In Our Bodies to Do It:
A Jewish Feminist Theology of Reproductive Choice

Emily Langowitz

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Summary

The goal of this thesis is to provide a feminist, post-halakhic ethic for reproductive choice. In addition, the thesis seeks to model a process for imagining the future sources and ideologies available to Reform Judaism in the twenty-first century. Thus, although the specific topic of this thesis is about expanding the Jewish conversation on abortion, the methods presented in its five chapters are meant to be applicable to any number of important moral issues. This thesis's contribution is to provide, for the first time, a rich articulation of a pro-choice position deeply grounded in Jewish and feminist texts and thought.

The first chapter of the thesis explores the halakhic discourse on abortion as it has developed from biblical text through modern interpretations. It presents these materials and opens them to critique from the author's location as both a feminist and a Reform Jew. The second chapter discusses the current written material from Reform Judaism and Jewish feminism on abortion. It considers what pieces of thought from those two movements can be moved forward as a foundation for a more systematic articulation of a Jewish position in support of reproductive choice. Having considered the current state of the discourse on abortion in halakhic and post-halakhic Judaism, the third chapter then sets the stage for the creative work of this thesis. It presents the intellectual heritage of Reform Judaism and feminism, and shows how the endeavor of this project fits in a chain of authentic Jewish innovation. The methodologies for ethical reasoning presented by these two movements serve as the backdrop for the final two chapters of the thesis. Chapters four and five summarize the responses of nearly twenty participants who were interviewed over the course of this research. The fourth chapter presents broader themes present in the testimonies of those spoken to about their Jewish identities and their connections to the topic of abortion. It also considers the current political climate in the United States and how it creates a heightened state of tension around abortion access in this country. The final chapter, the true innovative work of this thesis, offers five new principles gleaned from the themes present in the words of those interviewed. It uses these themes as a lens for retrieval of traditional sources and presents works of creative midrash to help the reader ask new questions when considering Judaism and abortion.

Through the use of traditional Jewish texts, the writings of contemporary ethicists and theologians, and the interviews of today's pro-choice Jews, this thesis presents a new way of thinking about abortion and reproductive justice. It articulates a strong pro-choice stance, rooted in Jewish voices, values, and ideas, which more fully reflects the lived experiences of previously marginalized members of the Jewish people. This new moral language for discussing Judaism and abortion will, the author hopes, function as a guiding framework for Jews making decisions about their reproductive lives, a resource for more empathetic pastoral presence to abortion, and a call for Jews to embrace the cause of reproductive justice as a holistic part of their identities as people of faith.

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Blessed is the One who spoke, and the world came into being.
May my words, like Yours, serve to build a world which is more just, compassionate, and whole.

Introduction

I was reaching the end of my fourteenth research interview in the span of just one week. I had known, when I first considered abortion as the topic of my rabbinic thesis, that it would be important to speak with other Jews invested in this issue, to hear their stories. The interviews were invigorating, inspiring, emotional, and exhausting. My body rebelled from sitting day after day in the same wooden chair at the kitchen table in my small Brooklyn apartment. As this interview with Sue, a thoughtful pro-choice advocate, small business owner, and DC resident, came to an end, I asked my standard final question: "Is there anything else that you have been thinking about that you want to make sure you have a chance to say before we close?" Sue paused, letting out a little contemplative hum before continuing:

> Yes. I think the one last thing that I want to put on the record is that abortion is a part of a lot of people's lives. It is really important and awesome that a rabbinical student is doing this. And it is really important and awesome that there are so many rabbis with uteruses now, because approximately half of the world has uteruses and might need to have an abortion…It is a very, very, big deal, and also a reasonable baseline part of how we should operate, that Jewish religious infrastructure is responding to this reality of our lives in a serious and person-centered way.[1]

I wanted to hug through the phone. Here it was, the perfect articulation of why—despite the aching shoulders and wrists, the constant stream of thesis-related thoughts as I bought my groceries, rode the subway, tried to fall asleep, and the doubts about what exactly it was I was doing or if it could make any difference—this was why I woke up every day ready to do this work.

[1] Sue, interviewed by Emily Langowitz, December 20, 2016.

In my fourth year of rabbinical school, I pursued my passion for feminism and religion in both the professional and academic realms. I worked as an intern at the Religious Institute, a multifaith non-profit organization engaged in education and advocacy around sexuality and reproductive health. I was also taking a weekly course at the Jewish Theological Seminary on pastoral care for issues of gender and sexuality. In a White Paper published during the fall of 2015, within my first few months of working there, the Institute outlined a vision for "why the sexual and reproductive justice movement needs religion." The paper focused on what the Religious Institute calls the "morality-legality divide." Data on the views of Americans of all religions shows that there is a significant gap between those who believe that abortion should be legal in all or most cases and those who feel abortion is a morally acceptable choice.

Religion is meant to speak to the moral issues of the human condition. And yet, the American public, the paper argued, understands the religious voice on sexuality and reproductive health to be the sole property of the Far Right. This comes as no surprise; when the media discusses contraception, they include the voices of Catholic leaders six times as often as those of women's health professionals.[2] In the 2016 election season's Vice Presidential debate, candidates Tim Kaine and Mike Pence, both white Christian men, shared their religious positions on abortion and how these positions influence their approach to policy. Writer and pro-choice activist Katha Pollitt wrote an op-ed in the New York Times critiquing the application of faith-based principles to women's reproductive rights: "I wish we didn't so often discuss abortion rights in the context of

[2] Rev. Debra W. Haffner, *A Time to Embrace: Why the Sexual and Reproductive Justice Movement Needs Religion* (Westport: Religious Institute, 2015), 47.

religion. We're not a Christian nation, much less a Catholic or evangelical one. Why should women's rights have to pass through the eye of a theological needle?...it's discouraging that we are still talking about abortion as a matter for biblical exegesis."[3] While Pollitt makes an important point about the androcentric nature of public discourse on abortion, she conflates the specific way that Pence and Kaine rely on their faith with the broader way that religion might guide moral decision-making in the public sphere. And, in assuming that the religious voice on abortion is a ***Christian*** one, Pollitt indirectly points to the same problem which the Religious Institute highlights: conservative Christian voices currently dominate our society's moral discourse on reproductive choice.

Pollitt feels that religion should be excised fully from public political discourse. It is my belief that the antidote to a conservative religiously-driven political agenda on reproductive rights is not to call for the removal of faith from public life, but to offer a vision for a pro-choice platform of reproductive justice firmly rooted in a different understanding of religious values. Progressive religious leaders, then, have both the opportunity and the moral responsibility to offer nuanced religious language in discussing abortion. As the Religious Institute's paper concludes: "The conversation must be changed to help people understand that abortion is a moral decision and that it is the denial of safe, legal, accessible, and affordable services that is immoral."[4] The need for this new conversation was clear to the staff at the Institute, yet the question remained: what would this look like in Jewish language?

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[3] Katha Pollitt, "Can Women Be Trusted on Abortion? Two Men Weigh In," ***New York Times***, October 5, 2016.
[4] Haffner, ***A Time To Embrace***, 51.

Meanwhile, in the learning environment of the Jewish Theological Seminary, my professors were asking the very same questions: how would we, as clergy people, navigate the pastoral needs of our congregants in a way which resonated with our understanding of Jewish tradition? We opened every session by discussing a small set of textual sources as they related to a broad array of issues: sexual and gender identity, infidelity, sexual assault, and abortion. The week we studied abortion, students were prompted to break into small groups and share our personal, political, and religious views on the subject. In the group dialogue which followed, a pattern emerged; the majority of students, professors included, felt that a clear tension existed between their personal or political positions on abortion and their understanding of Jewish tradition. I did not and do not share that tension. My personal, political, and religious beliefs around abortion are in harmony. The Judaism of my understanding requires struggle, certainly, but does not lead to a splitting of self. But how, the class asked, and this thesis seeks to answer, can I articulate that harmony? What would an intellectually honest, religiously rich pro-choice ethic of abortion look like from the perspective of a Reform Jew?

As with all interpretations of Jewish tradition, this thesis will be shaped and informed by my many various identities as a Reform Jew, feminist, American liberal, and rabbinical student. I acknowledge them here because I believe that we are meant to engage with Judaism as our full selves. I am a Reform Jew and I am a feminist. My concerns as a feminist illuminate my participation in our secular society: they guide my support of safe and legal abortion access. My feminism also causes me to question my Judaism. I understand Jewish tradition to be a continually evolving language for articulating the identity of a people engaging with the world both materially and

spiritually. That language has been shaped for many thousands of years almost exclusively by male voices. The traditionally patriarchal arbiters of tradition must be called into question; the definition of that which makes Judaism "authentic" must be expanded. It is here that my Reform Jewish identity and my feminist identity meet.

As a Reform Jew, I do not understand halakhah to be the sole locus for traditional authority, nor do I see law as the only form of expressing Jewish particularity or religious commitment. If our existence as human beings in relationship with the Source of goodness is predicated on what leading Reform ethicist and theologian Rabbi Eugene Borowitz describes as "a dialectical autonomy, a life of freedom-exercised-in-covenant,"[5] then we must dedicate ourselves to discovering what the new shape of that freedom-in-covenant might take. I believe that Jews, today, in the here and now, have the capacity to reshape what Judaism means for our time. In that reshaping, we open the doors of the Jewish tradition wide to the repair which feminism so passionately calls for. Embracing the methodology of a Reform approach to Judaism empowers my feminism to move from a critical, deconstructive lens to a constructive one. Thus, though this thesis focuses on the issue of abortion, it is meant as a case study for how Reform Judaism might ***build*** a compelling post-halakhic, feminist framework for Jewish ethical decision-making.

The question of how to articulate Judaism's stance on abortion in a feminist, progressive way is very personally meaningful for me. Women I love have had abortions and deserve the full support of the Jewish community. In addition, I want to ensure that the tradition I represent, both as a Jew and a future clergy-person, best articulates its

[5] Eugene B. Borowitz, *Renewing the Covenant: A Theology for the Postmodern Jew* (Philadelphia: The Jewish Publication Society, 1991), 288.

enduring moral commitments to Truth, Justice, and human dignity. As I have outlined above, this question has a great deal of bearing on the national discourse around abortion in this country. But it also matters to the individual Jews and the Jewish communities that I hope one day to serve. The bulk of the American Jewish community identifies either as Reform or as non-denominationally Jewish. This excludes those who see themselves as "Jews of no religion."[6] These are people who understand Judaism to be a formative part of their identity, but do not look to classical halakhic sources when making ethical decisions. These are people who may work in pro-choice organizations, as abortion providers or family health physicians, in social justice movements, or who simply see abortion as a critical issue in our society. These are Jewish women, and their partners, who choose to abort a pregnancy: some find the decision fraught and the eventual conclusion painful, others feel great clarity and relief. All of them deserve Jewish language which speaks to their identities, to their ethical concerns, to their understanding of tradition's power and relevance. All deserve to feel that their religion supports and lifts up their personal and political choices. And I believe that Judaism deserves and demands that I engage with the tradition as a loving partner, seeking new answers where old ones have failed, finding sacred meaning in the task of renewal.

Renewal and reform become meaningless, however, when attempted without an awareness of one's roots or of what is being reformed. The first chapter of this thesis, then, engages with Jewish interpretations of abortion as they have developed through Jewish history. It begins with an exploration of sources from Torah and rabbinic literature which have been used by classical halakhic interpreters to discuss abortion. This leads to

[6] Pew Research Center, "A Portrait of Jewish Americans," October 1, 2013.

a review of legal sources and responsa literature on abortion through the present day. This first chapter couples a presentation of the traditional materials with an analysis of how they might be considered in light of a feminist post-halakhic critique. The second chapter, then, continues that work by presenting Reform and feminist Jewish approaches to the topic of abortion. The Reform movement has largely articulated its stance on abortion in two ways: through several responsa offered by the Reform Responsa Committee and through resolutions passed by the Central Conference of American Rabbis. These two categories of Reform response to abortion do not quite cohere with one another, either in style or in substance. There is clearly a need within the Reform movement, then, to develop a more thorough position on abortion. The inclusion of Jewish feminist thinkers in this chapter aids in our consideration of how to develop such a position.

If, ultimately, that which has been understood as the voice of Jewish tradition on abortion thus far does not offer compelling guidance to today's Jews, and the position of a progressive movement is not enough, how can we be thinking about the expansion or modification of those voices? The third chapter takes up this question and considers the formation of Jewish ethics outside of a halakhic system. It grounds the work of this thesis in the intellectual heritage of Reform Jewish ethics and Jewish feminist theology. It considers what it means to build an authentic Judaism and how to allow for a holistic sense of self which integrates Jewish and feminist identities. By presenting the broader ideological principles behind those two movements, the chapter seeks to articulate a new way forward for the Jewish discussion on abortion and sets the stage for the final two chapters of the thesis. In this final move, the stories and voices of contemporary pro-

choice Jewish individuals create a lens by which to re-read and retrieve traditional texts and ideas. They give shape to a new framework of Jewish discourse on abortion.

The final two chapters use the combination of contemporary voices and Jewish sources to seek answers for new questions in regards to abortion. For the most part, current Jewish thought on abortion concerns itself with the same central issues: First, what is the status of the fetus, and how does that status influence the legal position of one who terminates a pregnancy? And, second, what level of danger to the mother is sufficient rationale for an abortion? These questions, are indeed, critical to any discussion of abortion. But they miss a whole range of broader moral principles. These principles have relevance not just for this specific issue, but for crafting a general ethical existence. The inspiration for deriving these new ethical themes comes from the interview materials gained in my research. The fourth chapter, then, presents an overview of the interview process and the broad understandings about Judaism and abortion gained from those who participated. In the fifth and final chapter, I present the specific moral themes derived from the interview respondents, analyze them in light of Jewish tradition, and offer a piece of creative midrash which integrates these new understandings into the traditional sacred canon. With all of this material, I hope to provide a nuanced network of Jewish wisdom which will guide and support a new discussion of abortion.

Judaism has never been a religion of certainties and absolutes. Even the legal system of halakhah maintains the possibility of multiple viewpoints and insists upon the power of individual rabbis as decision-makers. But for many Jews today, myself included, halakhah can never speak for the fullness of the Jewish endeavor to make meaning and to act as divine partners in this world. Judaism is a continually evolving

spiritual language which binds us to a people and its God. Abortion is a highly relevant and personally meaningful topic, one which deserves the benefit of a nuanced progressive religious stance, not just within the Jewish community, but in the global community as well. It is only a case study, albeit an important one, in how Judaism might continue to grow and change, to reflect the spiritual and intellectual longings of the whole of the Jewish people.

Dr. Sandra B. Lubarksy, in her article outlining a Jewish approach to non-medically indicated abortions, addresses the concern that abortion, in cutting off the potential for human life, constitutes a destruction of ***tzelem Elohim*** (the image of God) in the world. She writes: "to say that abortion always 'diminishes God's image' is to undermine God's ability to be responsive."[7] I believe, fully, in God's ability to be responsive to the growth and change of Her created world. The beautiful paradox of divinity is that the Unchanging One might indeed have the capacity for change. I believe, too, that Jewish tradition, as the historical record of the Jewish people's encounter with God in our shared world, must change as well. I present this thesis as an offering toward that change, with the hope that its drive toward renewal will only magnify the image of God, who guides me in the creation of this and all things.

[7] Sandra B. Lubarsky, "Judaism and the Justification of Abortion for Non-Medical Reasons," ***The Journal of Reform Judaism*** 41:4 (Fall 1984), 10.

Chapter 1
Precedent for the Discussion of Abortion in the Jewish Halakhic Tradition: From Torah to Modern Interpretation

Though its origin is ancient, Judaism has sought through the millennia of its history to apply the teachings of its sacred canon to the contemporary concerns of its people's everyday lives. Jews of all kinds—sages, rabbis, laypeople—create meaning by calling on time-honored tradition to speak in modern reality; some might call this process a continuing revelation. Thus, it is no surprise that although our modern medical procedures for abortion were unknown to earlier generations, much has been written about the various Jewish perspectives on ending a pregnancy. This chapter reviews the literature of Jewish tradition which has been classically used to discuss the issue of abortion. It begins with a survey of the canonical sources later interpreters have grappled with: from biblical through tannaitic and amoraic literature.[8] The chapter then considers three key commentaries on these texts from early medieval authorities. The opinions of Rashi (1040-1105) and Maimonides (1135/8-1204)[9] on fetal status and the tosafist prohibition on abortion are essential points of reference in the development of Jewish thought on this issue. Later halakhic decisors grapple significantly with these three touchstone texts. The discussion from the medieval through modern periods of Jewish history occurs largely in responsa literature; well-known rabbinic figures respond to questions on specific abortion cases with ethical guidelines derived from the sources described above. Thus, the chapter completes a full historical retrospective on the

[8] Tannaitic: from the time of the Mishnah; amoraic: from the time of the Talmud
[9] Rabbi Moshe ben Maimon, referred to in this thesis alternately as Maimonides or as Rambam

development of halakhic discourse around abortion from the Tanakh through the present day.

While this summary is important in and of itself, I also endeavor in this chapter to note the "pivot points" in the development of these materials. Where are there core texts which are open to several meanings? What exegetical choices have been made that directly influence the development of future interpretive possibilities? Where have external societal pressures or moral judgments significantly impacted halakhic decision-making? In reviewing all of the literature detailed above, this chapter sets a foundation for the analysis and genesis of the remainder of this work.

Base Texts

Torah

The central biblical text which has informed Jewish response to abortion appears in the book of Exodus, one verse among many in a chapter which details various laws around damages. Sandwiched between the appropriate punishment for beating a slave and rules for the proper way to handle a dangerous ox are two verses which set the stage for centuries of Jewish thought on abortion. Exodus 21:22-23 reads:

> וְכִי-יִנָּצוּ אֲנָשִׁים וְנָגְפוּ אִשָּׁה הָרָה וְיָצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אָסוֹן עָנוֹשׁ יֵעָנֵשׁ כַּאֲשֶׁר יָשִׁית עָלָיו בַּעַל הָאִשָּׁה וְנָתַן בִּפְלִלִים. וְאִם-אָסוֹן יִהְיֶה וְנָתַתָּה נֶפֶשׁ תַּחַת נָפֶשׁ.
>
> 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. But if other damage ensues, the penalty shall be life for life.[10]

[10] I include a translation of the Hebrew here for the benefit of the reader and to convey general meaning, but it is crucial to acknowledge that there is significant ambiguity in the Hebrew text which will be discussed further in the chapter.

From this short passage, later interpreters come to significant conclusions about the difference in status between a woman and her fetus. The Torah demands retributive justice in two different forms depending on which "being" is accidentally destroyed in the fight. For the miscarriage of the fetus, the husband exacts a monetary fine, while for the death of the mother, the text demands a measure-for-measure punishment of ***nefesh tachat nafesh***.[11] From this, later authorities derive the principle that a woman has the full status of a ***nefesh***, while the fetus has a lesser status. This focus on status differential greatly influences the development of Jewish positions on abortion.

As is true for most Jewish text, there can be no perfect interpretation of Exodus 21:22-23. The potential places for subjectivity to enter the exegetical process are not unique here; in fact, the "sticking points" around these two verses might serve as a model for the application throughout this thesis of a critical lens to traditional interpretation on abortion. There are three main areas to consider when analyzing this primary source: the ambiguity of the text in its original Hebrew, the context of its authorship, and the biases of its traditional interpreters. With this key source, all three come into play. This does not necessitate a complete rejection of the source, its interpreters, or its conclusions as they relate to modern Jewish considerations around abortion—it simply means that the effort to approach texts with greater awareness leads to a heightened clarity and intellectual honesty.

[11] There is some dispute about whether this indicates ***killing*** the man who accidentally kills the pregnant woman or simply exacting a fine equivalent to her life's value, but either way, it means that the woman is a ***nefesh*** and the fetus is not.

For these verses in Exodus, there are two critical Hebrew words whose ambiguous meanings have a direct impact on how later readers consider abortion. The first, ***nefesh***, associated with a full-fledged human being, leads to a series of questions around defining the relative status and values of mother and fetus. The implications of assigning a fetus ***nefesh***, non-***nefesh***, or alternative status will become clear in a later analysis of the interpretations of medieval authorities Rashi and Rambam. The second key ambiguity in the Hebrew of Exodus 21:22 is the word ***ason***. Most Jewish readers agree that in the context of this verse, ***ason*** means that the woman has been killed by the fighting man's accidental strike.[12] The text of the Septuagint, a translation of the Torah into Greek which greatly impacts early Christian thought, has a completely different understanding. Instead of reading ***ason*** as "damage" or "tragedy", the Septuagint renders it as ***exeikonismenon***, meaning "made from the image," or "formed." The difference in punishment is not based on whether the fetus or the woman has been affected; rather, the penalties are determined depending on the growth of the fetus as formed or unformed. According to Dr. Richard Freund, an expert in Hellenistic Judaism, this change was likely the result of a homophonic translation from ***ason*** in Hebrew to ***soma*** (human life) in Greek.[13] The translator then morphed ***soma*** into the more morally resonant ***exeikonismenon*** in order to "create a link between feticide and homicide by way of the 'made from the image' formulation."[14] Thus, the strong Hellenistic condemnation of pregnancy termination as feticide manifests in the Septuagint translation; in the

[12] Daniel Schiff, ***Abortion in Judaism*** (Cambridge: Cambridge University Press, 2002), 3-4.
[13] R Freund, "The Ethics of Abortion in Hellenistic Judaism," ***Helios*** 10:2 (1983), 129-131, as quoted in Schiff, ***Abortion in Judaism***, 14.
[14] Schiff, ***Abortion in Judaism,*** 14.

Hellenistic world, women who terminated their own pregnancies were judged on the same level as those who committed witchcraft, adultery, or murder.[15]

One sees here that regardless of readers' desired or professed objectivity, there will always be a certain level of subjectivity or error in textual exegesis given individual or societal bias. This occurs even in the "simple" act of translation. The trajectory of this Exodus text from Septuagint translation to Christian thought exemplifies the way that multiple ideological biases can work through several layers of textual interpretation. The original Hellenistic distaste which guided the translation of the Septuagint "was not rooted in a moral vision of the value of life…but rather was rooted in a practical approach to the needs of society."[16] The modern concern of some Christians with the moment the fetus gains form, however, is far more interested in life's "moral value" rather than population considerations.

The formative texts on abortion which will be introduced in this chapter do not supply readers with concrete answers. They are worked through a process of continual interpretation and reinterpretation in which exegetical bias holds sway. I consider, then, the new interpretations and critical points of departure presented in this thesis as equally legitimate forms of Jewish exegetical reasoning. And though many possible interpretations can grow out of one discrete passage, a single set of verses should not be considered the sole authoritative text on such a broad topic as abortion. Exodus 21:22-23 is the only section of Tanakh referenced in Jewish discussions of abortion. It follows,

[15] Schiff, *Abortion in Judaism*, 15.
[16] Schiff, *Abortion in Judaism*, 16.

then, that the final chapters of this thesis focus on ways to broaden the collection of sacred texts and interpretive strategies deemed relevant for this moral issue.

Rabbinic Literature

Though the passage from Exodus is an essential starting point for Jewish conversations on abortion, later halakhic discourse draws extensively from passages of the Oral Law (tannaitic and amoraic materials). These sources expand on the question of maternal and fetal status and some consider what is at stake for the mother in the potential termination of a pregnancy. Again, it should be noted that none of the authors of rabbinic literature conceived of abortion in the modern sense; the materials from the Mishnah and Talmud consider a specific mode of terminating pregnancy which excludes any present-day understandings of non-medically indicated abortions. Rabbi David Kraemer, an ethicist and Talmud professor at the Jewish Theological Seminary, writes powerfully on this issue: "The halakhic authorities of old were not asking our questions about abortion. Can we justify deriving instruction when the analogies are so inexact and the circumstances so different?"[17] My answer to Kraemer is as follows: this material is of its own time and place. It has been interpreted to fill a certain need based on a certain paradigm for how moral (and legal) decision-making gets made. And yet, it is still deeply relevant for post-halakhic considerations in that it guides our understanding of both the hurdles there are to overcome (feminist and otherwise) and the incredible potential there

[17] David Kraemer, "Jewish Ethics and Abortion," in *Exploring Judaism: The Collected Essays of David Kramer* (Scholars Press, 1999), 271.

is in using sacred text (ancient, new, sacred as broadly defined as possible) to ask modern questions of how Judaism will help fashion our lives.

There are several key texts from the Mishnah and Talmud which directly relate to the termination of a pregnancy. They can loosely be categorized around three different considerations: the status of the fetus, potential concerns for the mother's welfare, and broader concerns for how Jews should approach abortion given the stances of other groups in society. The essential texts concerning fetal status are Mishnah Ohalot 7:6 and Sanhedrin 72b in the Babylonian Talmud. These two sources serve as the foreground for the major schism in later halakhic thought around what legal categories can be applied to the fetus. The passage from the Mishnah concretizes the implicit language of Exodus 21:22-23. It states that the life of the woman takes precedence in difficult childbirth and that the fetus may be dismembered to save her as long as its majority remains in the womb. Only when the majority of the fetus has emerged, alive and intact, can it be considered a ***nefesh***:

האשה שהיא מקשה לילד מחתכין את הולד במעיה ומוציאין אותו אברים אברים מפני שחייה קודמין לחייו יצא רובו אין נוגעין בו שאין דוחין נפש מפני נפש.

> If a woman is having difficulty in childbirth, one cuts up the fetus inside her and takes it out limb by limb, for her life comes before its life. If most of it had come out, one does not touch it, for one does not push off one life for another.[18]

This text implies that there is precedent for performing an abortion up until the moment of childbirth, even if, as Kraemer notes, this is not exactly what the source intended in its time. As Rabbi Mark Washofsky, a leading Reform legal scholar, argues, "The Jewish

[18] Mishnah Ohalot 7:6

legal sources, by drawing the distinction between mother and fetus, *allow us to make the moral judgment necessary to permit any abortion.*"[19]

The Babylonian Talmud in Sanhedrin 72b complicates this Mishnah and the way its strong definition of the status differential between mother and fetus could constitute a blanket approval of abortion. The passage in the gemara introduced by a statement from R. Huna presents the idea that a fetus might be considered a *rodef*, a pursuer, when childbirth endangers the mother. R. Huna believes that a pursuer can be killed to save the life of the pursued, even without warning. The gemara continues with a challenge from R. Hisda to R. Huna that directly references the Mishnah from Ohalot 7:6:

איתיביה רב חסדא לרב חונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש ואמאי רודף הוא

> R. Hisda challenged R. Huna saying 'If its head came out, one does not touch it, for one does not push off one life for another.' Why [should this be the case]? Isn't it [the fetus] a pursuer?[20]

R. Hisda wants to understand the seeming contradiction between R. Huna's categorization of the fetus as a *rodef* and the Mishnah's injunction against harming the fetus upon emergence. If the fetus is truly a pursuer, argues R. Hisda, then it should be permissible to kill the child after it has been born if it mortally threatens the mother. R. Huna counters by claiming that in the case of difficult childbirth, the fetus is *not* a direct pursuer; rather, the fetus's endangerment of the mother represents the fact that the heavens themselves are her direct *rodef*.[21] The gemara is inconclusive on how the fetus

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[19] Mark Washofsky, "Response: 'Abortion, Halacha, and Reform Judaism,'" *Journal of Reform Judaism* 28:4 (1981): 18. Emphasis mine.
[20] BT Sanhedrin 72b
[21] BT Sanh72b: "שאני התם דמשמיא קא רדפי לה" "There it is different, for the heavens pursue her."

should be labeled, but this debate between R. Hisda and R. Huna serves to complicate the way future rabbis will consider abortion. When can the fetus be considered a *rodef*, and is it *necessary* for the fetus to intentionally place the mother in mortal danger for action to be taken to terminate the pregnancy? These two rabbinic sources introduce a complex dialectic which guides the future development of Jewish thought on abortion.

The Talmud does not confine its consideration of maternal need when terminating a pregnancy to mortal danger alone. The mishnah and gemara from BT Arakhin 7a-b consider the proper procedure for dealing with a pregnant woman who has committed a crime worthy of the death penalty. Through this process, the text once again asserts the diminished status of the fetus while in the womb and grants permission for ending a pregnancy on those grounds. This section of the Babylonian Talmud also displays an interest in the potential disgrace to the mother which might occur should the pregnancy continue. M. Arakhin 1:4 states: "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." The gemara elaborates by explaining that the abortion of the fetus before the woman's execution is clearly acceptable because "גופא הוא," it is a part of the woman's body. The only concern one might bring is in regards to the fetus as the husband's property, which the rabbis mark as an invalid issue for this case.[22]

[22] The gemara begins the discussion here, by noting the need to clarify that the fetus is part of the woman's body lest one assume, from the passage in Exodus discussed above, that because the husband sets the amount of money to be compensated for a miscarried fetus, that the fetus is his property, and therefore should be saved. No, the rabbis say here, the verse which condemns this woman to death from Deut.22:22 contains the word "*also*" meaning that the fetus must be destroyed along with the woman and cannot be saved by virtue of being the husband's property.

The gemara goes on to describe the procedure for terminating the pregnancy: "R. Judah said in the name of Shmuel: If a woman is about to be executed, one strikes her against her womb so that the child may die first, to avoid her being disgraced." The commentaries of Rashi and Rabbeinu Gershom (960-1040) offer a graphic description of what this means. As R. Gershom writes, " שאם היה העובר חי לאחר מיתת אמו היה מפרכס ויוצא והיתה שועפת דם מאותו מקום ותתנוול בפני הכל" "If the fetus were alive after its mother's death, it would spasm, emerge, and pour blood from that place, causing shame in front of everyone." ***Nivul*** is a rabbinic concept with a range of meanings, but when invoked in reference to dead bodies typically implies physical degradation. It is worth noting that this disgrace, ניוול, is in regards to the disgrace of the woman's body ***after*** she has been killed—not the needs of the living woman.[23] Regardless, this passage serves as a precedent for later authorities who choose to rule more leniently in regards to abortion. For them, Arakhin 7a-b shows that a pregnancy ***can*** be ended for a need other than the mortal danger of the mother.

Rabbinic literature directly considers the termination of pregnancy by discussing the status of the fetus and mother, the potential endangerment of the mother, and it also comments on the practice of "abortion" (as it was then understood) among broader

[23] It should be noted that when discussing the living, ***nivul*** is most often attached to the disgrace of ***women***. A man can experience ***nivul*** if he is an unwashed guardsman (BT Ta'anit 17a), an unsavory character who should be brought to the Beit Midrash to be set straight (BT Sukkah 52b) or married off as a bad husband option, in the same category as men with boils. (BT Ketubot 48a, among others). Living women, on the other hand, take on the status of ***nivul*** only as relative to men, and are discussed much more often—either through the forced degradation of the Sotah ritual (Mishnah Sotah 1:6), the disgrace of an enslaved woman who will become her owner's wife (BT Yevamot 48a), or the woman who makes herself repugnant to her husband through Nazirite vows of deprivation (BT Nazir 28a-29a).

society. The injunction against "feticide" by Noahides (non-Jews) in BT Sanhedrin 57b is the first attempt of many by Jewish thinkers to integrate Jewish stances on abortion into broader social contexts. In the text, R. Ishmael's position is firm: Noahides can be executed for the destruction of a fetus. The gemara wants to know his reasoning, and reveals that his logic hinges on a specific interpretation of Genesis 9:6. The verse reads: "שֹׁפֵךְ דַּם הָאָדָם בָּאָדָם דָּמוֹ יִשָּׁפֵךְ כִּי בְּצֶלֶם אֱלֹהִים עָשָׂה אֶת-הָאָדָם". A simple translation of the text renders it "Whoever sheds human blood, their blood shall be shed by a human, for God made human beings in God's image." R. Ishmael reads the verse differently, glossing this seemingly superfluous language and uniting the clause "***adam b'adam.***" He declares that this phrase means "a fetus in its mother's womb," hence his prohibition of feticide as a capital crime for gentiles. His understanding here of "human being" as female does not, however, serve to promote the humanity of women in the long run. R. Ishmael's position plays a central role in the development of a possible blanket prohibition of ***Jewish*** "feticide."[24] All subsequent halakhic decisors and Jewish legal theorists will feel the need to grapple with the implications of R. Ishmael's statement. It is essential to see, here, that modern Jewish positions on abortion are building on a chain of interpretive choices whose origin is in this very specific and not necessarily plain-sense reading of Genesis 9:6.

[24] Such a staunch position against the taking of any form of life is in alignment with the portrayal of Rabbi Ishmael in other texts. In the Mekhilta d'Rabbi Ishmael (***Nezikin*** 8), he quotes a verse from Leviticus in an attempt to prove that just as there is monetary compensation for injury to animals, so is there monetary compensation for human injury. This is expanded by R. Isaac to mean that capital crimes can be resolved with monetary fines, rather than capital punishment.

This concludes a cursory summary of the texts from the Oral Law which most directly discuss the termination of pregnancy. There are, however, other passages from rabbinic literature which, although they do not directly discuss the act of abortion, constitute aspects of the rabbinic approach to this topic. Several well-known positions from Mishnah and Talmud which discuss fetal status outside of the context of abortion are worth noting here. The whole of the third chapter of Mishnah Niddah discusses the various forms a woman's miscarriage might take and its subsequent effect on her purity status. In M. Niddah 3:7 at the conclusion of the chapter, the rabbis offer that a woman need not sit for purification if she miscarries before the fortieth day of pregnancy, because "אינה חוששת לולד," she need not be concerned that it was a fetus. Implied here is that the potential future child may not be considered either a ***nefesh*** or even a <u>fetus</u> until the forty-first day in its mother's womb. A similar position appears in the Babylonian Talmud. BT Yevamot 69b considers whether a woman who might be pregnant can eat of the ***t'rumah*** offering. The gemara concludes that she may, for if she is found to be not pregnant, then the point is moot, " ואי מיעברא עד ארבעים מיא בעלמא היא," "and if she is pregnant, until forty days it is mere water." The rabbinic mindset seems to consider the fortieth day of pregnancy as an important developmental mark for fetal formation. Clearly the Septuagint was not alone in considering how the physical formation of the fetus affects moral attitudes toward abortion. It is significant, though, that here the discussions are concerned with fetal status not for the benefit of determining fetal need, but for the sole purpose of determining how the woman should behave in her daily halakhically-guided activities.

Another principle which appears in a number of places in rabbinic literature, ***ubar yerekh imo***, should also be considered a relevant yet separate comment on the issue of abortion. This statement, literally meaning "the fetus is its mother's thigh," was not universally agreed upon by the rabbis of the Talmud. As Rabbi Daniel Schiff notes, "*Ubar yerekh imo* was not…a principle that was applied automatically under all conditions, and its use was designed for those situations in which legal changes or decrees that affected the mother were also made applicable to the fetus."[25] Again, although the concept is certainly about fetal status, the way that the rabbis considered ***ubar yerekh imo*** was never with the idea of terminating the pregnancy in mind. This illustrates the beautiful tension of Jewish textual exegesis. There are passages in the Jewish textual canon which seem to address a specific issue but, in context, are concerned with a completely different matter. In addition, there may be broader principles available which are not applied to abortion because they don't align with the questions that have traditionally been asked. I do not believe this should preclude contemporary progressive Jews from using Jewish texts in new ways to build an ethical framework. Rather, it should lead to greater sensitivity and engagement in understanding how texts and principles have traditionally been used and an awareness of both the danger and the power of relocating texts to serve personal hermeneutics of desire.[26]

Thus far we have seen that Judaism's sacred canon offers a limited number of texts that directly deal with the termination of a pregnancy. These texts present certain specific cases which depict the potential abortion scenarios relevant to that historical time

[25] Schiff, *Abortion in Judaism*, 32
[26]To be explored at length in Chapters 3, 4, and 5.

period: accidental miscarriage, maternal mortality in childbirth, and pregnancy which would impede the administration of just, court-ordained punishment. In all of these cases, the texts agree that abortion is acceptable, though they differ on their modes of presentation and the principles invoked. The questions focused on in these texts center around the determination of fetal status and how it impacts the mother's status and physical health. We will see now how early medieval commentators expanded these cases and the impact their positions have in forming lenient and stringent tendencies in the development of Jewish thought on abortion.

Key *Rishonim* (Rashi, Rambam, *Tosafot*)

There are three key responses to the texts outlined above which determine, in large part, the shape of the discussion on abortion from the medieval period and beyond. These include the commentaries of Rashi and Rambam on fetal status in abortion cases and the tosafist extension of the Noahide prohibition to the Jewish community. Given the nature of the halakhic process, these three sources, in particular, are seen as authoritative in a way that *must* be dealt with by later rabbis. Some seek ways to align Rashi and Maimonides' seemingly conflicting positions while others align strongly with one figure or the other. Many rabbis provide their own rationalization for the tosafist ban to generate some exceptions for further leniency. All, given the status of these particular *Rishonim* and the tosafist commentary, feel compelled to grapple with these opinions. This thesis, too, must consider the positions of Rashi, Rambam, and the *Tosafot* as important building blocks in the Jewish conception of abortion, but does not grant them the same weight as might be assigned from within the halakhic method.

The great split between lenient and strict opinions on abortion originates in the difference between Rashi and Rambam's commentaries on the fetus-as-*rodef* concept. The Talmud in BT Sanhedrin 72b presents R. Huna's assertion that a fetus can be considered a *rodef* and thus, can be destroyed to save the life of the mother. Rashi's comment on the passage invokes the Mishnah from Ohalot 7:6 which permits the dismemberment of the fetus in cases of difficult and dangerous childbirth. He continues:

"דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו"

> Any time that [the fetus] has not gone out into the air of the world it is not a *nefesh* and it is possible to kill it and save its mother.

Rashi states explicitly his opinion: the fetus may be destroyed not because it qualifies as a *rodef* (who is a living, breathing person that one may still kill to preserve another's life), but because it is not a full *nefesh* while in the womb. This sets the precedent for more lenient opinions because it cites the fetus's diminished status as legitimate cause for abortion, not the fatal harm it causes the mother.

Maimonides makes a slight variation in the Mishneh Torah which will have lasting consequences for the Jewish interpretive tradition on abortion. In *Hilchot Rotzeach uShmirat Nefesh*, the Laws of the Murderer and Preservation of Life, 1:9, Maimonides writes on the same case of a woman in mortal danger while in childbirth. Unlike Rashi, he makes a particular distinction about the fetus's status as כרודף, "like a *rodef*." His full statement makes no mention of the fetus as a non-*nefesh* while in the womb—only that like Rashi and the Mishnah in Ohalot, he feels the fetus gains protection as soon as its head emerges for one *nefesh* does not take precedence over another. Thus, there is an implicit acknowledgement that the fetus has not been a *nefesh* prior to its emergence from the womb, but Rambam's explicit use of *k'rodef* is the

strongest influence on his later readers. More stringent rabbinic opinions on abortion will flow from Maimonides' focus on this specific rendering of fetal status; they argue that abortion can only be permitted in situations where the fetus literally acts as a ***rodef***, causing immediate threat to the woman's physical livelihood. All later rabbis, those who derive the authority of their position from Rambam and those who do not, will have to struggle with the seeming inconsistencies in his formulation. Why does the fetus suddenly ***lose*** its status as a ***rodef*** as soon as it emerges from the womb? It is, after all, still endangering the mother. They will also grapple with the ***k'***, "like" which Maimonides adds before the status of ***rodef***. Though the behavior of a fetus endangering its mother in the womb is life-threatening, is it considered only ***similar*** to a pursuer rather than tantamount to it?

While most Jewish thought on abortion focuses on case law, the ***Tosafot*** introduce a broader statement about terminating pregnancy in their commentary on BT Sanhedrin 59a. The original focus of the talmudic discussion in this case is not on abortion at all; still, the Toasfists seize this as an opportunity to advance a general principle. In a much longer back-and-forth on which laws apply to the Noahide covenant and which to the Sinaitic covenant, the gemara states: "There is nothing permitted to an Israelite yet forbidden to a gentile." In their commentary on this maxim, the ***Tosafot*** offer a complex statement about the rules for Jews and gentiles surrounding abortion: "A gentile is culpable for the death of a fetus, while a Jew is forbidden to cause its death but is not culpable. Even though [a Jew] is not culpable, nevertheless it is not permitted."[27] This means that though the termination of a pregnancy is not considered murder for a Jew (as

[27] ***Tosafot*** to BT Sanhedrin 59a, s.v. ***lika***

it is for a gentile), it is still not permitted. They go on to try to reconcile this dictum with the tannaitic statement in M. Ohalot which mandates that one dismember the fetus should the woman struggle in childbirth: "There are those who say that here likewise a Jew is commanded to save her, and it is possible that a gentile is also permitted to save her."[28] While the Tosafists are drawing a very delicate balance here, attempting to weave the many talmudic strands on abortion together (as is characteristic of their methodology), later readers will derive from this position a "tosafistic ban" on abortion for gentiles and a strong mandate against abortion for Jews.

Schiff, in considering the Toasfists' prohibition of Jewish abortion cites D.B. Sinclair's analysis of this particularly strict exegetical choice: "The *Tosafot*…had produced a prohibition in order better to address the societal reality in which they found themselves, notwithstanding the fact that this may not have done justice to the true contextual sense of the sources."[29] Once more we see that halakhic development is not immune to subjectivity. The bias of the rabbinic authorities and the influence of their milieus had a lasting impact on the progression of Jewish thought on abortion. And a complex statement by the Tosafists would be distilled by many future scholars to represent a full ban on abortion which, because it is linked to R. Ishmael's interpretations of Genesis, could be considered biblical. As Dr. Ronit Irshai critiques, "those who believe that the discussion of Noahides established a meta-principle regarding the biblical prohibition of abortion, in light of which all other sources must be interpreted, are thus

[28] *Tosafot* to BT Sanhedrin 59a, s.v. *lika*
[29] Schiff, *Abortion in Judaism*, 65

assuming in advance what they are out to prove."[30] The commentary of the Tosafists, then, is another clear "pivot point" in the development of Jewish legal material on abortion.

Later Authorities (Medieval, Pre-Modern, Modern)

Rabbi Daniel Schiff's work, *Abortion in Judaism*, provides an in-depth analysis of further legal literature on abortion through the medieval, pre-modern, and modern periods. For the purpose of this thesis, such an in-depth exploration of the breadth of materials is unnecessary; I hope to summarize here the diversity of opinions presented in his work and highlight some of the particularly striking innovations from hundreds of years of development in halakhic discourse. The relevant takeaways from this section are an awareness that the Jewish position on abortion has *never* been univocal; that there has been an emphasis in the halakhic tradition on grappling with the positions of previous authorities; and that social pressures play a significant role in influencing the opinions of individual rabbis, some of whom will even acknowledge this bias. Given the particular analytical lens of this thesis, an overlay of feminist critique also serves to highlight the moments where the rabbinical authorities write from a conventionally masculine and paternalistic point of view.

Schiff presents medieval, pre-modern, and modern authorities as representing different stages in the development of Jewish thought on abortion. The medieval sources, in particular, seem to align themselves within two camps: those who tend towards Rashi's

[30] Ronit Irshai, *Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature* (Waltham: Brandeis University Press, 2012), 131.

view of the fetus as non-*nefesh*, and those who prefer a Maimonidean understanding of the fetus as *k'rodef*. These are the ancestors of the pre-modern and modern split into more lenient and more stringent groups. Schiff places a number of medieval rabbis within the Rashi camp, beginning with Rabbi Meir Abulafia (1170-1244) and Rabbi Menachem Meiri (1249-1306), both thirteenth century scholars, who simply reassert Rashi's designation of the fetus as non-*nefesh*.[31] In the fifteenth and sixteenth centuries, Rabbi David ibn Zimra (1479-1573) and Rabbi Joshua Falk (1555-1614) both rejected Maimonides in favor of Rashi's formulation of fetal status.[32] By the late 16th and 17th centuries, rabbis wrote more extensively on specific abortion cases and sought to fit those cases within the context of the Tosafists' abortion ban. Rabbi Yosef Trani (1538-1639), a 17th century authority from Turkey also known as the Maharit, wrote two responsa on abortion. Though he maintains an awareness of *Tosafot*'s prohibitory language, he can also be placed within the Rashi camp. Maharit asserts that abortion is *not* to be considered murder, both for Jews and potentially for gentiles, does not reference the *rodef* argument, and even leaves room for non-medically indicated abortions in the responsum which references BT Arakhin 7a-b's consideration of shame.[33]

Two eighteenth century authorities, Rabbi Jacob Emden of Germany (1697-1776, Ya'avetz) and Yehuda Ayash (1700-1759), an Algerian rabbi, presented specific cases where abortion is permissible for reasons other than maternal mortality. Emden approved of the abortion of a fetus conceived in adultery and Ayash of an abortion requested due to

[31] Schiff, *Abortion in Judaism*, 61.
[32] Schiff, *Abortion in Judaism*, 68.
[33] Schiff, *Abortion in Judaism*, 69-72.

the mother's concern for an existent nursing child.[34] In particular, Emden's use of the term צורך גדול, "a great need" in his responsum sets the stage for further lenient positions. It is crucial to note, however, that even though these two rabbis rule progressively, the language of their responsa betrays a continued inability to truly see women as subjects and not objects. Ayash's leniency is predicated on the rabbinic certainty that only men are included in the procreative commandment ***pru ur'vu,*** be fruitful and multiply. Women can have permission for more lenient abortion decisions because they are not actually subjects in the divine reproductive process. Emden, meanwhile, bases his lenient decision on a line of logic which argues that were the woman who committed adultery to kill herself, it would be "regarded as meritorious."[35] An adulterous woman, deserving of capital punishment, may destroy the fetus she carries because her life deserves to end. Emden uses the idea that an adulterous woman's life should be forfeit to facilitate his logic that a fetus, part of her body, may thus be sacrificed as well. So, while his ruling may seem sensitive to female concerns around abortion, he arrives at his conclusion through legal principles that originate from a patriarchal world view.

This concludes a brief overview of the main opinions from ***Rishonim*** and ***Acharonim*** who aligned more closely with Rashi's understanding of the status of a fetus while in utero. There are two major opinions from this broad time period which deserve consideration as being more Maimonidean in approach. The Shulchan Arukh, arguably one of the most important codes of law in the development of halakhah, discusses

[34] Schiff, ***Abortion in Judaism***, 80-82, 84.
[35] Schiff, ***Abortion in Judaism***, 80.

abortion in *Choshen Mishpat* 425:2. The author of the code, Joseph Caro (1488-1575), seems to have excerpted the equivalent section from the Mishneh Torah *Hilkhot Rotzeach u'Shmirat Nefesh* discussed above. The Shulchan Arukh reads: "Therefore, for a pregnant woman who has difficulty in childbirth, it is permitted to cut the fetus in her womb, either by drug or by hand, for the fetus is *k'rodef*—like a pursuer—after her to kill her. And if its head should emerge, one does not touch the fetus, for one does not push off one life for another, and this is the way of the world."[36] Like the Rambam, Caro derives permission for action against the fetus on behalf of the mother because of its status as "like a *rodef*," meaning that the Shulchan Arukh can be considered as text supporting a more stringent position on abortion.

Rabbi Yair Chaim Bacharach (1639-1702), a seventeenth century German rabbi, relies heavily on the Rambam when he answers a question about whether or not a woman, early in her pregnancy, who has conceived in adultery, has permission to abort the fetus. Bacharach abides by the tosafist ban on Jewish abortions, but still wants to consider those circumstances under which breaching that ban could be acceptable. To do so, he weaves in Maimonides' position, maintaining that a fetus truly endangering the mother's life, behaving as a *rodef*, has no protection under the general ban. As Schiff summarizes, "Bacharach submits that Maimonides would concur that the fetus is not a *nefesh*, that killing the fetus is not murder, that it is nevertheless forbidden to kill the fetus, and that this prohibition can only be lifted insofar as the fetus acts like a *rodef*."[37] What is apparent here is that even among the more stringent school of responsa writers

[36] Shulchan Arukh, *Choshen Mishpat* 425:2, translation mine.
[37] Schiff, *Abortion in Judaism*, 76.

from the medieval period, there is no one who accepts a ***full*** definition of abortion as murder, nor anticipates that Jewish women will never need to avail themselves of the necessary medical treatment of ending a pregnancy.

Though later medieval scholars find it imperative to grapple with the Tosafists' extension of the Noahide ban, many of them seem to approach it as an intellectual exercise, rather than as a legal inevitability; two rabbis of note provide interesting rationalizations for the ban which inform their rulings within each specific responsum but also broaden the constellation of rabbinic thought on the meaning of the act of abortion itself. Both the Maharit and R. Bacharach, who draw more significantly from Rashi and Maimonides, respectively, offer new interpretations of the logic behind the ***Tosafot***'s abortion ban. The Maharit, in one of his ***teshuvot***, writes that he sees the prohibition of abortion from the ***Tosafot*** not as an expression of abortion as murder, but as a concern about the act of ***chabbalah***: self-injury.[38] This position seems to draw implicitly on some of the texts on fetal status from rabbinic literature. In BT Arakhin 7a-b, the fetus is described matter-of-factly as a piece of the woman's body, and the ***ubar yerekh imo*** concept used throughout the Talmud invites a similar conclusion. Abortion, writes the Maharit, is prohibited under most circumstances because it is self-injury, forbidden due to the relationship between the human body and its Owner and Creator. As Schiff summarizes, "because wounding for the purposes of healing is permitted within the law, the ***chabbalah*** explanation helps to clarify why abortion in therapeutic circumstances would be acceptable."[39]

[38] Schiff, ***Abortion in Judaism***, 71.
[39] Schiff, ***Abortion in Judaism***, 71.

Bacharach's explanation for the Tosafist prohibition offers a completely different perspective. According to his responsum, the termination of pregnancy is akin to the futile spilling of seed, a practice considered impermissible in the rabbinic worldview. Like the Maharit, Bacharach seeks rationale for a ban which seems to be a later imposition on the earlier thought of both the written and oral Torahs; in the conclusion of his responsum, he rules against the adulterous woman terminating her pregnancy, but acknowledges that it is because of his desire to maintain fidelity to the interpretation of the *Tosafot*: "The law of the Torah would permit what you ask, were it not for the widespread practice among us, and among them to seek to establish a fence to curb the immoral."[40] Rachel Biale, in her work *Women and Jewish Law*, notes Bacharach's explicit definition of the immoral; he rules stringently "to hold promiscuity in check."[41] This introduces a key component of this discussion which is easily overlooked. At times, the male rabbinic establishment concern with abortion has little to do with protecting fetal life or even the correct interpretation of legal strictures. Rather, some rabbis operate with the specific motive of curtailing female sexuality through dominance over their reproductive choices.

In both the Maharit and Bacharach's formulations around the ban of the *Tosafot* on abortion we see a reiteration of the themes which have been articulated above: the rabbis ruling on abortion through the late medieval period felt compelled to grapple with the interpretations of earlier authorities, because they understood those interpretations to be an unfolding of revealed Oral Law. These religious leaders sought to bring coherence

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[40] Bacharach as cited in Schiff, *Abortion in Judaism*, 78.
[41] Rachel Biale, *Women and Jewish Law: The Essential Texts, Their History, and Their Relevance for Today* (New York: Schocken, 1984), 227.

to opinions which conflicted with one another, or even with their own moral sensibilities; Schiff notes that one of the most common trends among the ***Rishonim*** and ***Acharonim*** was the move toward modulating Maimonides' statement on fetal status by reconciling it with Rashi's opinion: "When looked at collectively, it can be said that [they] navigated a centrist course: they had put in place a hitherto unspecified prohibition on Jewish abortion, but they had also provided extensive opposition to the notion that abortion was murder…and at times had even permitted abortion in non-life-saving circumstances."[42] As the world made its way toward modernity, the Jewish position on abortion remained multi-vocal and open to further development.

It would not serve the scope and purpose of this work to review in-depth the many responsa offered by rabbis through the period of early modernity in the 19th and 20th centuries. Instead, this section will once again focus on key opinions—those that exhibit a new or interesting rabbinic viewpoint on abortion or those particularly ripe for post-modern critique given the biases and social location of their authors. Rabbi Joseph Babad (1801-1874), of 19th century Poland, appears well within the school of thought guided by Rashi's focus on the fetus as non-***nefesh***. He takes this formulation a step further. In a move of striking halakhic ingenuity, Babad applies a seemingly unrelated rabbinic principle to the question of disparity between maternal and fetal status. In BT Sanhedrin 45b, the Talmud asks whether one human life could ever be considered more worthy than another.[43] Babad brings this conversation into the specific issue of abortion in a surprising way. He weaves together Rashi's affirmation of the mother as ***nefesh*** and the

[42] Schiff, *Abortion in Judaism*, 93.
[43] "Who is to say that your blood is reader than his?"

fetus as non-***nefesh***, that status disparity giving the mother license to protect her own life interests above the fetus, and Sanhedrin 45b's statement that the worth of two ***nefashot*** is indistinguishable. This may mean, Babad asserts, that ***any*** person with the status of ***nefesh*** has needs which outweigh those of the fetus.[44] Though Babad asks this question on a theoretical level, he offers an expansion within Jewish thought that leaves open the possibility for abortions that take the needs of others beside the mother into consideration. The implication here is that although most later rabbis reject Babad's invocation of this "transitive property" of ***nefesh***-value, he sets a precedent in the halakhic literature itself for a hugely expansive embrace of extra-maternal concerns when considering abortion.

Rabbi Israel Lipschutz (1782-1860), a 19th century German rabbi, focuses more on the Maimonidean ***rodef*** designation than Babad, but also articulates an intriguing concept which has yet to be discussed in the scope of this thesis. His commentary on abortion focuses on the hypothetical case of extreme late-term abortion; until what point in the birthing process is abortion acceptable? Lipschutz considers the difference between fetus and mother not based on ***nefesh***-status but through the lens of "doubtful viability." This means considering not just the current lives of both mother and child but also the presumed potential for their respective continued existence. According to Lipschutz, and to other authorities before him who proffered this "doubtful viability" concept, the mother's continued viability is assured while the baby's is in doubt through the first thirty days of its life. Thus, it would even be acceptable to have a Mishnah Ohalot 6:7 style abortion; though one cannot lay aside one ***nefesh*** for another, the mother's greater chance

[44] Schiff, ***Abortion in Judaism***, 103.

at surviving would, according to Lipschutz, be reason enough to elevate her life above the life of her child.[45]

This is not the first time we have seen the idea of potential viability invoked in the Jewish discussion of abortion. In BT Arakhin 7b, the gemara leaps from the initial consideration of a pregnant woman condemned to death to a related situation in which a woman dies in childbirth on Shabbat. R. Nahman states that it is permitted to bring a knife to cut open the woman and try to save the baby. This seems self-explanatory, the gemara complains; why does R. Nachman need to offer permission? In his explanation of R. Nahman's statement, Rabbah brings in the idea of ***safek***, doubt. In the case of an adult who is accidentally buried under rubble, one may violate the Sabbath to lift away the stones and try to save him, whether or not he is known to be alive or dead. Rabbah says that R. Nahman must also offer permission in the case of the woman who has died in childbirth because the intricacies of doubt surrounding a fetus's standing in the realm of the living are more complicated. The main point, though, is that in the case presented in the Talmud, doubt is ***permissive*** in allowing the abortion of a fetus. When Lipschutz and others invoke doubt in the modern era they use it in a permissive way as well, but seemingly to the opposite effect. Doubt saves the child in its dead mother's womb on Shabbat, but it condemns the baby mid-birth in Lipschutz's abortion hypothetical. This shows that religious concepts in Judaism's centuries-long conversation on abortion are fluid. Principles and terms can be invoked for multiple purposes, yet they continue to speak authoritatively. The work of this thesis is merely a continuation, therefore, of the process which shapes and re-shapes Jewish thought.

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[45] Schiff, ***Abortion in Judaism***, 95-97.

One final highlight of the nineteenth century comes from the opinion of Rabbi Yehudah Perilman of Minsk who offers an 1891 responsum on the difficult issue of rape. The responsum does not speak directly about abortion but has important implications for permissiveness in abortion cases. Perilman states that it is acceptable for a woman to destroy male seed when she has been raped.[46] Though he refers more saliently to contraception in his responsum, Perilman leaves the door open for later termination of pregnancy when women have been raped. What is most significant about Perilman's language, though, is that it exhibits proto-feminist tendencies in its treatment of a dehumanizing metaphor traditionally applied to women: "While woman is said to be a vehicle for reproduction (***karka olam***), as a human being she differs from 'mother earth' in that she need not nurture seed implanted within her ***against her will***; indeed, she may 'uproot' seed illegally sown."[47] Clearly it cannot be said that this nineteenth century rabbi applied a modern feminist critical lens to the tradition, but his words mark a significant departure from traditional rabbinic metaphors which objectified women. Perilman, in acknowledging the full humanity of women and allowing it to guide his conclusion that women deserve freedom from reproductive coercion, demonstrates the necessity of including women's perspectives in the development of Jewish thought on abortion.

As Schiff states, "Teshuvot of the twentieth century began to revolve far more around matters of practical concern."[48] Though it is unnecessary to consider each case of the twentieth century in detail, this section will highlight two rabbis whose opinions

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[46] Schiff, ***Abortion in Judaism***, 108.
[47] Perilman, ***Or Gadol***, Vilna, 1924, number 31, as quoted in Schiff, ***Abortion in Judaism***, 108.
[48] Schiff, ***Abortion in Judaism***, 116.

offered lenience in specific cases of women seeking abortions for situations where they were not experiencing immediately physical endangerment. Despite this, the twentieth century halakhic system maintained its roots in patriarchal culture. Permissive rulings aside, many rabbis (still all male within the halakhically-minded community) continued to focus more in their responsa on the intellectual exercise of halakhic maneuvering, rather than on the real inner lives of the women who sought their guidance. Nowhere is this more striking than in the writing of Rabbi Issar Yehudah Unterman (1886-1976), who shared the story of a Jewish woman impregnated against her will by a German soldier during World War I. Unterman's response to this scenario, though, considers the halakhic responsibilities of a Jewish doctor being coerced by German occupiers to perform an abortion for this woman and gives little thought to the trauma of the girl herself.[49] This may simply be a product of the nature of the genre; halakhah tends to work out its case law without dwelling on the extratextual emotional needs of its adherents. Whatever the reason for the framing of Unterman's response, there is a serious loss manifest in the Jewish traditional sources' inability to give subjective female concerns proper expression.

Rabbi Mordecai Winkler (1899-1930) ruled leniently in several cases, most notably in a 1913 responsum which addressed the case of a woman whose pregnancy put her mental health at stake. Winkler finds sources from early authorities to support his conclusion that the woman may have an abortion to spare her from significant threat to her mental well-being.[50] Schiff summarizes the ground-breaking nature of Winkler's

[49] Schiff, *Abortion in Judaism,* 119.
[50] To do this, he draws on a ***teshuvah*** from Rabbi Israel Meir Mizrachi of the late-17th century who ruled that mental health risks (in this case relating to a completely separate

position: “While it is likely that his permissive reply is predicated on the assumption that the mental-health risk under discussion is a life-threatening one, his reply suggests that mental-health concerns should be seen to be just as serious potential triggers for abortion as their physical counterparts.”[51] If Winkler expands permission to mental-health issues for women, his contemporary Rabbi Yitzchak Oelbaum takes a step further. Oelbaum draws on Ayash’s 18th century rulings[52] to make the case for an acceptable abortion should a pregnant mother fear for the needs of her already living child. There *were* scenarios in which rabbis found the consideration of a life other than that of the mother to be an acceptable factor in deciding whether her abortion was permitted. It should be emphasized that these two *teshuvot* are presented not as the norm but as the farthest reaches of permissive rabbinic thought from twentieth century halakhic decisors. Winkler and Oelbaum represent the permissive edge of Jewish abortion rhetoric and were, by no means, accepted by all of their peers.[53]

Schiff presents a concise and helpful summary of the halakhic landscape on abortion as it had developed through the mid-twentieth century. He notes that rabbinic positions were “varied and sharply contrasting,”[54] and that lenient positions outweighed stringent ones. He also proposes that the relatively low volume of halakhic literature on abortion was due, in large part, to the circumstances of civil society in the nineteenth and early twentieth centuries. Most governments were fairly restrictive toward women’s

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issue around eating treif soup) created significant enough risks for harm to self and others that they could be considered on the same level as physical-health risks.

[51] Schiff, *Abortion in Judaism*, 118.

[52] See above

[53] Schiff, *Abortion in Judaism*, 119.

[54] Schiff, *Abortion in Judaism*, 131.

reproductive choice, and scientific technology had yet to develop which would provide a window into the womb. "[I]n the middle of the twentieth century," writes Schiff, "outside events would permeate the ***halakhic*** world-view…it would not be long before these influences would result in depictions of abortion within Judaism in far starker tones than had been evident previously."[55]This segue brings us to the relatively recent changes in halakhic thought that remain operative in the halakhic Jewish community today. A final consideration of these most recent advances sets the stage for considering the current Jewish outlook on abortion and the position of progressive Judaism within that range of opinions.

The difference between what abortion meant in the Jewish world of the Bible, the Talmud, the medieval period, and even early-modernity and what it means in the present-day is massive. Our current moment can be characterized by two significant shifts in secular society which influence Jewish abortion decisions. Medical innovations have changed the way human beings think about embryonic and fetal development. This greater understanding of what happens within women's bodies as they gestate a future child informs all human thinking on what it means to terminate a pregnancy. A three-dimensional ultrasound is a far cry from conjecture about the fetus as "mere water." And, the addition of new tests for genetic compatibility pre-pregnancy and potential fetal defects while in utero even further complicates the process of deciding whether to carry a pregnancy to term. In addition to medical innovations, the pace of change on the issue of abortion in secular society has lasting consequences for Jewish thinkers. The rabbis of the mid-twentieth century through the twenty-first found themselves in countries, previously

[55] Schiff, *Abortion in Judaism*, 132.

restrictive on abortion, legislating far more permissively towards women's reproductive choice. These changes brought abortion closer to the forefront of halakhic consciousness and pushed toward crystallization a previously amorphous and multi-vocal Jewish tradition. They also highlight, once more, the inherent dynamism of the halakhic process; external conditions change, and the rabbinic mindset rises to grapple with those new understandings of reality.

Given this background, I would like to focus on two major trends in the present-day halakhic discourse on abortion. Neither are unique to this time period; including them in this analysis demonstrates their continuing relevance and influence in the development of Jewish thought on reproductive choice. Modern-day halakhic writing on abortion exhibits the way that rabbinic authorities are influenced by their social surroundings and the prevailing patriarchal mode which runs beneath the predominantly male halakhic discourse to this day. Though the societal influence on halakhic development is not new, there are several responsa from the modern period which show their authors' *conscious* response to external pressures in their formulations on abortion. Rabbi Moshe Feinstein (1895-1986), an American rabbi, wrote extensively on reproductive issues and maintained a restrictive position. Feinstein works his way through the traditional sources on abortion, grappling with Maimonides, the *Tosafot*'s ban, and the Maharit, among others. Feinstein states the polemical purpose of his interpretation explicitly:

> I have written all this because of the great outbreak of licentious behavior, in that the governments of many countries have allowed the killing of fetuses, among them the political leaders of the State of Israel, and countless fetuses have already been killed. Hence, at this time, there is a need to make a fence for the Torah, and not to undermine this most serious prohibition against murder.[56]

[56] Feinstein, as quoted in Schiff, *Abortion in Judaism*, 175-6.

Readers could consider Feinstein's read of the sources in a heavily restrictive mode to be a legitimate extension of halakhic development. But it is critical to note that there is clear bias driving his interpretive choices, and that those choices mark a significant departure from both Rashi and Rambam, who do not classify abortion as murder outright.

Some modern scholars, unlike Feinstein, cannot bring themselves to read the sources so restrictively, but still want to condemn abortion except under circumstances of extreme duress. We see, then, a seeming willingness to allow external moral sensibilities to dictate the direction of what is deemed a sanctioned Jewish ethical action. Of Rabbis Moshe Yonah Zweig (d. 1965) and Eliezer Waldenberg (1915-2006), two other esteemed rabbinic personalities of the twentieth century, Schiff writes: "Implicitly, they both seem to be suggesting that if internal arguments for cleaving to abortion strictures are not sufficiently compelling, then the ***halakhah*** must at least conform to some external yardstick of morality."[57] Zweig and Waldenberg are not drawing their entire ethic on abortion ***from*** the sources; they are applying external ethics and concerns about the moral breakdown of society ***to*** those sources as well.

The Orthodox rabbinical establishment is not alone in this type of interpretive move. Orthodox feminist scholar Dr. Ronit Irshai offers a nuanced and ground-breaking analysis in her work ***Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature***. Even Irshai, though, exhibits the same tendency to reject a halakhic conclusion derived solely from the sources should it not meet her own external moral standards. When considering "abortion on demand,"[58] Irshai asserts that this type of

[57] Schiff, ***Abortion in Judaism***, 163.
[58] I find "abortion on demand" to be a troubling, non-neutral, and implicitly anti-abortion term and will typically refer to this type of abortion (not in response to an immediate

abortion should never be acceptable: "That idea would have to be rejected *even if* we were to find within the halakhic tradition interpretive possibilities that supported it."[59] So we see that there is often, especially in modern Jewish thought and even among feminist thinkers, an explicit tendency toward overlaying one's personal moral code onto halakhic rulings in spite of any objective potential for the texts to speak differently. There is precedent from the more restrictive side of the abortion debate which validates similar inclinations within this thesis from a much more liberal perspective. Grappling with Jewish texts sometimes means that one can bring an external value to the sources in search of specific set of conclusions.

Despite any critique one might have of Irshai's position on non-medically indicated abortions, she articulates with great clarity the patriarchal nature of responsa literature on this topic. Irshai advocates for a hermeneutic of suspicion, one which "asks the woman question" of Jewish tradition.[60] I share her desire that Judaism see women as full subjects, and her dismay that when it comes to abortion, a topic uniquely wedded to women's experiences as potential carriers of children,[61] the female voice is notably absent: "Women are seen as objects rather than subjects…there is little if any understanding that femininity extends beyond the reproductive function, and…there is

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medical need or concern) as "non-medically indicated", but this is the language that Irshai uses.

[59] Irshai, *Fertility and Jewish Law*, 20. Emphasis mine.

[60] Irshai, *Fertility and Jewish Law*, 12.

[61] Not all women have uteruses, not all men do not, but the world-view of these sources did not include a nuanced understanding of the spectrum of gender identities and so I refer to child-bearing and abortion as a specifically female experience, acknowledging, of course, that this is not the case for all human beings.

minimal sensitivity to the woman's physical and psychological needs beyond the context of mortal danger."[62]

Patriarchal rhetoric from within Jewish legal sources is systemic, but it is worth considering several specific examples of overt or covert paternalism from male halakhic decisors of the twentieth century. A Romanian responsum from 1940 rules against a woman seeking permission for an abortion because she fears, given her own epilepsy, that she will give birth to a child who will suffer from the same condition. The author writes that concern for the future child's safety does not constitute sufficient rationale for ending the pregnancy. "The secrets of God," he declares, "are unknowable."[63] While this is certainly true, this statement reads as a paternalistic dismissal of a woman's legitimate medical concerns. And the secrets of God become even more unknowable when access to sacred text, discussion, and religious life is denied to a subset of Jews. Zweig is similarly dismissive in his responsum on abortion when he writes judgmentally of a mother who wants to abort a malformed fetus out of what he describes as "self-love and egotism, wrapped…in the cloak of compassion."[64] This language betrays a lack of compassion on the part of its rabbinic author and an inability to muster empathy for a pregnant individual. Rabbi Shaul Yisraeli (1909-1995), an Israeli rabbi who offered a permissive responsum in 1966, nevertheless misses the crucial questions which arise as a result of a hermeneutic of suspicion. Yisraeli, in considering the tosafist prohibition, rejects two possible interpretations for why it might stand: ***chabalah***, as mentioned above, and ***bal***

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[62] Irshai, ***Fertility and Jewish Law***, 177.
[63] Sperber, D., ***Afrekasta d'Anya***, Satmar, 1940, number 169 as cited in Schiff, ***Abortion in Judaism***, 136.
[64] Zweig, as cited in Schiff, ***Abortion in Judaism***, 147.

taschit, a common principle against unnecessary destruction. He concludes that ***bal taschit*** does not apply in this case, for abortion is a destruction of property done for a constructive purpose.[65] This is all well and good, and leads to a permissive end, but says nothing about the troubling underlying assumption that the fetus is ***the property of its father, alone***.

Even Rabbi Daniel Schiff, a progressive rabbi whose work deftly summarizes and analyzes Jewish texts on abortion, exhibits patriarchal tendencies. ***Abortion in Judaism*** is a work of nearly three hundred pages; eleven of those discuss women's voices on the subject. This disparity, of course, is a natural consequence of women's near invisibility in Jewish sources and as halakhic decisors until the most recent century (decades, in Orthodoxy). Schiff's language in the section, though, belies a lack of empathy similar to that of the rabbis cited above. In addressing Dr. Sandra Lubarsky's incisive work on this subject, Schiff becomes particularly patronizing:

> While restricting women's choices in this particularly pivotal area may be seen as undesirable by many, to contend that this will lead to a diminution of women's humanity may be exaggerated…while a woman is pregnant, her 'interiority' does not enjoy the same independence as at other times…According to this line of reasoning, some amount of 'individuality' is ceded in these circumstances, not because the individual concerned is a woman, but because the individual concerned is pregnant.[66]

Schiff, whose "individuality" and "interiority" have never been overtaken by his status as pregnant has no grounds for making general claims about the diminishment of women's humanity. While it is true that a woman who is pregnant experiences something extraordinary in that her life merges and abuts that of another potential life, her body

[65] Schiff, ***Abortion in Judaism***, 155.
[66] Schiff, ***Abortion in Judaism***, 259.

never ceases to be hers. His distinction at the end of the paragraph between restriction of choice as *women* versus as *pregnant people* reads as trivial and dehumanizing; in the context of his work and certainly within the mindset of Jewish tradition, *all* pregnant people are women.

A footnote elsewhere in the book emphasizes Schiff's tendency to disdain or, at best, downplay the real concerns of pregnant women:

> While, to be sure, any unwanted pregnancy has potentially serious consequences such as emotional trauma or depression, these are conditions that, if the mother is willing, are normally susceptible to treatment. Hence, while they certainly constitute a threat to the health of the mother, they need not be 'profound' in the sense of leading to irreversibly physical or mental damage.[67]

According to Schiff, emotional trauma is an acceptable outcome for an unwanted pregnancy because, if the woman tries hard enough, she can work through it. To assert that being coerced into motherhood has no "profound" effect on women's lives is equally troubling and completely erases the reality of unwanted pregnancy. Schiff's words join a body of proof centuries long which demonstrates the great disservice done to women when their voices remain absent from religious discourse.

The evaluation of sources presented in this chapter shows that Jewish tradition has always been multi-vocal when considering abortion. It also affirms the fact that there is a great deal of textual and interpretive material in the tradition which upholds a partial pro-choice agenda. Certainly, according to even the strictest of rulings, an abortion may be performed if the life of the mother is at stake. Beyond that, there is a range of acceptable scenarios in which a woman could seek a halakhically-permissible abortion. In many ways, Jewish halakhic tradition lends itself to being pro-choice, and this is reflected in the

[67] Schiff, *Abortion in Judaism*, 194, fn 183.

strong support within the Jewish community for the legalization of abortion.[68] Despite this relatively positive summary, the halakhic process remains born of and carried out in a patriarchal power structure, and there is still a stigmatization of abortions for non-medical reasons. The next chapter, then, turns to the Reform movement and to Jewish feminist thinkers to see if they have expressed a more robust language for being Jewish and pro-choice.

[68] 89% of Jews support the statement that abortion should be legal in all or most cases, the highest number among all American religious groups and even those who are "Unaffiliated" (75%). See *A Time to Embrace: Why the Sexual and Reproductive Justice Movement Needs Religion*, 17.

Chapter 2
Drawing Inspiration from the Margins: Moral Perspectives on Abortion from Reform Judaism and Jewish Feminism

Our discussion thus far has offered an overview of the "traditional" Jewish sources on abortion, from biblical text through present-day halakhic literature. The analysis has tracked the main questions of fetal and maternal status that have been asked by prior authorities. It has also sought to bring the reader's attention to the subjective nature of halakhic development, both due to the male identity of those in power within a patriarchal religious system, and to the influence of outside culture on the substance of Jewish thought. I must acknowledge, here, that I come to this project with a certain amount of ambivalence. I want to hold the "traditional" approach summarized in the previous pages as a deep and legitimate form of interpreting Jewish sources and to allow my critique of its methods to move me forward into different interpretations. But I also must recognize that in some ways these "deep and legitimate" Jewish expressions enact what feels, to me, like a textual violence against my humanity as a woman. The Jewish way forward, I believe, is to allow these two truths to exist in tension with one another, and to continue searching within and beyond that which has been deemed "traditional" for texts which spark intellectual growth, healing, and greater covenantal understanding.

There are several additional categories of response that I introduce here to provide a broader view of extant theological and religious positions on abortion. These include: materials produced by the Reform movement and its leading ethicists and Jewish feminist thinkers writing on abortion. They are included in this thesis as examples from the emerging landscape of religious opinions on abortion beyond the "traditional" field of halakhic development. These voices are crucial because they affirm the possibility of

discussing this topic with an overlay of Reform or feminist critique. In addition, they might serve as inspiration for the ultimate constructive purpose of this thesis; the ideas of those on the margins of traditional Jewish conversations—Reform Jews, feminists of our own and other faiths—offer the chance to see the body of "tradition" with new eyes.

Reform Judaism on Abortion

I begin with the voice of my own movement to see what it might offer me on this topic from the body of work its leaders and adherents have produced. The Reform voice varies significantly in format and tone, covering responsa, thought pieces, rabbinic resolutions, and political activism. There seems to be a significant split among these sources. Reform responsa and academic articles published by halakhic scholars tend to use language and structure similar to extant halakhic work on abortion; their positions certainly fall within the permissive end of the spectrum of the broader range of possibilities across Judaism, but are relatively conservative relative to the Reform movement itself. The Central Conference of American Rabbis (CCAR) resolutions and statements from the Religious Action Center (RAC), the social justice body of the movement, are in contrast quite liberal, but lack the depth of source material provided in Reform responsa on abortion. This latter set of statements uses ethical language, but it tends to be political and secular in nature. In the analysis of the Reform material to follow, I argue that neither of these strains are sufficient in providing a deeply Jewish, progressive, feminist Reform position on abortion.

All of the Reform responsa on abortion draw extensively on the sources outlined above. Across the board, they sanction abortion when it has been deemed medically

necessary for the physical health of the mother; this is certainly consistent with other halakhic literature. Also consistent is the Reform responsa's focus on two specific philosophical considerations: the status of the fetus and the relationship between the fetus and the mother. The discussion of the varying contexts that would lead to abortion is, of course, limited to the individual circumstances of the women presented in the questions that come to the committee. For the most part, though, we might describe the positions outlined in Reform responsa as liberal yet cautious. Rabbi Solomon Freehof (1892-1990), in a collection of responsa published in 1963, sanctioned a late first trimester abortion for a woman with German Measles and an ambiguous prognosis for the baby's viability. [69] He wrote that "since there is a strong preponderance of medical opinion that the child will be born imperfect…then for the ***mother's*** sake (i.e., her mental anguish now and in the future) she may sacrifice this part of herself."[70] Freehof picks up on the rabbinic principle of considering the fetus as a part of the mother's body. He also aligns himself with other halakhic decision-makers who felt that "threat to the mother" could be applied as both physical ***and*** psychological. He tempers the Maimonidean concern for physical mortal danger with a Rashi-inspired permissiveness that construes danger more broadly given the fetus's diminished status.

This early responsum predicts a larger trend in the development of Reform responsa on abortion. The responsa will sanction abortion if, and only if, the author feels there is a significant enough reason for a woman to end her pregnancy. It should be noted that all authors of Reform responsa, as well as the current chair of the responsa

[69] The date is significant because it is ten years prior to the Supreme Court's Roe v. Wade decision and the abortion in question may not have been legal in all states.
[70] Solomon Freehof, ***Recent Reform Responsa*** (New York: CCAR Press, 1963), 188-193.

committee, are men making recommendations for women's reproductive decisions. In a 1977 collection, Freehof writes that "one may not destroy anything without a reason. But if there is a worthwhile purpose, it may be done."[71] That means that a group of men get to decide what is "worthwhile," a sweeping category in its own right. In January 1985, under Rabbi Walter Jacob's auspices, the CCAR responded to the more general question: "When is Abortion Permitted?" The answer: a strong yes for great danger to the physical or psychological health of the mother and cases of rape or incest, and cautious permission for other reasons. This cautious permission was granted with least hesitation in the period between 1-40 days from conception, and most hesitation in the period from 40 days to 27 weeks.[72] Jacob wrote that "we must…be more certain of our grounds for abortion but would still permit it," yet he also concluded with the statement that "we do not encourage abortion, nor favor it for trivial reasons, or sanction it 'on demand.'"[73] The definition of "trivial reasons" was clearly subject to the opinions of the responsa writer(s). In a 1994 responsum, one of a collection written by Rabbis W. Gunther Plaut (1912-2012) and Mark Washofsky, the ***teshuvah*** concluded that an abortion should not be condoned if it has been decided out of consideration for the suffering of other family members who are not the mother.[74]

Thus, the body of Reform responsa, though it could be considered lenient in relative terms, does not seem to hold a particularly liberal, pro-choice stance. Though this

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[71] Solomon Freehof, ***Reform Responsa for Our Time*** (New York: CCAR Press, 1977), 258.
[72] Considered to be the line of demarcation for viability outside the womb.
[73] Walter Jacob, ***Current American Reform Responsa*** (New York: CCAR Press, 1987).
[74] Gunther W. Plaut and Mark Washfosky, ***Teshuvot for the 1990s*** (New York: CCAR Press, 1997), 5755.13.

responsa literature is produced by a non-halakhic movement, it continues to speak from the language and philosophical boundaries of a halakhic framework. What does it mean for the Reform movement to engage with halakhah in this manner? A published debate between Rabbi Mark Washofsky (who would go on to become the chair of the CCAR responsa committee) and then-rabbinical student and now rabbi Richard A. Block across two issues of the *Journal of Reform Judaism* in 1981 offer insight into this question. While the discourse focused on the issue of abortion, each man presented a broader ideological position on how Reform Jews relate to halakhic sources when making ethical decisions. Block's article, titled "The Right to do Wrong: Reform Judaism and Abortion," appeared first in the Spring 1981 issue of the *Journal*. He took a strongly-worded and fairly conservative stance on abortion, responding to his perception that the entire movement selectively used Jewish text to support its pro-choice political stance. Though I disagree with Block's conclusions and the somewhat dismissive manner of his presentation, he offers an interesting question that strikes at the heart of what it means to operate as a Reform Jew:

> If we concede that Jews who are not 'halachic' in the traditional sense may lay rightful claim to a share in Jewish tradition and may therefore speak in its name, must we also grant the right to appropriate whatever Jewish laws and traditions that support one's views and to disregard those which oppose them? It certainly is the distinct tendency of Reform Jews to do so. If we justify them by admitting that the highly selective use, even the taking out of context of sources, was a widespread and accepted practice among Talmudic authorities, may we do likewise, absent a guiding principle, consistently applied?[75]

What Block fails to acknowledge here is that his view of Reform engagement with "Jewish laws and traditions" as appropriation rather than interpretation is an equally

[75] Richard A. Block, "The Right To Do Wrong: Reform Judaism and Abortion," *Journal of Reform Judaism* 28:2 (1981): 9.

selective definition of what constitutes Jewish tradition. It denies the possibility that critical reading, and even rejection, of halakhic and "traditional" sources are a true continuation of Judaism's development.

Washofsky responds to Block with his own article in the *Journal of Reform Judaism*'s Fall 1981 edition. In "Abortion, Halacha, and Reform Judaism," Washofsky pushes back both against Block's restrictiveness around reproductive choices ***and*** his understanding of the appropriate nexus between Reform Judaism and classical Jewish sources. "If we do not feel absolutely bound to the legal literature," Washofsky writes, "we can still see it as a major expression of the tradition we claim to represent and interpret."[76] He aligns himself much more closely to the body of halakhic literature and uses an extensive survey of the traditional sources to counter Block's claims that Reform Jews are pulling their pro-choice position selectively. In Washofsky's eyes, the halakhic sources are an available and necessary legitimation of the movement's liberal position on abortion. Block's response, published alongside Washofsky's, affirms once more his negative perception of what he calls "abortion on demand." In this short re-articulation of his principles, though, Block betrays the sustained patriarchal nature of conducting a debate on abortion between men relying solely on a body of male sacred text. He writes that there is no halakhic proof that "unwanted pregnancy is, by definition, harmful to the woman's mental health and welfare."[77] We see here the precedent for Schiff's similar remark, written decades later, that unwanted pregnancy "need not be 'profound' in the sense of leading to irreversibly physical or mental damage"[78] as well as a fundamental

[76] Washofsky, "Abortion, Halacha, and Reform Judaism," 12.
[77] Richard A. Block, "Response," *Journal of Reform Judaism* 28:4 (1981): 21.
[78] Schiff, *Abortion in Judaism*, 194 fn 183.

inability to acknowledge the nature of halakhah. There is no halakhic reckoning with the impact of unwanted pregnancy on women's lives and psychological well-being largely because there are no women writing halakhah.

It is worth pausing for a moment, here, to address the question of essentialism. The critique of the patriarchal rabbinic establishment and later male Reform scholars on the very grounds of their ***being male*** could be read as an overly simplistic characterization of both male and female attitudes toward abortion. Of course, not all women are pro-choice, not all men lack empathy for reproductive needs, and not all people define themselves within such a gender-binary at all. Indeed, there are many men who are abortion providers, the supportive partners of those who choose abortion, or activists for reproductive justice. But this thesis seeks to lift up female-bodied voices for two essential reasons. One, as expressed in the feminist critique present throughout this work, is the need for balance. When the discourse has been dominated by male authority figures for so long, there must be a prioritization of the voices which have been relegated to the margins. And second, unlike other issues, given the specific ***biologically***-based nature of what it means to be pregnant, people with uteruses have a higher stake in the realm of reproduction. Again, not all people with uteruses are women, and not all women have uteruses, reproductive capacity, or sexual lives which would lead to pregnancy. This thesis's use of the generalities sometimes necessary for the sake of concise argument are not employed with the intent of erasing those identities. Dr. Lisa Guenther, a philosopher whose thought will be explored in depth in the final chapter, articulates these biological issues with great clarity: "While anyone, male or female, may become 'like' a maternal body, only a woman can become pregnant, and only a woman can be faced with her own

unwanted pregnancy. In this sense, physiological differences between the sexes raise the possibility of an ethical situation that only women—and not all women—will encounter."[79] For these two reasons, this thesis questions the dominant male voice in the Jewish conversation on abortion, present both in the discourse between Block and Washofsky and beyond.

Over the course of their debate, Block and Washofsky offer two formulas for how Reform Jews might engage with halakhah on difficult issues, neither of which is ultimately satisfying. Block feels that Reform Jews must honor tradition as it exists without reading their own needs or identities into the text, for fear of corrupting it. Washofsky gives Reform Jews greater permission to engage with halakhic sources but, in so doing, seems to say that they are necessary for real Jewish legitimacy. He turns back to halakhah with a more progressive lens. I submit that there is a third way for Reform Jews to relate to "Jewish tradition"—as a sacred canon which has yet to be closed which, with true awareness of its treasures and failings, can serve as a catalyst for the development of meaningful and relevant ethical guideposts. The parameters for this synthesized understanding of Judaism will be the focus of the latter portion of this thesis.

I turn now to the formal positions of the bodies of the Reform movement to see if they better articulate a Jewish ethic that affirms women's reproductive freedom. An initial review of this literature, which includes the resolutions of the CCAR and the Women of Reform Judaism (WRJ), shows that the public face of Reform Judaism is more staunchly pro-choice than the responsa literature might lead a person to believe. On

[79] Lisa Guenther, *The Gift of the Other: Levinas and the Politics of Reproduction* (New York: SUNY Press, 2006), 141.

its website, the Union for Reform Judaism (URJ) writes: "The Reform perspective on abortion can be described as follows: Abortion is an extremely difficult choice faced by a woman. In all circumstances, it should be her decision whether or not to terminate a pregnancy…this decision should not be taken lightly."[80] While the cautious permission of the responsa literature remains, this statement does more strongly affirm a woman as primary moral decision-maker.

The CCAR and WRJ resolutions introduce some broader secular and religious moral themes in their support of a pro-choice political agenda. The RAC offers the most explicitly Jewish moral language on the subject: "It is due to the fundamental Jewish belief in the sanctity of life that abortion is viewed as both a moral and correct decision under some circumstances." There is no explanation of how the belief in the sanctity of life leads to this cautious affirmation of women's right to choose, but at least there is a nod to Jewish principles. The CCAR's 1975 resolution on abortion opens by naming the members of the Conference as "inheritors and participants in a religious tradition that encompasses all human experience in its scope."[81] This resolution emphasizes a woman's ability to use religious and moral criteria to make her own decisions, and cites the importance of religious freedom in not having other views imposed upon American Jews, but, again, it never really offers language for ***what*** those religious and moral criteria are.

When the resolutions ***do*** bring in more specific Jewish texts or values, they are not directly about abortion, but about issues connected to abortion. The 2005 resolution

[80] Rabbi Jonathan Biatch, "Abortion," http://www.reformjudaism.org/ask-rabbi-topic/abortion
[81] CCAR Resolution: Abortion, 1975, https://www.ccarnet.org/rabbis-speak/resolutions/1975/abortion-1975/

condemning the Federal Refusal Clause writes that "by allowing health care entities to refuse to provide referrals for abortion services, this clause places a stumbling block before the blind (Leviticus 19:14)."[82] It also cites the Shulchan Arukh in condemning doctors' refusal to provide medical care. The CCAR's statement condemning a slanderous video campaign against Planned Parenthood, published July 27, 2015, uses Jewish moral language as well: "Our Jewish tradition insists that truth is 'first and last,' guiding our lives. Therefore, we are offended that federal legislative decisions may be based on falsehood."[83] These more recent statements are making an attempt to bring in new Jewish language to the conversation around abortion, but they focus on issues *surrounding* the abortion debate, and not the question of abortion itself.

The Reform Movement is a strong religious presence in the fight for reproductive justice in this country. Despite this support, the movement and its leaders have yet to articulate a robust progressive opinion on abortion which honors but does not mimic the halakhic process. Jewish women have abortions. Jewish women have abortions for all of the same reasons that other women have abortions: they will not or cannot bear and birth a child under the circumstances of a particular pregnancy. Those circumstances could be that the pregnancy somehow threatens a woman's health, that genetic testing has revealed something threatening to the fetus's future viability, or because for social, economic, personal, or professional reasons a woman decides not to have a baby. The Reform Movement ***can*** provide language which supports these women in their Judaism and their

[82] CCAR Resolution: Federal Refusal Clause, 2005, https://www.ccarnet.org/rabbis-speak/resolutions/2005/federal-refusal-clause/
[83] "CCAR Condemns Deceptive Campaign against Planned Parenthood," July 27, 2015, https://ccarnet.org/about-us/news-and-events/ccar-condemns-deceptive-campaign-against-planned-parenthood/

reproductive choices, which allows them to exist as integrated selves. In so doing it will live up to its core values: articulating a rich religious ethic for pro-choice activism is an essential form of pursuing justice in our world. Clarifying our theological location on this issue will allow for Reform practitioners to be more effective pastoral caregivers to women contemplating or choosing abortion. Our congregants, colleagues, and friends deserve thoughtful, accessible, and positive religious language for their experiences with abortion and reproductive choice.

Jewish Feminist Thought on Abortion

Though the Reform movement has been training female rabbis for over forty years, very few of the materials produced by the movement on abortion have actually included the voices of women. The chairs of the CCAR Responsa committee, the heads of the RAC and the URJ, the presidents of HUC-JIR, and the majority of the presidents of the CCAR have all been men. Thus, though the development of the Reform movement's formal stance on abortion is an essential piece of Jewish thought on reproductive decision-making, it does not solve the problem of missing female voices, nor does it operate from a particularly feminist consciousness. Thus, I now turn to a presentation and analysis of works by female scholars which tackle the issue of abortion with the application of a Jewish and feminist heuristic. Some of the scholars presented here define themselves as feminists and Orthodox Jews, while others do not align themselves with a halakhically-observant community. This analysis will consider the ways feminism and a commitment (or lack thereof) to Jewish law intersect and how this affects these thinker's positions on abortion.

Introduced in the previous chapter, Dr. Ronit Irshai is an Israeli Orthodox feminist professor at Bar Ilan University. Her work, *Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature*, contains several chapters on women and abortion in Jewish law. She offers a cogent critique of the inherently patriarchal nature of halakhah. Irshai considers the halakhic materials on abortion from within the larger rabbinic discourse on methods by which women might curtail their own fertility. Her first two chapters, then, focus not on abortion but on the broader question of women's responsibility in childbearing. She rightly notes that the command "*p'ru ur'vu*," "be fruitful and multiply," heard throughout the book of Genesis, is understood by the rabbis to solely apply to men. Irshai understands this exemption to offer "the practical effect of *allowing for flexibility* in carrying out the commandment."[84] And though our argument for giving women agency in reproductive decision-making could benefit from such a flexibility, one has to wonder if the obligation differential, conceived as a clear differentiation of status between men and women, can be employed in a liberative fashion. Irshai's work does highlight, though, that there is a certain balance in the sources between the tradition's inclination toward procreation and its awareness that marriage and sexuality can have their own independent worth.[85] I would argue that this balance, arising from a patriarchal point of view, still privileges certain forms of sexual expression and romantic relationship, and, in Irshai's own words, highlights that "halakhah's underlying concern is to maintain a woman's ability to continue functioning in her procreative role."[86]

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[84] Irshai, *Fertility in Jewish Law*, 34.
[85] Irshai, *Fertility in Jewish Law*, 51.
[86] Irshai, *Fertility in Jewish Law*, 78.

In Irshai's two chapters on abortion in Jewish law, she summarizes many of the sources presented in the first chapter of this work. She, too, points to the subjective nature of the halakhic process and the danger of allowing male decisors to bring foregone conclusions to their interpretations ***before*** reading the sources. In this analysis, Irshai tracks the major question we have seen operating in halakhic discussion of abortion: what is the status of the fetus? But Irshai then reframes this question in an incisive way. Instead of asking solely, "Is the fetus considered a life, and therefore sacred?" she broadens the issue to question: "What does it mean to uphold the sanctity of life?" It is here that I find her feminist critique of the sources most compelling and most relevant to this current project. Irshai considers the passage in BT Arakhin 7a-b on ending a pregnancy to spare a woman's body shame after she has died. She brings in Ronald Dworkin's work on the sanctity of human life and applies it to the scenario with a feminist lens by focusing on the need for preserving women's dignity ***while living***. This moment in the Talmud, she writes, shows a side of Judaism which "holds the sanctity of life to flow not only from the fact of its existence but also from its nature and quality, matters that depend, of course, on human actions, preferences, and choices."[87] Thus, according to Irshai, "formulating the moral dilemma as 'life versus life' falls short of conveying the full scope of the problem."[88] The meaning of women's lives, the value they hold relative to the future children they carry, encompasses far more than the reproductive ability so prized by certain interpreters of the Jewish tradition. To preserve

[87] Irshai, ***Fertility in Jewish Law***, 197.
[88] Irshai, ***Fertility in Jewish Law***, 197.

life when considering abortion, according to Irshai, does not mean solely considering the status of the fetus.

Irshai, of course, writes from within her own religious context; she presents excellent critique of the dominant understandings on abortion and fertility in Jewish law, and she compels us to ask halakhic questions in new ways, but ultimately, she is dedicated to operating within the halakhic system. "The attempt to enter into a feminist-halakhic conversation," she writes, "can be fruitful only if halakhic logic is followed to some degree and we are able to show that the halakhah's *own method* allows for interpretations different from the ones that traditionally have been offered."[89] This is certainly true for the conversation Irshai seeks to have, but I hope, eventually, to move beyond the need to justify my conclusions on Judaism and abortion using halakhic discourse. Rachel Biale, the author of *Women and Jewish Law*, an early precedent for feminist criticism of halakhah, does not identify, as Irshai does, as a halakhic Jew. But as a compiler of halakhic materials, she is particularly invested in the Jewish legal method as a rich language of meaning, both for historical connection and future growth. "This language is crucial," she asserts, "not only in order to understand the history of the Halakhah and what Jewish life has been, but also to formulate Jewish life and aspirations today."[90] With these two scholars we see the rich potential for feminist critique from within a halakhic framework. Both Biale and Irshai, though, maintain the assertion that

[89] Irshai, *Fertility in Jewish Law*, 116.
[90] Biale, *Women and Jewish Law*, 9.

halakhic sanction for "non-therapeutic" abortions is untenable.[91] It is the work of Blu Greenberg, herself an Orthodox feminist, that pushes beyond this claim.

Blu Greenberg's groundbreaking work *On Women and Judaism: A View from Tradition*, is a collection of multiple essays on the balance she seeks in her life between Orthodox Jewish and feminist concerns. One essay, originally published in 1976, a mere three years after the passage of Roe v. Wade in the Supreme Court of the United States, is the strongest articulation of a pro-choice stance in Jewish moral language I have yet encountered. All this, despite the fact that Greenberg opens the essay by expressing her deep ambivalence about abortion: "Emotionally, theologically, as a Jew, and most of all as a mother who is daily nurtured by the sights and sounds of her children, I am opposed to abortion." Greenberg's recognition of the moral complexities of reproductive decision-making is all the more impressive given her personal stance. Throughout the essay, she names the many scenarios in which women and their partners choose to end a pregnancy for non-medical reasons. When "conditions do exist," Greenberg writes, "such as the need to support self and/or husband through school, the need for time for a marriage to stabilize, overwhelming responsibilities to other children and so forth then abortion should be seen as a necessity rather than an evil. Many mitzvot (commandments) are interdependent functions of timing and of the conditions which they regulate."[92] This statement is trailblazing beyond its respectful expression of the many factors which

[91] See: Biale, *Women and Jewish Law*, 238: "abortion is always an extraordinary measure in extreme circumstances." And Irshai, *Fertility in Jewish Law*, "That idea [of abortion on demand] would have to be rejected even if we were to find within the halakhic tradition interpretive possibilities that supported it."
[92] Blu Greenberg, "Abortion: A Challenge to Halakhah," *Judaism: A Quarterly Journal of Jewish Life and Thought* (Spring 1976): 204.

influence women's reproductive choices. The conclusion of Greenberg's position radically destabilizes the halakhic categories typically applied to women. First, as Irshai noted, women are not obligated, according to the rabbis, in the biblical command to procreate. Second, women are considered exempt from all commandments which are positive and ***time-bound***. Thus, Greenberg's framing for the validity of non-therapeutic abortions is subversive and pioneering on several levels.

Though Greenberg seeks new language for discussing abortion from ***within*** a halakhic context, her investigation leads to conclusions which are valuable for the same project conducted outside that framework. She notes that for Judaism to better address the topic of reproductive decision-making, it must move beyond specific cases or legal maneuvers to broader ideological creativity: "The sanctions for abortion—or against it—should be set within some sort of total theological framework…One should ask, and answer, personal questions with wider reference to a religious code which has God and community as its value-source."[93] It is exactly this undertaking which this thesis hopes to develop. What "total theological framework" can we begin to offer which speaks from a feminist, post-halakhic position? Greenberg's honest reckoning with the many legitimate reasons which drive women to end pregnancies for non-medical reasons is an excellent starting place. This thesis seeks to carry that same spirit forward while removing itself from her initial expressed distaste for abortion and her commitment to working from inside the halakhic worldview. Before presenting the grounds for such a new moral-theological framework, however, it helps to consider the thought of feminist scholars who addressed Judaism and abortion from outside the halakhic community.

[93] Greenberg, "Abortion," 205.

Dr. Dena Davis, whose primary field is bioethics, questions the legitimacy of a case-based law for women's reproductive needs which has been defined solely by men. In her article "Abortion in Jewish Thought: A Study in Casuistry," Davis notes, as this thesis has done, the central "paradigm cases" from Jewish texts for abortion: Exodus 21:22-23, Mishnah Ohalot 7:6, and BT Arakhin 7a-b. She marks, as I have done, the bias of halakhic interpretation of these texts: "To argue casuistically is to argue analogically...analogic argument is essentially subjective."[94] The subjectivity of a case-based process is not damning in and of itself, but the fact that only one half of human experience is represented in that subjectivity is deeply problematic. Davis's commentary on this issue is particularly striking given our interest in expanding the conversation on abortion in Judaism to include non-medically indicated procedures. Little is present in the "paradigm cases" which mirrors today's myriad reasons that women might seek out abortion as part of their reproductive lives. Later male halakhic decisors, then, extrapolate from initial texts and commentary, thereby making demeaning statements about women's sexual and reproductive needs. Davis summarizes this issue well when she points out, as this thesis did above, the patronizing language which enters halakhic discourse on these types of abortion. Discussing Rabbi David Feldman's (1929-2014) writing on the topic, she writes: "The problem is that words like 'capricious' and 'inconvenience' are value-laden and pejorative…when it is men telling women that their motivations are 'capricious' or matters of mere 'inconvenience,' such terminology is offensive and obnoxious."[95] Ultimately, Davis concludes that the halakhic system is defective because

[94] Dena S. Davis, "Abortion in Jewish Thought: A Study in Casuistry," ***Journal of the American Academy of Religion*** 60:2 (Summer, 1992): 319.
[95] Davis, "Abortion in Jewish Thought," 322.

it fails to truly represent the experiences of women. She opens the door for us to ask the question of what the solution to women's exclusion from case-based law might be. Perhaps, rather than introducing female voices to casuistic law, we might seek a new way forward of expressing Jewish values on abortion.

In her article "Judaism and the Justification of Abortion for Non-Medical Reasons," Dr. Sandra Lubarsky presents both a critique of halakhic development on this subject and articulates a potential piece of that new way forward. Lubarsky's response centers on a fascinating question: why does the rabbinic discussion of abortion seek "moral justification for an act that is not legally culpable?"[96] That is to say, if we are to understand all of the halakhic materials agreeing that abortion is, under no circumstances, to be understood as prohibited for Jews on the level of murder, why do authorities still seek to minimize the number of circumstances under which it may take place? Lubarsky feels that many rabbinic figures restrict abortion to cases of medical need because they are operating with six philosophical assumptions. These underlying assumptions, argues Lubarsky, are ***perceived*** as necessary to any Jewish discussion of abortion when they may not actually be inherent Jewish values. Here, it is worth naming all six principles and highlighting some of the interesting moves Lubarsky makes in her analysis. The six assumptions she tracks are as follows: human life is valuable above all other life forms; higher ***quantity*** of human life leads to greater value, especially for Jews in a post-Holocaust reality; God perceives the worth of all human beings as equivalent; God is unchanging, meaning that "the value system of the historical structure stands firm"[97];

[96] Lubarsky, "Judaism and the Justification," 1.
[97] Lubarsky, "Judaism and the Justification," 6.

physical life is more valuable than inner life; and, existing life is more important than potential life. Lubarsky groups the first three of these principles as the key assumptions which underlie the rabbinic distaste for abortion on economic, sociological, or ecological grounds. She notes that as much as we point to the Jewish principle that no human being's blood is redder than another, the rabbinic world was predicated on hierarchy. When it comes to the application of life's sanctity to both mother and fetus, "we can," she argues, "affirm intrinsic value…without also having to affirm an equality of value."[98] This honors the fact that a fetus represents potential life while still prioritizing a holistic view of the woman's current and future needs.

In addressing the final three assumptions, Lubarsky introduces some profound theological and philosophical observations. She asks how our re-examination of these assumptions which underwrite halakhic language on abortion might better help us understand the human relationship with God. This is, after all, the professed purpose of halakhic discourse: to build a system mandating behavior which, to the best of the rabbis' understanding, reflects how God wants us to act in the world. Lubarsky centers on the core principle of relationship which is so present in feminist theology. She applies that focus to the relationship between God and humanity. If God is in relationship with the world and humanity—covenant being a core pillar of the Jewish story—then God cannot remain unchanged by that relationship.[99] Though some might critique from a theological perspective the idea that the Eternal can be Changed, Lubarsky's position can certainly be received as a call to reassess what the Jewish people have "known" of God through the

[98] Lubarsky, "Judaism and the Justification," 9.
[99] Lubarsky, "Judaism and the Justification," 9-10.

centuries given the mutuality of our relationship. Who is to say that God's demands of us cannot reflect our development as human beings in the world? God's expectations, Lubarsky continues, are based on God's acknowledgement of our whole selves. "It is because we are not merely material beings," she attests, "that God can influence us in non-coercive ways."[100] Part of the human relationship to the divine, then, necessitates a recognition of human interior lives. When the rabbis concern themselves solely with immediate ***physical*** danger to women in childbearing, this betrays not only a lack of egalitarianism on their part but an inability to acknowledge that women's interiority connects them to God's moral presence. "In this kind of Judaism," Lubarsky writes, "women bear children, not witness."[101]

It is Lubarsky's treatment of the sixth assumption she outlines that I find particularly compelling. She asserts that the current halakhic mindset on abortion is undergirded by the principle that present life is superior to future life. In many cases, this works in the advantage of more lenient positions, as the needs of the living woman outweigh the needs of her potential future baby. But Lubarsky hopes to upend this binary approach to life's value. She argues that being solely present-focused is not a healthy way to consider the complexity of life's trajectories. It also denies the fact that not only will there be a future child should the pregnancy continue, but that the ***woman's*** future will be indelibly changed. Though she does not make the connection outright, I see Lubarsky's line of argument here as deeply theological. She asks that we consider present and future considerations as part of a holistic understanding; in life, we sacrifice pieces of the

[100] Lubarsky, "Judaism and the Justification," 10.
[101] Lubarsky, "Judaism and the Justification," 11.

present for unknown futures and vice versa. For me, this resonates strongly with one of the primary Jewish stories about God. When God reveals Herself to Moses in the burning bush, She names Herself as "אהיה אשר אהיה."[102] This name is notoriously difficult to translate, often rendered as either: "I am that I am" or "I will be what I will be." The truth is, perhaps, that God's name encompasses both of these translations. Just as God is not limited to solely a present or a future self, so too might we, in God's image, consider ourselves creatures with lives that encompass many times, decisions, and potentials.

Lubarsky's article is a powerful argument for broadening our understanding of Judaism and abortion beyond the narrow strictures of halakhic discourse. It will mean that, as Lubarsky so beautifully concludes, "Judaism can uphold such positions without denying either the tragedy of abortion—'What might have been and was not'—or the life-affirming aspects of abortion—'What can be.'"[103] It perceives women as moral agents, God as knowing that our human-ness exists across the span of a lifetime, and recognizes the complexity of abortion's many meanings. Judaism can, and should, produce an ethic for reproductive choice in line with these understandings. This thesis seeks to begin the dialogue on how we might step away from "traditional" assumptions to embrace a new Jewish ethics on abortion which honors women's varied experiences with pregnancy and childbearing. To accomplish this move away from the halakhic process while remaining grounded in "Jewishness" is no small feat. The next chapter, then, will consider the more general theoretical positions of feminist and Reform Jewish thinkers. It will show that this expression of a new ethic of reproductive choice is not a departure

[102] Exodus 3:14.
[103] Lubarsky, "Judaism and the Justification," 12.

from Judaism; it is, rather, an authentic outgrowth of the centuries-long desire to understand our place as a people in relationship with the world and its Creator. In moving away from traditional halakhic categories and methodologies, I see myself as moving not farther from, but closer to, a Judaism which represents divine Justice, Compassion, and redemptive power.

Chapter 3
Religious Ethics Beyond Law:
Theoretical and Theological Grounding for A New Discourse on Abortion

This chapter seeks to provide an ideological background for this thesis's ultimate goal: the creation of a new Jewish framework for reproductive choice. I am in no way an expert in the vast literature on religious ethics in Judaism, nor could I formulate a full theological template for the creative impulse which guides me in subsequent chapters. But as I believe in the power of each individual person to shape and be shaped by living as a Jew, I am not exempt from an attempt at articulating the ideologies which push me forward. I offer, below, the work of several thinkers, both self-defined Reform ethicists and feminist theologians. Their depth of thought provides historical precedent and intellectual scaffolding for my work. I should note, though, that I feel some ambivalence about the need to validate the move away from reliance on halakhah as authoritative. I offer this chapter not because I feel my beliefs about Judaism require any more authentication than the beliefs of Orthodox Jews, but because I hope to be seen as the inheritor of my own tradition; I am operating with gratitude to the legacy of my own form of Jewish intellectual inquiry. Rabbi Eugene Borowitz, pre-eminent Reform theologian, wrote of halakhic decisors that they have "no greater access to God's present will than the rest of us possess."[104]This chapter explores how others have understood Judaism's path to that "present will" beyond the halakhic process in the hopes that we might apply those understandings to the task of this thesis.

[104] Borowitz, "The Jewish Self," in *Contemporary Jewish Ethics and Morality*, 108.

The Ethical Legacy of Reform Judaism

The extant sacred canon of Jewish texts includes both legal and non-legal materials. The rabbis and their successors never believed that Jewish wisdom could be encapsulated and imparted solely through legal rulings and analysis. Two categories of Jewish interpretive response exist side by side within the Talmud and beyond: ***halakhah***, the nomian voice which seeks to present a law of Jewish praxis, and ***aggadah***, the many stories which paint the lives of biblical characters and rabbis alike and offer moral insights. It would be impossible to define such a dichotomy perfectly, but suffice to say that ethical principles operate both within and without the explicitly legal texts of Judaism. Dr. Louis E. Newman, a leading Jewish ethicist, encapsulates the complexity of law and ethics in the Jewish tradition in his essay "Ethics as Law, Law as Religion." Newman writes of the difficulty one would have in categorizing how law and ethics operate in Judaism: "To ask 'what is ***the*** relationship between law and ethics in Judaism' is to assume that there is only one relationship and, so to speak, one Judaism. It is to assume that the tradition is not rich and subtle enough to permit more than one legitimate answer to such a question."[105] According to Newman, the people Israel's covenant with God consists of a legal contract (understood to be static and expressed in the tradition's sacred texts), and a relationship (inherently dynamic).[106] In this way, he aligns with Dr. Sandra Lubarsky's theological assertions as summarized in the previous chapter. The

[105] Louis E. Newman, "Ethics as Law, Law as Religion: Reflections on the Problem of Law and Ethics in Judaism," in *Contemporary Jewish Ethics and Morality: A Reader*, ed. Elliot N. Dorff and Louis E. Newman. (New York: Oxford University Press, 1995), 84.
[106] Newman, "Ethics as Law," 89.

Jewish covenant, a central component of Judaism's master narrative, is not solely defined by law, but is also predicated on relationship.

Reform Judaism has long asked what obligation to that covenant community and its traditions might look like. In its historical development, the movement has also had a significant focus on ethics. Rabbi Michael Marmur defines four distinct "historical sensibilities" in his chapter on "Ethical Theories in the Reform Movement." The first two, which Marmur titles "Ethics as First Theology" and "Tikkun Olam," maintained a commitment to ethical reasoning and to ethics as expressed through liberal social politics, respectively. The Reform Movement believed, from its beginning, that "the sources of Judaism, certainly the Bible, could be trawled for evidence of sublime moral instruction," but that said moral instruction was certainly not inherent to all Jewish texts or practices.[107] These earlier sensibilities were influenced by both the tradition of German rationalists like Emmanuel Kant and Hermann Cohen and the social justice orientation of American Protestantism. Halakhic decision-makers are not alone in having their religious responses influenced by social forces; Reform Judaism, like Orthodoxy in its many current iterations, is a product of Jewish integration in broader societies. These first two historical moments establish the precedent for the Reform movement's deep interest in ethical living, but I would like to focus on Marmur's definition of the latter two.

Marmur sees the first two phases of Reform ethical thought as reflective of the optimism of modernity. Human beings had the capacity, through reason and social action, to engage in truly moral decision-making and to repair the world's brokenness. The

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[107] Michael Marmur, "Ethical Theories in the Reform Movement," in *The Oxford Handbook of Jewish Ethics and Morality*, ed. Elliot N. Dorff and Jonathan K. Crane (New York: Oxford University Press, 2013), 210.

Reform Jewish thought which developed in the wake of the Holocaust could no longer countenance that type of optimism. Thus, Marmur names the third stage of Reform ethical development as a "Critique of Modernity," led by the pioneering Reform thinker, Rabbi Eugene Borowitz. This is followed, Marmur writes, by the current moment in Reform Judaism, which he titles an "Ethics of Authenticity." I see myself as an inheritor of both of these ethical sensibilities; this thesis is an attempt to integrate them fully.

Borowitz's innovation is a reconceptualization of covenant. He focuses on grounding the autonomous self so lauded by modernity in a dialectic with Jewish tradition, community, and God. Such a move, he writes in his seminal work ***Renewing the Covenant,*** "cannot lead us back to law as a required corporately determined regimen. Instead, we must think in terms of a self-discipline that, because of the sociality of the Jewish self, becomes communally focused and shaped."[108] The key to the "Ethics of Authenticity" is the post-modern awareness of identity as a powerful factor in the ways we live and interpret our lives. This awareness is what allows for the feminist critique of Jewish ethics. What I seek, here, is to ***combine*** these two moments. Borowitz's conception of the covenant and the power of its expression through non-legal means deserves to be wedded with feminist thought. This integration allows us to ask: How can we have real covenant ethics if half of the community is missing from said covenant's essential texts? What tradition must we build so that the covenant might find its fullest expression given the many identities we hold as Jews? We might consider the potential answer to these questions as the uncovering of the "feminist Jewish self." Such a self is built, as we will see below, on the commitment to individual dignity as found within

[108] Borowitz, ***Renewing the Covenant***, 288.

communal connection. I believe such covenantal encounter can only occur when our holistic selves are present and integrated, rather than bifurcated.

Borowitz has written prolifically on Jewish ethics and theology; it would be impossible to cover the breadth of his thought in the scope of this thesis. I focus, then, on his notion of the "Jewish self," as articulated in the quotation above. Borowitz saw the "Jewish self" as a locus of authentic Jewish identity, the way to have a deep response to Judaism which operates beyond legal strictures. In his words, this would manifest in an "individuality that is elementally structured by participation in the Jewish people's historical relationship with God."[109] This relationship with God, understood by Borowitz as covenant, would be the deep undercurrent beneath all individual decision-making. Such a connection, Borowitz felt, would ensure that regardless of a person's level of adherence to Jewish law, that "whatever issues from [the self's] depths will have authentic Jewish character."[110] Classically, the "Jewish people's historical relationship with God" has been represented by the many voices of the sacred textual canon and its interpreters. God's will, the basis for ethical behavior, appears in this relationship through a system of law. Borowitz demands that we consider God's will, and the foundation for ethical living, as located in the dialectic between, self, tradition, community, and the divine, not in the law itself. "I think it unlikely," he wrote, "that a non-Orthodox religitimation of Jewish law would have either theoretical success or practical effect."[111]

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[109] Eugene B. Borowitz, "The Jewish Self," in *Contemporary Jewish Ethics and Morality: A Reader*, ed. Elliot N. Dorff and Louis E. Newman (New York: Oxford University Press, 1995), 109.
[110] Borowitz, "The Jewish Self," 106.
[111] Borowitz, "The Jewish Self," 109.

Borowitz felt that deep Jewish engagement, particularly through Jewish learning, was a requirement for this Jewish selfhood, though such engagement did not have to look like traditional orthodoxy. Can such a category, then, be claimed by cultural Jews, unaffiliated Jews, or Jews with a more minimal Jewish education? We will see, in the fourth chapter, that many of those I interviewed for this thesis, though they might fall into one of those groups, felt a deep internal connection to their Jewishness as it had been transmitted through Jewish community and culture, family history, and ethical values. They describe their Jewish identities with language that resonates strongly with Borowitz's formulation of the Jewish self. I believe this calls for a broader understanding of what constitutes "authentic" engagement in Judaism. Though my interview participants had a variety of levels of Jewish education and practice, they all expressed an "individuality elementally structured" by their Jewishness and their connection to the Jewish people.

Dr. S. Daniel Breslauer, in his assessment of the effects of modernization on American Jewish ethics, seems to agree with Borowitz. Bresulauer notes that the rejection of authority and reliance on autonomy which characterizes the modern world will force religious ethical thinking to adapt: "Religion is challenged to offer a more flexible and humanistic ethical system if it is to meet the demands of contemporary society."[112] The halakhic system, then, even as some circles adapt its rulings to modernity, maintains a form which will not meet the needs of those who prize the flexibility that both Borowitz and Breslauer admire. For Breslauer, the antidote to this

[112] S. Daniel Breslauer, "Modernizing American Jewish Ethics: The Liberal Dilemma," in *Contemporary Jewish Ethics and Morality: A Reader*, ed. Elliot N. Dorff and Louis E. Newman (New York: Oxford University Press, 1995): 94.

dilemma is to contrast the ethics gleaned from religion and its dogmas with the ethics derived from human experience. Modern liberals, then, can embrace the tension which is bound to occur between their religious traditions and their experiential selves: "The liberal need not seek a synthetic truth made up of both."[113] What Breslauer loses, here, is the fact that our lives are not so binary. "Selves" are holistic—the truths bound up in the modern individual's liberalism are not so ***synthetic*** as to be artificial; they are reflective of the fact that we are meant to live our lives in a holistic way. I am not content to divide my liberalism from my religion as though the two things are meant to be separate. If Borowitz's "Jewish self" lives on in our movement, then it does so with recognition that our Judaism does not just undergird our other identities, it grows out of them, as well.

What this thesis seeks to do, then, is to give expression to that holistic Jewish self, to reimagine the covenant, yet again, given the needs of my Reform ***and*** feminist identities. Abortion and reproductive rights are a particularly powerful case study because they speak so immediately to issues of sex and gender, but the goal is that this synthesis be applied to all facets of Jewish thought, text, and ritual. There is clear grounding in the development of Reform thought to move Judaism beyond halakhah; feminist thinkers will provide the support needed to consider just ***what*** that beyond-law might look like. It is to several feminist Jewish theologians and ethicists, then, that I now turn, to establish the methodology and ideology behind the new Jewish reproductive ethics I will articulate in the coming chapters.

[113] Breslauer, "Modernizing American Jewish Ethics," 103.

The Ethical Legacy of Jewish Feminism

Jewish feminism is a relatively young field of inquiry, but what it lacks in age it makes up for in depth and innovation. Jewish feminists have written on a variety of topics: from biblical criticism to ritual and liturgical creativity. This thesis is particularly interested in the realm of theology and religious ethics. There are two full-length works in Jewish theology which have proved transformative not just for Jewish feminism but for Judaism in general: Dr. Judith Plaskow's 1990 work, ***Standing Again at Sinai: Judaism From a Feminist Perspective***, and Rabbi Rachel Adler's ***Engendering Judaism: An Inclusive Theology and Ethics***, published in 1998. Both works provide an exciting picture of what Judaism might look like when feminist concerns inform our relationship to God, text, and the Jewish people. For the specific purpose of this thesis, Plaskow and Adler will serve as the foundation for the new ethic of reproductive choice presented in the coming chapters. Their writings affirm the Reform commitment to consider Judaism's ethics and values outside of the legal framework and they provide some possible methodologies for constructing a new framework which is mindful of feminist concerns.

Judith Plaskow's work in Jewish feminism is inextricable from her active participation in the second wave of American feminism. She was a member of one of the original Jewish feminist circles, ***B'not Esh***, which had its first meeting in 1981.[114]The group was founded on broader feminist principles: the motto that the "personal is political" and a belief in the supreme importance of relationship. Plaskow did not understand her "secular" feminist interests to be separate from her Jewish self. She wrote,

[114] Martha A. Ackelsberg, "Spirituality, Community and Politics: B'not Esh and the Feminist Reconstruction of Judaism," ***Journal of Feminist Studies in Religion*** 2:2 (Fall, 1986): 109-120.

rather, that "sundering Judaism and feminism would mean sundering my being."[115] This is the nascent articulation of the "feminist Jewish self" I am striving for, and Plaskow states it beautifully: "our religious lives change the way we live, and our political commitments shape our spirituality."[116] They are, perhaps, not separate lives at all but one holistic religio-political existence.

Standing Again at Sinai powerfully identifies the ways in which women's lives have been silenced from within the Jewish tradition. It asks us to reevaluate our understanding of God and Torah in light of the awareness that Judaism had, for many millennia, represented only one half of its constituents' spiritual experiences. Plaskow believes that there are several modes by which to recover and renew the female voice of Jewish tradition. To, as her title suggests, stand once more at the revelation of Mount Sinai and consider God's relationship with ***all*** of the Jewish people. Such a revelation has traditionally been understood as contingent upon the legal strictures God presents and the rabbinic mindset later elaborates. But the expansion of revelation to include the voices and experiences of previously marginalized Jews can also mean the drive to move beyond law as the only legitimate expression of God's will. There are extensive materials in the revealed tradition which impart ethical wisdom without being part of a legal system; this thesis seeks to broaden even further the definition of "revelation" beyond law to include all human attempts to understand a relationship with the Jewish people or with God and what such a connection demands.

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[115] Judith Plaskow, *Standing Again at Sinai: Judaism From a Feminist Perspective* (New York: HarperCollins, 1990), xiii.
[116] Plaskow, *Standing Again at Sinai*, 237.

Most relevant for our project, here, is not the "what" of Plaskow's new theology but the "how." Plaskow offers three potential avenues for working towards a more representative Judaism. At the time of her writing *Standing Again at Sinai*, this meant, predominantly, the incorporation of female voices as against the male/patriarchal voice of authoritative tradition. Given a more nuanced contemporary understanding of gender and identity, we might expand this inclusiveness in representation to include the full spectrum of gender, sexual, and all other identities heretofore marginalized by Jewish tradition. Plaskow's vision for the method by which to integrate these new voices into the fabric of Judaism contained three parts: historiography, midrash, and liturgy/ritual. All three of these paths, she writes, are a way of "reshaping Jewish memory."[117] Because the Jewish historical record is fairly sparse when it comes to women's stories, Plaskow understood that it must be supplemented with the creative energy of midrash and liturgical/ritual innovation. What is crucial, here, is that though Plaskow acknowledges that feminist midrash and liturgy produce entirely new Jewish material, she is adamant that this production is not invention from thin air but a way to "remember ourselves."[118] These three methods draw on and influence one another; past and present are in dialogue, paving the way for a deeper Jewish future:

> We turn to the past with new questions because of present commitments, but we also remember more deeply what a changed present requires us to know. The issue of reinterpreting the past is preamble to but also follows from issues of contemporary Jewish women's experience. Significant changes in contemporary Jewish communal and religious structures cannot but affect our perceptions of the past.[119]

[117] Plaskow, *Standing Again at Sinai*, 52.
[118] Plaskow, *Standing Again at Sinai*, 60.
[119] Plaskow, *Standing Again at Sinai*, 53.

Plaskow sees the project of feminist recovery, invention, and reinterpretation as deeply rooted in the historical legacy of the Jewish people. She shows us that imagination is an essential and legitimate tool in crafting a Judaism which expresses our full selves.

Standing Again at Sinai leaves the question of Jewish law unanswered. Plaskow brings a full feminist critique of the ways that specific aspects of ***halakhah*** have been objectifying to women. She also considers a second layer of critique, that the form, in itself, is anti-feminist. Rejecting the essentialist notion that law, as a category, is somehow divorced from the female way of being, Plaskow still questions whether law is too far from the non-binary, relational fluidity of the feminist ideal. In the end, she writes, "the deeper question of the compatibility of feminism and law must be left open."[120] Though *Standing Again at Sinai* focuses almost exclusively on building a new Judaism outside of the halakhic system, Plaskow is unwilling to demand that feminists reject Jewish law altogether. Her focus simply lies elsewhere. Rachel Adler, on the other hand, asks in her work *Engendering Judaism* that we embrace halakhah as a traditional Jewish mode even as we use our feminist concern to destabilize and re-conceptualize it. Adler insists that the halakhah should be defined as "a way for communities of Jews to generate and embody their Jewish moral visions."[121] In analyzing Adler's work further, I hope to show how our visions for a Judaism guided by feminism align, and that the project she locates in halakhah can, I believe, be achieved outside it.

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[120] Plaskow, *Standing Again at Sinai*, 73.
[121] Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: The Jewish Publication Society, 1998), 21.

Adler introduces the same categories of feminist critique of halakhah as Plaskow does. She notes that the law has been objectifying both in its specific rulings, but also as a system in and of itself:

> To argue that the system requires no system critique, a liberal halakhist must ignore or discount that halakhic rules, categories, and precedents were constructed and applied without the participation of women, that they reflect perceptions of women as a commodified sub-class, and that they are often inadequate or inimical to concerns that women themselves possibly would raise if they were legal subjects rather than legal objects.[122]

Despite this awareness of the complicated origins of the halakhic system, Adler is unwilling to reject "halakhah" (however newly defined) outright. She is inspired by Robert Cover's article, "Nomos and Narrative." In that piece, Cover asserts that communities build their legal structures to ensure a functioning and normative society, but that those legal structures are grounded in communal narrative. The two forces work in tandem, meaning that if the law loses its meaning, a new story is required to generate new law. For Cover, story cannot exist unchecked; radically unstable, narrative worlds must gain legal strictures to be maintained: "Every narrative is insistent in its demand for its prescriptive point, its moral."[123] The bridge from the normative to the ideal is created through the continual generation of new legal standards of praxis.

Adler embraces Cover's theories of story and law, reflected in her new definition of halakhah as "a communal praxis grounded in Jewish stories." [124] For Adler, the ability to reshape the definition of halakhah while still maintaining allegiance to the concept of world-building its legal structure allows is enough to move beyond the feminist critique

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[122] Adler, *Engendering Judaism*, 29.
[123] Robert M. Cover, "The Supreme Court, 1982 Term – Foreword: Nomos and Narrative," *Harvard Law Review* 97:4 (1983), 5.
[124] Adler, *Engendering Judaism*, 25.

she articulates so astutely. Adler writes that the narratives which ground this new halakhah in meaning *will* include the new, unheard voices of women, but that they also *must* "tell the tradition its own stories in a new way. The alternative tradition…must assert its authenticity by grounding itself in narratives the tradition believes it owns and understands."[125] The Jewish feminist, Adler writes, "must make the law her accomplice in its own destabilization."[126] I feel, acutely, the tension in Adler's assertion. The project of Jewish feminist creativity cannot exist in a vacuum, and yet so much of what it might rest on is, if not overtly oppressive, at least the product of patriarchal norms. Adler does an incredible job of empathizing with the male authorities who wrote these norms: "It would be ungenerous to regard the struggle for holiness, which was the conscious motivation of our storytellers, as merely a cloak for their unconscious struggle for hegemony."[127] And yet, the insistence that the law must be the accomplice of the Jewish feminist is perhaps an unnecessary generosity. If authenticity can only ever be derived from the acceptance of the tradition as it currently exists, then change will indeed be hard won, if won at all. As womanist, black feminist, and poet Audre Lorde writes, "the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change."[128]

My concern with Adler's presentation of Jewish law, then, is twofold: it accepts that Jewish feminist innovation must be legitimized by classical halakhic tradition,

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[125] Adler, *Engendering Judaism*, 51.
[126] Adler, *Engendering Judaism*, 51.
[127] Adler, *Engendering Judaism*, 18.
[128] Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House," in *Sister, Outsider: Essays and Speeches* (New York: Crossing Press, 2007), 112.

insomuch as it must engage in halakhic language and methodology to move forward, and it assumes that the only way for Jews to 'embody their Jewish moral visions" is through legal means. Narrative or ethical frameworks beyond law, are, according to both Cover and Adler, too unstable to hold a community together. I would argue that though the Jewish community has operated with legal instruction at its core since the revelation at Sinai, it is the *story* of that revelation, and the many, many, stories which have followed it, which truly bind together the Jewish people. Thus, though law has been a compelling mode, and we might find many stories and values contained within law, it is not *necessary* for Judaism's existence. Adler writes beautifully of what she understands the feminist task to be: "We must *extend* Torah as we extend ourselves by reaching ahead."[129] We simply disagree on the form that reaching might take. Deep meaning, self-reflection, communal ritual and care, and intellectual inquiry can all be maintained through other Jewish frameworks. It is to two alternative systems of Jewish feminist ethics, then, that we now turn.

Dr. Laurie Zoloth-Dorfman, whose work is primarily in bioethics, produces what she calls an "ethics of encounter," an ethics which relies on the intimacy of the deep empathy formed when truly encountering another human being. She is interested in the ways that Jewish ethical thought can influence public policy, particularly in the field of medical care. Though Zoloth-Dorfman, like Adler, seeks grounding for her ethics in Jewish law, she does not see her ethics as a continuation of the same halakhic system. Rather, she sees halakhah and Jewish text as a valid starting point for ethical enquiry which will eventually demand more beyond that starting point. She derives her

[129] Adler, *Engendering Judaism*, 37.

authenticity not from the substance within the text, but from the Jewish mode of engaging *beyond* the text: "The suggestion, the insistence, that other texts are needed to explore an argument is well within the traditional method itself, namely, the search for other accounts on which to base…morality."[130] Zoloth-Dorfman offers the example of how such a search might be conducted in her close reading of the book of Ruth. She uses the narrative of mother and daughter-in-law as a way of uplifting her feminist concerns: the story highlights female voices (though not, perhaps, female in authorship) and showcases the centrality of relationship. Zoloth-Dorfman sees the repetition of the Hebrew root *dalet, bet, kof*, to cleave, from the Ruth story, as the perfect representation of her "ethics of encounter." Such an ethic requires that one meet the other with such total empathy that their needs merge with one's own; the way to this meeting is through dialogue, through the reciprocal sharing of narrative. Thus, writes Zoloth-Dorfman, "justice is then personal: it calls for no less than the totality of re-membering, of re-call, of the woman who walks at your side."[131]

Ultimately, Zoloth-Dorfman exercises the kind of creativity Plaskow advocates for in re-imagining existing Jewish texts for the purpose of feminist renewal. Crucial to this renewal, according to Zoloth-Dorfman, is a commitment to the guiding force of interpersonal experience. Unlike Breslauer, who saw the integration of experience and religious ethics as "synthetic," Zoloth-Dorfman sees it as essential. Only through our ability to experience the needs of the other, to encounter them fully, will we be able to

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[130] Laurie Zoloth-Dorfman, "An Ethics of Encounter: Public Choices and Private Acts," in *Contemporary Jewish Ethics and Morality: A Reader*, ed. Elliot N. Dorff and Louis E. Newman (New York: Oxford University Press, 1995), 220.
[131] Zoloth-Dorfman, "An Ethics of Encounter," 236.

live out our truest religious convictions. It is key to note that though Zoloth-Dorfman is interested in any relevant moral principles that might be drawn from halakhah, her ethical system is based in narrative without a return to religious law: "Applying textual narrative is a method of applied theology that is at the heart of the ***halakhic*** method. Embellishment of the aggadic source to achieve a template for action is central to Jewish method."[132] In this way, Zoloth-Dorfman moves her thought away from Adler, but not fully. She is still committed to legitimizing her non-legal ethics of encounter with the assertion that such a move is, in fact, derived from the very system which it transcends. It is the work of Rabbi Donna Berman on feminist Jewish ethics which completes the break from halakhah. To her, a feminist ethics of Judaism need neither revere nor refer to halakhah to be Jewishly legitimate.

In the introduction to her unpublished dissertation, "***Nashiut*** Ethics: Articulating a Jewish Feminist Ethics of Safekeeping," Berman explains that she intends to subvert the typical expectations of launching a feminist inquiry. Traditionally, feminist work moves through three stages: from critique to retrieval to renewal. Berman, on the other hand, seeks a reversal; she begins with critique but follows it with renewal, and only then concludes with retrieval.[133] This altered order will lead, Berman hopes, to a centering of women's experiences as an antidote to the patriarchal origins of traditional Jewish sources. After offering her critique of Jewish law, Berman derives her ethics ***first*** from the voices of women—both written and oral. Only after her analysis of women's history and contemporary ethnographic interviews does Berman return her gaze to traditional

[132] Zoloth-Dorfman, "An Ethics of Encounter," 233.
[133] Donna Berman, "***Nashiut*** Ethics: Articulating a Jewish Feminist Ethics of Safekeeping" (PhD diss., Drew University, 2001), 6.

Jewish texts and ethical endeavors. She, unlike Zoloth-Dorfman, sees this process as inherently Jewish not because it mirrors any pre-existing forms, but because "the expressions of women wrestling with patriarchal religion and resisting male control of their lives are nothing less than sacred texts chronicling a sacred struggle."[134] The stories of the lives of Jewish women, living and dead, are the foundation of Berman's new feminist religious ethics. It is crucial to note that this inclusion is not meant only for the benefit of women, nor does it imply that men's voices are inconsequential in a renewed Judaism. Rather, "retrieval in the context of ***nashiut*** ethics…seeks not to redeem oppressive texts, but to redeem Jewish women—and men—***from*** oppressive texts."[135] This redemption, Berman feels, will only happen if the body of Jewish text, thought, and ritual is approached with women's experiences as the starting point.

Berman presents some extremely helpful methodologies for reading the texts of women's written and spoken narratives. She narrows her source material to the writing of radical Jewish socialist, Emma Goldman. This is notable, because as an anarchist, Goldman represents the desire to fully overthrow a system through the negation of prior structures. Though this is a meaningful choice, it constricts Berman's reading to one specific lens, given the great variety of available female Jewish writers. It also implies a deeper rejection of existing systems (in Goldman's case, government, in our case, Judaism) than even Berman seems to demand. Still, her framework for engaging with Goldman's written work can certainly be applied on a broader level to any project of feminist interpretation. Berman outlines the following four steps: reading the author

[134] Berman, "***Nashiut*** Ethics," 77.
[135] Berman, "***Nashiut*** Ethics," 202.

given her own historical context, reading her story for its potential meaning in our time, reading the text as a "narrative of women's moral agency," and, finally, encountering the "author's life as liberative text."[136] This process is a key expansion on why it is so important to include women's voices in our sacred canon. The intent is not just to seek a perfect egalitarianism, nor to make an essentialist assertion about one female mode of expression. Rather, Berman's vision of reading women's voices into Jewish tradition models the need to embrace the lived human experience as a source for moral wisdom and liberation.

The section of "*Nashiut* Ethics" on ethnographic interviews expands this idea. As part of the process for developing her ethical system, Berman spoke with several groups of women who have, in some way, felt alienated by their Judaism. She draws heavily from the work of her advisor and pioneering ***mujerista*** theologian, Dr. Ada Maria Isasi-Diaz. Isasi-Diaz focused on the centering of Hispanic women's voices in religious thought; Berman adapts the process for a Jewish context. Berman sites Isasi-Diaz's work, ***En La Lucha***, in her explanation of the power of integrating women's narratives into our theological understandings: "Ethnographic interviews…make it possible to hear many voices instead of only the voices of the leaders of the community. They provide an opportunity for different members of the community to reflect on their experiences, to grasp better what they believe and how those beliefs impact their everyday lives. The interviews, therefore, are part of a liberative praxis."[137] Berman sees the hearing of

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[136] Berman, "*Nashiut* Ethics," 92.
[137] Ada Maria Isasi-Diaz, ***En La Lucha, In The Struggle: Elaborating a Mujerista Theology*** (Minneapolis: Foretress Press, 1993), 66, as cited in Berman, "*Nashiut* Ethics," 180.

contemporary Jewish women's stories, therefore, not just as a way of challenging the patriarchal narrative of Jewish tradition, but also as a way of honoring the women interviewed by providing them a Judaism which wants to bear witness to their lives.

Having considered both written and oral testimony from Jewish women who have traditionally been relegated to the margins, Berman then distills the themes and values of their voices to use as a new paradigm for viewing Judaism and the world. This paradigm is not meant to be a new halakhah, in the legal sense. Rather, Berman writes, "these insights are meant to be guideposts and markers on the confusing and challenging path of ethical decision-making. They provide a framework, an openwork structure without hard, fixed edges…If the framework merely serves as a springboard for discussion and controversy, a great service is provided, as greater clarity on an issue is potentially achieved."[138] This is, in many ways, a beautiful articulation of the endeavor of this thesis: not to proclaim that the materials contained herein are ***the*** official Jewish position on abortion, but to show that there are more guideposts and markers available when it comes to reproductive decision-making.

It is not the final product of Berman's new feminist ethics that most guides this thesis, but her process. The work of applying marginalized experiences to Judaism in a liberative way is ongoing, particularly because each individual Jew's identity is multivalent. There is, truly, no "Jewish women's narrative" to mold into a single lens for ethical decision-making. This thesis, then, though it connects to feminist and Reform scholarship, though it magnifies the voices of nearly twenty interviewees, is, in large part, simply the expression of its author's personal convictions. I am shaped, absolutely, by the

[138] Berman, "*Nashiut* Ethics," 102.

Judaism of tradition, the heritage of Reform and feminist thought, and the stories of others I have been lucky enough to witness. But, at the end of the day, the final creative work of this thesis is of my own invention. I offer it with the knowledge that it is incomplete, but with the hope that it will inspire others not only to see that there is another way to speak about reproductive choice in a Jewish context but also to believe that they, too, are full and authentic authors of the Jewish story as it continues to unfold.

Chapter 4
Interviews:
Introducing New Voices to the Conversation

As I stated in the introduction, I began this thesis knowing that I would want to speak with the Jews for whom I felt it was written. I pictured this final section, a creative attempt to offer a new Jewish expression for the experience of abortion and a commitment to reproductive choice, as made up of several chapters. The interviews would be a small part, a nod to the lived experience of Jews whose moral convictions and reproductive experiences have remained untold. With that in mind, I put out a call for individuals who would be interested in speaking to me about their experiences with abortion. I expected that I would conduct a handful of interviews, estimating that few people would have the time or inclination to engage with me, or that others might be reluctant to share such personal stories to a complete stranger. How wrong I was! Within the first forty-eight hours of sending out a general email detailing my project and asking for interviewees, I received nearly thirty responses from potential participants.

This outpouring of interest, and the eighteen interviews which followed, drastically changed the landscape of these final chapters. Inspired by Rabbi Donna Berman's work in what she coins "*nashiut* ethics,"[139] I have shifted the structure of this section so that it centers on the insights and themes of my interviews. These chapters will use Berman's subverted order: following the critique of Jewish tradition on abortion offered in the first two chapters, the voices of my interviewees will serve as the renewing force which guides our re-entry into "traditional" Jewish text and thought. Again, I see

[139] See Chapter 3

these two steps, renewal and retrieval, in perhaps a less linear way than Berman did. For me, there is a mutuality in the process; our present voices asking new questions join with those of the past—the revelation of a holistic Jewish, feminist framework for reproductive choice.

This final section contains two essential parts of this revelation. This fourth chapter of the thesis is an extended discussion of the interview process and an analysis of the general themes found among the interviewees. It will focus on the many similarities and differences in the Jewish identity development of those interviewed, and the way Judaism operates in their lives. All of those interviewed identified as pro-choice: they believe in the right of pregnant persons to determine, without government intervention, the outcomes of their own pregnancies, as well as safe and ***accessible*** procedures to ensure those outcomes. Yet, despite this identification, they held a range of viewpoints when it came to their personal and emotional responses to the topic of abortion. I present this range of viewpoints to show that, like any other group, those who politically identify as pro-choice are not a monolith. All of the individuals who agreed to speak with me for this thesis have thought about the issue of abortion with depth and passion. Their support for reproductive choice draws from deep moral clarity, even as it sometimes acknowledges the ambiguity and "grey-ness" of the process of creating human life. To be pro-choice, as I have seen in the eighteen stories shared during my research, is certainly not a cavalier or casual position; it is a stance rooted in deep ethical principles and moral commitments to uphold human dignity.

From the stories of these participants, then, the fifth and final chapter turns to the ultimate aim of this thesis: the integration of feminist understandings of abortion and

religious thought with the rich and complicated legacy of core Jewish stories and concepts. The chapter presents several thematic areas which emerged when looking at the eighteen interviews as a whole. Inspired by Judith Plaskow's call to write new feminist midrash, Rachel Adler's desire to let our stories build a moral framework for our communities, and Donna Berman's insistence on centering Judaism around new voices, I will present a number of new interpretations which combine the themes of my research with traditional Jewish texts and ideas. These interpretations constitute the beginnings of a new language for discussing abortion and reproductive justice from a Jewish and feminist perspective. This thesis is, by no means, the end of that discussion. It is, rather, an attempt to articulate in a rich, theologically-grounded way my location as a Jewish advocate for reproductive choice. It is my hope that it can also serve as a model for the possibilities of progressive Judaism in our time.

Interviews: Method

The interviews for this thesis were conducted by phone over a two-week period. Participants were found by sending a mass email to several professional and educational lists.[140] Some responded from that initial email, while others were referred to this project through a subsequent forwarding of the information. The initial email contained information about me, the researcher, a brief description of the project, and a request for anyone interested in participating to contact me via email. Appropriate interviewees were

[140] Initial lists contacted were the HUC-JIR New York student list, the Wexner Graduate Fellowship Alumni list, and the Center for Reproductive Rights. From those lists, I know that the information was forwarded to the Doula Project list and the IfNotNow list (not clear if this was just New York chapters or nationally), and it is possible that it was spread to further lists without my knowledge.

defined as those who self-identify as "Jewish or deeply connected to Judaism as a grounding force in their lives and **do not** consider halakhah to be an authoritatively binding legal system, and fit into any of the following categories: have had, or have been the partner of someone who has had, an abortion; have seriously considered abortion as part of their reproductive decision-making; work in a medical setting where abortion care is provided; work in policy, legal, or justice-related reproductive health organizations; have a strong relationship to this topic in advocacy or activism." Twenty-eight people expressed an initial interest in the project. Of those 28, eighteen were successfully scheduled for interviews.

Each interviewee received a confirmation email with their scheduled interview time which asked that they fill out a brief demographic survey. The survey asked participants for their age, gender identity, marital status, number of children, hometown, current place of residence, occupation, and religious identity. All participants completed the demographic survey. The day before the scheduled interview, each interviewee received a reminder email with a brief summary of the interview questions. These were listed as "a few questions on your relationship to the topic of abortion and why it is important to you, a few questions about your Jewish identity and your religious background, and a few questions on the connections, if any, between your Jewish identity and your thoughts on abortion/reproductive rights." Each interview was conducted following the same rubric. Participants were first given a chance to ask any questions about me (as a student or a person) and this project. They were then asked for permission to record the conversation. With some variation, participants were all asked the same four questions. If participants naturally began to answer one question in their answer to

another, I allowed conversation to flow organically from there. Follow-up questions varied based on the answers received. The four questions were as follows:

1. What is your personal investment in the topic of abortion?
2. On religious identity:
    a. How were you raised, religiously?
    b. How has that developed into your current religious identity and practice?
    c. In what ways, if any, does Judaism play a role in your day-to-day decision-making?
    d. What about in bigger life choices?
    e. If it is a belief you hold, how would you describe your understanding of God/Spirit/the Divine?
3. Given your own understanding, how would you summarize a Jewish position on abortion?
    a. In what ways have you found that meaningful given your experience?
    b. If not meaningful, participants were asked to articulate their own sense of meaning behind reproductive choice.
4. How, if at all, do you believe Judaism should speak to the issue of abortion (in personal, social, professional, or political spheres)?

Participants were then given a chance to share any other thoughts they had hoped to express which may have been missed in our initial conversation. Each interview lasted thirty to forty-five minutes.

The full group of interviewees represent a diverse population in nearly all respects: age, location (of origin and of residence), family status, occupation, and connection to the topic all varied significantly. The only demographic category with very minimal diversity was gender: Of the eighteen participants, seventeen identified as female and one identified as non-binary. No indication was given in my initial email that I sought only female participants, but respondents seemed to self-select; of the twenty-eight who expressed initial interest, only one identified as male. Though participants were not asked how they describe their sexuality, several named themselves as members of the LGBTQ+ community over the course of the interview. The ages of the participants

spanned from late-20's to late-60's, with six participants in their 20's, five in their 30's, one in their 40's, two in their 50's, and four in their 60's. Ten of the eighteen respondents described themselves as married or partnered. Seven of the eighteen had anywhere from 1-3 children. Participants represented a variety of geographical locations, both in hometown and current city of residence. The Northeast, Southeast, Midwest, and West Coast were all represented in respondents' hometowns, with a plurality from the New York area. Interviewees showed a similar diversity in their current locations, with a greater number now living on one of the two coasts of the United States. Though not asked in their demographic surveys, several participants self-identified during their interviews as first-generation immigrants.[141] Respondents named a great variety of occupations. Several work in medicine, public health, or legal advocacy. Other occupations include: student, small business owner, judge, social worker, writer, retail worker, community organizer, non-profit administrator, teacher, and artist.

Participants surveyed also identified with a range of religious backgrounds and Jewish identities. Answers to the demographic survey, which was left as a fill-in-the-blank question included: Jewish, Reform, Conservative, non-denominational, Reconstructionist, progressive traditional egalitarian, cultural Jew/atheist, not practicing but spiritually committed. Several respondents, either in the survey or in conversation, indicated that they are somehow connected to another faith, whether raised in another faith tradition, partnered to a person of another faith, or practicing some element of another faith; all indicated a strong relationship to Judaism. Participants represented a

[141] Meaning that they are the children of immigrants to the United States.

wide array from the American Jewish community, and their deeper understandings of Jewish identity will be explored further as the chapter continues.

There were many categories listed in my initial email about how participants might relate to the topic of abortion, and the eighteen participants fit within the full range of those categories. All interviewees identify as pro-choice and consider reproductive rights and access to be an important issue in their lives. Six of the eighteen participants shared the experience of having an abortion, for both medically indicated and non-medically indicated reasons. Two shared that they had considered having an abortion but ultimately did not choose that procedure as part of their reproductive care. (One carried an unexpected pregnancy to term and is the happy parent of one, while the other spontaneously miscarried an unexpected pregnancy which rendered the abortion unnecessary.) Two participants, while they had not, themselves, had abortions, were either the mother or the daughter of someone who had. Many more shared stories of accompanying a close friend to an abortion procedure. Several respondents work or worked with abortion in a healthcare capacity, either as a medical provider, abortion doula, or reproductive options counselor. Many participants work with abortion in a political/public capacity as legal advocates, community organizers, and in non-profit organizations which work to destigmatize abortion and advocate for its necessity and accessibility. Some participants had decades-long volunteer commitments to Planned Parenthood, local women's health clinics, and local abortion access funds.

In many ways, then, the eighteen individuals interviewed for this project represent a cross-section of progressive Jews in America committed to reproductive choice. Their stories, all unique, certainly cannot stand for the whole of such a broad population, but

they offer us a true diversity of perspectives and lived experiences. And all of the incredible people I spoke to represent something much greater in the scope of the Jewish discussion on abortion. These eighteen participants, many of whom have had abortions, all have uteruses. Their voices, then, serve as a counterweight to the hundreds of years of male conversation on a reproductive decision which takes place inside the female body. Not enough to provide full balance, of course, but perhaps enough to tip the scales, and enough to encourage others to join them. It seems particularly fitting that the final number of interviewees worked itself out to be eighteen, a number of such deep Jewish significance. These eighteen voices, the themes I hope to draw out from their stories, and the creative synthesis I will endeavor with their guidance represent *chai*, a new life for our understanding of abortion, and our understanding of Judaism.

Interviews: Discussion of General Themes

Abortion

As I mentioned above, though the participants all align themselves with a pro-choice political agenda and advocate for the social acceptance of women's reproductive decision-making, they held many different viewpoints when it came to the specific medical procedure of abortion. I present this variety of perspectives, now, to show that the pro-choice movement is composed of feeling, thinking individuals. They are passionate about their political and social goals, but are nuanced in their own personal thinking and open to variance in others' opinions. The voices of these eighteen interviewees combat some of the stereotypical ways feminists and pro-choice individuals are portrayed in public discourse. Violent terms defining pro-choice individuals as fascists or murderers are often deployed by anti-abortion or anti-feminist protestors. Even

the language used to designate the opposing side of the abortion debate not as "anti-choice" but as "pro-life" implies that those who support reproductive choice and access to abortion are inherently "anti-life." These labels portray those in the pro-choice movement as a uniform stereotype: unfeeling and unwilling to consider the moral complexities of terminating a pregnancy. The array of opinions and experiences of abortion from among my interviewees serves to counter such an assumption.

Many of my respondents understood abortion to be an unquestionable right. They saw it as a medical procedure meant to assure the health, happiness, and future of women whose circumstances could not allow for a child. Sue, a small business owner who had worked with pro-choice organizations on their media presence, summed this up: "I really think that abortion is a social good."[142] There was concern among many of the people interviewed that there is a general misinformation about abortion given the current political climate, which somehow detracts from this sense of the procedure as a "social good." Rachel, a medical student who hopes to become an abortion provider, shared her feeling that "something that is so important to let people know is that abortion is a very, very safe procedure when done in the first trimester,"[143] and yet Targeted Regulation of Abortion Providers (TRAP) Laws try to enforce incredibly high and unnecessary standards for the procedure. Amy S., who had worked in an international women's health organization, echoed this concern about the importance of seeing abortion as a ***medical*** procedure. She "certainly understood the societal impact of lack of reproductive

[142] Sue, interviewed by Emily Langowitz, December 20, 2016.
[143] Rachel, interviewed by Emily Langowitz, December 18, 2016.

autonomy on women's lives," adding that such a lack had "extraordinary implications for their health and mortality."[144]

Some of those interviewed shared that despite how a person might feel about their abortion, that no one should be subjected to the kind of shame, scrutiny, and misinformation they receive when attempting to get this procedure. Marlene M., a lifelong resident of Missouri, a state with a strict set of anti-abortion laws, shared the following: "My heart broke for all those women in Missouri who had to wait 72 hours. Almost always they need to pay more, are read all those things [meaning the false information required by the state to be read to abortion patients by their doctors]…It's nothing short of barbaric, what's going on."[145] These testimonies succinctly summarize the needs of women who seek abortion, while also highlighting the way that the government, as one participant said, maintains the "very paternalistic view that women can't make a decision without all these other actors coming into play."[146] Their responses show us all the ways that abortion can, in this way, be considered a "social good." It preserves the life and health of women, is a safe and well-understood medical procedure, and should not be regulated with tactics of shame and repression by government entities.

Some respondents, though fully pro-choice, named the ambiguities they saw in the experience of abortion. Amy G., a mother of two, teacher, and weekly Planned Parenthood volunteer, shared that her thinking on this issue has evolved. When she was a younger woman, she was nonchalant about her certainty that should she have needed one, she would have sought an abortion. Now, though, she noted that neither she nor her two

[144] Amy S., interviewed by Emily Langowitz, December 14, 2016.
[145] Marlene M., interviewed by Emily Langowitz, December 20, 2016.
[146] Marlene P., interviewed by Emily Langowitz, December 16, 2016.

adult daughters would ever terminate a pregnancy. Another participant acknowledged her own biases when it came to judging appropriate scenarios for having an abortion. She had distinguished between women in their first trimester and women who, in her mind, had an abortion in the second trimester after wanting a baby and then changing their minds. She noted that her views continue to change on this issue. This woman, a lifelong women's health advocate who recognized the huge impact lack of reproductive decision-making had on women's lives, expressed trepidation at sharing some of her own inner judgments. She felt concerned that the pro-choice movement shies away from addressing questions brought up by anti-abortion rhetoric; the fear that asking about these controversial issues will be corrupted by opposing political forces, she believes, means that the pro-choice movement loses a real opportunity to think with more nuance.

Amy S. summed up this need for nuance perfectly when she described the way two women can react to the same physiological phenomenon in two completely different ways: "One woman's thrill at having a baby in her womb is another woman's protoplasm that she needs to get out."[147] The varied nature of the female experience of pregnancy was clearly mirrored in the opposing views presented by different interviewees in their opinions about abortion. Erica shared that she feels the choice to have an abortion is sometimes treated too lightly in pro-choice circles: "I think there's a lot of rhetoric in pro-choice communities…that treats abortion kind of flippantly, but it's a big deal. It's a big deal because some people go through trauma when they get pregnant, or because their religion is against it. There's so many reasons that it's a fraught thing."[148] But, in

[147] Amy S., December 14, 2016.
[148] Erica, interviewed by Emily Langowitz, December 18, 2016.

contrast, Jeri shared her experience of having an abortion as a teenager, before the Roe v. Wade decision which legalized abortion across the country. For her, concerns about remaining pregnant were far more fraught than the choice to have an abortion itself: "I remember waking up and thinking to myself 'I am so glad that this is over…thank goodness I'm not pregnant.'"[149] Shira, who had been in close relationship with several friends as they chose to have abortions, shared that for her friends "it's been such a hard decision, and it already seems so hard, and there's already all of this stigma."[150] We can juxtapose her lived experience with another woman who explicitly stated in sharing her abortion story: "It was not a hard decision…I knew it wasn't the right time. I didn't have the wherewithal, the emotional time, the mental time. I didn't have the ability to be a parent right then, and so it wasn't even a debate. It just had to happen."[151] Though she presented this choice as clear and straightforward, the reflective nature of her language shows that even when such a decision is not cast as "hard," it can still be serious and thoughtful. We see in these contrasting testimonies that just as the physical state of pregnancy can be experienced in drastically different ways, so too can one's personal location within the pro-choice movement be approached from different perspectives.

Several respondents shared that reproductive decision-making—either the act of choosing to keep or end a pregnancy or the facilitation of such a choice—is a deeply spiritual process. Elise, who considered abortion but chose, ultimately, to keep her pregnancy, shared the experience of finding out she was pregnant right before her wedding. She did what she called a "spiritual math: if I am pregnant at our wedding, it

[149] Jeri, interviewed by Emily Langowitz, December 18, 2016.
[150] Shira, interviewed by Emily Langowitz, December 28, 2016.
[151] Hannah, interviewed by Emily Langowitz, December 29, 2016.

will be impossible to have an abortion afterwards, because this being was at this religious ceremony."[152] She remained deeply engaged throughout her wedding-planning and her pregnancy in the spiritual forces at play which guided her internal decision-making process. Her relation to abortion in this way exposes the troublesome nature of Judaism's silence on the spiritual axis of pregnancy and reproductive choice. Judaism, a religion which spends so much time imbuing the mundane with sacred meaning (much of halakhic praxis is built around every day acts like eating, using the restroom, tying one's shoes, putting on clothing, etc.), has yet to acknowledge the inherent sacred meaning available to women as they make choices about their pregnancies. Debbie, who provides abortion care as a medical professional, encapsulated this issue in her testimony: "I feel that I'm doing something spiritual when I'm performing abortions. It feels extremely meaningful to the other person, and very life-transforming, this thing that I can do to help them in this five-minute procedure. It just felt very powerful and spiritually moving, but I don't really have words for that, or, at least, no explanation from Judaism."[153] When asked if she could describe such a spirituality further, Debbie indicated that for her, it is an experience almost beyond language. In her statement, she bridges the dichotomy expressed above by some of the other interviewees. She is able both to acknowledge the relative insignificance of such a small "five-minute procedure" while drawing on deeper reservoirs of meaning. This thesis hopes to offer some words to describe such a bridging, and the innate spirituality of reproductive decision-making, within a new Jewish framework.

[152] Elise, interviewed by Emily Langowitz, December 14, 2016.
[153] Debbie, interviewed by Emily Langowitz, December 28, 2016.

Judaism

When asked about their religious development, many respondents expressed an innate sense of a "Jewish self" which was inseparable from their larger identities. In this way, their voices rearticulate Borowitz's call for an "individuality that is elementally structured by participation in the Jewish people's historical relationship with God."[154] Both Amy G. and Hannah described Judaism as a constant presence beneath the surface of their identities. As Amy G. put it, "I think it's always a backdrop. I don't know that it's always a conscious reference, but I'm aware of my Judaism every single day."[155] Hannah articulated the presence of her Judaism similarly: "I think because it's always in the back of my mind, my Jewish identity is part of the subconscious these days. Maybe it always was, but certainly I'm more aware of that part of my subconscious."[156]

Others shared similar thoughts, focusing on the fact that their Judaism seems to merge with all other aspects of their lives. As Lauren put it, "I think it's hard to separate my Jewish identity from my general outlook on life, just because I think the values are so intertwined. Growing up, the values around social justice, and around commitment to family and to community were both 'this is what our family believes in' but also 'this is what our religion believes in' so it's really hard to separate those out."[157] Ariella shared nearly the exact same sentiment: "I think it's hard to separate out what's Judaism and what's just my values because they are so intertwined in my life. That's not to say that people can't have strong values without strong religious upbringing, but the two are so

[154] Borowitz, "The Jewish Self," 109.
[155] Amy G., interviewed by Emily Langowitz, December 18, 2016.
[156] Hannah, December 29, 2016.
[157] Lauren, interviewed by Emily Langowitz, December 28, 2016.

embedded…all my values education came from Judaism."[158] And, as Marlene M. succinctly conveyed, "I think it's my whole ethics playbook. It's everything. It's my sensibility."[159] For these interviewees, Judaism is simply a part of the manifestation of their holistic selves; there is something about such simplicity that seems to escape definition. "I feel like I can't really explain it," Sue offered, "I just am Jewish. It fits, it makes sense."[160] Those I spoke to articulated time and again the certainty that their every action, decision, and thought process are innately Jewish, by virtue of their ***being*** Jewish, and in this case Jewishness seems to begin with a set of cultural and ethical landmarks. They needed no specific texts, rabbis, or theologies to validate this conviction.

Just because so many participants felt deeply connected to their Jewish identities didn't mean that they never struggled with Judaism. Several respondents expressed feelings of alienation from Judaism in its "traditional" iterations. Jini, one of the participants in her sixties, recalled her awareness of the barrier her gender created in the Jewish community. She also shared an enduring frustration with the way that Judaism seems to value separateness. "The way that Jews set themselves apart," she noted, felt incongruous with "the teaching that God is one."[161] Such frustrations were multi-generational. A respondent in her early thirties, Elise, articulated a similar struggle: "I do feel spiritually connected to Judaism, but sometimes can feel alienated from the Jewish community because it can feel sort of like a club. I don't love that you have to be Jewish to participate in Judaism."[162] Some participants shared a similar sense of alienation, not

[158] Ariella, interviewed by Emily Langowitz, December 19, 2016.
[159] Marlene M., December 20, 2016.
[160] Sue, December 20, 2016.
[161] Jini, interviewed by Emily Langowitz, December 13, 2016.
[162] Elise, December 14, 2016.

from community, but from text itself. Sue, who had a strong sense of Jewish identification, felt a simultaneous distancing from the traditional Jewish canon. "If it's not sacrilegious to say this to a rabbi," Sue quipped, "I kind of feel like a lot of text is bullshit. There's so much patriarchy in Jewish texts."[163] Erica circumvented such male dominance by looking not to Jewish text, but to the history of strong Jewish women for inspiration: "Tough Jewish women…feel like my religious touchstone, even more than Jewish Torah studies or something."[164] Thus we see that strong convictions about one's Jewishness and the centrality of Judaism to the fullness of one's life do not preclude a questioning of and deep struggle with "Judaism" as it has traditionally been presented.

In the range of Jewish identities held by the interviewees, a vision for what Judaism can be emerges. Such a Judaism is driven by the mixing of an innate sense of Jewishness, a dedication to Jewish values (typically understood to be liberal ethical values), and the commanding force of lived experience in the twenty-first century. Erica beautifully expressed her sense of Judaism's fluidity and its embrace of uncertainty:

> I kind of like the idea of deciding to not have the answers in a way, and that some things are sort of unanswerable. Even if God or some power doesn't exist, it's irrelevant; it's the idea that is motivating. It's motivating to feel bound to other people, and to nature, and to animals, through something watching over all of us together. It feels like there's an inherent community there and that can be sort of heartening when the world feels so fractured and undone.[165]

Katie offered a Judaism which is open, relevant, and malleable. "It can look like what you want," she mused, "and it doesn't have to look like it did thirty years ago."[166] That commitment to creativity and possibility is echoed in Elise's sense of her Jewish journey.

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[163] Jini, December 20, 2016.
[164] Erica, December 18, 2016.
[165] Erica, December 18, 2016.
[166] Katie, interviewed by Emily Langowitz, December 13, 2016.

She spoke about her current interest in exploring fertility and Judaism and her desire to make the religion accessible to all: "That's what it is for now. It's kind of like making up my relationship to Judaism."[167] And Shira was sure to assert that a holistic feminist Judaism is not merely a vision; in her life, such a Judaism is reality: "My Judaism is one where feminism, being a feminist Jew is my identity. That's not how it is everywhere in Judaism, but it's possible. The little section of Judaism that I'm part of, that's important to it."[168] Her truth is a testament to the achievability of the Judaism this thesis hopes to advance.

Respondents held core Jewish identities, but were more than willing to craft Judaism to match their fuller selves. As we have seen above, such an integrated Jewish identity would be creative, fluid, feminist, and responsive to the modern condition of the individual. But the most important piece of Jewish identity commonly cited for those interviewed was the way their Judaism inspired them to better themselves, their communities, and the world. When asked about her spirituality, Marlene M. said simply that "we all have that goodness inside of us, we just have to tap into it."[169] Marlene P. phrased her theological connection to Judaism in a similar way: "God is about being the best: to be the most honorable, to be the least judgmental, to really want to raise people up."[170] And Hannah, too, beautifully expressed a similar Jewish ideology. When asked how she conceives of her relationship to God, she shared the following: "It's the voice inside of me that's pushing me to always do better, make the right choice, try to make the

[167] Elise, December 14, 2016.
[168] Shira, December 28, 2016.
[169] Marlene M., December 20, 2016.
[170] Marlene P., December 16, 2016.

choices that are best for the world, and ways to bring out and bring up humanity. That's where I find God, when it's internally the voice pushing me to make the world a better place."[171] This commitment to being better people, shared by many of the respondents, is not, in and of itself, specific to Judaism. What made it Jewish, in their eyes, was the expression of such a commitment in the context of Jewish community, Jewish family heritage, Jewish ethical values, and their own certainty about their Jewish identities.

Such an affinity for goodness is indicative of the vast reservoir of goodness I perceived in each person interviewed. When speaking about abortion, it particularly manifested in a strong commitment to the principle of justice, which we will explore in depth later in the next chapter. Lauren's formulation of how she hopes Judaism can operate ties all of these visions together. "Everyone sort of does their own thing," she said, "but we should have some central religious tenets that are important, like social justice, being nice to people, and recognizing that there are many different ways to do Judaism and none of them are wrong."[172] The Judaism of my participants, so inextricably linked to their full identities, is dynamic and fluid, but committed, above all, to a higher ethical concept of increasing goodness in the world.

Social Context

The commitment to serve a greater purpose in the world through support of reproductive choice and through connection to Jewish identity and values meant that participants were also thinking critically about their broader social contexts. Like the rabbis of the halakhic process, those I interviewed understood that the Jewish discussion

[171] Hannah, December 29, 2016.
[172] Lauren, December 28, 2016.

of abortion does not exist in a vacuum. Many interviewees spoke extensively about the current political climate of the United States as pertains to this issue. They also frequently shared, unprompted, awareness of the Christian viewpoint on abortion, particularly the anti-abortion stance of the Far Right. This is a testament to the nature of debate around abortion access in our country; the issue is highly charged politically, and the dominant religious voice is stridently anti-abortion.

The conclusion of the 2016 presidential election cycle played out during the process of writing this thesis. When I began my research and writing, Hillary Clinton, the democratic nominee, faced Donald Trump, the Republican candidate. A month before I began conducting interviews, Trump won the national election with the electoral vote. His running-mate, now Vice President and former governor of Indiana, Mike Pence, is notoriously anti-abortion. The rhetoric of the campaign season around abortion rights was particularly harrowing, and Paul Ryan, Republican Speaker of the House, continues to lead efforts to defund Planned Parenthood.[173] Many in the pro-choice movement fear a shift in the Supreme Court over the next four years which will put Roe v. Wade in jeopardy. Over the course of editing this thesis, President Trump signed an executive order to reinstate a ban on funding international women's health organizations which provide counselling on abortion. Several women I spoke to shared their very real fears about the reality of a Trump presidency, still raw in the lead-up to his inauguration. I share their words now to show that this discussion has even more dire relevance given the current changes in our political environment.

[173] This, despite the fact that the Hyde Amendment, first passed in 1976, continues to ensure that no federal funding may be used for abortion procedures except in cases of rape, incest, or extreme danger to the life of the mother.

Some respondents, like Marlene P., simply alluded to their fears without elaborating significantly: "This horrible election we had…"[174] Amy S. phrased her discomfort similarly, noting that my request for interview subjects had touched a nerve. "The reason it was so present when I saw the email," she said, "is because this election has been so traumatizing."[175] Jeri outlined the assault on the basics of her identity she felt after the campaigns ended: "My Judaism is very integral to who I am, as are my gender and my progressive ideals…this election has been particularly devastating."[176] A couple of interviewees presented their fears in depth, creating some particularly haunting images. Ariella, when asked about her spirituality, connected her awareness of the election with her rejection of an omnipotent God who could act to change the human condition: "I'm already in enough despair about the state of the world right now that I think if I believe that there was a God who was looking over all of this it would make me more upset, because some entity is behind this."[177] She joked that maybe 2016 was the year God let an intern take over. Marlene M., a Missouri native and well-versed in the strict anti-access laws of her state, shared a final disturbing metaphor. "It's going to be like the Underground Railroad here soon," she stated. "We're going to have to start sending people to other states again. I never thought I'd see things go backward so fast."[178]

A huge number of those interviewed independently brought up the context of the Christian Right in the American discussion on abortion. This strongly aligns with the

[174] Marlene P., December 16, 2016.
[175] Amy S., December 14, 2016.
[176] Jeri, December 18, 2016.
[177] Ariella, December 19, 2016.
[178] Marlene M., December 20, 2016.

thoughts expressed in the introduction of this thesis. Their awareness, as pro-choice allies and activists, of the dominance of the Far Right on the conversation and the implications such a dominance has for religious liberties, confirms my assertion that a stronger progressive religious voice is needed to shift the balance. Ariella summarized this sentiment when she professed that "it's not right that the Christian Evangelical Right has co-opted the issue of abortion. The understanding is that if you are a religious person, then you oppose abortion."[179] Some interviewees took issue with such a co-option because they perceived it as an attack on the separation of church and state. "From a perspective of church and state," Marlene M. shared, "I strongly feel that one religion should not impose its beliefs on another."[180] Such a separation goes both ways, Sue felt, meaning that just as Christianity should not influence public policy on abortion, neither should Judaism: "In a political context, it's really important to me that what Judaism says does not matter. That's a really Jewish way of looking at the world, to me, that enforcing a specific religious belief in a political system makes Jews less safe."[181]

The strong awareness of a conservative Christian position on abortion meant that many respondents compared their location in the discussion as a Jewish person with known Christian doctrine. For those like Debbie, this could be a frustrating comparison: "I never felt like I was doing something wrong, but I didn't like that people who were citing the Bible were saying that I was doing something wrong."[182] Others felt that the juxtaposition of Judaism and anti-abortion Christianity created a sense of pride in the

[179] Ariella, December 19, 2016.
[180] Marlene M., December 20, 2016.
[181] Sue, December 20, 2016.
[182] Debbie, December 28, 2016.

more liberal Jewish position. “In my understanding, Jewish law is not like Catholicism,” Jini began. “It’s much more flexible and adaptable to people. It sort of has more love in it, rather than just being these harsh rules, and the whole thing about sin, there’s not the same concept.”[183] Maya saw that working in advocacy for reproductive justice, she never had the same issues as her Catholic friends: “My people are down with reproductive rights, with abortion rights, so I’ve been really proud of that…most Jews, in the US at least, are supportive of reproductive rights. I’ve kind of used it as a point of pride in my Jewishness.”[184]

For some, the battleground between Christian and Jewish values on this issue has its roots not in views on abortion, but in an issue at the foundation of the debate: women’s sexuality. As Sue noted, “Christian dominance over a lot of our political ideas about sex are so tied into our ideas about abortion…My experience of Jewishness isn’t one about fear about sex. Our bodies and our sexuality aren’t a negative, scary, or dirty thing.”[185] Such a distaste for female sexuality often led to what two respondents saw as deep inconsistencies in the thinking of those in charge of reproductive health policy. Marlene M. found that her work in trying to secure long-acting contraception for women in the state of Missouri, though it operated on a pre-pregnancy timescale, and would serve to decrease the number of unplanned pregnancies, was met with equivalent rejection: “It’s all too close, it all has to do with sex and women, so we [the legislators] don’t want to talk about it.”[186] For Ariella, the frustration came from the inherent

[183] Jini, December 13, 2016.
[184] Maya, interviewed by Emily Langowitz, December 16, 2016.
[185] Sue, December 20, 2016.
[186] Marlene M., December 20, 2016.

contradictions she saw in many anti-abortion voices. If they truly held the belief that life begins at conception, she countered, then there should be no exceptions for a pregnancy conceived in rape or incest. Thus, the anti-abortion stance of those with such exceptions, in her estimation, is more about distaste for women's sexuality than protection of fetal life. To her, such a stance says that "you should take personal responsibility for having sex as though a child is punishment for having sex."[187] These respondents saw in Christian rhetoric on abortion the conflation of a religious concern with fetal ensoulment and a strong desire to control female sexuality.

Though Maya's above assessment is correct in noting that the majority of Jews in the United States support legal access to abortion in all or most cases, many of those interviewed still felt the lack of a Jewish religious voice in public discourse. "Catholics will openly have a very 'Catholic moment,'" Katie said. But with Jews, you "don't see them coming from a religious place like with other religions."[188] Marlene P's assessment was similar. She called for a more vocal elaboration of Jewish values on abortion: "Because there is such a religious group that plays into this on the other side, I would think that it could be positive for the Jewish community, if we really believe that women have a right to choose, or that the belief is that you are not killing a child, then maybe we should be more vocal and say 'Not all religions think this way, there are a diversity of opinions out there.'"[189]

Despite the wariness of a number of those interviewed around the Christian voice on abortion, there were two participants who highlighted the ways pro-choice Jews might

[187] Ariella, December 19, 2016.
[188] Katie, December 13, 2016.
[189] Marlene P., December 16, 2016.

learn from positive aspects of a Christian approach. Erica, who volunteers as an abortion doula, shared a powerful teaching from one of her trainers about how to support women who have abortions and feel connected to a religion which does not support their decision:

> Instead of trying to convince them that it's all fine, she'll ask them: While I know it was a really hard choice for you, and that it feels like the wrong thing to do, ask yourself—do you believe in a forgiving God, does God forgive you for this? It's not about convincing someone that they're doing the right thing, it's about framing it…if God is important to you, if God is able to forgive you, and this God of spirit or he/she/whatever that you are looking to is the model of morality, then you can kind of forgive yourself by that model.[190]

Rachel conveyed a similar message, noting explicitly that Judaism can learn from Christianity in this regard. "The language of love and forgiveness," she opened, "I think is often not something that Jews are so comfortable with. I've seen a couple of documentaries in which Christians, not even Christian religious leaders, were able to provide comfort to women who were getting abortions in a way that felt like it was all about grace and love…I think that's something that Jewish discourse could benefit from."[191] Thus we see that the solution to a violent anti-abortion rhetoric from the Christian Right is not necessarily the erasure of all religious elements, even all Christian elements, from the dialogue. Rather, these interviews show a need for a reassessment of how religious language operates in public discourse on abortion.

Abortion in Judaism

If Jewish pro-choice individuals hear so much of the Far Right Christian position on abortion in American public discourse, what do they know about the Jewish position

[190] Erica, December 18, 2016.
[191] Rachel, December 18, 2016.

on abortion? Before entering the realm of interpretive possibility for crafting a new feminist pro-choice position on abortion, I wanted to hear what the interview participants already believed about Judaism and abortion. In the answers to these questions, I perceived three general trends: those who could articulate a Jewish stance on abortion would point to the focus on maternal welfare and the status imbalance between mother and fetus. Others would not point to any specific position other than a certainty that Judaism does not flat-out reject abortion. Some perceived such a lack of positive affirmation as a silence. Though they knew themselves to be Jewish at every moment, they felt a separation when they considered their experience of abortion or pro-choice activism. On this issue, there was no perceived support from Jewish community or text of the innate Jewish identity they brought to their feminist selves. And, finally, there were a few people interviewed who believed in their own power to define a Jewish position on abortion, with or without any specific textual knowledge. All these themes in aggregate point to an underdeveloped language for being Jewish and pro-choice. The answers of those interviewed show the real opportunity that exists to develop and present a more robust religious framework on this issue.

Only a few of those interviewed quoted any specific textual sources when discussing their understanding of a Jewish position on abortion. A couple of participants referenced the verse in Exodus 21, if not always in name, then at least in concept. Some who had been to specific adult learning sessions on this topic knew of principles like the fetus being mere water before 40 days' gestation and *ubar yerekh imo*, the fetus as a piece of the mother's body.[192] More often, such principles were implicitly present in

[192] See Chapter 1 for more details on these concepts.

answers like that of Amy G. who said that "the value system is that we have to take care of ourselves. We have to take care of others, absolutely…but I don't know that the obligation goes toward the unborn fetus in the same way."[193] Jeri stated her recollection of Jewish texts on abortion in a similar way: "I can't remember what I read, but I think what I took away from it was that there wasn't a blanket prohibition on it. The life of the mother had to be at stake…I'm not sure there's any across the board permission for getting an abortion."[194] Hannah, well-educated on the Jewish texts around abortion, summarized the key contributions as the clarity that a "fetus isn't a life without the person carrying it, and the mother's life comes first."[195]

Some responses simply echoed Jeri's awareness that Judaism has no strong prohibition against abortion without drawing on any specific texts or ideals to positively frame such a claim. Debbie and Elisette both expressed the relief they felt at finding that Judaism did not prohibit abortion, nor did the Torah say it was wrong. "I just felt validated that I wasn't in conflict with my faith,"[196] said Elisette, while Debbie noted how it felt to learn that the Torah never explicitly says that abortion is wrong: "It's not like I needed that, but I felt empowered by it."[197] Marlene P. experienced that sense of "it's not wrong, but we won't tell you that it's right" as a kind of silencing on the part of Jewish tradition. "It wasn't an impediment," she said of Judaism, "but it's not a reaffirmation either. It's sort of like people are just silent about it."[198] Such a silence can be a product

[193] Amy G., December 18, 2016.
[194] Jeri, December 18, 2016.
[195] Hannah, December 29, 2016.
[196] Elisette, interviewed by Emily Langowitz, December 16, 2016.
[197] Debbie, December 28, 2016.
[198] Marlene P., December 16, 2016.

of the Jewish community, or of a person's own decision to distance their pro-choice self from their Jewish identity. Rachel saw the two as simply unattached to one another: "My religious identity is very strong, and my pro-choice medical identity is very strong, and I don't think they are particularly connected…I don't know that my Judaism really says anything about it. I don't feel like that's part of my relationship to abortion."[199] Katie found such an uncoupling disconcerting. "Generally, it is known that we are probably a pro-choice religion and that people are probably pro-choice," she offered, "but it's rarely talked about in a big way unless we make people talk about it, and it is super weird."[200]

Some kept a purposeful distance from Judaism on the subject. Jini had no interest in seeking counsel from a rabbi when she had an abortion: "I never even considered going to my rabbi at the time…that was a period where I had absolutely no interest in going. I would never have considered going to my rabbi at the time for guidance."[201] Meanwhile, Sue shied away from making connections between Jewish textual sources and a pro-choice identity because of a general alienation from Jewish law: "There's all this text stuff that I don't know about. I sort of avoid it because so much of it is full of patriarchy that it just makes me angry and sad."[202] In many ways, then, we see that the quest for a holistic feminist Jewish self is compromised when Judaism cannot or will not speak to abortion in meaningful ways.

Two respondents, when asked about a Jewish position on abortion, complicated the question by questioning its premise. The Jewish position on abortion, they argued,

[199] Rachel, December 18, 2016.
[200] Katie, December 13, 2016.
[201] Jini, December 13, 2016.
[202] Sue, December 20, 2016.

could be their own positions on abortion. They felt empowered to craft their own Jewish frameworks for being pro-choice and thinking about reproductive decision-making. In their minds, this process did not require text to be Jewishly valid; it required intention drawn from self-reflection. Erica shared this idea with gentle simplicity: "I think my answer might just be the answer I want it to be, because I don't know what it 'officially' is."[203] She allowed her ignorance of "official" sources to propel her toward her own Jewish path to making meaning out of the question of abortion. Elise, who shared her process of deciding to keep a pregnancy she at first thought she might end, expanded on this idea. "It's funny, because in that moment, I did not think 'What does the text think I should do, what does the law say I should do."[204] Despite this distance from law, Elise still saw the decision-making around her pregnancy as deeply Jewish: "Even though the text wasn't necessarily reflecting what I want it to, I still do feel like as a Jew, when I make decisions they are Jewish decisions. I don't know, it's hard to explain. I still feel like I came through this experience Jewishly…it all feels like it was a Jewish experience because I did it intentionally."[205] These two methods for approaching the nexus of Judaism and abortion show a way forward. They affirm the model of this thesis by being open to creative endeavor from a place of deep centering in one's identity.

This chapter has summarized the broad themes and opinions present in the eighteen interviews conducted for this thesis. Those interviewed held a range of positions both in their Jewish identities and their locations within the pro-choice movement, as well as a diversity of origins and life experience. The general thematic analysis presented

[203] Erica, December 18, 2016.
[204] Elise, December 14, 2016.
[205] Elise, December 14, 2016.

above shows that, for the most part, the driving hypothesis of this thesis is correct. There is a strong sense that Christian rhetoric dominates religious discourse on abortion in the United States. Jews who are reflective and nuanced thinkers on issues of reproductive choice sometimes feel a disconnect between such thought and their Jewish identities. If Judaism does not ban abortion outright, it certainly does not present a great deal of viable language for the topic, particularly language which draws on more than the halakhic system. And yet, the eighteen individuals interviewed have a strong sense of Jewish identity, and a strong commitment to freedom of abortion access as purposeful work with true ethical value. Their voices, combined, articulate the skeleton of a new kind of Judaism: one which is feminist, creative, responsive, and which flows outward from an individual commitment to personal and universal goodness. The final chapter, then, will focus on more specific themes which emerged from these interviews, and apply such themes to the historical texts, beliefs, and modalities of Jewish tradition. In so doing, it hopes to fill the silences currently operating in the space between Judaism and reproductive choice.

Chapter 5
A New Revelation

This chapter presents the final work of retrieval. It returns to traditional Jewish sources and ideas with the voices of those interviewed as a lens for exploration and inquiry. Guided by the body of material collected from interview participants, I offer five new ethical principles for considering abortion in a Jewish context: **Creation, Bodily Integrity, Transmission, Choice, and Justice.** The discussion of each principle contains the testimonies of those interviewed which aligned around that ethical theme. A creative reinterpretation of Jewish tradition—a work of imaginative, feminist midrash-- follows these contemporary voices as a means of supplying a narrative, that while rooted in Jewish texts and ideas, offers a distinctive feminist alternative to male-centered tradition. These five principles are just a beginning; I see them not as the full representation of pro-choice Judaism, but as the beginning of such a position. Unlike the halakhic system, these ethical principles and their creative renderings are not meant as concrete legal material. Rather, they offer a new picture for how the Jewish past and present might come together to speak to this sensitive issue. I hope that this chapter resonates with the stories of those interviewed, redeems the ancient stories of our tradition, and reveals a new way forward for all stories yet untold.

Creation: Story-Telling from a Female Body

The five themes presented in this chapter follow, more or less, the arc of sacred Jewish-story telling. They begin with creation, move through the familial narratives of Torah, touch on the methodologies of the rabbinic interpretive tradition, and close with redemption. It seems particularly fitting that we begin with creation, given both the

creative nature of this chapter and the general topic of this thesis. Human reproduction is a powerful symbol of partnership with God as a Creative force. Story-telling is another. In both cases, we breathe life into a new entity, physical, imaginative or spiritual. I will note again, here, that although the majority of pregnant people are women, given the human range of gender and sexual identities, not all women have the capacity to become pregnant, and not all people with uteruses are women. I hope, then, to use terms around "female embodiment" in this chapter in an inclusive way: to acknowledge the range of understandings of what that might mean while still promoting an image of reproductive story-telling which pulls focus away from cis-gendered male voices. I will use "female-bodied" and "women" primarily as indicators of individuals with female reproductive organs, whose external gender presentations and internal gender identifications may or may not align perfectly with such generalized language.

The need for hearing the stories from the movement for reproductive choice, *particularly* stories coming from the experience of female-bodied people, was a strong theme among my interview respondents. From this theme, I submit our first ethical principle: the acknowledgement of the childbearing body as a source of divine creative power. As the discussion in this section of the chapter will show, the sacredness of the reproductive process as a mirroring of divine creation does not come from the mere fact of pregnancy. It requires, also, that the pregnant person as God's co-creator be able to evaluate the goodness of that process, as God does when creating. Abortion should not be seen as an assault on the divine creative power of the body, but as a way of ensuring that the process of pregnancy be sacred both for the future created being *and* its creator.

Those interviewed emphasized this principle in two ways. Some expressed feelings of frustration, alienation, and incredulity over the way that cis-gendered male voices dominate the religious and political discourse on abortion. Others came at the issue from the opposite side; they spoke about the importance of hearing women's experiences, both as full and authentic Jews throughout history and as the primary agents of pregnancy, and integrating them into their advocacy for reproductive choice. Considering both of these strains together provides a full range of perspectives on the need for embodied story-telling in abortion discourse. The power of story in such discourse cannot be understated. Elisette, who works at a non-profit organization which combats stigma around abortion, shared this core principle behind her work: "When we share our stories with others, we create familiarity and awareness around people's lived experiences rather than keeping them secret and untold."[206] Marlene M. saw story-telling as liberative not just on a personal level but on the political level as well. She "started becoming interested in advocacy because it put a face of reproductive rights on the issue and I could relay the stories of the women I saw every week [as an options counselor]."[207] Story has the power to uplift marginalized voices and create public awareness and empathy. It also undoes the standard patriarchal formulation which cedes artistic creativity in the public sphere to men and only allows women the domestic creativity of childbirth in the private realm. It is particularly striking to be reclaiming the creative art of story-telling through stories about reproduction. Dr. Susan Stanford Friedman writes in her essay on the metaphor of pregnancy and creativity that "in

[206] Elisette, December 16, 2016.
[207] Marlene M., December 20, 2016.

contrast to the phallic analogy that implicitly excludes women from creativity, the childbirth metaphor validates women's artistic effort by unifying their mental and physical labor into (pro)creativity."[208] If the pen and paintbrush are phallic symbols traditionally associated with masculine creativity, then story-telling about the experience of pregnancy is doubly destabilizing of patriarchal creative hierarchies.

The centering of female voices in this debate is crucial because it alleviates an imbalance of power. As Elise declared, "It's infuriating that most of our politicians are men and most of our politicians who are pro-life are men, and this is just something that doesn't impact their life, period."[209] Certainly a small group of interviewees cannot represent all female-bodied people, but they at least stand as a concerned group of citizens with a much higher stake in the issue of pregnancy. The focus on the voices of pro-choice women and people with uteruses does not deny the possibility that others would be against abortion, it simply seeks to question the power structures which privilege cis-gendered male voices as authoritative on reproductive issues.

Frustration was not saved solely for the political realm, but for religion as well. When Marlene P. reflected on her decision to have an abortion, she noted a status difference between herself and a male religious authority figure: "I did really believe, and I do really believe, that it was my decision. I was the one who was pregnant. I was the one who would be responsible if I gave birth to a child. It wasn't going to be my rabbi who would have to deal with it, it was going to be me."[210] The fact that pregnancy takes

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[208] Susan Stanford Friedman, "Creativity and the Childbirth Metaphor: Gender Difference in Literary Discourse," ***Feminist Studies*** 13:1 (Spring, 1987): 49.
[209] Elise, December 14, 2016.
[210] Marlene P., December 16, 2016.

place in the female body is central to Marlene P.'s understanding that the locus for reproductive choice should be the pregnant person's needs and experiences, not those of a male political or religious authority. A distrust of privileging male authority in this arena even applies to the theological realm. Sue expressed the way that masculine language for God caused deep discomfort, naming that at first, it was comfortable to "picture God as an old woman in a babushka."[211] They elaborated on the pain caused by the binary nature of Hebrew and the privileging of masculine conjugations: "I tend to switch genders for God because I'm non-binary: not a woman, but do have a uterus. The idea of God being a man is really really stressful and upsetting to me, so when I do pray or use Jewish ritual, I'm pretty thoughtful about the grammar and gender stuff that I pick."[212] This testimony exposes the need for a re-centering on non-male voices, not just in the human dialogue on abortion, but in our God concept as well.

It is possible that such a centering on lived experience around abortion can create suspicion of women. Erica spoke animatedly about an article she had recently read on the fear which propelled many to label abortion as witchcraft. The logic behind such a claim, she said, "reflects so much fear of women. It's scary that we have this private experience of being pregnant that's specific to women, and also this secret way of dealing with it."[213] When seen with suspicion and mistrust, the experience of pregnancy unique to the female body becomes an isolating influence. But when such an experience is shared, both among people who have access to its uniqueness and through story to the wider world, it is a

[211] Sue, December 20, 2016.
[212] Sue, December 20, 2016.
[213] Erica, December 18, 2016.

profound force for empathy and connection. Hannah beautifully expressed this power, and the way she linked it to her Judaism, as she described her own abortion:

> I wanted to find a way to tell my story, and through a Jewish lens…I was also just really moved by the recovery room afterward. Suddenly I found myself crying in this room, but I was surrounded by all of these women who had just gone through the same experience, through all sorts of different walks of life. People who, I think, maybe their community is less understanding of abortion, and maybe if people who had known about them, in their situation they would have been pressured to keep the child. And younger girls, clearly college students who looked scared and sad, and women who already had children who couldn't afford to have another kid. It was just really moving. I'm still trying to figure out how I want to tell that story…to embrace the idea of narrative, that we're Jews, and that's how we relate to things, through story.[214]

Hannah's powerful words bring with them a vital nuance to the project of embodied story-telling around abortion; she recognized, in the recovery room, that although all the women present had been through a similar procedure, they all came to that experience from different backgrounds, holding different identities. Of course, there would be no way to tell one story of the choice to end a pregnancy which would resonate with the lived experiences of all pregnant people. But it is crucial that their bodies be acknowledged as the unique site of human reproduction as an act of creation, and that their lives be honored through the introduction of their stories to political, religious, and theological spheres.

It is with such a principle in mind, inspired by the above analysis of my interviews, that I present a new interpretation of the creation story. This is certainly not the first Jewish re-interpretation of creation. In fact, the account of God's forming the world in Genesis 1, the very first chapter of the Torah, is itself a conscious interpretation of Ancient Near Eastern myth. In the Enuma Elish, an ancient Babylonian creation

[214] Hannah, December 29, 2016.

narrative, the world comes to be as the result of great cosmic warfare. The many gods and heroes of the story battle until Tiamat, the prime mother of all the other gods, is destroyed by Marduk, the general of the opposing side. Marduk slices her body in half to create the division between heaven and earth: "He split her like a shellfish into two parts/ Half of her he set up and ceiled it as sky/ Pulled down the bar and posted guards/ He bade them to allow not her waters to escape."[215] The first chapter of the Torah is a studied departure from the tropes and theological underpinnings of the Enuma Elish. There is no sexual union to create many divine figures, no warfare, no violent dissecting of the female body to create the known world. God, the only, the One, creates through speech. The first two verses of Genesis emphasize such a shift. "When God began creating the heavens and the earth, the earth was formless and void, and darkness was over the face of ***tehom***, the deep. And the spirit of God hovered over the face of the waters." These verses echo many of the conditions present for creation in the Enuma Elish, but subvert them by refusing to continue the story along the same lines. The use of the word ***tehom*** is particularly instructive for our purposes, as it recalls the divine feminine power of Tiamat. As Dr. Christine Hayes notes, "it means 'deep' and etymologically it's exactly the same word as Tiamat: the 'at' ending is just feminine. So Tiam, Tehom – it's the same word…now it's demythologized, so it's as if they're invoking the story that would have been familiar and

[215] E. A. Speiser, trans, The Creation Epic, in ***Ancient Near Eastern Texts Relating to the Old Testament***, ed. James B. Pritchard (Princeton: Princeton University Press, 1950, 1955).

yet changing it."[216] The biblical authors were retelling a known story to reflect their new big idea: monotheism.

The Jewish creation story, then, is rooted in the move away from creation as imposed violence on the female body to creation as a non-sexual, non-violent, monotheistic act. Given the interest this thesis has in the inviolability of the female body, in many ways this is a positive shift. But with what is gained in the transition from the Enuma Elish to Genesis there is also loss: the loss of a divine feminine force connected to creation. What if we kept what we gained from a non-violent monotheistic creation myth, yet rejected the shift away from the female divine aspect as the source of the created world? We might consider, then, that the Creator God of Genesis, the Jewish Creator God, exists in a female body. The creation of the universe in our religious myth can, in fact, mirror the creation of human life in our everyday experiences.

Such an image of God as pregnant is not foreign to traditional Jewish texts. It is subtly present in liturgy, a modality which often turns to masculine images of God: Father and King of Kings. On Rosh Hashanah, the Jewish New Year and celebration of the creation of the world, the ***musaf*** service contains an anonymous ***piyyut*** (liturgical poem) which begins with the phrase ***hayom harat olam***. The Hebrew is difficult to translate; many renderings of the opening line simply state "today is the day of the world's creation" or "today the world is conceived." But the Hebrew root in הרת appears everywhere in the Bible as the signifier that a woman is pregnant. So, we might read the line as "today is the pregnancy of the world." The ***piyyut*** goes on to name God as a

[216] Christine Hayes, "Lecture 3-The Hebrew Bible in Its Ancient Near Eastern Setting: Genesis 1-4 in Context" on Open Yale Courses, RLST 145: Introduction to the Old Testament (Hebrew Bible), September 13, 2006.

compassionate Father. But its opening line offers an embodied maternal image. On Rosh Hashanah, God re-enacts the primordial creation by once again carrying the world in Her womb.

The Kiddush Levanah, a kabbalistic ritual honoring the new moon, contains additional references to cosmic pregnancy. The ritual's liturgy involves reciting Psalms of praise, honoring God's creation, and jumping toward the moon, which was traditionally understood as a feminine symbol. One piece of the liturgy about creation contains the following: "And God said to the moon: 'Renew yourself!' A crown of beauty to the ***amusei vaten***, the womb-carriers/womb-carried." The moon, grammatically rendered feminine in the Hebrew, is linked with pregnancy. Again, the Hebrew of the phrasing is difficult to translate. ***Amusei vaten*** could be those who carry something in the womb—the moon as inspiration for pregnant women—or it could be those who have been carried in the womb. This certainly includes humanity, but the metaphor might also be extended to the whole created universe: the stuff of the cosmos had its origin, as it were, in a divine womb.

I am reading these images, of course, as metaphorical. I present the idea of God as an embodied pregnant woman not to imply that God is somehow a corporeal being—my own theology, along with most other Jewish theologians would reject such a notion— but to show that the images we use for God matter. A pregnant Creator metaphor serves as a corrective for thousands of years of masculine God imagery; it calls us to imagine God differently. Such imagining does not erase the potential power of other traditionally "masculine" images for God. (I, for one, resonate quite strongly with God-as-Judge ***and*** with the combination image of a warrior-God with feminine attributes) I am inspired

once more, here, by Judith Plaskow, in her latest collaboration with Christian feminist theologian Carol Christ, *Goddess and God in the World*. In that work, she writes of the need for expanding our metaphors for God beyond Judaism's traditionally masculine language:

> But new imagery will acquire weight and plausibility only as we begin to tell new stories. Jewish feminists have argued that Torah as it has come down to us is only part of the record of the relationship between God and the Jewish people because women's stories have not been told. As women create new stories and expand on traditional ones through midrash, God will be changed. I hope that, just as a broader range of images in liturgy can communicate a view of god as male, female, both and neither, so new midrash and stories can crack open and increase the reparatory of God as character.[217]

I would argue that not only will the new stories we tell about God serve to change God's character, they will also radically change our own.

If we map this image of a pregnant female God onto the creation story in Genesis 1, how does that influence our understanding of abortion and reproductive choice? First, it highlights the position of women as primary agents in the process of creation; they are now more directly in this new metaphorical image of God as they experience pregnancy. Some might worry that such an interpretation would lead to a strict anti-abortion stance. If, when women become pregnant, they are mimicking the divine creation, and we are the happy products of such a process, then would ending a pregnancy be a chosen betrayal of the divine image? The Genesis narrative, though, is not simply about embodied creation. Its innovation, the move away from other Ancient Near Eastern myth, is that God creates the material world with non-material acts. What are the key markers of God's creative

[217] Judith Plaskow, "Evil Once Again: Responding to Carol's Chapter 9" in *Goddess and God in the World: Conversations in Embodied Theology* by Carol P. Christ and Judith Plaskow (Minneapolis: Fortress Press, 2016), 284.

process in Genesis 1? She discerns, separates, observes, and assigns value. If God is pregnant with the world, She is given an internal, cognitive, creative life to match that physical pregnancy and procreative power. And the key, here, is that final evaluative process. Each time God enters a new stage of creation, She studies what has been formed and pronounces its value. "And God saw that it was good" is the continual refrain. It is only when God sees that Her process is appropriate and necessary, that it is wanted, that it generates greater goodness in the world, that She continues to create.

The first chapter of Genesis is God's perfect pregnancy: it is wanted, viable, exciting. In the end, it is very good. But what if we were to imagine another creation, one where everything does not go as planned? Indeed, there is precedent for such a story in the rabbinic mindset. In Bereishit Rabbah 3:9, Rabbi Abahu interprets a verse of the creation story in Genesis 1 as signifying that God had created and destroyed many worlds before finally settling on our known universe. The following feminist midrash brings the two images—the metaphor of a pregnant female God and the story of God's creating and destroying multiple worlds—together. It imagines what it might have looked like for the divine creative process to include abortion:

> In the beginning, God began to create. Out of the shapelessness and void, She felt a kernel of being emerge; something new was taking form. And God felt the movement of ancient waters within Her, as physical substances separated, clustered together. God saw all that was in the process of being created. And…it was not good. God was not yet ready to be responsible for a created world. Or. God wanted this world, wanted it desperately, but something was wrong, something very not good. Or. God had not anticipated this creation, at this moment. She still needed to generate her ***own*** light. So God made a choice. Not this time. She felt the waters recede. She looked back into the darkness of futures unknown, of countless possible new beginnings.

Women are in God's image not just in the fact of their pregnancy, but in their ability to evaluate such a pregnancy and determine if its creative process should continue. As such,

we should stand for access to reproductive choices which enable all women to live with the dignity such a divine image deserves.

Bodily Integrity: Pregnancy and the Inviolability of the Female Body

The second theme collected from the interviews is the ethical importance of bodily integrity: the ability to exist fully in one's body without the violent imposition of external regulation or physical breach. For those I spoke to, this goes beyond legal definitions of "privacy" whereby protections for abortion access define women's bodies as separate from the public sphere (and therefore not subject to political regulation). This is bodily integrity centered on the woman's right to control the parameters of her own life by having the power to control her physical health and well-being. The breach of such bodily integrity, therefore, is not simply a breach of the divide between the public and private spheres, but a disruption of the basic human right to a non-coercive embodied existence.

Knowledge, awareness, and control of one's own body is a powerful and empowering thing. Elise saw this in her study of fertility cycles and her decision to more closely track and understand her menstrual cycle. "It totally changed my life," she professed, "not just from a contraception stand-point, but also getting this data and realizing, oh my god, there is a reason that my body does certain things at certain times."[218] In this case, Elise had previously been denied control of the information she gained about her own body. Societal distaste for women's menstrual cycles dictated her prior comfort level in her own physical form. Reclaiming this bodily connection without

[218] Elise, December 14, 2016.

the imposition of external norms or expectations, however, liberated her from this judgment.

The disempowerment of losing bodily integrity in pregnancy elicited an even stronger reaction among interview participants. There was never a question or doubt for Sue that they would hold a pro-choice position. When asked about the origin of their stance on abortion, they responded that "it was a matter of ethics, about knowing what was right, that it seemed like a baseline obvious thing to me. Being able to decide what happens to your body and what medical choices you make is what ethics means."[219] Rachel, a medical student, shared that such a stance is a driving force behind her commitment to her chosen profession, and especially her desire to provide abortion care:

> Part of what feels special about it is that it's so not special in terms of what you do as a doctor, which is just helping people take care of their body and making decisions that are right for them, and help[ing] them figure out what they prioritize and value to help them make that happen. And I think that it's unfortunate that it feels so in its own category in the context of the rest of being a healthcare provider. But since it is, providing a place or being someone that can provide that care in a totally non-judgmental way and honor whatever feelings people are having, whether that's something they're experiencing because of everything society is putting on them, or it's something that they're having totally internally. Being there for them wherever they are, and helping them move forward with making decisions about their body in a way that feels most important to them.[220]

Rachel was careful to define the boundaries of care as she considered her future role as an abortion provider. Her knowledge as a medical provider would be shared to greater empower her patients in a deeply pastoral way. In the end, she located the final decision-making in the hands of the one seeking to "take care of their body."

[219] Sue, December 20, 2016.
[220] Rachel, December 18, 2016.

Many might argue that the principles of bodily integrity applied to other medical scenarios do not apply to the case of abortion. When women are pregnant, their bodies contain new material that has the potential to become a separate human being. We have seen in the first chapter of this thesis some of the rabbinic assessments on the status of such a potential being while still in the mother's womb. In the majority of cases, the fetus is understood to be part of, or dependent on, the mother, rendering her of higher status and priority. Her bodily integrity, then, can still take precedence over a being which is, by its nature, incapable of autonomy. The fetus needs the protection and nourishment of the womb to grow into a separate entity, and thus the female body should not be unduly violated for its benefit.

Ariella summarized such a rejection of the privileging of a fetus over its mother: "It's a violation of someone's body to literally force them to house another person inside of them…bodily integrity at its very core."[221] I am particularly interested in tracing the idea behind the language Ariella used here of "housing" another person. This idea links the theme of bodily integrity, as expressed by many of the interviewees, with the idea of hospitality. Dr. Lisa Guenther, professor of philosophy at Vanderbilt University, considers such a question in her work titled *The Gift of the Other: Levinas and the Politics of Reproduction*. Guenther seeks to complicate the typical binary between feminist language around the "right" to bodily autonomy and the anti-abortion movement's focus on the fetus's "right" to life. She presents a nuanced ideological path which invokes Jewish scholar Emmanuel Levinas's concept of the Other while still maintaining a pro-choice position: "What if we grounded women's reproductive freedom

[221] AM, December 19, 2016.

not on the assumption of an autonomous subject who owns her body and therefore has a right to choose, but rather on the ethical sensibility of an always-already embodied self whose very exposure to the Other calls for justice and equality, and *therefore* for women's right to choose?"[222] Levinas's philosophy introduced a category of ethics based on this idea of Other-ness; one's embodied encounter with the face of the Other would lead to a deep sense of responsibility for that person. Guenther's stance honors the embodied nature of pregnancy while still allowing for a subjective awareness of what the presence of the fetus in that body means. That meaning does not take away from a pro-choice position, indeed, it *enhances* a commitment to choice.

Dr. Margaret Kamitsuka, a professor of Religion and Feminist Studies at Oberlin College, summarized Guenther's work in her article on the influence of feminist scholarship on abortion in the political sphere. Kamitsuka writes that "Guenther's theorizing on hospitality brings the personal-political relationship to bear in a new way on abortion debates. This viewpoint affirms maternal hospitality as an instance of recognition of an Other but also specifies what must be in place politically for this hospitality to be a viable ethical position – namely personal choice."[223] According to this perspective, maintaining a pregnancy is an act of hospitality of the highest order. But this hospitality must come with the insurance that it is not grounded solely in coercion and self-sacrifice. As Guenther herself writes, "without a feminist politics of reproductive choice, a maternal ethics of embodiment for the Other threatens to confirm the traditional view of women and especially mothers as humble, self-sacrificing supports for other

[222] Guenther, *The Gift of the Other*, 143.
[223] Margaret D. Kamitsuka, "Feminist Scholarship and its Relevance for Political Engagement: The Test Case of Abortion in the US," ***Religion and Gender*** 1:1 (2011): 30.

people—or even to valorize the persecution, trauma, and displacement of the maternal self."[224] The idea of fetus as Other, of course, plays somewhat with Levinas's ethical mandate of the face-to-face encounter. Mothers do not feel the sense of responsibility of staring into the face of their children until birth; hence, this formulation of the fetus as Other maintains the ambiguity of fetal status we have seen both in Jewish tradition and in the responses of the interview participants. When there is no face-to-face encounter, it allows a woman to feel a range of empathic connection to the being growing in her womb. Guenther already draws heavily from Jewish theological reasoning, alongside many other feminist and philosophical thinkers; I am interested in considering her thought in light of the strong emphasis Jewish narrative and later rabbinic interpretation places on the value of ***hakhnasat orchim***, the hospitable welcoming of guests. I see this exploration as a continuation of the commitment to the ethical principle of bodily integrity.

The paradigmatic story of hospitality in the Torah, according to rabbinic tradition, takes place in Genesis 18. Abraham, sitting at the entrance of his tent during the heat of the day, looks up to see three men (who the reader understands to be angels) and immediately invites them into his home. Rashi, the great rabbinic commentator, writes that Abraham sat at the ***entrance*** to the tent "to see if there was anyone passing by so he could invite them into his home."[225] Abraham runs to meet the three messengers, offers them food, water, a place to stay, bows to them, and asks to wash their feet. This scene in Genesis 18 introduces Abraham as the model for how to welcome guests. As Abraham

[224] Guenther, ***The Gift of the Other***, 143.
[225] Rashi on Genesis 18:1.

rushes to prepare for his visitors, Sarah stays in the tent, baking cakes at her husband's request. Later in the chapter, she will overhear Abraham's conversation with the messengers and laugh incredulously as they tell him that the two of them will have a child in their advanced years. These two moments in the chapter, the initial hospitality followed by the annunciation, seem to be linked only as a plot device; Abraham has to welcome the angels so they can tell him about his future child with Sarah. But when the reader applies the lens of bodily integrity and non-coercive reproduction as a form of ethical hospitality, new possibilities emerge.

Perhaps Genesis 18 contains two equivalent stories of the Jewish people's ancestral commitment to hospitality. Abraham's is external and easily recognized. He exerts himself—helped by Sarah, who he commands to quickly bake cakes for his guests—to ensure that the three visitors will be well-fed, rested, and respected. He does so without any knowledge that his guests are God's messengers, thus negating any coercion he might have felt about serving divine beings. Abraham's *hakhnasat orchim* comes from a place of choice. Sarah's hospitality in this story parallels her husband's. She, too, will be welcoming the Other to her home, ensuring that he will be nourished and cherished. Unlike Abraham, though, Sarah's hospitality takes place both in the tent, where she prepares food for the guests, and in her womb. When Sarah overhears the message to her husband about their future child, the text tells the reader that she "laughed within herself." God immediately questions her response, indignant that she would assume that such a pregnancy would be impossible. Sarah denies her laughter, God denies her denial, and the story seems to move on. The typical reading of this story reveals a God who spies on Sarah's internal thoughts, harshly judging her laughter, and

refusing to hear her response. No wonder Sarah is portrayed as fearful. God's intrusion into her inner world is a direct violation of bodily integrity.

I would like to read the story differently, however, to remove the taint of a God who judges Sarah's laughter. Maybe Sarah's response comes not from a lack of faith, but from delight and acceptance at the generosity of body and spirit it will take to house a new life in her body for nine months. Sarah's laughter, then, encompasses the fullness of Guenther's philosophy. The matriarch is able to name her own embodiment (her original incredulity is based on the certainty that her menstrual cycles have ceased) while also appreciating the subjective ways that an Other being, in this case Isaac in-utero, shifts her understanding of that embodiment and her ethical commitments. Genesis 18, then, becomes a story about the value of bodily integrity as expressed through hospitality, a hospitality now ***shared*** by the first Jewish matriarch and patriarch.

Given the lens provided by interviewees and feminist philosophers, coupled with the retrieval of Sarah's narrative from the book of Genesis, our second principle appears: the ethics of bodily integrity lead us to prize a non-coercive maternal hospitality. Such bodily integrity demands that women be granted the freedom to exist in their bodies without violation or unwanted imposition. A pregnancy under coercion cannot be considered as meeting such ethical standards. Anti-abortion legislation and impositions on access to abortion create an environment in which women are coerced into staying pregnant. As Kamitsuka writes, "The gift of the maternal body must, ethically speaking, have as its necessary material precondition a politics of reproductive choice."[226] The feminist call for bodily integrity, as expressed through the Jewish commitment to the

[226] Kamitsuka, "Feminist Scholarship," 30.

value of hospitality, requires a robust pro-choice position as a means for granting women the dignity of an unviolated embodied existence.

Transmission: Reproductive History as Covenantal Heritage

Many of those interviewed, when discussing their connection to abortion or the development of their pro-choice identity, mentioned such things in the context of a familial legacy. For some, liberal family values were the guiding force behind a commitment to pro-choice activism. Others spoke about the history of abortion in their family tree as they relayed stories of mothers, daughters, aunts, or grandmothers who had abortions. This was a common theme in my experience outside of formal research as well. After explaining the topic of my rabbinic thesis, many people would share that their mother, grandmother, or great-grandmother had had an abortion. This pattern shows that reproductive choice is a value which becomes embedded in a great number of Jewish family narratives. In this way, interviewees present a third ethical principle for approaching the discussion of abortion in Judaism. The heritage of reproductive decision-making is a manifestation of the Jewish interest in *l'dor va'dor*, the passing of values and stories from one generation to the next. This is all the more striking given the paradox it creates. Abortion, in a sense, curtails biological lineage in that it keeps a pregnancy from resulting in new human life. This theme, then, complicates the values we assign to the idea of legacy. Clearly the passing on of one's lineage amounts to more than genetic replication; it includes elements of spiritual, religious, and ethical transmission as well.

Interviewees considered the influence of generational legacy on value-formation around reproductive choice in many ways. For some, such a connection was built within the immediate family, while others saw it as a continued chain of female Jewish tradition.

Hannah described the influence of such a legacy on her political consciousness from an early age: "I was almost a one-issue voter, a little bit. I guess that comes from my mom, because she would always consult pro-choice New York before election day and check in and make sure that everybody had appropriate voting records."[227] Katie saw her generation's involvement in pro-choice activism as a natural continuation of maternal legacy. "We had moms that were involved," she said, "and now we are involved."[228] When asked about the origin of her stance on reproductive choice, Erica cited her mother's influence as well: "I really remember, in seventh grade…we had an assignment that was something like pick a controversial topic and fight for it in an essay. I was going through the list of options with my mom and she pointed out that I could write about abortion. I didn't know what it was. She told me, and really impressed upon me this strong pro-choice: 'Of course, it's a woman's body, it's up to her to choose.'"[229] Meanwhile, Elisette saw the female Jewish legacy of pro-choice activism in a much broader way. She felt empowered by the history of women who held their female identities and Jewish identities in a holistic way to take a stance on important ethical issues:

> Jews stand up for what is right at the risk of everything. And this feels like I'm doing the work, I'm not alone, I'm part of a huge movement and a growing movement. Jews have always taken a stand for what they believe is right…Jewish ***women*** have always…I think of Queen Esther, Bella Abzug, or Ruth Bader Ginsberg, these women where Judaism and being a woman is part of their identity, and I feel supported by that legacy in continuing to do this work.[230]

[227] Hannah, December 29, 2016.
[228] Katie, December 13, 2016.
[229] Erica, December 18, 2016.
[230] Elisette, December 16, 2016.

Truly, then, inspiration for working towards abortion access and reproductive justice feels a part of the inherited wisdom of Jewish women, beginning in the family and reaching back into Jewish history.

It is not just a commitment to being pro-choice which is passed from one generation to the next among Jews and Jewish women. The memory of abortion experiences is transferred as well. From what she had heard, Jini understood that her grandmother had several abortions. Her grandmother would go to a local midwife when she was pregnant and did not want to be. Maya commented on the special nature of hearing stories from her Iraqi-born maternal grandmother about her abortion experiences:

> She had six kids and then she had many abortions, and she would talk about it very openly. It was a big deal to her, but it was also not at the same time. So, she would talk about how she knew the doctor, he knew her, she would call him up, he would come over. She was just done, she felt like 'I can't have more kids, I can't do this.' She didn't feel ashamed of it, I feel that she was really at peace with having those abortions.[231]

This kind of generational story-telling built empathy for reproductive decisions beyond the specific abortion experience of a family member. Marlene M.'s daughter, pregnant with twins who had been diagnosed on separate timelines with Trisomy 18, a non-viable genetic abnormality, underwent two abortion procedures: a selective reduction at 13 weeks, and a termination at 18.5 weeks when the second twin was diagnosed. Marlene M. reflected that sharing that experience with her daughter and witnessing the many inhumane ways she was treated, at the instruction of the state, while seeking abortion care, has changed the way they both think about the process. Shira, who knew at an early age about her mother's abortion, said that carrying such a story helped her better

[231] Maya, December 16, 2016.

empathize with the issue: “Being a kid growing up, people would think that abortion was wrong. You don’t actually know what was happening in someone else’s life, and it might be the right choice for someone. You don’t want to restrict their ability to do that.”[232] The passing of abortion stories from one generation to the next generates support, inspiration, compassion, and empathy.

I would like to integrate this principle into an interpretation of the patriarchal narrative of Genesis. In the first book of the Torah, it is the male line—a list of masculine “begats”— which transmits values and all forms of inheritance. Stories of infertility and subsequent pregnancies among the matriarchs serve only as a helper narrative to the more privileged journeys of Abraham, Isaac, Jacob, and Joseph. Most important, the covenantal relationship to God passes from father to son. When God appears to the later patriarchs, even to Moses at the beginning of the book of Exodus, a key identifier is God’s past relationship with the older patriarchs. Moses’s encounter with God at the burning bush in Exodus 3:6 contains the following language: “I am the God of your father, the God of Abraham, the God of Isaac, and the God of Jacob.” To be connected through a paternal legacy of relationship is to gain legitimacy as God’s chosen spokesperson. In Genesis 28:13, when Jacob dreams by the side of the road, God appears to him and says “I am the Eternal, the God of Abraham your father and the God of Isaac. The land where you lie, I will give it to you, to you and your seed.” In the Genesis narrative, then, it isn’t just a transfer of legitimate relationship to God, but a transfer of *covenantal promise*, that moves from father to son.

[232] Shira, December 28, 2016.

The patriarchal narrative of Genesis centers around covenantal promise, and the signs of such a promise are uniquely male. The physical mark of relationship with God, circumcision, is inscribed on the male sexual organ. God's language in describing the connection of the patriarchs with the land they are promised constantly invokes seed, a signifier for male reproductive material. The patriarchs are assured that their seed will multiply beyond count. This is the inter-generational promise for the men of Genesis, the main narrative which will serve as the foundation of Jewish covenant and relationship to God ever after. But what of the women? What of their covenant, their legacy of *l'dor va'dor*? The interviews conducted for this thesis show that as much as Jewish men have passed on their covenantal legacy through symbolic male embodiment, so too have Jewish women reached across generations with the unique embodied experience of being female. The values they inherit and bequeath to further generations destabilize the patriarchal narrative of Genesis, especially since so much of those stories hinges on the necessity of providing male heirs to fathers. Perhaps, their stories invite us to consider, the matriarchs are not meant to serve as the helpmeets of the patriarchal promise; rather, they might have an equally powerful balancing influence. If the male Jewish story is one of proliferation of seed, it finds its contrast in an equally sacred female Jewish story about reproductive selectivity:

> After she came home from Shechem, Dinah found a midwife. Her brothers, obsessed with her purity and their own good name, had slaughtered the whole city. What was Dinah to do with the sign of her ordeal, with the result of what Shechem had done to her? Dinah had an abortion. She refused to carry a pregnancy she did not ask for. She wanted to resume her outdoor walks, to visit her neighbors. She wanted to find some peace. Dinah knew, too, that the God of her Mothers was with her. Leah, her mother, fertile and unloved wife, had been to the midwife too. Seven times for her seven children and once more, after. Despite the joy her sons and daughter brought her, despite the prestige, her body was tired. She was done carrying babies. When Dinah, her youngest, was old enough,

she told her the story of her abortion. And with it, an even older story, that of Sarah, the family's great matriarch through both birth and marriage, she of the miraculous pregnancy late in life. Leah's father-in-law, Isaac, was the son born to Abraham and Sarah's old age. He, and her husband Jacob after him, they were the promised seed, the fulfillment of God's covenant. Sarah's pregnancy with Isaac was part of family legend; the fathers told it with pride to their sons. Everyone knew the darker family story, too, though they spoke of it in hushed tones. The day that Abraham had brought Isaac to the mountain to make a sacrifice to the Eternal. The God of seed and male flesh had demanded Isaac as an offering. Only at the last minute did an angel come to stay Abraham's hand. Father Abraham, rewarded for his faith. Bound Isaac, silenced by fear. But a few of the women knew the third story, the deepest one. Leah and Rachel heard it as girls; Dinah learned it too. *And it came to pass, after these things*: Sarah woke one morning to a strange feeling; she was pregnant again. No angels this time, no grand pronouncements, but inside, the same laughter. She rolled over to reach for Abraham only to find that despite the early hour, he had already left the tent. At the tent flap she watched her husband as he rushed by, saddling his donkey, chopping fresh wood, rushing Isaac along though he would barely touch him. "Where are you going so early," Sarah called to him, "and in such a rush?" Abraham came near his wife, his face pale but his jaw set firm. She lifted up her eyes to meet his, and in one terrible instant, she saw everything: Isaac climbing the mountain with wood on his back, Abraham binding her son, his hand raised, trembling and terrible, the glint of the knife against a darkened sky. She saw the angel intercede at the last moment, the ram in the thicket, the silent walk back down the mountain. The trauma which would scar her beloved, precious son for the rest of his life. When her vision cleared, the two had already gone. Sarah turned inward. She wept and raged, she sat in tortured silence, she clutched at her stomach, her breast. There was no midwife to go to, so far from her homeland, but she remembered whispers, old stories about which herbs to take. *Not this child, too*, she promised herself. The God she knew would understand; her husband must be speaking with something else. By the third day, she had decided. Sarah walked out to the fields in Kiriat-Arba. Far off, on Mount Moriah, Abraham raised the knife. Sarah took a deep breath and brought the herbs to her lips. *And the life of Sarah was a hundred and twenty-seven years. These were the years of the life of Sarah. And Sarah died in Kiriat-Arba*.

This midrash is meant to reflect the idea of generational legacy of abortion stories among Jewish women, stories that are tradition may have chosen not to tell. In this case, I imagine the matriarchs as passing such a legacy from generation to generation. The inspiration for these stories come from some of the abortion stories shared by those interviewed, either about their own circumstances or those of their maternal ancestors.

The Sarah story, in particular, is driven by the stories I have heard from interviewees and others about grandmothers or great-grandmothers who had abortions before they were legalized and died without access to a safe medical procedure. It is meant to fill in the gaps around Genesis 22, the story of the binding of Isaac. That chapter begins with "And it came to pass, after these things." The rabbis assumed this was about Abraham's interactions with Abimelech in the previous chapter, but what if it was about Sarah? Genesis 23, which immediately follows the binding of Isaac, begins with Sarah's death. Here, too, there is a gap. We certainly have a whole midrashic tradition that links her death to the trauma of the Akeidah. What if Sarah died because she tried to end a second pregnancy and could not find proper abortion care?

The juxtaposition of Abraham and Isaac on the mountain and Sarah in Kiriat-Arba should not be understood as drawing an equivalency between child sacrifice and abortion. Rather, it is meant to question what moments in a person's life count as defining spiritual moments. Abraham's willingness to obey God's commands has been portrayed by Jewish tradition as the ultimate testament of faith. Sarah's decision in this midrash destabilizes such an assertion. The choice *not* to obey what the body has brought about, especially when the circumstances threaten the potential child's wellbeing, and the commitment to make that choice known and available to other women, these are their own acts of faith. With the testimonies offered in interviews, we can re-read the patriarchal narrative of the Torah and begin to fill in the silences around the lives of the matriarchs. From such a rereading, our third guiding ethical principle emerges: the experience of abortion, and the commitment to being pro-choice, is a legacy bequeathed from one generation of Jewish women to the next. Such an inheritance shows us that the decisions women make about

their reproductive futures are a symbol of their covenantal partnership with God, and their commitment to the continuation of Jewish stories and values. This legacy should be honored as a strong counter-narrative to the traditional Jewish understanding of the book of Genesis and the Jewish people's story as a whole.

Choice: Reproductive Decision-Making is Not in The Heavens

Given the name of the movement, it is no surprise that many of those interviewed would highlight "choice" as an important ethical principle in their thinking about abortion. But what was striking about this fourth principle was the way that so many of those interviewed explicitly referenced their Judaism when discussing choice. The participants drew a clear line between choice and self-determination as key for reproductive access ***and*** as equally strong moral principles when considering their Jewish identities. Though only a few of those interviewed self-identify as Reform Jews, this connection feels aligned with my own understanding of Reform Jewish identity. The link will help us reconsider traditional Jewish approaches to choice and self-determination and how they might be applied to the discussion of abortion. We see, also, how these five principles are interconnected; they are meant to serve not as five discreet concepts, but as a flexible framework. The issue of choice harkens back to the second principle of bodily integrity, and the need for truly non-coercive decision-making. As Elisette noted, "choice doesn't mean anything if you don't have access or can't afford your choices."[233] This focus on the life circumstances surrounding access to abortion care foreshadows the fifth and final principle which we will soon explore in depth.

[233] Elisette, December 18, 2016.

Though several participants connected choice about reproduction with choice about religious identity, they did so in different ways. Sue considered the critical nature of choice in light of past Jewish oppressions, noting that "because of Jewish history, and that we have not had all of the choices available to us that we've needed to for much of our history, self-determination feels especially important."[234] For Sue, the Jewish historical experience of powerlessness grounds a commitment to reproductive choice in the broader narrative of Judaism. Jini encountered reproductive choice on a theological level. She spoke about her training as an energy healer and a paper she wrote on healing and abortion. That project, she shared, was "about really reframing abortion into a choice" so that women who had the procedure could feel supported in their decision-making. She elaborated on the theological underpinnings of this stance, explaining that "it's really more about making decisions about what's in your heart, you know, and also that God is everywhere, so I don't think you're separate from God."[235] According to Jini's spiritual language, the process of looking inward to make a decision about the future of one's pregnancy is a form of divine encounter.

Choice can be a form of historical or theological connection to Jewish identity. For several interviewees, it represented the meaning of Judaism itself. Elise put it succinctly. "I think Judaism is all about choices," she said, framing her statement with a question: "I have a conscious choice, how am I going to be the best person that I can be right now?"[236] With this question as a guide, abortion becomes a part of Elise's broader Jewish landscape of decision-making. She is guided by her Judaism to make choices

[234] Sue, December 20, 2016.
[235] Jini, December 13, 2016.
[236] Elise, December 14, 2016.

which will make her the best possible version of herself; in this structure, abortion is normalized as one such choice. Erica saw choice as an aspect of the very Jewish process of continual inquiry and exploration: "I think of the Jewish take on that [on abortion] as being supportive of choice in the way that it's supportive of questioning something. Getting to choose, getting to think about is this the right thing for me or not."[237] Given Elise and Erica's ideas, we might see not only that Judaism supports abortion as a legitimate moral choice, but that it could see the act of making reproductive decisions as an inherently Jewish process.

Ariella made similar connections in her interview: "I think that being a religious person has made me value bodily autonomy and personal choice. I think that one thing that's powerful in my own religious system and the way my parents raised me…I'm doing all of this, religious stuff, because I chose it, not because anyone forced me to."[238] When she elaborated on the values behind this stance, Ariella implicitly used biblical language. "For me," she continued, "religious practice is very much about ***choosing my own life*** and what I want to do, and so abortion is also about choosing your own happiness, and choosing what's right for you at the right time, and being able to raise a good family when you're ready for it, if you're ready for it. It's about autonomous decision-making."[239] The uncited reference to Deuteronomy 30:19, "Choose life that you may live, you and your seed," is particularly striking given its context. That verse is often cited by religious members of the anti-abortion side of the debate as a biblical injunction against abortion. "Choose life," according to their interpretation, means choosing the

[237] Erica, December 18, 2016.
[238] Ariella, December 19, 2016.
[239] Ariella, December 19, 2016, emphasis mine.

potential life of the fetus and remaining pregnant. For Ariella, though, the idea of what it means to "choose life" takes on greater nuance. Choosing life, in her understanding, an understanding deeply grounded in religious conviction, means having the autonomy to live a full, happy life. Choosing to have an abortion, then, would be the very affirmation of "choosing life," not its antithesis.

The traditional texts of the Jewish canon support this focus on the importance of decision-making and self-determination. I can think of no greater story to highlight this orientation than that known as the Oven of Achnai. This story, found in the Babylonian Talmud Bava Metzia 59a-b, begins with a debate among the rabbis about an oven and whether or not it should be considered unclean. Rabbi Eliezer tries to convince his fellow interlocuters of his opinion in any number of ways and the story develops into a larger meditation on self-determination and the development of Jewish law. For our purposes, it is worth presenting the story here in full:

> On that day, Rabbi Eliezer brought forward every imaginable argument, but the other rabbis did not accept them. He said to them: "If the halakhah agrees with me, let this carob-tree prove it!" And the carob-tree was torn a hundred cubits out of its place—others affirm four hundred cubits. "No proof can be brought from a carob-tree," they retorted. Again, he said to them: "If the halakhah agrees with me, let the stream of water prove it!" The stream of water flowed backwards. "No proof can be brought from a stream of water," they countered. Again, he urged: "If the halakhah agrees with me, let the walls of the schoolhouse prove it," and the walls inclined to fall. But Rabbi Joshua rebuked them, saying: "When scholars are engaged in a halakhic dispute, why should you interfere?" So they did not fall, in honor of Rabbi Joshua, nor did they stay upright, in honor of Rabbi Eliezer; they are still standing so inclined. Again, he said to them: "If the halakhah agrees with me, let it be proved from Heaven!" A heavenly voice cried out: "Why do you dispute with Rabbi Eliezer, seeing that in all matters the halakhah agrees with him?" But Rabbi Joshua arose and exclaimed: "It is not in heaven" (Deut. 30:12). What did he mean by this? Rabbi Jeremiah said: The Torah had already been given at Mount Sinai, so we pay no attention to a heavenly voice, because You have long since written in the Torah at Mount Sinai, "After the majority one must incline" (Ex. 23:2). Rabbi Nathan met Elijah and asked him: "What did the Holy

> Blessed One do in that hour?" He replied, "God smiled and said 'My sons have defeated Me, My sons have defeated Me.'"[240]

There is so much richness in this story for the project of this thesis. For one, it shows the way that even the rabbinic mindset used creativity and imagination, coupled with personal experience and a re-reading of text, to put forth their understanding of Judaism and its development. This chapter is, in many ways, a continuation of that legacy. It is equally relevant when considering decision-making, the ethical principle at hand. The Oven of Achnai teaches that the rabbis refused to cede their autonomy to a heavenly authority, and that God ***supported*** earthbound decision-making. Leave the magical moving trees, falling walls, and heavenly voices to the supernal realm, the rabbis seem to say. The determination of status in the earthly world is a choice that is ours to make.

Despite this relocation of authority from divine to human hands, the story of the Oven of Achnai—a very womb like structure!-- still maintains power in the male rabbinic establishment. What if we were to ask this passage of the Talmud to tell the story again given the thoughtful testimony of interviewees about the connection between Jewish identity and reproductive choice? I present, then, a creative reworking of the Oven of Achnai which centers the experiences of those interviewed for this thesis:

> Three women sat outside the schoolhouse. They were there to take in the sunshine and enjoy each other's company, to tell the stories they wanted to be heard. The first woman began: "I got pregnant in my thirties with a man I didn't want to be permanently attached to. I understood the responsibility it took to raise a child, and I knew I was not ready for it. I heard everyone's opinion and then I stopped talking to everyone for a week and just…sat with myself to figure out what I wanted to do. I chose to end the pregnancy. It was a decision I made with care." As she spoke, the carob-tree in front of her gently uprooted itself and flew away. The three women smiled. It was the second's turn to speak: "My partner and I had used a birth control method successfully for many years, but I still got pregnant. I was still young and wasn't ready to have children. My partner was very

[240] BT Bava Metzia 59b

> supportive of the choice he knew was mine to make. I thought about abortion right away, and started researching my options. I thought about the values my partner and I shared, and we spoke with trusted friends and spiritual advisors. I felt so unsure about what decision to make, and one day thought, 'Maybe I'll see what it feels like to imagine keeping this baby.' You never really feel ready, but I ended up keeping the pregnancy, and I'm very glad things unfolded the way they did. Being a mom has made me more pro-choice than ever." When she finished speaking, the river she sat beside reversed its flow. The three women smiled. Finally, the third began her story: "I already had two children, and was joyfully pregnant with a third. My husband and I spoke about genetic testing, about what it might mean. We knew in any given scenario what we might do. That didn't make it any easier when the results came back. The baby's brain was developing all wrong; there would be no way for him to survive. I kept asking myself if there was something I had done to cause it. I saw other women carry babies to term with similar conditions only to watch them die. I knew I couldn't bear it. It felt like a loss I didn't have permission to mourn, like my house was crumbling down around me, but I was so grateful I had the choice to end the pregnancy." Behind her the walls of the schoolhouse began to fall. The other two women reached for her hands in wordless comfort, and as they did so, the walls steadied themselves at a gentle incline. The three women met each other's eyes, tear-stained, joy-filled, resolute. They smiled. Somewhere, far from where they sat, far from their lives, voices pronounced with authority about right and wrong, clean and unclean, the proper rules and regulations.
> "It's not in Heaven," the women affirmed to one another. "This decision does not belong in some far-off place. It is not the province of magical omens, miracles, or even heavenly voices. It is in our hearts and our mouths, in our bodies, to do it."
> "My daughters have surpassed Me, My daughters have surpassed me," God replied. And She smiled.

This re-reading demands that we shift our perspective when considering the stories in the traditional Jewish canon. Moving to the space outside the schoolhouse, the ***beit midrash***, allows us to encounter marginalized voices that do not typically merit inclusion in the category of "sacred text." The commitment to self-determination through human autonomy expressed in the original Oven of Achnai must be expanded beyond the power structures of the rabbinic establishment. In the same way that the talmudic story places masculine decision-making and consensus above notions of miraculous, heavenly intercession, this new interpretation presents reproductive choice-making as a divinely

sanctioned act and asks that we incorporate the ethics of female-bodied self-determination into the totality of our Judaism.

Justice: Reproductive Justice, Reproductive Justice You Shall Pursue

Our distillation of the interviews into five themes has taken us on a journey from creation, through the biblical narrative, to new conceptions of rabbinic interpretation. We close with redemption. A discussion on reproductive choice cannot be limited to a consideration of the ethics of the abortion procedure alone. Abortion operates within a larger context which encompasses women's health care, childcare, access to education, and more. When women are denied reproductive choice, either through legal regulation or through socioeconomic and geographical inequality, they are denied justice—the agency to live full and rich lives and to provide the same for their families and loved ones. SisterSong, a "national multi-ethnic Reproductive Justice collective" founded in 1997 as a convening of several groups led by women of color, names this concept Reproductive Justice (RJ). The term was coined in 1994 by a group of black women in Chicago who "agreed that the individual right to plan your own family must be central to global development."[241] SisterSong's website lists several crucial pieces of the definition of Reproductive Justice and how it can be achieved. RJ is:

- **A human right**. RJ is based on the United Nations' internationally-accepted Universal Declaration of Human Rights, a comprehensive body of law that details the rights of individuals and the responsibilities of government to protect those rights.
- **About access, not choice.** Mainstream movements have focused on keeping abortion legal as an individual choice. That is necessary, but not enough. Even when abortion is legal, many women of color cannot afford it, or cannot travel

[241] SisterSong: Women of Color Reproductive Justice Collective, "Reproductive Justice," sistsersong.net/reproductive-justice/.

hundreds of miles to the nearest clinic. There is no choice where there is no access.

- **Not just about abortion**. Abortion access is critical, and women of color and other marginalized women also often have difficulty accessing: contraception, comprehensive sex education, STI prevention and care, alternative birth options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support out families, safe homes, and so much more.[242]

It is achieved when we "analyze power systems…address intersecting oppressions…center the most marginalized…[and] join together across issues and identities."[243] The discussion of abortion in Judaism cannot be concluded without an understanding of how it relates to the deeply held Jewish principle of pursuit of justice.

A vast majority of those interviewed referenced this framework either explicitly or implicitly. There was a strong sense among participants that access to abortion is a justice issue. Given the scope of this thesis, our conversations focused on the specific topic of abortion, but the respondents' strong commitment to social justice expanded beyond reproductive choice. Ariella, who is writing a dissertation on the national network of abortion funds meant to alleviate the costs of reproductive care for women who cannot afford it, felt that abortion access is not discussed enough in Jewish institutions as a justice issue: "I think that it needs to be talked about more in Jewish schools and Jewish camps as an issue of social justice. About access, not just 'Is abortion permitted on a Jewish level.'"[244] Others noted the same lack of language in Jewish spaces about reproductive justice. Maya responded that "one of the things I don't see enough of, in terms of progressive Jews who are already on board with reproductive rights and abortion rights, I don't see enough of a commitment to understanding the concept of reproductive

[242] SisterSong, "Reproductive Justice."
[243] SisterSong, "Reproductive Justice."
[244] Ariella, December 19, 2016.

justice."[245] She went on to name the fact that in many cases the reproductive justice language serves as a generational divide, particularly between younger millennial women who are operating in an intersectional framework and women who remember life pre-Roe v. Wade and have a deep emotional connection to the ***right*** to an abortion. Sue's comments aligned strongly with this theme as well. "Abortion is a matter of justice," they stated resolutely. "What we do on this earth matters, and our dignity matters, and we have the tools to figure it out, and that is what speaks to me about why reproductive justice needs to be in our secular politics."[246] Clearly the framework of reproductive justice was powerful for many of the interviewees.

Some of those interviewed found greater empathy and understanding for abortion as a justice issue based on personal experience. Jeri, who works hard to ensure reproductive health care and sexual education for young women in foster care, shared the way the circumstances surrounding her own abortion at a young age built her resolve around this issue: "The awareness that without an understanding parent, the financial wherewithal to travel to another state, and if I didn't have the hopes and the motivation myself to succeed, I don't know what would have happened to me…I think that had a fairly big impact on my commitment and dedication to this issue."[247] Her awareness of the social and economic privileges which enabled her access to an abortion drives her current work on seeing the issue within a social justice frame. Marlene M. worked for decades as a volunteer options counselor. She experienced first-hand the way that government policy affected abortion access by imposing new financial restrictions.

[245] Maya, December 16, 2016.
[246] Sue, December 20, 2016.
[247] Jeri, December 18, 2016.

"When I started," she recalled, "a woman with Medicaid could show her Medicaid card and get an abortion for thirty-five dollars. Then, six months later, Hyde passed. Now you see women trying to sell the coats off their backs."[248] Without such personal experiences, Lauren worried, Jewish communities that tend to be more privileged socioeconomically have a hard time understanding the justice-related part of the abortion discussion. To her, the question of access as a crucial part of the conversation is clear:

> I think people deserve access to safe, accessible, and legal reproductive healthcare, and abortion is an integral part of that. And I think that we already live in the vast majority of places in the United States in a space in which abortion access is really determined by how much money you have and your ability to drive, and that means that people who have the ability to become pregnant are fundamentally unequal in our communities.[249]

Lauren's fear was that Jewish communities, where monetary concerns are, on average, less prevalent, would fail to understand the true weight of this inequality.

But many of those interviewed did make an explicit connection between their Jewish identity and their awareness of abortion as part of a social and reproductive justice framework. Jeri saw this connection as an integral part of her Jewish identity: "I think that even though I never thought about it: 'I'm doing all this because my Jewish practice tells me to do it,' but I think that overall this whole strain of ***tikkun olam*** (repairing the world)…I think that's all part and parcel of it."[250] Erica felt that Jewish engagement in the struggle for reproductive justice harkens back to a long Jewish history of engagement in civil rights and social justice movements: "Judaism feeling like it prioritizes fairness makes me think that there's something equalizing about it. Everyone should be able to be

[248] Marlene M., December 20, 2016.
[249] Lauren, December 28, 2016.
[250] Jeri, December 18, 2016.

treated well and have the opportunity to…live rightly for themselves."[251] Debbie, a provider who proudly fought for legal recognition of nurse practitioners as capable of administering abortion care, put it simply: "I am doing work that's very social justice focused which I feel is a Jewish value."[252] And Amy G., who also volunteered as a reproductive options counselor, linked the work she did to the concept of Jewish obligation: "To me, it was just another mitzvah of taking care of people, and being there, and volunteering my time with something that I was passionate about and could help other people."[253] For these women, the compassionate and skillful commitment to reproductive choice for ***all*** individuals is deeply connected both to their understandings of justice and equality and their visions of themselves as Jews. They see the work of combating injustice as part of an integrated, holistic story; it is at the center of who they are both as pro-choice activists and as enactors of the continued Jewish struggle to create a better world for all people.

The Jewish story, after all, is one obsessed with the search for justice. The narrative of the exodus from Egypt, and the subsequent revelation and covenant at Mount Sinai are central to Jewish consciousness. They forever link the formation of the Jewish people to the command to combat injustice, to remember with empathy the feeling of enslavement, to protect the most marginalized in society. In the book of Deuteronomy, amid a long list of ritual and societal laws, we read: "Justice, justice, you shall pursue, that you may live."[254] The prophetic books cry out against the social injustices of their

[251] Erica, December 18, 2016.
[252] Debbie, December 28, 2016.
[253] Amy G., December 18, 2016.
[254] Deuteronomy 16:20.

time. In all, the Hebrew root for justice, צ.ד.ק., appears nearly 600 times in the Hebrew Bible.[255] This thesis adds to our sacred canon the prophetic voices of contemporary Jews, who see injustice with equal clarity. And as we saw briefly in the third chapter, Reform Judaism, in particular, has had a strong commitment to social justice as a grounding force of Jewish ethics. The fifth and final principle of this Jewish framework for reproductive choice, then, is an application of a centuries-old Jewish commitment to present-day concerns.

"Reproductive justice, reproductive justice you shall pursue," is our moral outcry. This pursuit of justice is with the hope that it might lead us to a world redeemed: a world in which women of all backgrounds, classes, races, religions, and locations are given equal access to the tools they need to make caring decisions for their own lives and the lives of their families. A world in which pregnant people are honored for their divine creative potential and their powers of discernment, where the legacy of reproductive history is recognized as a lasting testament to a covenanted relationship with the Source of the universe, where the female body's generosity is never coerced, where freedom of choice is known to be a religious value. I hope this thesis has done its part to advance this vision. I hope that it represents the redemptive possibility of looking at our Judaism with a changed perspective, of asking new questions of old texts and ideas, of promoting the truth that our lives are made of many overlapping identities. We deserve integration. We deserve a Judaism which represents the whole of who we are. We deserve rich religious

[255] According to the Evan-Shoshan Concordance entries on צדק as a verb, and the nouns צדק and צדקה, the root appears 586 times in these forms.

language for our moral convictions. I hope this project will be only the first step in building such a reality.

Conclusion

This goals of this thesis were twofold: to analyze and expand the current discussion of abortion in Judaism and to present such a process as a model for a post-halakhic, feminist Judaism. The first chapter presented the development of abortion rhetoric in the Jewish textual and legal traditions. It analyzed the core biblical and rabbinic texts invoked in this debate and the central methodologies used in the halakhic approach. This analysis served as a critique of the male-centered and subjective power structure of the Jewish legal system, particularly egregious given the connection of this topic to the female reproductive body. Seeking further commentary on the halakhic discourse, Chapter Two considered alternative approaches through the prism of Reform and feminist thought. It offered a brief history of the Reform movement's public stance on abortion and its current responsa literature on the topic. The chapter also included feminist scholars who offered new perspectives on the legal materials or alternate frameworks entirely. It displayed many important shifts away from the classical halakhic rhetoric on abortion born out of feminist and Reform critique. Ultimately, though, these critiques were not fully satisfying, as they remained in many ways within the structures, methods, and language of the halakhic system. The third chapter, then, located this thesis within the broader context of feminist and Reform Jewish thought beyond the specific topic of reproductive choice. Inspired by past developments in the ethical thought of these two ideologies, the chapter grounded the move away from the halakhic system in a deeply Jewish intellectual legacy. It presented, as an alternative, the modality of Rabbi Donna Berman's "*nashiut* ethics," which demands that marginalized voices create a moral lens for ultimate return to "traditional" stories and texts. In response to this

alternative ethical model, the fourth chapter presented a discussion of the broad themes gleaned from interviews with eighteen individuals who identify as both Jewish and connected to reproductive choice in some way. It clarified the diversity of those spoken to while highlighting certain through-lines in their responses about their connection to abortion and to Jewish identity. Chapter Five, the culmination of this endeavor, brought everything together; it offered five ethical principles drawn from the common themes among those interviewed and centered them within Jewish language, history, and the tradition of creative interpretation.

There are so many ways to continue the goals of this thesis and to move this research forward. Though I expressed reluctance to be pinned down to the language and modality of halakhic discourse, there are many concepts presented in the first chapter which could be ripe for reinterpretation through the final chapter's new ethical framework. This might be a direction of particular interest for those more attached to halakhic authority or the development of Jewish legal thought. In addition, there are aggadic sources in Jewish tradition about reproduction (the reproductive lives of the rabbis' wives, commentary on more stories of female reproduction in the Tanakh) which, when analyzed with a feminist lens, might yield interesting principles or discoveries.

In the third chapter, I acknowledge the brief nature of my discussion of the development of Reform ethics. There are certainly many more thinkers, ethical concepts, and ideologies that I simply did not have the time to analyze in depth. A continued sharpening of this section would only strengthen the placement of this thesis within an extant Jewish intellectual framework. It might also lead to different options for how to flesh out this thesis as a model for a twenty-first century feminist Reform Judaism. I

mentioned, when discussing Judith Plaskow in that chapter, that one of her three modes for feminist reclamation of Jewish tradition is through liturgy and ritual creativity. There are a number of women doing interesting work in this regard around abortion: writing new liturgy for the experience and considering what rituals, such as mikvah, might be meaningful. This would be another excellent avenue forward, both for future research on what currently exists, and for contributions to additional ritual innovations. I was able to touch, ever so briefly, on the extensive body of work on reproductive choice among Christian and non-Jewish feminist theologians and philosophers. Though my focus in this thesis was on abortion through a particularistic Jewish lens, there are great riches to be found in the broader field of feminist philosophical and theological discourse on abortion which could only enhance a Jewish position.

Finally, though each interview was rich and meaningful, I was able to present the voices of only eighteen individuals. And, because my focus was on drawing broader themes from these interviews, there were some stories which remained heard but untold in this thesis. One participant, for example, commented on the disturbing nature of anti-abortion propaganda depicting pro-choice supporters as equivalent to the perpetrators of the Holocaust. There is much more to be said on this topic, especially as it relates to the Jewish community's connection to the Holocaust and its influence on a pronatalist Judaism. There are so, so many more people in the Jewish world who are grappling with their identities as Jews and as supporters of reproductive choice and reproductive justice. This thesis is meant as only the beginning of what I hope is a career-long and lifelong attempt to open many more such conversations. I leave us, then, with the voices of my interview participants, and their answers for what steps we, as a Jewish community, can

take to move forward. Together, they envision a Judaism which treats abortion and all reproductive decision-making with justice and compassion.

- It is **more than just a political issue**. –Amy G.

- On an experiential, individual level, I just don't think there's enough…political **courage**, not just to see the other viewpoint. It's a real, **it's a lived empathy**, that says 'this is actually not one thing or another…it's sometimes both at the same time. –Amy S.

- For me, it's very much intertwined. More than for its actual reasons, for its **optics**. –Ariella

- **This is something that people want to talk about**…I think **there is a hunger** among abortion providers, and maybe healthcare providers in general, to have some sort of spiritual grounding. –Debbie

- Jews do community really well, and they do wrestling really well, so I think relying on **wrestling and community is kind of the answer**. –Elise

- Having someone, like Dr. Willie Parker [a doctor who speaks openly about his own Christian faith fueling his work as an abortion provider], who is a *Jewish* provider who can get up and say **"I do abortions, and I'm Jewish, and I believe in God."** –Elisette

- Because society makes this such a shameful, embarrassing thing, that **having someone there who's going to let you squeeze their hand** is really meaningful. I guess maybe part of why I do it, is because I wish I could have known that I was allowed to ask for help or to ask for support. –Erica

- Sitting in that room and waiting was brutal, and it must be brutal day in and day out for the people who work there. It was freezing cold, you cannot bring anyone with you, you're all alone…there's armed guards when you walk in, for obvious reasons. I wonder if there's a way for somebody to be a chaplain. **That is a space for a chaplain if I ever saw one.** –Hannah

- I grew up in a very Jewish world, in a very Jewish environment, and you had to **make the world better**, you had an obligation to do that, you had to be proactive. –Jeri

- I would really like to see a day when abortion didn't have a stigma associated with it, and I wonder how it would be. It's hard to imagine how it would be if there was no stigma attached to it. I would like to see that happen, though. I would like it to be just a decision that you make in your life. I think it's just too laden with morality, with bad morality, and **I'd really like to see that stigma**

gone from it, and that it be a deeply personal and reflective decision, as most decisions should be. –Jini

- You never do **a tractate on reproduction**…people who are on Planned Parenthood board and only show up at synagogue three times a year, they would be coming more often, too. –Katie

- The slogan of my synagogue is "**All the Days of Your Life**" …you don't know what all the days of your life are going to look like. –Katie

- The biggest reasons that people have an abortion after 20 weeks is because they are poor, or because they are young, and only after that do you get to the genetic exceptions…We don't have as many folks who are young and pregnant and don't have as many people who are poor and pregnant…**it skews our understanding** of what people who have an abortion look like in this country…**skews who we see as "the people who had good abortions."** –Lauren

- It needs to be a **united voice**, and **not just "those progressive women."** – Marlene M.

- Sometimes you have to go about things in a different way. We can't forsake government, but there's only so many times you can hit your head against the wall and say 'Oh, let's try it again!' So, you keep doing it, **you keep being a voice**, but sometimes there's people in the community who need to step up who have the capacity, who have the passion, and say to them: "**This is where we need you** to put your money." –Marlene M.

- We talk a lot about the passage of Leviticus [on homosexuality] and how we don't read it, and why we don't read it…but I haven't really heard a discussion about reproductive rights…I think **it would be a positive thing, you know, to talk about it**. –Marlene P.

- I do feel like **the Jewish community steps up**, most of the time, when there is some kind of restriction or policy that's being put out there to restrict abortion rights…I would like to see **more of that coming from the leaders of the Jewish community**…the rabbis and the clergy. --Maya

- Having it something that more people say "**this is important**, and should be something that is a normal part of our lifecycle conversation" both for decreasing stigma in America in a secular way, but also **motivating people to really take a closer look** at what is and is not permissible within a halakhic framework. – Rachel

- I feel like my experience of the Jewish community on abortion is just a **silence**. – Shira

- I'd want to hear from the institutional Jewish communities that we're here to support you, and offer **the whole range of Jewish intellectual history and ritual to support you** in this moment. –Sue

I believe that these and many more voices can continue the incredible work that many Jews already do in the struggle for reproductive justice and safe, accessible, and non-judgmental abortion care. I pray that this thesis can serve to fill some of the silence in our community which remains. May it introduce a new way for us to listen to one another, ask worthy questions, and seek spiritual and ethical answers—endeavors which will, in my estimation, always be at the core of the Jewish people's story: past, present, and future.

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Interviews
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Ariella, interviewed by Emily Langowitz, December 19, 2016.

Debbie, interviewed by Emily Langowitz, December 28, 2016.

Erica, interviewed by Emily Langowitz, December 18, 2016.

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Maya, interviewed by Emily Langowitz, December 16, 2016.

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