

Mourning Unrecognized Losses — Rabbi Janet Madden

Part I. Judaism and Procreation:

“God blessed them and said to them, ‘Be fruitful and multiply, and fill the earth...’” (Genesis 1:28)

“And God blessed Noah and his sons and said to them, ‘Be fruitful and multiply and fill the earth.’” (Genesis 9:1)

“But as for you, be fruitful and multiply; spread out across the earth and multiply upon it.” (Genesis 9:7)

“I will turn toward you and make you fruitful and multiply you, and I will fulfill My covenant with you.” (Leviticus 26:9)

“Children are indeed a heritage from the Lord, and the fruit of the womb is His reward.” (Psalm 127:3)

Part II. Judaism, Halachic Status and Mourning:

The Talmud accords full status of humanness to a child at birth, but, as the Babylonian Talmud, Tractate *Yevamot* 69b states: “the embryo is considered to be mere water until the fortieth day.”

As to the fetus, as Rashi writes, Halacha considers a fetus “*lav nefesh hu*” —it is not a person. The Talmud’s ruling is “*ubar yerech imo*” —the fetus is like the thigh of its mother. In Halachic thinking, then, both embryo and fetus are viewed as part of a woman’s (mother’s) body, not as a separate being. The definitional terminology used for miscarriage, abortion (whether spontaneous or medical) and stillbirth

uses the same word, indicating the lack of *halachic* differentiation, although the commonality is that no laws of mourning apply.

Abortion/miscarriage: **נפל**—*Nefel* (“miscarriage,” “stillbirth,” “abortion,” “untimely birth”). No laws of mourning apply.

Neonatal Death: **נפל**—*Nefel* (“miscarriage,” “stillbirth,” “abortion,” “untimely birth”). No laws of mourning apply.

Stillbirth: **נפל**— *Nefel* (“miscarriage,” “stillbirth,” “abortion,” “untimely birth”). No laws of mourning apply.

Infertility: **עקרות**—*Ahkaroot* (“infertility,” “barrenness”). No laws of mourning apply.

Although there are some dissenting opinions that allow mourning even a one-day-old newborn, the predominant Halachic position is that if a baby does not survive for 30 days, it is as if the baby had not lived. The two major halachic statements that set out this halachic position are:

“We do not mourn for fetuses (*nefalim*), and anything which does not live for 30 days, we do not mourn for it.” — Maimonides, *Mishneh Torah*, *Hilkhos Aveilus* 1:6

“The infant, for 30 days, even including the full 30th day (if it dies), we do not mourn for it.” – *Shulchan Aruch Yoreh De’ah* 374:8.

There is also no halachic imperative that fetuses from “early” miscarriages (under 21 weeks of gestation) be buried

In contradiction to Rambam’s “We do not mourn for fetuses (*nefalim*), and anything which does not live for 30 days, we do not mourn for it” (*Mishneh Torah, Hilkhos Aveilus* 1:6), the following rulings are clearly influenced by compassion for the bereaved parents:

“A one-day old child who dies...is to his parents and family like a full-grown bridegroom.” (*Niddah* 5:3)

“Anyone who wants to tear his clothing or remove his shoes shall not be prevented from doing so.” (*Ke-Cholom Ya’uf* based on Ramban’s commentary on *Mo’ed Katan*)

“Although there is technically not a requirement to comfort the mourners since Jewish mourning customs are not obligatory in these cases, it important to remember that comforting those who mourn is part of the more general mitzvah to love one’s fellow as oneself” (Ramban, *Hilkhot Avel* 14:1)

Ramban further states: “If a man knows for certain that the child was born after a full nine months, even if it dies on the day it is born, we mourn it” (*Aveilut* 1:7); the *Shulchan Aruch* concurs with this point in *Yoreh De’ah* 374:8).

Part III. Original Embodied Rituals of Compassion and Healing

1. The Jewish Sages have three names for the womb: Hamakom – the place, which is also one of the names of the Divine; Rechem – compassion, which is also incorporated into another name for the Divine, HaRachamin, the Compassionate One, and— Kever – a grave.

2. “A *tanna* taught the following *baraita* before Rabbi Yochanan: ‘If one engages in Torah and acts of charity and buries his sons, all his transgressions are forgiven...’
Rabbi Yochanan himself said, “This is the bone of my tenth son...” (*Brachot* 5B)