-Robinson points out in her article is an even more important matter. She writes, “Nowhere...in this text is the woman required to consult with any rabbinic authority in order to validate her concern for the well-being of her living child for her to be able to make this decision.” Unlike

² Margaret Hughes-Robinson, “Citizen-Souls; Translating a Jewish Understanding of Abortion from Algiers to America,” in *Zeramim*, Vol. 2, Issue 2, Spring 2021.

other matters of Jewish law which require a rabbi or some other expert to adjudicate, this decision is left to the person whose very body and wellbeing is most impacted by their decision.

On this matter, like so many others, Judaism has something special to add to the conversation: a nuanced approach, which does not seek to condemn or criminalize, but which seeks to create a more just world. In this way, Judaism is counter-cultural. The Jewish legal framework and our language of *halakha* do not overlay neatly with the American political conversation because the conversation in that realm carries the baggage of a particular Christian perspective. My contention is that Judaism offers a more nuanced approach to this conversation, and the only way to allow that approach to be fully realized by the American Jewish community is to make it such that abortion is accessible, affordable, and safe. It is neither the responsibility nor the role of our government to restrict who, when, how, and why someone chooses to terminate a pregnancy. Rather, it is their responsibility to make sure that abortions are accessible, affordable, and safe.