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Reproduction

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REPRODUCTION

This purpose of this article is to review biblical texts related to reproduction—including procreation, contraception, and abortion—and the ongoing legacy that they have for Christian and Jewish tradition.

Procreation in the Bible. Genesis 1:28 states, "And God blessed them and God said to them, 'be fruitful and multiply and fill the earth and subdue it.'" Here, after God created human beings—male and female—God blessed them with fertility. This blessing to reproduce abundantly represents, moreover, the first words God uttered to humanity. Genesis 9:1 reiterates, offering a shortened version of the blessing to Noah and his sons, "And God blessed Noah and his sons and said to them, 'be fruitful and multiply and fill the earth'" (see also Gen 9:7; 35:11). In between these blessings, Genesis 3:16 recounts God's proclamation to the first woman, "I will greatly multiply your pain in conception, in pain you shall bring forth children," and similarly to the first man in Genesis 3:17, "Cursed is the ground because of you, in pain you shall eat of it all the days of your life." These two verses make an explicit connection between human fertility and that of the earth. Despite the strong statement that women will conceive and give birth in pain in Genesis 3:16, the Bible rarely repeats such a sentiment. Indeed, shortly after, Genesis 4:1 states, "And the man knew his wife Eve and she became pregnant and gave birth to Cain," without mention of any travail. Further, the verse continues with Eve triumphantly proclaiming, "I have acquired a man with God," a statement that stresses God's role in procreation, which is consistently reiterated throughout the Bible (Frymer-Kensky, 1992).

Throughout the Hebrew Bible, fertility is largely attributed to God. God "opens wombs," granting pregnancy (e.g., Gen 21:1–2; 25:21; 29:31; 30:22; 1 Sam 1:19; Ruth 4:13; Luke 1:25), and God "closes wombs," withholding pregnancy (e.g., Gen 20:18; 1 Sam 1:5). God promised to make Abraham's progeny too numerous to count (e.g., Gen 13:16; 15:5; 16:10). Exodus 23:25–26, further stressing God's prominent role in fertility, states, "You shall serve the Lord your God and He will bless your bread and your water; and I will remove sickness from your midst. No woman in your land shall miscarry or be barren; I will let you enjoy the full count of your days." Hosea 9:11 places Israel's fertility in God's hands yet again, stating, "As for Ephraim, their glory shall fly away like a bird; no birth, and no pregnancy, and no conception." According to Psalm 127:3, "Children are the provision of the Lord, the fruit of the womb his reward," and Psalm 113:9 states, "He sets the barren woman among her household as a happy mother of children." Finally, Genesis 49:25, at the end of the patriarchal and matriarchal narratives, states, "And Shaddai will bless you with the blessings of the heavens above, blessings of the deep that couches below, blessings of breasts and womb." According to the Hebrew Bible, reproduction, then, is a divine blessing when bestowed upon humanity, or a divine curse when it is withheld.

The process of procreation is most elaborately described in two poetic biblical passages, and God is given credit for the creation of the embryo and fetal development. Psalm 139:13–16 states, "It was you who created my conscience; You knit me together in my mother's womb. I will praise you for I am awesomely, wondrously made; Your work is wonderful; I know it very well. My frame was not concealed from you when I was shaped in a hidden place, knit together in the recesses of the earth. Your eyes saw my unformed limbs; they were all recorded in your book." And Job 10:10–12 (using an image that also appears in Aristotle's *On the Generation of Animals*) states, "You poured me out like milk, congealed me like cheese; You clothed me with skin and flesh and wove me of bones and sinews; You bestowed on me life and care; Your providence watched over my spirit." Ecclesiastes 11:5 also credits God with the process of fetal creation, proclaiming it beyond human understanding, "Just as you do not know how the life breath passes into the limbs within

the womb of the pregnant woman, so you do not know the actions of God, who causes all things to happen."

Other passages might be used to infer some further information about theories of procreation in the Hebrew Bible, yet a clear theory, beyond God's participation, remains elusive. Leviticus 12:2 states, "When a woman emits seed and gives birth to a male child," which seems to indicate an active role for women in procreation. The idea of women's active participation is already evident in the grammatical structure of the standard formulaic statement "she became pregnant and gave birth." Other biblical verses also use the word *zera'* ("seed") in reference to female progeny (e.g., Gen 4:25; 16:10; 24:60), perhaps supporting a biblical theory of "female seed." Pieter van der Horst (1998) examined Hebrews 11:11 and found further evidence for the idea of female seed. In contrast, Numbers 5:29 uses the passive form "she will conceive seed" to describe conception. Some scholars suggest that Leviticus 15 assumes a concept of female seed in menstrual blood (e.g., Biale, 1992; Eilberg-Schwartz, 1990; Milgrom, 1991). Such a theory, evident in Greco-Roman sources, is explicitly attested in Second Temple, rabbinic, and medieval sources, but the Bible never explicitly makes any such claim (Kessler, 2009).

What emerges from texts within the Hebrew Bible is the view that reproduction is a blessing; procreation is something to be celebrated, envisioned as part of the order of creation. As heirs to and part of their ancient Near Eastern context, sources from the Hebrew Bible consistently portray reproduction as a divinely sanctioned—and assisted—"fact of life." New Testament sources, by contrast, as heirs to and part of their Greco-Roman setting, display some significant differences. Genesis 1:28 and the numerous other passages from the Hebrew Bible that proclaim the value of reproducing abundantly are lacking in these scriptures. What appears here, which is lacking in sources from the Hebrew Bible, is the questioning of and challenge to such a heightened value of procreation. Thus, in answer to his disciples' query about the expediency of marriage, Jesus responds with a strong preference for denying marriage and reproduction, "Not everyone can accept this teaching, but only those to whom it is given. For there are eunuchs who have been so from birth, and there are eunuchs who have been and eunuchs by others, and there are eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven. Let anyone accept this who can" (Matt 19:10–12). According to Luke 23:29, Jesus praises barren women, stating, "For the days are surely coming when they will say 'Blessed are the barren, and the wombs that never bore, and the breasts that never nursed.'" Paul, in 1 Corinthians, made his preference among marriage, procreation, and celibacy known: "To the unmarried and the widows I say that it is well for them to remain unmarried as I am. But if they are not practicing self-control, they should marry. For it is better to marry than to be aflame with passion" (1 Cor 7:8–8). He further stated, "I mean, brothers, the appointed time has grown short; from now on, let even those who have wives be as though they had none" (1 Cor 7:29).

Such praise of celibacy and denigration of reproduction, however, did not go unchallenged. Other New Testament sources attempt to ameliorate the strength of these statements, and the debate about celibacy versus marriage and reproduction will continue among Christian interpreters, and practitioners, for at least the first five centuries of the Common Era. The Deutero-Pauline letters, for example, already present a "domesticated Paul," a version of Paul that "softens him from a radical preacher into a patron saint of domestic life" (Pagels, 1988, p. 23). First Timothy 5:14 states, "I would have the younger widows marry, bear children, rule their households, and give the enemy no occasion to revile us." First Timothy 2, after blaming Eve for deceiving Adam and proclaiming female submission, states, "Yet woman will be saved through bearing children, if she continues in faith and love and holiness, with modesty" (1 Tim 2:15). And Hebrews 13:4 states, "Marriage is honorable to all, and the marriage bed is not polluted." Writing just a generation after Paul, the Christian author of the Epistle to Diognetus proclaims, "Christians marry, like everyone else; they beget children; but they do not destroy fetuses" (Pagels, 1988, p. 21). During the latter part of the second century C.E., Clement of Alexandria denounces celibates "who say they are 'imitating the

Lord' who never married, nor had any possessions in the world, and who boast that they understand the gospel better than anyone else" (ibid.).

The tension between a life of celibacy or restraint, on the one hand, or marriage and procreation, on the other, neither began nor ended with New Testament sources. Evidence from Second Temple Jewish literature already represents some differences between these later texts and those from the Hebrew Bible. Neither Ben Sira nor the author of Jubilees—both of whom wrote during the second century B.C.E.—made mention of "be fruitful and multiply" in their retellings of the origins of humanity (Cohen, 1989). Sexual restraint of some degree is thought to have been practiced in the Qumran Community, with at least some members practicing celibacy. Philo (20 B.C.E.–50 C.E.) makes mention of the Therapeutae, an offshoot of the Essenes, who made the renunciation of sexual life into a philosophical ideal. Thus, among Second Temple Jewish sources as well as New Testament and early Christian sources, the value of procreation was debated.

The larger Greco-Roman setting for these debates about the value of procreationis of paramount importance. Jewish and Christian interpreters were part of the Greco-Roman world, participants and active agents rather than passive recipients or isolationists sealed off from the larger cultures within which they lived. Any sharp bifurcation that lacks considerable caution and nuance between and among Greco-Roman and early Jewish or Christian sources about many matters, including those about the value of procreation and sexuality, is simply no longer tenable. To set Jewish and Christian interpreters against a backdrop of uncompromising Greco-Roman sexual freedom constitutes a gross misunderstanding of the complexities of all of the various competing—and overlapping—constituents of the late antique world (Biale, 1992; Brown, 1988; Pagels, 1988). Greco-Roman culture had its advocates for asceticism (e.g., Stoics and Cynics) along with its more hedonistic voices. Greek and Roman literature and laws promoted procreation, casting it as a civic responsibility and, indeed, an obligation (Daube, 1977).

It is in this setting that New Testament and other early Christian sources debate the values of procreation and sexual restraint; it is against this backdrop that the rabbinic "duty to procreate" takes shape. It is not necessary to claim that Greco-Roman law and culture is the singular or even primary cause of the rabbinic transformation of procreation from a blessing, as in the Hebrew Bible, to a commandment throughout rabbinic sources (Daube, 1977). Nor can the admittedly few, though existing, rabbinic traditions far more open to sexual restraint be seen as merely adopting and promoting Greco-Roman or Christian ideals. Rather, the variety of ancient opinions vis-à-vis reproduction in rabbinic, patristic, and Greco-Roman sources alike represents the complex choices and debates of late antiquity.

The Duty of Procreation. Within rabbinic literature, some sources mention the celibacy of Moses (*Sifre Numbers* 99–100, ca. third century C.E.) and Noah (*Rab.* 35:1, ca. fifth century C.E.). Ben Azzai (ca. second century C.E.)—who proclaims that one who does not procreate commits murder and diminishes God's image (*t. Yebam.* 8:7; *Gen. Rab.* 34:14; *b. Yebam.* 63b)—appears to have remained childless and unmarried. On the whole, however, rabbinic literature succeeded in transforming the biblical blessing of procreation into an obligation (*miṣwâ*) imbued with cosmic significance (Cohen, 1989). While the majority of early Christian and patristic sources, with the clearest exception being that of Jovian (ca. fourth century C.E.), maintained a clear preference for celibacy over marriage and procreation, rabbinic sources vehemently asserted the primacy of procreation.

The rabbinic term for procreation stems from Genesis 1:28 and related verses' use of "be fruitful and multiply." The value of procreation is extolled already in the Mishnah (ca. 220 C.E.), which, joining the language of Genesis 1:28 with that of Isaiah 45:18, asserts that the "world was created only for procreation," as scripture states, "He (God) did not create it (the earth) a waste, but formed it for habitation" (*m. Giṭ.* 4:5; *m. 'Ed.* 1:13). The duty of procreation, its transformation into a halakhic obligation, also appears in the Mishnah. One text, for example, states, "A man may not desist from procreation unless he has children" (*m. Yebam.*; see also, *t. Yebam.* 8:4). Both of these mishnaic teachings highlight the transformation of the

blessing of procreation into a commandment imbued with cosmic significance.

Ensuing rabbinic discussions debate the intricacies of the commandment to procreate. How many children must one have, and of what gender, to be considered free from the obligation? One text records that according to the House of Shammai, two sons fulfill the requirement, but according to the House of Hillel, one son and one daughter (*m. Yebam.* 6:6). This question continues to be debated in the Palestinian Talmud (*y. Yebam.* 6:6; 7c) and the Babylonian Talmud (*b. Yebam.* 62a). Most medieval codifiers maintained that the halakhic ruling was according to that of the House of Hillel, understood by the Babylonian Talmud as one son and one daughter but not two sons (Cohen, 1989, p. 129).

Other questions concerning the details of the commandment to procreate arose. For example, "If a man's children died, has he fulfilled his obligation to procreate?" (*b. Yebam.* 62a–b) Do illegitimate children count toward the fulfillment of this mitzvah? Are women, non-Jews, and slaves included in the rabbinic commandment to procreate? Rabbinic sources consistently circumscribe those who are included in the mitzvah of procreation, ultimately excluding, yet not without dissenting voices, each of these categories from the obligation (Cohen, 1989, pp. 140–157). Regarding the question of whether women are obligated to reproduce, a mishnaic text immediately after asserting that every man is obligated to procreate, states, "A man is obligated by the duty of procreation but not a woman. R. Yohanan b. Broka says, 'With regard to them both scripture states, God blessed them and said to them, Be fruitful and multiply'" (*m. Yebam.* 6:6). Although subsequent halakhah upholds the anonymous opinion of the Mishnah, that women are not obligated, other dissenting opinions, akin to the one raised by R. Yohanan b. Broka, continue to be recorded. Some Tosafists (ca. twelfth century C.E.) use Isaiah 45:18, "He did not create it as a waste but formed it for habitation (*shevet*) to include women," stating, "Be fruitful and multiply binds men alone; shevet includes women as well" (Cohen, 1989, p. 143; see also Feldman, 1968, p. 55). David Daube, while noting the difference between the overall rabbinic primacy of procreation and the church fathers' consistent higher valuation of celibacy and virginity, nonetheless points out that, in contradistinction to the view dominant in rabbinic sources, "the church fathers impose the duty on females as well as males" (1977, p. 39).

Contraception. The Babylonian Talmud recounts a clever tale that directly connects women's lack of obligation to procreate to the permissibility of women's use of a contraceptive device, a "cup of roots," or sterilizing potion. *Yebamot* records that Judith, the wife of R. Hiyya suffered great pains in childbirth when she gave birth to twins (65b). She disguised herself and appeared to her husband asking, "Is a woman commanded to procreate?" He answered that a woman is not obligated whereupon she drinks a sterilizing potion. This Talmudic text, as well as the Talmud's mention of a contraceptive device called a *mokh* (e.g., *b. Yebam.* 12b; *b. Yebam.* 35a; *b. Nid.* 3a–b)—a tuft of wool or cotton that is either used by women during intercourse to block conception or after intercourse as an absorbent—form the basis of halakhic debates about the permissibility of contraception, at least insofar as such actions are undertaken by women. The use of the *mokh* was at least permitted, and perhaps prescribed, for a pregnant woman, a nursing woman, and a female minor (*b. Yebam.* 12b and parallels). Other traditions seem to assume its use (*b. Yebam.* 35a; *b. Nid.* 3a–b). While more and less permissive post-Talmudic opinions exist, in general a woman has far more freedom in contraceptive methods than a man (Feldman, 1968). If the *mitzvah* of procreation belongs to men, the burden of contraception belongs to women.

Evidence for contraceptive techniques already exists in Egyptian papyri dated to the second millennium B.C.E. Greco-Roman sources, beginning at least in the fifth century B.C.E. also contain information about such techniques (Noonan, 1965; Riddle, 1992). John T. Noonan writes, "Potions are the first form of contraceptive mentioned by any of the classical writers, and the type most often mentioned" (1965, p. 13). John Chrysostom speaks against women taking "medicines of sterility" (*Homily 24 on the Epistle to the Romans*), and Jerome also writes with strong disapproval of women who "drank sterility and murder those not yet conceived" (Noonan, 1965, pp. 100–101; Riddle, 1992, p. 19).

Although, as seen above, rabbinic sources permit women to use such potions, men are not permitted. *Tosefta Yebamot* states, "A man is not permitted to drink the cup of roots in order to become sterile, but a woman is permitted to drink the cup of roots to become sterile" (*t. Yebam.* 8). Further, the editorial strands of the Babylonian Talmud raise the issue that comes to be known as the prohibition of "wasted seed," which in post-Talmudic sources forms the primary basis for Jewish men's inability to use contraceptive techniques (Feldman, 1968; Satlow, 1994).

The importance of Genesis 38, which recounts Onan's refusal to raise up children for his deceased brother Er by "spilling [his seed] on the ground" (Gen 38:9), seems to enter into discussions about contraception and become central later than one might expect. Noonan makes note of "a general failure to invoke the story of Onan" prior to Jerome (1965, p. 101), and he further writes, "Augustine's reference to the scriptural story is the first use of the fate of Onan by a prominent theologian as an argument against contraception in marriage" (1965, p. 138). David Feldman notes that the connection between Genesis 38 and the sin of wasted seed is most developed in the Zohar (1968, p. 115).

The clearest distinction between rabbinic and patristic sources on the use of contraceptive methods seems to be the permissibility of women's usage among rabbinic traditions. The patristic condemnation of contraception applies to men and women; the rabbinic prohibition is limited to men. The extent to which the high value of procreation for both Jewish and Christian authors and practitioners acted as a deterrent to the use of contraceptive techniques cannot be determined with any certainty, but its plausibility as a factor cannot be entirely dismissed. Noonan asserts that the patristic valuation of abortion as homicide contributed to the patristic condemnation of contraception (1965, p. 91). The link between abortion and homicide made by patristic authors and the consistent denial of such a link in rabbinic literature is yet another distinction between rabbinic and patristic sources included under the rubric of reproduction.

Abortion. Although in many ways the importance of Exodus 21:22–23 along with rabbinic and patristic statements about abortion seem to be the most relevant for contemporary questions about the Bible and law, such an assumption is fraught with certain difficulties. To begin with, biblical and rabbinic sources are entirely lacking on the direct question of what would now be considered elective abortion; the one biblical passage of possible relevance is concerned only with an accidental miscarriage.

Exodus 21:22 states, "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" (JPS translation). This verse seems to assert that a monetary fine, to be decided, is due in the case of a spontaneously aborted fetus. Exodus 21:23 continues, "But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth." Here, if the woman has suffered other harm, then the *lex talionis* is applicable.

Similar to biblical sources, rabbinic sources do not treat the question of elective abortion. *Mishnah Ohalot*, however, permits and even requires therapeutic abortion in the case of danger to the mother during childbirth, at least up to a certain point of the birthing process (7:6). The text states, "If a woman suffers hard labor, the fetus is cut up in her womb, and taken out limb by limb, for her life comes before its life; if the majority of it has [already] come out, it must not be touched, for the [claim of one] life cannot supersede [that of another] life." Here, the status of the embryo is clearly subordinate to that of the mother—at least until the majority of it, or according to some sources its head, emerges. A later discussion in the Babylonian Talmud revisits this text: *b. Sanh.* 72b asks why the fetus—the majority having emerged from the womb—was not considered a "pursuer" (*rodef*), who can be killed to save the life of the mother? The answer is that, in contrast to other "pursuers," here the woman is being "pursued by heaven."

The significance of this Talmudic text lies in its afterlife, in the further interpretation given by Maimonides (twelfth century C.E.). Maimonides's reading of *Mishnah Ohalot* casts the fetus that is in its mother's womb as a "pursuer," and for that reason, and not simply because the mother's life takes precedence,

it can be dismembered. *B. Sanh.* 72b had asked this question only about the fetus the majority of which had emerged already. Maimonides's application of the principle of the *rodef* to the first part of the *mishnaic* statement, however, opens the door for the status of the fetus in its mother's womb to be revisited (Feldman, 1968, pp. 275–276; Schiff, 2002, pp. 58–61).

In classical rabbinic sources more generally, the status of the embryo is not that of a person. In keeping with the rabbinic understanding of Exodus 21:22, rabbinic sources maintain a clear distinction between the injury to a fetus and to a person, even distinguishing between a fetus and a child who is one day old. The fetus does not fall under the category of living person mentioned in Leviticus 24:17, which provides a basis for rabbinic understandings of homicide. In rabbinic sources, homicide and feticide are not equivalent (Feldman, 1968, pp. 254–256; Schiff, 2002, pp. 27–28).

Some scholars have distinguished between an "Alexandrian" Jewish school of thought and a "Palestinian" school of thought on the questions of the status of the embryo/fetus and abortion (Aptowitzer, 1920; Schiff, 2002, pp. 23–24). The rabbinic sources, briefly summarized above, represent the Palestinian school, where the status of the embryo is not that of a person. Josephus, at least in his *Contra Apionem* (ii.202), and especially Philo, represent the Alexandrian thought (Schiff, 2002, pp. 16–23), where feticide and homicide were equated regarding a fetus that was deemed fully formed.

Part of the difference between Philo and rabbinic discussions about the status of the embryo and the question of abortion stems from the Septuagint's interpretive translation of Exodus 21:22–23, which differs significantly from the Hebrew text: "And if two men strive and smite a woman with child, and her child be born imperfectly formed, he shall be forced to pay a penalty: as the woman's husband may lay upon him, he shall pay with a valuation. But if it be perfectly formed, he shall give life for life." This translation, perhaps a compromise between the Stoic consideration of the fetus as a part of its mother's womb and the Platonic consideration of the fetus as an independent living being, becomes important to patristic discussions about abortion, particularly in the fourth and fifth centuries C.E. (Schiff, 2002, p. 15).

Although the distinction between a formed and unformed embryo set out in the Septuagint and known from other Greco-Roman sources (e.g., Aristotle's *History of Animals* 7:3) is important for patristic opinions about abortion, some condemned abortion prior to formation. Basil (330–379 C.E.) writes, "She who has deliberately destroyed a fetus has to pay the penalty of murder. And there is no exact inquiry among us as to whether the fetus as formed or unformed" (*Epistolarum* 188.2 *PG* 32:671).Other sources simply make no distinction between formed and unformed fetuses. For example, the second-century C.E. *Epistle of Barnabas* (19:5) and the *Didache* (2) both assert that one should not abort a fetus or commit infanticide. Tertullian (160–225 C.E.) writes, "In our case, murder being once for all forbidden, we may not destroy even the fetus in the womb, while as yet the human being derives blood from other parts of the body for its sustenance. To hinder a birth is merely a speedier man-killing; nor does it matter whether you take away a life that is born, or destroy one that is coming to the birth" (*Apology* 9:8).

In the fourth and fifth centuries, Jerome and Augustine distinguish between a formed and unformed fetus. Although Jerome does not make such a distinction in *Letter 22, to Eustochium* (CSEL 54:160), seeming to consider any abortion "parricide" (homicide), in his letter to Algasia he writes, "seeds are gradually formed in the uterus and it is not reputed homicide until the scattered elements receive their appearance and members" (*Epistles* 121:4; CSEL 56:16). Augustine, commenting on Exodus 21:22–23 as it appears in the Septuagint, writes, "Here the question of the soul is usually raised: whether what is not formed can be understood to have no soul, and whether for that reason it is not homicide, because one cannot be said to be deprived of a soul if one has not yet received a soul. The argument goes on to say, 'But if it has been formed, he shall give soul for soul'" (*On Exodus* 21.80, cited from Noonan, 1965, p. 90). The concern here is not whether abortion is permitted—it is strongly condemned—but whether it constitutes homicide. For some church fathers, especially prior to the fifth century C.E., abortion constitutes homicide regardless of whether it occurs before or once the fetus is thought to have been formed and

ensouled; for others, notably Augustine and the many subsequent Christian authors, abortion constitutes and is condemned as homicide after formation.

Rabbinic traditions discuss the time of fetal formation and ensoulment, but neither of these topics are broached in connection with the question of abortion. The Mishnah (ca. third century C.E.) discusses the formation of the fetus at forty days in the context of ritual purity (*m. Nid.* 3:7). In this mishnah, an individual opinion attributed to R. Ishmael places formation of a male fetus at forty days and that of a female fetus at eighty days. The majority opinion of the sages, however, maintains that both the formation of the male and the female fetus occur after forty days. Since formation is placed at forty days, if a pregnant woman miscarries up to that point, she does not need to observe a period of ritual impurity. The Babylonian Talmud discusses whether or not a priest's daughter who is married to a man from a nonpriestly family and who becomes pregnant can still eat *terumâ* (*b. Yebam.* 69b). The text answers that she can eat the priestly food until the fortieth day after conception, because prior to that the embryo is considered "mere water." Several others distinguish between a "formed" and "unformed" fetus, but neither are concerned with the permissibility of abortion (*m. Nid.* 3:7; *b. Yebam.* 69b).

Likewise, the rabbinic traditions that discuss ensoulment are not connected to questions about abortion. The most explicit rabbinic tradition about ensoulment involves a purported conversation between Rabbi Judah Ha-Nasi and Antoninus. According to the version in *Genesis Rabbah*—a fifth-century midrashic compilation of Palestinian provenance—Antoninus asks Rabbi Judah when the soul is placed in humans. Rabbi answers, "From the time one issues forth from its mother's womb." Antoninus, in contrast, says from the time of conception, and Rabbi then agrees (*Gen. Rab.* 34:10). The parallel version in *b. Sanh.* 91b has Antoninus ask Rabbi if the soul enters at conception or formation, presumably at forty days. Again Rabbi answers the later point suggested, formation, but again Rabbi ultimately assents to Antoninus's purported view, at conception. In both versions of this tradition, Rabbi even finds scriptural support, citing Job 10:12, "You bestowed upon me life and care, and your providence has preserved my spirit." The Rabbi and Antoninus exchange about ensoulment, irrespective of whether it actually occurred, gives voice to the dialogue and exchange between rabbinic and Roman thought in late antiquity.

Indeed, rabbinic, patristic, and Greco-Roman sources about contraception and abortion as well as procreation and sexuality demonstrate sharp divergences and significant overlap. Patristic condemnation of contraception and the equation of feticide and homicide can be contrasted with rabbinic permissibility of women's use of contraception and the consistent halakhic opinion that the fetus "is not a person," and therefore abortion does not constitute murder. Early Christian and patristic writings against abortion, however, may be seen as in keeping with the Hellenistic idea that "the willful abortion of a formed fetus was to be considered one of the most serious transgressions imaginable, deserving of the death penalty" (Schiff, 2002, p. 15 citing Weinfeld, 1977). Yet, in their mutual anathema to infanticide, rabbinic and patristic views stand united against Greco-Roman permissiveness of this practice. What the textual evidence demonstrates over and against absolute lines of overlap and divergence in any uniform direction is that rabbinic, patristic, and Greco-Roman sources are grappling with questions of their day, questions about ensoulment, fetal formation, and how to evaluate life.

Legacy. Questions about the permissibility of abortion in Judaism and Christianity continued long after late antiquity. However, the foundations had been laid in the formative patristic and rabbinic documents, and evidence for certain distinctions between the normative stances of the two religions had already taken shape.

Catholic doctrine vacillated, for a time, distinguishing between abortions that occur prior to forty days and those after. Current Canon Law maintains that all abortion is prohibited under penalty of excommunication (CIC 1398). Pope Paul VI, in his *Humanae Vitae* (1968) touched upon a number of topics covered in this article when he wrote,

> Therefore We base Our words on the first principles of a human and Christian doctrine of marriage when

> We are obliged once more to declare that the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children. Equally to be condemned, as the magisterium of the Church has affirmed on many occasions, is direct sterilization, whether of the man or of the woman, whether permanent or temporary.

Jewish sources continued to place premium value on the life of the pregnant woman, with a clear mandate that her life takes precedence—up to a certain point—over the fetus's life. If death to both the emerging fetus and the woman is a possibility, then her life takes precedence even at this point as well. The fetus continues to be seen as "not a person," and thus abortion continues to be kept separate from homicide. In addition to endangering the life of the pregnant woman, abortion is permitted in cases of health threats to the mother as well as her claims to hardship and anguish, both physical and mental. The permissiveness of abortion in halakhic sources is balanced by these same sources' careful weighing of the value of the potential life of the fetus.

Debates about abortion live on. Today, the United States, for example, remains polarized on this issue, as well as on the growing social and legal concerns surrounding reproductive technologies such as in vitro fertilization and medical research on embryonic stem cells. Both the prolife and prochoice sides of the debate call upon biblical and postbiblical sources in their arguments. While the Christian underpinnings of the prolife movement are especially visible, it is far more difficult to assess the impact of religious sources and beliefs at play within contemporary U.S. jurisprudence.

Roe v. Wade, the landmark Supreme Court case that legalized abortion, did so by invoking and interpreting the Fourteenth Amendment's right to privacy under its due process clause, not Exodus 21:22–23 or any other religious traditions. The notion of "quickening" as an important distinguishing factor previously held by Pope Innocent III (1161–1216 C.E.), Pope Gregory XIV (1535–1591 C.E.), as well as English Common Law and early U.S. Common Law, gave way to discussion of the "viability" of the fetus. In the opinion of the Supreme Court in *Roe v. Wade*, Justice Blackmun writes, "we have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries" (117). Indeed, section VI has sections devoted to "Ancient Theories" and "The Hippocratic Oath." Mention of Exodus 21:22–23, according to the Septuagint, is made in a footnote (n. 22). The biblical text, the interface between Bible and law, in this case, is either merely relegated to a footnote or is deemed worthy of a footnote in what, at the time of this writing, continues to be the "law of the land" on the question of abortion in the United States.

[*See also* Biblical Law; Children; Early Christianity; Early Modern Period, *subentries on* Catholic Canon Law *and* Orthodox Canon Law; Gender, *subentries on* Hebrew Bible *and* Rabbinic Literature; Halakha/Rabbinic Law; Mishnah; Modern Legal Traditions, *subentry* United States; Same-Sex Relations; Sexual Legislation; *and* Talmud.]

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RESPONSA LITERATURE

Responsa (Heb. *šĕʾēlôt ûtĕšûbôt,* literally "questions and answers") are rabbinic, mostly written replies to queries in matters of religious Jewish Law (halakha). Like halahka in general, *responsa* deal with every part of Jewish Law: ritual law as well civic law. Consequently, they cover every aspect of Jewish life and treat a wide and varied range of topics like prayer, Shabbat, festivals, kashrut, and ritually appropriate slaughtering of animals; consumption and commerce with wine produced by non-Jews; circumcision, mourning, marriage and sexuality, birth control, divorce and levirate marriage, adultery, and suicide; oath and excommunication, communal taxes, and leadership; and partnership, interest, bailment, and claims regulations, all the way up to and including contemporary questions like immigration to the State of Israel, euthanasia, and artificial fertilization.

History of the *Responsa*. Such correspondence in halakhic issues was already mentioned in the Babylonian Talmud; however, it had an informal character and the answers were not halakhically authoritative. The *responsa* first became an outstanding part of halakhic literature in the Geonic period (750–1050 C.E.). The more the Babylonian Talmud became the binding authority for all Jews, not only in Babylonia, but also in other parts of the Diaspora and in the Land of Israel, the more the scholars of the Babylonian academies became its sole authoritative interpreters. Jews of the Diaspora, often not acquainted with the language and the *realia* of the Babylonian Talmud, sent their queries to the Babylonian scholars asking for explanations of words or passages in the Babylonian Talmud. As a consequence of their respect for Babylonian scholars, Jews outside Babylonia also turned to them in disputes between local scholars and in cases in which new halakhic questions arose in matters that were without precedent in the Babylonian Talmud. The length of the Geonic *responsa* varies from very short *responsa* containing brief explanations to lengthy, treatise-like *responsa*. The most famous among the latter is the Epistle of Rav Sherira Gaon (d. 1006 C.E.) on the redaction of the Babylonian Talmud. Because they are so highly esteemed, tens of thousands of Geonic *responsa* have been preserved, mostly in the Cairo Geniza because Egypt served as the postal intersection in the Geonic period. However, only a small proportion has been published so far (Glick, 2012).

As parts of the Diaspora became increasingly autonomous from Babylonian influence, starting in Sepharad and in Ashkenaz with the tenth century, the authority of the Geonic scholars and thus the influence of their *responsa* declined. The quasimonopolistic authority that the Geonic scholars had claimed for themselves until then was broken. Rav Moses b. Hanokh (d. ca. 965), the first famous Sephardic scholar, made autonomous decisions in his *responsa* without referring to the Babylonian yeshivot, although he did not explicitly deny their authority (Glick, 2012, pp. 37–38). Not long thereafter, in the second half of the tenth century,