UNION OF AMERICAN HEBREW CONGREGATIONS
DEPARTMENT OF JEWISH FAMILY CONCERNS
COMMITTEE ON BIO-ETHICS

STUDY GUIDE XI

INFERTILITY

AND

ASSISTED REPRODUCTION

Autumn 1999

Union of American Hebrew Congregations
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UAHC DEPARTMENT OF JEWISH FAMILY CONCERNS
COMMITTEE ON BIO-ETHICS STUDY GUIDE XI
INFERTILITY AND ASSISTED REPRODUCTION

Shalom. The Torah commands us to "be fruitful and multiply". In our tradition, children have been, and in many ways, continue to be the currency of our own immortality. There exists, however, the fact that many within our community face difficulties in fulfilling that command. Changes in family structure, the age of marriage and personal life-styles have created new challenges for our contemporary Jewish world. To assist individuals in family creation, a host of new options have sprung from an explosion in medical research and technology. Assisted reproductive technologies offer options such as artificial insemination, in-vitro fertilization, ovum donation, sperm donation, surrogacy, etc. These new technologies create complex issues and ethical choices such as multiple births, purchase and commodification of reproductive capacity, selective embryo reduction, disposition of frozen embryos, and questions concerning parental identification. This study guide has been prepared in order to assist in raising some of these issues through a liberal Jewish perspective. We hope that it will be used to create meaningful programs within our congregations, camps and retreats. Likewise, we hope that it will spark discussion and promote the search for the linkage between the dynamic faith we espouse and the challenges inherent in contemporary life.

As with other Study Guides, in Section I we begin with a series of personal "thought pieces" that help to set the tone and agenda for our discussions. As in previous guides these thought pieces are included in order to stimulate discussion. These pieces reflect the personal views of the authors and do not necessarily reflect official policy of the UAHC, the Department of Jewish Family Concerns, or the Bio-Ethics Committee.

Rabbi Ron Kaplan alludes to the changing demographics of the Jewish family and new challenges and options that are the nexus of infertility. He seeks to develop a dialogue based on the basic Jewish value of "*shalom bayit.*"

Dr. Allen Gardner looks at what he calls the "best and worst" of times that now represents the current discussions concerning infertility and assisted reproduction. He looks at some of the interesting scientific and ethical questions that are raised by this expanding technology.

Rabbi Jordan Parr discusses the issue of in-vitro fertilization from both a classical and contemporary point of view. He seeks to examine how we may approach the difficult situation of "selective reduction".

Dr. Stephen Modell proposes ways in which Judaism can provide answers to some of the questions posed by infertility. He seeks to examine such issues as the moral rights of the fetus, economic influences, genetic screening and cloning. Modell speaks about the need for an informed public and for policy on these and other challenges raised by the technology of reproduction.

Dr. Morton Prager provides a perfect coda to the preceding pieces. Using Genesis as a springboard, Prager traces the various scientific options available in dealing with the issue of infertility. As he does this, he reminds us of the primacy of our Jewish tradition and the need for our support for the continued and measured progress of scientific research.

We conclude this section by presenting two personal journeys. Rabbi Michael Feshbach relates the journey that he and his wife took. Do sacred texts dealing with family and children take on a different interpretation for a rabbinic family? What can it mean to be your own best "advocate" in dealing with the medical establishment and the infertility medical infrastructure? We conclude with a second personal statement by Marcia Hochman. Marcia serves as the assistant director of the UAHC's Department of Jewish Family Concerns. She has lent to this study guide her own devotion and dedication and offers here the struggle of her own family.

Section II draws from additional Jewish sources and provides a more academic and formal background to our subject. The texts represent a small cross section of thought from some of the major denominational authorities. The selections are by no means exhaustive. They are presented as resources to be used in the programs that will hopefully be created. They are presented as tools to be used in educational situations within congregations, retreats and discussion groups.

We have also included a section presenting counseling and text resources.

Finally, we hope that this study guide helps stimulate discussion and programming in the critical field of how Jewish values can inform decisions that are made in relation to issues of reproduction. These issues relate to the people in our congregations in very real and meaningful ways. Our tradition can help guide our decisions to be sacred.

B'shalom,

Rabbi Richard F. Address
Director: UAHC Department of Jewish Family Concerns
Autumn 1999

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2. "The Rabbinic Conception of Conception: An Exercise in Fertility". Rabbi Edward Reichman. Tradition. Vol. 31 No. 1 Fall 1996. P 33-63
3. "*Halakhic* Approaches to the Resolution of Disputes Concerning the Disposition of Preembryos". Yitzchak Breitowitz. Tradition. Vol. 31 No.1 Fall 1996 P. 64-91
4. Jewish Law and the New Reproductive Technologies: Ed. Feldman and Wolowelsky. KTAV. 1997
5. Assisted Reproductive Technologies. NY State Task Force on Law and Life. New York, NY. April 1998

SECTION I

INTRODUCTION TO BIO-ETHICS STUDY GUIDE ON INFERTILITY

Rabbi Ronald W. Kaplan, D. Min.

This study guide, prepared by the Bio-Ethics Committee of the UAHC Department of Jewish Family Concerns, focuses on issues of infertility and the bio-technological revolution in new treatments of reproduction exploring various ideas through religious and secular literature. For the first time ever couples and individuals are being presented with options and choices for family creation that seemed inconceivable only years before. These options push the boundaries of our very basic notions of life and the development and creation of life. With the separation of procreation from fetal development, genetic testing, and assisted reproductive technology come also astounding questions of who is mother, who is father, what is family. By examining the spiritual and clinical ramifications of infertility experienced among Jewish couples, we hope to help people understand how our tradition informs the process of decision making when they are faced with these complex issues. We hope clergy and congregational leaders will use these guidelines as teaching tools to offer counsel and support for those in our synagogues and community facing various forms and kinds of infertility.

Presenting Problem

"Primary infertility refers to failure of conception after one year of trying for couples who have never before been pregnant[i]". (Infertility also includes other failures including multiple miscarriages.) This clinical definition of infertility applies to some 15 to 20 percent of all couples of childbearing age in the United States[ii]. Physicians diagnose husbands' and wives' infertility resulting from a variety of physiological factors.

> Sometimes their infertility is simply a matter of age; sometimes it is caused by medications, drugs, and various diseases, or because of conditions present at birth ... As a couple, infertility may occur if the man has a low sperm count, or if the woman is approaching menopause, has infrequent ovulation, or has partially blocked fallopian tubes.[iii]

What makes these phenomena felt more acutely by Jews? Beyond the statistic quoted above which seems to be universal among all ethnic groups, we Jews face a complicating sociological reality. Modern day Jewish couples often marry later in life and delay parenthood until well into their thirties and forties due to educational and career choices and professional demands. These couples have a significantly greater chance of experiencing fertility problems. Studies have shown that there is a marked decrease in fertility with age.

> Among normally fertile women in their earlier twenties, 20 to 25 percent will conceive within the first month. Among women in their early thirties, only 10 percent will conceive in the first month. In their late thirties, the numbers fall to around 8 percent.[iv]

More importantly for women in their late thirties and forties the chance of producing a healthy child drops to 30%. We estimate that nearly one fifth of all Jewish married couples encounter the many physical and psychological challenges of infertility.

Religious Principles

What are the historical connections of infertility to Jewish life? There are many Biblical verses and stories, as well as Rabbinic texts focusing on the barren woman. Through these sources we may derive a clear understanding of the significance that traditional Judaism placed upon childbearing as an imperative for Jewish family life.

Procreation finds its origin in the Torah's first commandment recorded in the book of Genesis I-.22, 28 as one of 613 *mitzvot. "Pru u'rvu,'* "Be fruitful and multiply" was and is a compelling obligation felt by many Jews. They feel this teaching is the most basic of Jewish acts incumbent upon husbands and wives. Propagation, as reflected in Jewish sacred literature, is supreme among Jewish deeds with which to identify as Jews. Being unable to fulfill this *mitzvah, some* infertile couples struggle with the tormenting question. 'How can we be considered a family without children? How can we fit into the Jewish community as a childless couple?'

Yet we know, since Biblical times, infertility has been prevalent among Jewish couples. The patriarchs and matriarchs provide the paradigm. Sarah, Rebekah and Rachel all suffered

from barrenness. We learn from the narratives that they eventually overcame their inability to conceive children. In the process, however, they each endure pain and frustration. Abraham, Isaac, and Jacob with their wives set the Jewish precedent as couples having to cope with infertility and to maintain *"shalom bayit"*, peace in the home. Though they ultimately become parents, the harmony and unity of their marriages are sorely tested during this ordeal.

Clinical Principles and State of Need

Infertility, in addition to the physical problems, has painful, adverse effects upon one's entire sense of well-being. Fertility problems cause strong feelings of anxiety, depression, anger, frustration, and low self-esteem in individuals and relationships. One person whom I recently counseled reported:

> My infertility is a violation of my privacy, an assault on my sexuality, a final exam on my ability to cope, an affront to my sense of justice, a painful reminder that nothing can be taken for granted ... It is a break in the continuity of life ... Above all, a wound — to *my* body, to my psyche, to my soul.[v]

Individual psychotherapy and fertility support groups for people undergoing reproductive treatment have proven to be positive, therapeutic interventions in the healing process. There are a vast number of psychological and spiritual issues associated with infertility. The American Fertility Society cites some of the most common emotions experienced as shock, denial, guilt, blame, hopelessness, loss of control, anger and isolation[vi]. These feelings may cause stress and tension in a marriage, manifested in ways that threaten the marital relationship. Though not a complete list, challenges often include the following: the wife's or husband's unwillingness to accept the medical diagnosis, resentment at being labeled 'infertile', refusal of either or both spouses to communicate feelings, animosity directed at each other for their status, assigning blame to oneself or partner and feeling guilty as a result, depression from the belief that childlessness is a punishment from G-d for some sinful deed; holding G-d responsible for the 'affliction'; humiliation from the self perception that an infertile, barren woman is not feminine and an impotent/sterile man is not masculine; casting a negative reflection on one's womanhood or manhood; coping with the stigma of having some physical 'defect', that "there must be

something wrong with me/us!"; hardships inflicted upon mutual intimacy and enjoyment of sexual interaction; difficulty in facing parents, in-laws and other relatives and friends by feeling embarrassed or inadequate for not meeting expectations for grandchildren or children; the imposing societal pressure exerted upon young couples to become a 'family'; painful medical procedures; invasive tests; exorbitant costs; limited insurance coverage; and lengthy time commitments for reproductive treatments; and all too often, failure to conceive.

All of these issues accompanying infertility frequently provoke tremendous anxiety. Each of these stress-related ramifications of infertility requires emotional and spiritual fortitude necessary to deal with the possibility of an unfulfilled dream of giving birth. Any one or any combination of this litany of potential problems may seriously threaten the peace and stability of the most wholesome of marriages.

Pastoral counseling and psychotherapy for individuals, couples and groups are often necessary in these difficult situations. Having an opportunity to be *heard* in a safe, non-judgmental environment offers people necessary time to address and work through these troubling thoughts and feelings.

This study guide may be used, we hope, to provide information and inspiration in helping people make crucial decisions regarding infertility and reproductive treatments. The more clergy and congregational lay leaders are prepared to address these particular issues of Jewish family concern, the greater level of *shalom bayit* we may create in our homes and community.

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[i] Stephen L. Corson, M.D., Conquering Infertility (Now York: 1983), p. 2.
[ii] Lori B. Andrews, Now Conceptions (New York: 1984), p. 2.
[iii] Corson, pp. 1-2.
[iv] Michael Gold, And Hannah Wept: Infertility, Adoption and the Jewish Couple (Philadelphia: 1988), p.7, citing statistics in Sherman J. Silber, How to Get Pregnant (New York: 1980), pp. 59-60.
[v] Patricia P. Mahlstedt, 'The Psychological Component of Infertility" in Fertility and Sterility, March 1985, p. 346.
[vi] The American Fertility Society, 'Coping with Infertility: A Guide for Patients" (Birmingham: 1992), p. 45.

INFERTILITY AND THE BIOTECHNICAL REVOLUTION

Allen Gardner MD

For those who need help with pregnancy, this must seem like the best of times. Not because everyone can be helped, but because the knowledge and skills necessary to help far exceeds that which was available only a decade ago.

Getting pregnant and maintaining a pregnancy is a very complicated process. Eggs and sperm must mature properly and just this process alone requires a complicated interplay of hormones from the brain, the pituitary gland and the ovary (the hypothalamic-pituitary-ovarian axis). For conception to occur, both the egg and the sperm must traverse tubes and ducts to meet. The fertilised egg must implant into the endometrium of the uterus and grow, a process also mediated by hormones. And finally, after about 40 weeks, labour and delivery must occur. Here also hormones play a role.

The ability to assist in just about every stage of this process has been made possible by advancements in technology: the ability to locate the source of hormones, to quantitate their minute concentrations, and to synthesize and use them; the ability to manipulate the microscopic egg and sperm; the development of strategies to maintain pregnancies at risk and to lower the risk for mother and baby when labour and delivery may be difficult. For couples requiring this assistance these are hopeful times indeed.

The development of the egg (oogenesis) and sperm (spermatogenesis) are similar and yet different. In both processes (meiosis) hormones are important stimulants to maturation. In both, there is an exchange of chromosomal DNA so that the resulting egg or sperm is genetically distinct from other cells in the body, and from everyone else in the world.

Oogenesis is a prenatal process. A woman's eggs are halfway through their maturation before she herself has even been delivered. They remain in suspended animation (meiotic arrest) until menstruation starts. They don't continue to mature until the egg is released and makes its way down the fallopian tube to the uterus. The other eggs wait their turn for another month and, for any particular egg, perhaps a number of years or never. A woman has about 40,000 ova for her lifetime.

Spermatogenesis, on the other hand, begins at puberty. Sperm are continually formed and released. There is not much waiting around. Each ejaculate produces about 400 million sperm.

Fertilization takes place in the fallopian tube and a few days later the fertilized egg (zygote) reaches the uterus and implants into the endometrium. Once there, the bundle of cells which form the zygote differentiate - some destined to form the fetus and others the placenta. It is the placenta that forms the attachment to the endometrium. This is the life support system maintaining and enhancing the growth and development of the fetus. Then, about 38 weeks after conception or 40 weeks after the last menstrual period, labour and delivery begin. The muscles in the wall of the uterus contract and the baby is pushed through the lower end of the uterus (cervix), through the vagina and into it's bright new world. The placenta detaches itself from the uterus and is also pushed outside.

This mechanistic view of reproduction is mediated by a background of hormonal influences. It is a delicate balance prone to be disrupted either by changes in anatomy, changes in

hormones or changes in genes. It has been estimated that of 100 eggs exposed to sperm, 27 healthy babies are born.

When a couple has problems in getting pregnant or in maintaining the pregnancy, specialists in reproductive biology must first determine what is the most likely impediment to pregnancy and then apply the strategy most likely to work. Although reproductive assistance has been available for many years (determining the time of ovulation; accumulating and concentrating sperm for artificial insemination; identifying and treating chronic, subclinical infections in both partners) it has been the ability to manipulate the sperm and egg which has caught the attention of us all - to fertilize an egg outside the body and then implant the egg into the uterus. In vitro fertilization is now the basic tool of the revolution in infertility treatment that we read about. Hormonal hyperstimulation of the ovary ensures there are a number of eggs to choose from. Sperm washing and concentration enhances the likelihood that fertilization will occur. Injecting a sperm through the outer membrane and directly into the egg (intracytoplasmic sperm injection or ICSI) ensures fertilization does take place. Selecting embryos from among the healthiest of fertilized eggs increases the chances of success. And if a woman has no ovaries to produce eggs, as for example, in Turner's syndrome, a donor may be used. If the husband's ducts that transport sperm are blocked, as in cystic fibrosis, microsurgical techniques are used to retrieve sperm from the testes or epididymis. The final common pathway of all these techniques is in vitro fertilization - fertilization occurring in the laboratory, after which the embryo is implanted into the endometrium.

There are other variations on these themes. For example, just as sperm may be frozen for later use, embryos may also be cryopreserved or banked. The successful freezing and thawing of ova is more difficult to achieve., If in vitro fertilization is the only way to pregnancy

and the hormones that stimulated egg production result in a large number of embryos, some may be frozen to be used for subsequent pregnancies

Recently, a new twist has been added to this technology: the ability to make a genetic diagnosis prior to implanting the zygote - preimplantation genetic diagnosis. Following in vitro fertilization and prior to implantation, a single cell from the bundle of cells (zygote) is genetically analyzed. Finding a genetic alteration that could lead to a serious disorder allows one to skip that zygote and use only "healthy" ones for implantation. This obviates any decisions regarding therapeutic abortion. Duchenne muscular dystrophy is a debilitating disorder occurring exclusively in boys and leading to death by the late teens or early twenties. Tay Sachs disease is equally serious affecting boys and girls and fatal usually by four or five years of age. Even though preimplantation diagnosis is limited to only a few genetic disorders, it does relieve at least these couples of the serious moral issue of pregnancy termination.

But if these are the best of times they are also troubling times. Early on it was recognized that the success of in vitro fertilization required implanting only the healthiest looking zygotes and then only a few of those that were available. What does one do with those not used? Simply discard them? If one chooses to bank them for future use, one may eventually be faced with the problem common to anything cryopreserved. What happens to sperm and embryos when the freezers become filled? What happens to them if the couple decide they no longer want to pay for their preservation? Are these simply biologic specimens of no more significance than, for example, a snippet of skin or of bone?

And who "owns" these frozen embryos? This, of course, will not be an issue as long as the marriage is stable. But in instances of reproductive disorders and of raising children with special needs the rate of marriage separation is very high. Therefore, the issue of who has the authority to determine the use and disposition of those frozen embryos can become contentious. Suppose the ex-husband arranges for a surrogate or gestational carrier to have the frozen embryo implanted within her and to bear his child.

Preimplantation diagnosis has also led to problems – more theoretical at this stage than actual. If one can manipulate the DNA of a single cell is it possible to insert a gene which will correct the problem? For a very limited number of disorders this would be theoretically possible. But it is not necessary because one could go to the next zygote for implantation. But if circumstances were such that this was desirable could it be done? Eventually, yes. The genetically "improved" cell, however, could not be inserted back into its original zygote because those other cells would have the original genetic makeup. This improved cell would have to be the progenitor of a totally new zygote. It would have to be inserted into an entirely different egg, grown for a few days in the laboratory and then implanted into the uterus. This is what cloning is all about: taking a single mature nucleus with its genetic blueprint, inserting it into an egg and implanting the egg into a uterus. Eventually the mother delivers a baby whose characteristics have been determined by the genetic blueprint of the original nucleus.

If it is possible to technically manipulate genes in this way could one insert genes not to "cure" disease but to "improve" the individual? Could one insert genes for height, colouring, or intelligence? Theoretically it could be done. Practically, however, the task would be formidable. Most traits that we consider desirable are an interaction of many genes and all would have to be manipulated. In addition, non-genetic influences would have to be controlled

as well. Very little is known about this aspect of embryogenesis. It is oft-times forgotten that factors other than genes determine our development.

Does the approaching millennium herald an era of designer babies? Who can say? Each of us is the result of an integrated cascade of events during our prenatal lives involving genes, the protection from noxious exposures and the successful and safe passage through ducts, tubes and the birth canal. We have emerged. Our development has equipped "our bodies with wisdom, combining veins, arteries, and vital organs into a finely balanced network". May we use that wisdom to steer the best course through these best of times and these troubling times.

Acknowledgement:

The author thanks Dr. Alan B. Shewchuk, for his advice in preparing this article.

EIGHT IS MORE THAN ENOUGH:
THE JEWISH ETHICS OF *IN VITRO FERTILIZATION*

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INTRODUCTION

Although techniques for artificial insemination have existed for several decades, and many Rabbis have addressed this issue[1], it is only in recent years that the issue of multiple births due to *in vitro* fertilization (IVF) has come to the foreground. The septuplets born in 1997 and the octuplets born in 1998 have presented Jewish medical ethicists with a profound conflict between three competing Jewish ethical values: the belief *in periya u'rviya* (procreation), the acceptance of artificial insemination techniques in fulfillment of this *mitzvah* and the complexities posed by the abortion debate within Jewish thought. This article seeks to examine these conflicts and offer a solution to the question posed by multiple births.

We need to pose three questions that will guide us in our deliberations. They frame the boundaries of our discussion and, of necessity exclude other issues from our discussion. The three questions are:

I. Is *in-vitro* fertilization permitted in Jewish law?

II. If IVF is permissible, is it ethical to reduce the number of embryos after they have been implanted successfully in the womb?

III. If IVF is permissible, is it ethical for a woman to bring to term multiple births by deliberate artificial means (e.g., more than 3 babies)?

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[1] See for example CCAR Responsa 5757.2 and 5738.3. Also see Rabbi Solomon Freehof's responsum from 1952, one of the first to address this issue, found in American Reform Responsa (CCAR Press, New York), pp. 123C

I. *Is in-vitro fertilization permitted in Jewish law?*

In vitro fertilization is permitted according to *halachah*[2]. The CCAR Responsa Committee ruled, "In vitro fertilization is a legitimate medical therapy, offering realistic hope to many who seek to build families[3]. " Human infertility is a disease and "the procedures designed to correct it (is) medicine"[4]. Consequently, such a procedure as IVF, which does not pose an unacceptable risk to either the mother or fetus, is an acceptable medical procedure. IVF also fulfills the *mitzvah* of *periyah ur'viyah*, reproduction.

The responsum also notes that IVF is not a required procedure for infertile Jewish women[5]. In other words, just because *in vitro* fertilization exists as a treatment option, neither Jewish ethics nor *halachah* demand that women subject themselves to it, due to concerns over a woman's emotional, physical, spiritual and, yes, financial state. Finally, the responsa consistently hold forth the option of adoption (understanding that adoption too presents certain ethical, spiritual and psychological issues not covered in this article)[6].

II. *If IVF is permissible, is it ethical to reduce the number of embryos after they have been implanted successfully in the womb?*

As an acceptable medical procedure, we can reasonably expect Jewish women to opt for IVF as, undoubtedly, many already have. *In vitro* fertilization involves the harvesting of eggs from a woman and then inseminating them with sperm donated either from her partner or anonymous donor in a glass dish. If fertilization takes place, the egg or eggs are then implanted into the uterus. Then, if all goes well, implantation in the uterine wall will be detected in about two weeks.

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[2] CCAR Responsa 5757.2 and 57558.3.
[3] CCAR Responsa 5757.2.
[4] ibid.
[5] ibid.
[6] CCAR Responsa 5757.2 and 5758.3

Selective reduction is the ultimate form of birth control whereby "extraneous" fetuses are terminated in order that other fetuses within the womb might have a greater chance for survival. While I can certainly understand the medical necessity for these abortions, I also find it hard to justify. What are the criteria used for deciding "who should live and who should die?[9]" Will the doctor abort the "next Einstein" if s/he makes the wrong choice?

The prior intent to abort fetuses implanted within a womb is unethical since it is a violation of the mitzvah of *periyah ur'viyah*, of reproduction. On an ethical level (although not *halachic*), it reminds me of the Nazi doctors who used to wave Jews to the right or to the left, to live or to die, whose criteria was often whimsical at best. Doctors who play God in order to create life should not play God in deciding which potential lives will come to fruition. It is not their prerogative and is unethical.

Selective reduction is consequently unethical and violates *halachah* due to its a *priori* nature.

III. ***IF IVF is permissible, is it ethical for a woman to bring to term multiple births by deliberate artificial means (e.g., greater than 3)?***

If selective reduction is unethical and a violation of *halachah*, is it then ethical for a woman to carry multiple fetuses to term? The answer is also a resounding no. Women are not dogs; they are not able to carry large litters. If a woman brings six, seven or even eight fetuses to term, there is a tremendous risk of both birth defects to the children and a real risk of death or permanent injury to the mother. Consequently, since there are such great dangers involved, a woman should not attempt to bring such a large number of fetuses to term.

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[9] *Unetane Tokef* prayer, taken from Gates of Repentance (Central Conference of American Rabbis, New York)

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[9] *Unetane Tokef* prayer, taken from Gates of Repentance (Central Conference of American Rabbis, New York)

The medical technique, while technically complex, is easily understood in conceptual form: fertilized eggs are implanted within a woman and, if all goes well, she will be declared pregnant about two weeks later. Our questions are as follows: how many eggs can be implanted and is it permissible under *halachah* and Jewish ethics to selectively reduce (abort) fetuses in order to make room in the womb for the surviving fetuses?

It is also necessary to understand that not all zygotes implanted in the womb will survive. Hopefully if eight zygotes are implanted, perhaps one, two or even three will survive those first two weeks and be implanted in the uterine wall. The ethical dilemma presents itself when more than two or three embryos survive. In order to understand the ethical issues surrounding selective reduction, the aborting of several embryos in order to allow the others to survive, we must first visit the question of abortion in Jewish tradition.

In the late Solomon Freehof's collection, Contemporary American Reform Responsa, he answers a question: When is abortion permitted[7]? While he cites various Orthodox authorities who are more or less lenient towards abortion, he clearly states that it is permissible:

> It is clear from all of this that traditional authorities would be most lenient with abortions within the first forty days. After that time, there is a difference of opinion. Those who are within the broadest range of permissibility permit abortion at any time before birth, if there is a serious danger to the health of the mother or the child. We would be in agreement with that liberal stance. *We do not encourage abortion, nor favor it for trivial reasons, or sanction it "on demand"* (italics mine)[8].

The implications of this final statement are enormous. An otherwise happily married woman, with a healthy fetus, could not find ethical and legal support within Jewish tradition for an abortion due to "inconvenience." Furthermore, abortion cannot be considered a form of birth control.

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[7] Freehof, Solomon: Contemporary American Reform Responsa (Central Conference of American Rabbis, New York, 1985)

[8] Ibid.

CONCLUSION

We are faced with a real ethical dilemma: IVF is permissible according to both *halachah* and Jewish ethics, and a primary technique of IVF is the implantation of multiple fetuses within a woman's womb, yet both selective reduction and carrying a litter of fetuses to term are both unethical. What is a Jew to do? One additional *halachic* principle can guide us in our ethical search.

A human embryo at less than 40 days is considered *may be'alma*, "mere water," and not a fetus (ubar)[10]. Consequently, terminating the gestation of such a young embryo is not even considered abortion.

The implication of this concept, in ethical and *halachic* terms, is that we are permitted to discard unused embryos before they are implanted[11]. Therefore, if we do not implant more than two or three zygotes within a woman's womb, we can discard, freeze or experiment upon unused embryos without fear of *halachic* retribution[12]. Furthermore, we would not be faced with the unethical options of selective reduction and carrying multiple fetuses to term. In other words, if we don't implant them, we won't have to abort them!

When medical technology is able to increase the chances of the embryos' survival inside the womb, doctors will no longer need to implant a litter of embryos within a womb in order to increase the odds of one fetus surviving. Then, and only then, will the ethical impediments to IVF be removed and such a promising procedure will finally become ethically acceptable within the liberal Jewish community.

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[10] Yeb. 69b, Nid. 3.7, 30b, NL Ker. 1. 1.

[11] See the discussion in the CCAR Respona "in Vitro Fertilization and the Status of the Embryo," 5757.2.

[12] Ibid.

Medical Breakthroughs in Infertility and the Questions They Pose for Judaism

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I. INTRODUCTION

"I sit in the synagogue. The time that I have dreaded is about to arrive. I am prepared, I have done all the crying beforehand. There can be a few tears left ... I *am akarah* - a barren woman. ... so I sit in the sanctuary as I hear the words ... *P'ru ur'vu umilu et ha'arez*. God's command to be fruitful and multiply has been given again to our people ... [And] I feel my emptiness.' (Dresner, 1991, p. 442) These are the words of a modern Jewish woman as she pours out her heart for lack of giving birth to a child, but the grievous situation has parallels in the Old Testament. Rachel, wife of Jacob, watched jealously as her sister Leah gave birth to seven children while she had none. She declared to Jacob, 'Give me children or I shall die" (Gen. 29:30, 30:1). In the Book of Samuel, Hannah was unhappy because she was childless for many years and taunted about it by her co-wife. Hannah was found by the high priest standing in the Temple, pouring out her bitter anguish inaudibly with only her lips moving, and vowing to dedicate any son born to her to the Temple and the service of God (I Sam. 2:21). Under the standard definition of infertility, inability to achieve pregnancy in over a year, there are about six and a half million couples in the United States today who are infertile, about half of whom seek treatment. Beyond this number are the many who have shared in the experience through watching family members wait longingly for a child or have themselves waited unanticipated lengthy periods for the gift of conception. Modern medical science has sought vigorously for the means of giving these couples a child, a search which over the last decade has yielded new technologies together with unique ethical and policy dilemmas. We will look at these new possibilities and the questions they pose for the Jewish faith.

II. Artificial Insemination, In-Vitro Fertilization, and Assisted Fertilization

The hallmark of each of these medical technologies is that they bring together the sperm and egg in a novel way in hopes of achieving conception. Artificial insemination is the deposition of semen into the female genital tract by extraordinary means and without sexual intercourse. The concept is not distinctively modern, as since the fifth century there have been talmudic and rabbinic discussions of the possibility of a woman getting pregnant by immersion in a bath or lying on a sheet impregnated with semen. In this day and age, medicine offers two methods - AIH (artificial insemination with the husband's sperm), and AID (artificial insemination with donor sperm). These techniques are used for male factor infertility as might occur with low sperm counts or anatomic blockages in the male genitalia. For example, about 97 percent of males with cystic fibrosis, a condition leading to mucus plugging affecting the lungs and other vital organs, have anatomic abnormalities making them sterile.

A common controversy in Jewish circles with the use of donor sperm has been that the relationship established might be adulterous and the child illegitimate, though the liberal stance has been that the clinical procedure involves no forbidden intercourse and certainly no conscious violation of the marriage vow. Two other shared concerns are that AID typically eliminates the possibility of tracing paternity and that it may indirectly result in incest. The concept of *yichus*, of having identifiable ancestry and being part of a lineage, has always meant pride in specific parents and grandparents, and seeking to carry forward the ideals or qualities associated with them. Even in the dramas of Rachel and Jacob, and Sarah and Abraham, where both women resorted to concubinage as a means of delivering a child to their husband before having children of their own, the identity of the father was known and passed on to the child. The incest concern arises from the possibility of marriage between siblings unaware they have the same biologic father. This is a genuine concern since accounts exist of undergraduate sperm donors siring between 20 and 50 children. Further, incest is not only a Jewish moral concern, but due to consanguinity or close relatedness it increases the chance of birth defects in the children who are

born. The challenge for liberal Judaism is to decide whether such eventualities should rule-out use of AID. Can adequate policies be formulated regarding information passed on to the recipient about the sperm donor, and registering / restricting the number of sperm donations by any given individual, to make artificial insemination by outside donors as acceptable as the same technique performed with the husband's sperm?

In vitro fertilization (IVF), fertilization of the egg outside the womb, was not successfully performed in humans until the "test tube" birth of Louise Brown in England in 1978. Practitioners have widely used this technique for female factor infertility due to damaged fallopian tubes, pelvic adhesions and endometriosis. On first pass what amounts to conception in a culture dish would seem highly artificial and offensive to Judaism, since God alone gives and takes life (Deuteronomy 32:39). The emphasis in Judaism, in contrast to Catholicism, however, has been on humanity as co-creator with God. In Genesis and its Midrash, God created the world with much more left to do. Having created Man, the work is to be finished by man. This is also the notion of the break-up of the original primal unity, *En Sof,* and of our responsibility to reunite the world through the performance of mitzvah. In this case the mitzvot being respected is the biblical commandment of procreation, for every soul we bring into the world is a partial reflection of the Divine image.

Original concerns with IVF centered on its experimental nature and possible harms to the embryo during its transfer and subsequent development. Doctors have performed multitudes of IVF deliveries since 1978. These have been followed-up, and studies have not supported the concerns. Rates of malformation do not differ significantly from the general population, physical growth of the children is as expected, and school performance is good (Olivennes, 1997, p. 284). The sticky issues have tended to be in the areas of ownership and of disposition of embryos. Questions of ownership arise at many possible junctures with this technique - when extra eggs are stored unused by the couple, at a later point in the couple's relationship should they grow distant and have separate claims to the eggs or should one member of the couple pass away, if a surrogate mother is used to gestate the biologic mothers egg. Likewise, there are many possible fates for the stored eggs - donation to another needy couple, donation to medical research,

discard after long periods. Who owns the egg under these circumstances and what can ethically be done with it? While these destiny-related questions are two steps removed from the matter of whether IVF itself is acceptable, Judaism offers signposts towards the solution of these ethical dilemmas as well. Any Jew thinking through these sorts of questions must consider at what point in gestation the future person takes on moral rights, and whether any analogies can be drawn to biblical situations where an outside person enabled the birth of a son or daughter.

The primary question of the acceptability of a technique for overcoming infertility applies even more so to a technique invented seven years ago called "intracytoplasmic sperm injection" or "ICSI" that has allowed many women formerly considered infertile to give birth. Also known as "assisted reproduction" and "assisted fertilization", this method involves the direct injection of sperm into egg to engage the process of fertilization. To state the technique should be used now because many couples have been able to afford and use it as of late is to put market rationale ahead of safety. In point of fact, studies exist suggesting that direct penetration of the membrane surrounding the egg by micropipette could affect the chromosomes contributed by the sperm and the proteins in the head of the sperm and body of the egg, and that genetic abnormalities contributing to infertility in the father could be bypassed by this technique and passed on to the progeny (Kolata, 1999, p. D10; Pryor, 1997, p. 539; Reijo, 1996, p. 1293). Long-term population studies are lacking, though. ICSI has definitely brought many couples the happiness of childbirth, and to blankly rule it out would be both unrealistic and inappreciative of people's autonomy. But when we think of happiness, especially in Judaism, included in the equation is the happiness and health of our children and of the children they will have. If the decision to use a semi-charted technique is to be an individual one, then the balance of Jewish ethical authorities would ask the couple to weigh the expectation of medical efficacy against the potential risks in their own mind.

III. Genetic Screening for Infertility

Genetic conditions that may be inherited and contribute to infertility are cystic fibrosis and deletions in the Y or male sex chromosome. In one study where a number of such couples

did ultimately give birth but the child was born with cystic fibrosis, 54 percent of the families planned against having an additional pregnancy. Some women go so far as to have tubal ligation, the permanent solution to not having another child. (Fernbach, 1992, p. 22; Evers-Kiebooms, 1990, p. 208)

As the pamphlet for Dor Yeshorim, a prominent Jewish genetic screening program, describes, cystic fibrosis can be tested for just as easily as Tay-Sachs disease. Orthodox Jewry promotes such screening as a form of advance planning before partners decide to marry. Preimplantation genetic diagnosis (PGD) also offers a way to avoid having a child with a specific genetic condition while also avoiding abortion of the fetus. PGD entails removal of a single cell from the 8-cell cluster formed shortly after the point of conception, genetically testing the cell for the presence of the gene of concern, then implanting the early embryo in the mother's womb or discarding it depending on the result of the test. PGD is done in combination with in vitro procedures, since the egg must be tested outside the womb, and is actually a way of increasing the chances of a healthy child when IVF or ICSI is used.

According to many Jewish halakhic authorities, the fertilized egg is considered mere fluid before forty days post-conception. At this early stage, it is not considered a person or nefesh ("soul") with its own independent moral status. Still, authors agree that this early being should not be severed from life frivolously. Danger to the mother of completing the pregnancy and mental anguish to the mother are the commonly accepted criteria in Judaism for terminating a fetus, and more liberal authors also consider seriousness of the condition for the child-to-be. For most liberal Jews, PGD would probably be an acceptable way to avoid having a child with cystic fibrosis, which can severely affect several organ systems in addition to impairing fertility in both parent and offspring.

Is PGD with possible termination of the early embryo acceptable for conditions like Y-chromosome deletions where reproduction alone is affected? The UAHC *Bio-Ethics Program / Case Study* Guide V contains a story about a nineteenth century Polish physician treating a rabbi with a severe illness. As the disease progressed, the physician felt justified in withdrawing from the case since he believed the rabbi was beyond any hope of cure and had a grave prognosis. As

luck would have it the rabbi got better, but not before paying a temporary visit to heaven where he pointed out the physician bound for *Gehinom* (the underworld after death) since the latter abandoned his patient (Zlotowitz, 1992, pp. 4,5). The message is that so long as hope exists, whatever can be done to restore health for an individual, now or in the future, should be done. By this standard, the prospect of future infertility in one's child is not reason enough to genetically test the embryo for possible termination.

This conclusion does not however, preclude the option of genetically screening the husband to check for Y-chromosome deletions before the couple decides to have a child. Judaism's various branches have generally accepted adult genetic screening prior to conception as a way to inform, reassure, and give more certainty to couples about their reproductive options. The testing would either rule-out a Y-chromosome mutation, or prepare the couple to move onward and decide on a course of action they view as acceptable (adoption, AID vs. ICSI, sperm cell sorting).

IV. Recent Advanced Reproductive Technologies

Since the cloning of an adult sheep cell by Ian Wilmut and the Roslin Institute in 1996, there have been a host of new techniques reported which offer hope for infertility. Many of them are an outgrowth of the 'microsurgical"-level pipetting techniques used for ICSI. Like the various applications of preimplantation genetic diagnosis, some would seem more acceptable than others by Jewish ethical standards.

The first set of techniques involves combining the genetic material from the egg cell of a person hoping to one day have child with the cytoplasm or cellular fluid of an egg cell belonging to a fertile woman. Scientists have done this in various ways - by injecting a 'donor' person's egg cytoplasm into the affected woman's egg cell; by fusing the cytoplasm of the 'donor' person's egg cell with that of the needy recipients egg cell; by transferring the nucleus of the needy person's egg cell into a donor egg cell from which the nucleus has been removed. Each of these techniques has the effect of "jolting" the infertile person's egg cell into activity by virtue of the freshly added cytoplasm from the donor's egg cell. They would not seem to break any Jewish

codes against creating hybrids, since the "rejuvenated" egg cell, once fertilized, will be expressing the genetic makeup only of the person seeking to have a child. More appropriate analogies would be organ transplant and blood donation, which for the most part have been embraced by the Jewish Reform and Conservative movements. The above techniques are still experimental, but do not seem by themselves to pose unacceptable risk. Like ICSI, though, which involves direct injection of sperm rather than cytoplasm, safety would definitely have to be explored.

A second category of technique involves admixture of two individuals' genetic material in hopes of achieving a pregnancy. This involves transferring genes from an infertile woman's egg into another woman's egg still containing its own genes, then fertilizing it with the sperm of the first woman's husband. Leviticus 19:19 and Pesachim 54b proscribe mating diverse kinds of animals, sowing together diverse kinds of seeds, and wearing garments made of wool and linen. Even the more conservative Jewish ethicists do not regard this prohibition as rejecting gene therapy which has as its goal healing and the restoration of health. However, in this kind of procedure, we see two points of concern in the Jewish prohibition - mixing of different materials, and bringing together of seeds. Longstanding Jewish principles often have an innate wisdom that bears on modern developments. In this case, the scientific concern would be the possible insertion of the first person's genes into a dangerous trigger point in the second person's genetic material, with the potential for cancer or dysfunction. Since the error would be within the gene line itself, it could be passed on from one generation to the next. The above Jewish principles and the actual risks involved would seem tc rule against use of this technique.

The third category of technique involves what scientists call 'somatic cell nuclear transfer, or 'cloning'. States Rabbi Moshe Tendler, "Show me a young man who is sterile, whose family was obliterated by the Holocaust and who is the last in a genetic line. I would advise cloning him to create a descendent' (Tendler, 1997, p. A22; See also Modell, 1998, p. 7). Indeed, Korean scientists recently performed cloning on human cells, though they stopped the procedure at the 4-cell stage, and in America federal funding of human cloning is outlawed. In this procedure, the nucleus containing the genetic material of a donor's egg cell is removed.

This cell is then fused with the cell of an infertile individual containing a nucleus. The combination then begins to divide without the need for fertilization, ultimately producing a biologic duplicate of the second individual. What is unique about this procedure is that the infertile individual's cell is not an egg cell but a cell from elsewhere in their body. Bodily or "somatic cells" are known to collect mutations at a certain frequency throughout life. Normally these natural mutations disappear when the cell dies off, but here they are being allowed to remain and pass into subsequent generations. Thus, the risks are high with an innovative procedure like cloning which has not yet been fully investigated even in animal models. Not to be forgotten is the fact that out of 277 tries, the Roslin Institute only succeeded in giving birth to one clone - Dolly. If cloning were to be applied to human beings at the current stage, the level of embryo discard would be unacceptable by either secular or religious standards. But there do appear to be some leading edge advanced reproductive techniques, detailed above, that avoid these difficulties.

V. New Social Possibilities and Prospects

For many couples who have tried repeatedly to bring a child into the world but are met with disappointment, medical techniques we have covered hold the potential of turning tears of sadness into tears of joy. Some procedures are more acceptable than others by Jewish ethical standards. There is also a related question: 'Who should benefit from the technology?". This question is relevant considering that medical know-how is now able to push the envelope of couples able to give birth beyond barriers we would have previously considered inalterable. For example, in the last several years, a 62-year old woman in Italy and a 63-year old woman in California each gave birth to healthy children through the miracles of in vitro fertilization and assisted reproduction. People have also speculated whether cloning should be used to give lesbian couples a child with their own genetic makeup (let alone using AID or IVF). Discounting and allowing use of the new reproductive technologies for these purposes causes many emotions to boil over. On one side are cries of social irresponsibility and disrespect for the laws of nature: on the other are accusations of age and gender preference discrimination. Active discussion on

the part of the Jewish community is definitely called-for. Modern and classical Jewish literature should be a solid part of the discussion. The Winter 1998 and Spring 1999 issues of *Reform Judaism* provide a point-counterpoint on the acceptability of gay and lesbian marriages in the Jewish faith that could serve as a starting point for discussion. Also at hand is the story of Abraham and Sarah, who gave birth to Isaac when they were 100 and 90, respectively.

Just as incredible as the instances of pregnancy past menopause are reports of couples giving birth to six, seven, even eight children (the numbers seem to rise with time) following in vitro fertilization. To some extent this consequence is a result of the technique itself which requires the implantation of multiple embryos for its success. But it is also a matter of medical and social policy, calling for limits on the number of embryos implanted. Here the issue of social justice also enters in, because there are many needy couples who cannot afford the several thousand-dollar price tag to see infertility treatment through to success. Currently thirteen states require health plans to offer some coverage for infertility treatment and two states mandate coverage of in vitro fertilization. But these regulations do not cover many employees whose businesses are exempt from state jurisdiction. This is precisely where public opinion and the diverse voices of members of the Jewish community count, because a decision must be made whether to subsidize help for these couples out of our pockets (those of us who have children), or to allocate our health care payments to other medical needs. When Levi ben Darga's daughter was kidnapped, he did not hesitate to pay a lot for her ransom. It is said that the individual has the right to pay as much as they like, but for the community as a whole, limits exist. Yet the community would seem to have some level of commitment for its current members and future generations "thou shalt not stand idly by" (Sanhedrin 73a). What, then, is the obligation of those Jews who can afford to pay for treatment to have a child towards those not so blessed with good fortune and financial resources?

VI. Conclusion

So what starts with technologic questions ends with questions of social commitment. What is most personal - infertility - becomes a matter of community. And ancient wisdom shines on modern science. In concluding this multi-tiered series of questions, let me offer a framework for the various policy responses that people can form in the course of group discussion. Generally four types of policy options are available: (1) prohibitions - covering those areas considered illegal or inappropriate; (2) protections - that insure a particular practice or service is available; (3) promotions - which encourage certain policies and practices; (4) permissions - covering areas where a certain policy is allowed to but not promoted, often leaving several options open to the public. Part of the task of dialogue is to arrive at decisions about which of these policy avenues apply for each of the reproductive technologies and services under consideration. But the dialogue should always be guided by wisdom and compassion, the hallmarks of Jewish life.

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REPRODUCTIVE TECHNOLOGIES AND INFERTILITY

Morton D. Prager, Ph.D.

The first command in the Torah is "Be fertile and increase" (Gen. 1:28). It follows that procreation and the creation of families has always had a place of importance in Jewish life. In Talmudic discussions the dictum to reproduce is focused on the male. Because Abraham and Sarah had no children, she suggested that her husband consort with her maid Hagar in order to have a child through the servant. Such emphasis was placed on procreation that older rabbinic law encouraged a couple childless after ten years of marriage to divorce and remarry with the hope of having children. Torah relates the story of Onan who was to perform the obligation of a levirate marriage. Since he did not want the offspring credited to his dead brother, he spilled his seed on the ground for which God took his life (Gen. 3 8:8-1 0). The Talmudists account for this punishment because Onan diminished the number of those who might have been created in God's image, a view emphasizing the goal of sexual activity as procreation. But there are many threads woven into the Torah's tapestry, and we find, "It is not good for man to be alone"(Gen.2:18), for when one is alone, there is no outlet for *the yetzer tov,* the inclination to good. Therefore, Torah directs a man to leave his father and mother and cling to his wife so that they become one flesh (Gen.2:24). This passage indicates an intertwining of the lives of husband and wife. A sexual relationship is implied but also an intimacy that goes beyond sexuality to a sharing of mutual concerns, a desire to be of help to each other, to make the partner the most important person in one's life. More recent rabbinic law, recognizing the tragedy of divorce because of childlessness, has altered the older view so that divorce is no longer demanded (Joseph Telushkin, *Jewish Wisdom,* p. 172).

Until relatively recently there were state laws in the United States which inhibited contraceptive measures, in keeping with the early Biblical view that procreation was the goal of sexual activity between husband and wife. In 1965 the U. S. Supreme Court in *Griswold v. Connecticut* negated an 1879 state law that made it a crime to use any drug, article, or instrument to prevent conception. The executive director of Planned Parenthood had been convicted of giving advice to married persons regarding contraception. The Supreme Court in a precedent making decision ruled the statute to be unconstitutional because it infringed on the right to privacy of married persons. It seems remarkable that it was so late in U.S. history that it became

possible to provide contraceptive information without fear of prosecution. In theory, but not in practice, this attitude suggested that sexual activity was for the purpose of procreation and then only between married couples. Any other sexual act was to be frowned upon as typified by the literature of the time as, for example, in Hawthorne's *Scarlet Letter*. However, Justice Brennan, presenting the majority view for the Supreme Court *(Eisenstadt v. Baird,* 1972), wrote "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted government intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." It is clear that under U.S. law this right to procreate is not a mandate as was made clear by the *Griswold* decision and extended in *Roe v Wade* (1973) which granted a woman an unfettered right to an abortion during the first trimester of pregnancy. In order to achieve a healthy home environment, modern family planning has become integral to the thinking of most American Jewish couples.

However, in the face of the long standing emphasis on "be fertile and increase" in both Jewish and American life, American Jews have generally been accepting of the new reproductive technologies requiring participation of a third party to aid the procreative process. In Torah the third party was God. When Eve gave birth to Cain, the Bible's first conception, she stated, "I have gained a male child with the help of the Lord"(Gen.4: 1). The stories of each of the patriarchs include accounts of barren wives until God intervened to bless the marriage with offspring. The third party now is most likely a physician specialized in problems of infertility and the new technologies developed to aid such individuals to have children. Thus the skilled technician replaces the Biblical view of God's participation in the process of procreation. This does not in any way diminish the value and dignity of one born in the likeness of God.

The Ethics Committee of the American Fertility Society addressed concerns regarding the new reproductive technologies in an extensive document in 1996 *(Fertility and Sterility, 46,* Suppl. 1, 1986). The individual in such cases must be considered in all the dimensions that constitute human well being: "bodily health, intellectual and spiritual well being, which includes the freedom to form one's own convictions on important moral and religious questions; and social well being in all its forms: familial, economic, political, international, and religious."

Any action, including omissions, which undermines the individual in this sense is considered morally wrong.

Even before cloning an individual became a possibility, there were, in addition to coitus, 16 variations by which procreation could occur with the aid of a third party. Artificial insemination with either the husband's or a third party's sperm was the first to appear. If a sperm donor, not the husband, was used, questions arose whether this constituted adultery and whether the child would be a *mamzer*. Rabbinic responsa suggest that since there was no sexual intercourse, no adulterous relationship occurred, and the child was considered legitimate. U.S. courts have considered the rearing father to be the legal father of the child, and the donor, generally unknown to the recipient, has no legal responsibility even though he is the biologic father. This view contrasts with that of the Biblical levirate marriage where the offspring is credited to the dead husband.

In vitro fertilization produced great wonderment as well as extensive discussion when the first success was announced. Here was something totally new — a conceptus formed outside the body, carefully nurtured in a culture medium for a number of days, and then implanted in the wife. The four combinations that may be used are either husband or donor sperm and an egg from either the wife or a donor. While in vitro fertilization removes conception from the intimacy husband and wife experience in producing new life by sexual intercourse, it certainly fulfills the *mitzvah* to be "fertile and increase". The issue has been raised of psychological problems for a child who knows it was conceived in this fashion, but as long as the child is nurtured in a loving environment, there is no reason why this objection should hold. In fact the child can be convinced that it was wanted so much, the parents took this extraordinary measure in order to bring it into the world. Except for the case where both donor sperm and donor egg are used, the process permits one member of the couple to be a biologic parent. When husband and wife are both carriers of the same defective gene, passing a double dose of the gene to an offspring causes a recessive disease to appear. This problem can be obviated by use of a donor. However, if neither rearing parent is the biologic parent, why not adopt and provide a home for an otherwise homeless child? While many couples may choose such a route, the in vitro procedure permits the woman who is to become the rearing mother to experience giving birth and to bond to the developing baby during that period when she is also the gestational mother.

For the father as well there may be satisfaction in the intimacy of the shared experience with his wife-during the pregnancy. As the procedure has been accepted legally, it should be equally acceptable on religious grounds, providing the couple with choice, choice being a Jewish imperative. Since the procedure is both inconvenient and costly, there should be stricter regulation in order to decrease the current failure rate (apparently about 70%) and to protect the health of the involved woman.

An additional possibility is to use either the husband's or a donor's sperm for fertilization of a donor egg and then implant the fertilized ovum into a surrogate. This procedure could be employed when the wife is unable to ovulate. After a suitable period the developing embryo is removed from the surrogate by lavage and implanted into the wife. This procedure seems quite extreme and difficult to justify because of potential health risks to the women and the embryo.

The eight possibilities just enumerated may be doubled by having a surrogate gestational mother instead of the wife carrying the fetus to term. The surrogate is generally paid for carrying a baby that someone else intends to rear. Although some altruism on the part of the surrogate may be acknowledged, the fact that she is paid detracts from the contention. It is worth noting in the case of organ donation, payments are not permitted; that is, one cannot sell body parts, for then only the wealthy would have access to transplantation procedures. Since being a surrogate involves renting one's body as an incubator for a period of time, the question may legitimately be asked whether payment should be permitted. Again only the wealthy are in a position to enter such a contract. Equally important may be the view of some who decry a procedure which can be considered to diminish a woman's dignity. We have become aware of the legal problems that have arisen with surrogacy. Carrying a baby to term can produce a bond between the woman and the infant, and in some cases it has proven too strong for the surrogate to give up the child, even when there has been a formal contract for her to provide the service. With the potential health problems associated with pregnancy, the emotional problems that can occur at detachment from the infant that the woman has carried for nine months, and the legal problems that can ensue, it is difficult to make a strong case for surrogacy as a means of fulfilling the command to be fertile and multiply.

The concept of family in the United States is changing with a divorce rate of about 50% and unmarried women availing themselves of the new technologies in order to have children.

The Ethics Committee of the American Fertility Society is on record as opposed to legal prohibition of medically assisted reproduction for non-traditional families. For all cases involving recipients of an unknown gamete donor, records should be maintained, in keeping with confidentiality, so that medical history can be recovered if needed. Each new technology introduced for human use should have been thoroughly researched so that risks can be reasonably assessed and minimized relative to anticipated success. Cloning, potentially the next technology to be applied to human reproduction, is at the stage where much research remains to be done before such risk assessment can be made. The recommendation of the President's National Bioethics Advisory Commission to prohibit attempts to clone a human being was given shortly after announcement of the first cloning of an adult mammal. It was proper in the context of the uncertainties surrounding the technology of such a new process. Time is needed to learn the risks involved, even as continuing research improves the process, and then of equal importance, to think through the moral implications with their impact on the life of the individual so produced and on the family.

A Name for Ourselves: On Infertility, Struggle, Pain and "The Meaning of Life"

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Item: Our neighbor had a baby boy last week. All along, she said it would be really "convenient" if she gave birth on a particular weekend. How it would fit into her family's schedule, and be best for her other three kids. Along comes the day she wanted to have the baby and... sure enough... All this predictive power from a woman who never took more than a single month to get pregnant.

We like our neighbor a great deal. She is a wonderful parent. She is a personal friend. But I don't think she knows just how fortunate she is. There is a nightmare of the soul she has been spared.

Item: An Orthodox couple has been married for a year. A full month before their anniversary, at eleven months, people they barely knew began approaching them. "You know, I've got a doctor... he's very discreet." "If you are having trouble, there are people who could help..." All this interest nay, all this interference - because they had no news to share... eleven months after their marriage.

We place so *much* emphasis in the Jewish world on how to raise children. Sometimes we forget how hard it is to have them in the first place. We forget about the miracle of life... and the devastating pain when life follows not our dreams and hopes and plans, but its own.

There are so very many dimensions to the issue of infertility. Many couples who cannot conceive. Singles searching for partners, who yearn for children nonetheless. Gays and lesbians in committed relationships who would make wonderful parents if only they and the world could agree on a way. There are the too common tales of medical hoops, invasive procedures, intimacy set by the clock and not the heart. The monthly wait. The horrible trauma when we hear the beat of life at ... and it does not hold.

In the midst of all the shots and injections, turkey basters and chemical reducing of love to statistics and hope to numbers on a page; silly and all. In between the charts in the corner of the page, a couple of real human beings, in the midst of a deeply spiritual struggle, facing, perhaps, the most important issues of their lives.

Our own story has a happy ending. So many others do not. I write now as my two beautiful young boys fall asleep upstairs. But for years I never knew if I would ever be able to write those words. What my wife and I went through was only a minor touch of pain relative to what others have gone through, a single tear in an ocean of agony. I share it nonetheless, in the hope that somehow it is of help, or evokes an echo of memory for those who traveled on the same road.

We were lucky, by comparison. All we needed were multiple surgeries. And a bit of luck, what it was like, to think it might not work out. And how deeply empty I felt.

It began with a TV show. Shortly after our marriage I had been diagnosed with a varicocele, but was told it was "no big deal," that on rare occasion it could affect fertility, but that I should not worry about it. So I didn't. Until years later, and several months after my wife and I began trying to conceive, when watching an

episode of *Northern Exposure*, in which one of the characters was unable to conceive because of a varicocele. I called a urologist the next day.

For men or for women, although in different ways, infertility workups are uncomfortable -and embarrassing. You come to walk in a new world, to learn a new language, of "motility" and mucous, home kits and calculators. In our case, we discovered that I needed surgery, which I scheduled, went through m the small city in which we lived at the time, recovered, squirmed, suffered, stewed, switched urologists - and discovered a recurrence of the varicocele. The surgery had failed.

It is said that, no matter the subject, you need to be your own best advocate in the medical world of today. Physicians may not like it, or look longingly back to the days of reverential deference and near omnipotence, but doctors don't always know best. I had trusted the first physician I went to, not done enough research, and not discovered, until later, that there was a significantly newer procedure which used a laser and a microscope (a "microsurgical" approach), had a much quicker recovery - and a much, *much* lower rate of recurrence. The younger urologist in our small city was developing an expertise in the newer procedure, but I had had enough; we went to New York City, to the physician who invented the microsurgical repair. We read his articles with a medical dictionary in hand, met with him, checked references. I went through a second surgery -- and my wife was pregnant six months later.

I was cured! I was ecstatic! I was happier than I had ever been in my life. I never saw the miscarriage coming. It was hard m other ways as well. The miscarriage couldn't have come at a worse time: my wife was out of town. It happened two days before Rosh Hashanah... and at her newest nephew's *Brit milah* (circumcision) ceremony. She never made it back for the holiday. I couldn't go to her. (Frankly, rabbi of a solo pulpit or not, that was one of the greatest mistakes of my life. I should have been on a plane the moment I heard. The High Holy Days would have happened without me. *Someone* could have led the service.)

When she did return, we began the same round of confusion and medical cacophony we had just finished with me. No local docs this time, though. Off we went to the Cleveland Clinic, one of the best treatment centers in the world, the moment the post-miscarriage sonogram discovered her cysts.

Let me be blunt. A local ob-gyn says: "well, we *might* be able to save the ovary, but I doubt it. Hey, you've got another one." A specialist in another city says: "I've never had to take an ovary out for *that*." It's kind of a no brainer. (Jews have a reputation for being pushy. I don't like being pushy But we might have our children's lives to thank for doing more than listening and trusting.)

Julie had Laparoscopic surgery in December of 1994. They discovered several cysts, extensive endometriosis, and one fibroid. They removed the cysts, cleaned up the endometriosis, and left the fibroid right where it was. We conceived again in April. The second miscarriage came in June.

People mean so well when they try to offer comfort. And I am pro-choice: I do not believe that a twelve-week old fetus is really a person. But comments like "it's nature's way", were excruciatingly unhelpful. And a part of me died that day.

(Again, being a rabbi was intertwined with my family life. Julie began spotting in the morning. We were at a reception for a baby naming -- the child of close friends. Maybe it was made a tad easier because this baby was adopted, and this couple "had been there." But we knew what was coming. It was agony to wait. The

next morning I had a funeral. So off I went. By the time I got home, the miscarriage was beginning. At least we were together afterwards, this time.)

One miscarriage is "normal." I was shocked to learn just how common they were -- from friends and older relatives who shared stories I had never heard. Three miscarriages puts you into a different category. Two is... who knows?

Now the workups began in earnest: blood work, hormones, enzymes. Finally we found, well, *something:* a positive test for an anti-cardiolipin antibody, theoretically linked to a condition known as anti-phospholipid antibody syndrome. That summer we went to a specialist in Connecticut at the cutting edge of rheumatology, who tried to determine whether Julie had this syndrome. It puts mother and fetus at risk for thrombosis -- major blood clots. Did Julie have it? Well, maybe. We just don't know. Let's monitor this, and do more tests. Lots of tests and lots of speculation later I have come to my own conclusion: sometimes a little knowledge is a dangerous thing. The best scientific explanation anyone can come up with is: looks like she gets weird results on blood work.

By the fall of 1995 we were immersed in the world of infertility. We checked out web sites, E-mail discussion groups, Resolve. On Rosh Hashanah of that year, one year after Julie's first miscarriage, I preached about healing and hope. It was the hardest talk I ever gave.

But by then I was noticing other things as well. The women who got up and left before the Haftarah reading on Rosh Hashanah (the one about Hannah praying for children, and being "rewarded" by the birth of Samuel). Couples in the congregation who cry instead of smile at baby namings. The number of adopted children or adoptive parents: higher than I had ever realized. That pain is all around, in a child-centered world.

Everyone has a story. And each person's pain is his or her own. I realized that in the midst of a horrid pity party with my sister-in-law, whose nephew (the one at whose *bris* Julie had her miscarriage) was, at age *one,* diagnosed with diabetes. She kept acting as if what we were going through was just temporary, while she had a child with a permanent problem. We, not knowing what lay ahead, kept acting as if, hey, at least she *had* children. We just couldn't see the world through each others' eyes. Everyone's pain is their own.

But if we open our eyes, we are not alone. Healing came from eyes and ears and arms: to see the pain of others. To hear their stories. To hold and be held. when hope was almost gone.

Namings were the hardest thing, until our children were born. I managed, I believe, to be genuinely joyful, for most of the time, for each and every naming that I did. After all, it's not like "they" got "our" baby. There is something profound... about giving a name to another human being.

Long ago, in a city far away, there were those whose goal it was to make a name. "Let us make for us a name," said the builders of Babel, "lest we be scattered over the face of the earth." It was a natural desire, for impact, for immortality, for meaning that flows from who others think we are.

Sometimes, our hopes and dreams fall from the heights. The tower crashes. We are dazed *and "mevubal"* (the same Hebrew root as Babel); we are dazed and confused. We look at each other and do not understand. We cannot explain. We lack the language, we want for words.

Slowly, painfully, we come to a new understanding. It is this. Before we can say how others will see us, we must secure the way we see ourselves. With children or without, we have a task we too often overlook. Should we choose to have children, and be able to do so, still, before we can name another, we must know who we are. Whether or not we pass a name on, we must look in the mirror -- and name ourselves.

Children may come from inside our bodies, or be adopted from others. They are a part of us, and learn to grow apart from us.

But meaning flows from inside out. Not the other way around.

When I saw nothing more than waiting, I ached with emptiness.

To fill that void was my own spiritual task.

We are blessed. Children came. They fill my heart, and my soul, and my schedule.

But there are those who come face to face with that emptiness though their families be large and quickly built. And so I come to learn that, with children or without, the task is still the same. To fill the void. To answer the emptiness with the essence of who we are. Woven into the lives of those around us -- but not existentially dependent upon them. Alone, but not alone at all.

Has Hannah Stopped Crying?

By Marcia Hochman, MSW, MPA
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God commands us to be fruitful and multiply. Two powerful forces in my life reshaped this notion for me.

First, as a feminist and a modern, American, Reform Jewish woman, I found this as a "requirement", to be difficult and troubling. Women were certainly good for more than just having babies and raising children, weren't they? Growing up in the sixties and seventies, my views of the world were shaped by the women's movement, my heroes were Simone Debeauvoir, Golda Meir, Betty Friedan, Gloria Steinem, and Bella Abzug. I wanted to make a contribution to the world, my scope would be much larger, my range and influence would be more profound. Like many middle class Jewish families, education and learning were revered in my home and I was encouraged to pursue a profession/career. In my scheme of life, I would "eventually" get married and have children sometime in the future, but I would always be my own person.

Secondly, as a child who suffered in her parents home and as a result became painfully sensitive, I carried psychological scars that forced me to contemplate these questions—After one multiplies, how does one parent? What about all the people who should not have children and who are not capable of sensitive parenting? What about all the abandoned, neglected, hurt, abused children in the world? These were questions that stayed with me.

So, I set out to embark on a rich and full life. I developed interesting careers, explored, lived in different places, traveled, had different experiences, tried on different lifestyles, met my love–future husband and "eventually" got married at the age of 30. After much introspection, therapy, support and love from my husband, and family health considerations I was ready to take that leap- to become a parent myself. While I knew the second part of this, the parenting, would be a challenge, I thought that at least the first part of this should be easy. I have never been so wrong in my life.

In the Beginning

We began trying to conceive when I was "just" 37 years old. In the beginning it was fun and exciting. We got pregnant "quickly" (within 4 months of trying. As I began to learn, "quick" has a wholly different meaning to someone trying to conceive.) Three days later I began experiencing pain, and the next day I miscarried. I was shocked. Okay, others said: "we were only really pregnant for 2 seconds,– a "chemical pregnancy"... there was nothing really there, really common,..." Who knew that? I underwent some basic pre-natal examinations, tests, and Jewish genetic screening. Everything was pronounced "normal".

We had no problem mustering the energy and the feelings and beginning to try again. We decided that this time, we would get some assistance with a simple ovulation kit. Four months later we were pregnant again. The round of blood tests, the runs to the doctor's office for weekly visits continued. This time, everything looked good, this one was a real pregnancy. Week five, I woke up in the morning, rushed to the bathroom and threw-up. Um, morning sickness. Everyone told me that was a good sign, the sicker the

better. In week 6, we had our first sonogram. Through that picture we could see the little critter, or as the nurse said, our little "cheese doodle". Look, she said, and in the middle of the cheese doodle was a small pac-man-looking blinking blob on the sonogram screen. That's the heart, she said. There was a blinking heart in our little fetus. That sense of a total miracle enveloped us. Was it God's miracle? I wasn't sure. From that minute forward, in our minds we had a child. We thought quietly and together about being parents, about loving, about listening, about holding.

The nausea continued, intensified, and was not confined to the morning. It was 24 hours a day, 7 days a week. The fatigue, exhaustion and nausea were impossible to battle and I succumbed, cutting back on my work. But it was all for a good cause-I said to myself, a baby, and unfortunately this work was something only I, and not my husband, could do. We were scheduled for our crucial end of the first trimester visit. The grainy and fuzzy image of the fetus popped up on the screen, and as my husband and I were marveling at the structure, the doctor became noticeably silent. There were excruciating minutes of looking and searching, waiting. The doctor quietly said, "I can't see a heartbeat". I turned to look at the screen and searched for that blinking light. It was not there. It had died. What had died? Our baby had died. But what happened? What had happened to the miracle? Miscarriages are common, we were told. It is the body's natural way of terminating a "bad" pregnancy.

We became consumed with the sad and grimy details of what to do now. I opted for surgery, and the fetal tissue was analyzed. The results indicated a trisomy or a chromosmal abnormality. And it was a "male." Why did this happen again, I asked. The answer I got was because I was 37. What was wrong with 37, I said, I was young. But not according to my ovaries.

Mid-Journey

The doctor referred us to a fertility specialist to "move things along." I thought, maybe God was just testing me to see if I was really ready to be a parent, to be a good parent. Maybe I wasn't ready? I sat through the Haftorah portion of the first day of Rosh Hashannah, "and Hannah wept". A Dvar Torah done by a congregant concerning her struggle with infertility brought tears to my and many other female congregants eyes. Never before had I realized the intense emotional pain felt by so many female congregants on this day. I joined an infertility support group at my temple.

A new doctor, a round of painful and embarrassing tests to rule out any other causes for the miscarriages. Deflated and defeated, she bolstered our spirits. There was nothing mechanically wrong, all the hormonal and anatomical parts were working well and were healthy. The only problem was that my ovaries were not producing enough healthy eggs at the same rate as when I was younger, like 22. When did this dimunition happen? I didn't feel anything? How come nobody told me this was a consequence of pursuing a full and rich and diverse life as a woman? Twenty-two, I gasped, I was still a baby then. I didn't even know who I was, much less be able to bring a new creature into the world. Maybe my body was ready to be a parent but my heart and my mind certainly were not. Now time was against me—I was fighting that biological clock. OK, we would try again, but with a little help from her. We decided to have a little assistance, fertility drugs, to increase my chances . We also decided to begin pursuing adoption. As we

quickly learned, that was also a difficult and uncertain path toward family creation, but one that we continued to pursue throughout this period.

Terrified, we had now officially entered the world of infertility and hormonal treatments. We read past the warnings of a possible increase in cancer, and my husband learned how to mix medicines and give me shots, first practicing on eggplants.

I was pregnant again. This time was going to be our time. I thought maybe it's just the old adage—no pain, no gain...nothing comes easy for me... I had to suffer a bit before I had a baby, I am, after all Jewish. Week 5 we had the sonogram, there were smiles and beams all around—the doctor said you, my girl, are in fact pregnant—and I am glad you are lying down, because have you ever thought about having twins! Sure enough, there were 2 hearts beating. Two separate, fraternal twins inside my body. With tears flowing, my husband and I made quick and rapid adjustments. While we had not planned on twins, at least we would have our family all in one shot, we said. More importantly, if one was "no good", we had a second one to rely on. We were very excited, but cautious.

Week five the nausea and fatigue started again. My 40 year old body was not quite up to this. Week 9, the Dr.'s visit revealed that one of the twins had died. The heart had stopped beating. The other one was healthy however and the chance of losing both would be very unusual. We went through another 4 weeks, and had our end of the first trimester appointment right before Rosh Hashannah. The doctor's face was just silent. She could not find any heartbeat at all. We looked and looked at that grainy image, nothing. The second twin had died. How could this be? The grief and tears were uncontrollable. My husband and I clung to each other for a very long time. Another operation in the hospital, this time on the second day of Rosh Hashannah. Again, just random chromosomal abnormalities for both fetuses. Again, both were boys. Again the grief for something that never really existed. Again the endless questions. Why me, was I being punished by God for something? What a primitive and ghastly notion of the Divine?

End of the Journey

My husband and I realized that we had begun to reach "crunch time". The idea began dawning on us that we might never be able to have a biological child of our own. Maybe that wasn't so important? Maybe being a loving parent was all that mattered? If we really wanted a family, everything had to be up for discussion. We entered the world of assisted reproductive technology with a fury– ovum donation, "experimental" somatic and nuclear cell transfer, IVF, surrogacy. Every step of the way felt like slow torture—uncertainties compounded by uncertainties, harsh and unrelenting procedures, interminable waiting, and cold and insensitive medical and technical staff. Unintentionally hurtful family and friends. We attended every workshop, seminar, and event on assisted reproductive technology. We worked with the top infertility specialists at every hospital in a 200 mile radius. I was faced with some of the most bizarre questions and issues I had ever been presented with in my life: If I used donor eggs, would my child have all or some of the donor's characteristics, their traits, their personality? Was it better to look for a "match" for me and never tell the child, or was it better to look for a "good" profile? Would that child ever really be mine? Was it possible

to have and did we want a "Jewish" egg? Would we have to convert an ovum donor child? Was it better to have my husband's DNA in the child and not mine or would there be resentment later on? Wouldn't adoption just be better? What would we say to the child as they grew up, and what about finding the ovum mother?

Then there was the matter of money, the purchasing of a commodity-a valuable and rare one. One had to pay for one's eggs, and that was not reimbursed by the insurance companies. The price of one cycle of eggs went to $5,000. How many could we do? On the other hand, adoption was not paid for either and that could run to $20,000. Like the story everyone recounts to you, maybe we would adopt and then get pregnant? How could we even be thinking about this in this way? Was it this simple, to buy someone else's egg and make a family? Where was the Godliness in this? What choices did we have? Should we think about a life without children?

With the consultation of our physician, we decided on one more try—what we called a psychological pregnancy, one last time that would allow us to come to closure. We would have the somewhat experimental CVS (chorionic villi sampling) test, done as early as week 9 and no later than week 11, with a significantly increased risk of loss of fetus and limb malformation. I became pregnant with the 5th potential child. Again, the heartbeat, the waiting, the overwhelming nausea, the constant fatigue. Week 10 I had the CVS. Excruciating pain from a large needle in my belly drawing out placental tissue. Now we had to wait for the results. I remember the day well. It was a gray and cloudy Saturday and we were at a bar mitzvah. We got home in the afternoon. We were so anxious we called the lab technician directly. Agony. Waiting. Finally, she called back and said that we had a normal fetus, a girl. The sense of relief was enormous.

As I thought about it, I somehow realized that maybe it was not all a random accident. Four male fetuses all died, and the only female one seemed destined to live. Maybe I was not meant to be the Mom to a boy, maybe, I would not have been good at it?

For the next 6 months I lived mostly in trepidation and fear. Every time I had a cramp or an ache, I was convinced something was wrong. All the way through, even in Lamaze I somehow did not believe that what would come out of this experience would be a live and healthy child.

On December 5th, 1998, after 31 hours of labor, I delivered a girl, healthy and alive. The overwhelming feeling was one of total amazement—I brought life into the world, and now I would nourish that life. How did this miracle happen? She was perfect and small and pink and smelled wonderful.

What can I say about this long and tortuous journey? I know that if the journey had ended differently, with my family created in a different way, that that would somehow be what was meant to be for me and I would have been OK with that. I learned that so much of what we feel and know and come to learn is found in the journey itself. I am blessed, not only because of my little girl, but I am somehow blessed for having been on that journey. I came to know more deeply than ever before that were it not for the solid and loving support and tenderness of my husband, I would never get through anything. I came to feel deeply in ways I had never experienced before someone else's pain and anguish at not being able to get what one so dearly wants. I came to learn how much of life is the mix of hard work, luck, divine blessing, and things way beyond our

influence and control. Had I not been on that journey with all of it's uncertainty and pain, I would not have the beautiful and precious little girl I share my life with today. I also would not be terrified every time she cried or sneezed that something was wrong. I might not wake up in the middle of the night every night to check and make sure she is OK.

I am getting ready for Rosh Hashannah this year in a different way. My heart still has residual ache for all those trying to have families. I hope to be able to comfort them in some small way. I hope to be able to let them see that however one makes a loving family is OK. Has Hannah stopped crying? Maybe. We are blessed now with more amazing options at family creation than ever imaginable. Are the different roads and paths thorny and complex and tortuous? Yes. Is the journey worth making. Definitely yes.

From Matters of Life and Death: A Jewish Approach to Modern Medical Ethics
By
Elliot N. Dorff

Infertility in Jewish Sources

In many ways, the emphasis on children in Judaism exacerbates the frustration and alienation that infertile Jewish couples suffer. So, for example, when the Psalmist wants truly to bless his listener or reader, he says:

> Happy are all who fear the Lord, who follow His ways. . . . Your wife shall be like a fruitful vine within your house; your children, like olive saplings around your table. So shall the man who fears the Lord be blessed. May the Lord bless you from Zion; may you . . . live to see your children's children. May all be well with Israel![19]

As this passage indicates, such positive feelings about children are, at least in part, due to the tradition's conviction that children are an expression of God's blessing of those who abide by the conditions of God's covenant with Israel. As the Torah explicitly says:

> If you obey these rules and observe them faithfully, the Eternal, your God, will maintain for you the gracious covenant that God made on oath with your forbears. God will love you and bless you and multiply you. . . . There shall be no sterile male or female among you.[20]

While these words sound warm and loving to those who have children, they have a very different ring to those who do not. As one infertile Jewish woman has written,

> Fertility, it seems, is an integral component of the covenant. Is barrenness, then, next to godlessness? If you who are fertile have received a sacred blessing, have we who are not received a divine curse?[21]

The Bible includes stories of a surprising number of people who cannot have children, and the people involved in the biblical stories of infertility include no less than the Patriarchs and Matri-

archs, who are depicted as being in very good graces with God. Sarah, Rebecca, and Rachel all have trouble conceiving and bearing children,[22] which, in the biblical stories, adds to the preciousness and theological import of the ones they ultimately do have. The merits of these women and their husbands and the oath God swears to them are the reasons God forgives the seriously erring Israelites after the molten calf incident and the motive for God's choosing the People Israel in love.[23] The Torah is thus explicitly ambivalent about claiming that piety produces fertility and that fertility is the mark of piety.

As in the biblical stories, modern couples often experience their inability to have children as frustrating and degrading. Why can they not do what their bodies were designed to do and what most other people's bodies enable them to do? When all their married friends are having children, partners in an infertile marriage often feel not only unlucky and deprived but embarrassed and defensive as they continually feel the need to explain why they do not have children too. Infertility even challenges people's feelings of adequacy as men or women—and as mates. Some marriages fall apart due to the tension engendered by continued, unsuccessful attempts to have children. To add insult to injury, Jewish couples who seek to make Judaism an important part of their lives—and even those who do not—often *feel* that they are letting down not only each other but also their parents, the Jewish people, and God.

It is therefore crucial to underscore that while children are critical for the future of the Jewish people and a blessing to their parents as well as to their community, a person's *value*, according to the Jewish tradition, is *not* a function of his or her ability to produce children. Rather, human worth derives from being created in the image of God, which is true of each of us from the moment of our birth to the moment of our death, whether or not we produce children in between. (Note that, in contrast to many religions of the ancient past, God in the Bible and in the Talmud and Midrash specifically does *not* engage in sexual union to create us or anything else, and so imitating God does not require procreation through sexual union.) As Jews, we gain

additional divine worth through our covenant with God, but one's status as a Jew depends *not* on the ability to procreate but on being born Jewish or being converted to Judaism in accordance with the requirements and procedures mandated by Jewish law. Thus one's status and value as a human being and as a Jew, according to Jewish sources, are both totally independent of the ability to produce children, a Jewish teaching that needs to be affirmed again and again in this age of massive infertility among Jews.

Moreover, as indicated above, the command to procreate, like all other commandments, does not apply to those who cannot fulfill it. "In cases of compulsion *(ones)*, the All-Merciful One exempts him," the rabbis say.[24] Thus men who cannot impregnate their wives should not see themselves as thereby failing to obey Jewish law, for their inability to procreate frees them of the responsibility to do so. In that way they are legally in a better position than a man who has had many children but all of the same gender, for such a man presumably could still fulfill the commandment of begetting a boy and a girl but has not done so.[25] Even here it seems only fair to credit a man with fulfilling the obligation to procreate once he has fathered two children, regardless of their gender, because no man can control the gender of the children he begets. In the same vein, it seems all the more justified to exempt from this duty a man who cannot have children at all.

The context, then, for the entire discussion below on methods to overcome infertility must be made clear at the outset: it applies only to those couples who *choose* to use them. Jewish law imposes no obligation on infertile couples to employ any of them. Such methods do enable approximately half of infertile couples to bear children. As such, they offer new hope to such couples, and we certainly rejoice with them, both personally and communally, when they succeed in having the children they want. Whenever we *can* do something new, though, the moral and legal question of whether we *should* do so then arises, and the new methods of achieving conception come with some clear moral, financial, communal, and personal costs that will be described below and must be acknowledged and balanced against the great good of having children.

ARTIFICIAL FERTILIZATION *(HAFRAYYAH MELAKHOTIT)* AND PROCREATIVE AUTONOMY

In Light of Two Contemporary Israeli Responsa

David Ellenson

Modern medicine has developed new reproductive technologies that have allowed the genetic, gestational, and social components of parenting to be separated in unprecedented and astonishing ways. As Professor Arthur Caplan of the University of Minnesota recently observed, "[If] Leonardo da Vinci were suddenly transported to the United States in 1994," he would find "a reproductive clinic [where] we make babies in this dish and give them to other women to give birth ... more surprising than seeing an airplane or even the space shuttle."[1] A cartoon on the editorial pages of *The Los Angeles Times* on January 21, 1994, makes a similar point. The cartoon depicts a man and woman modestly clad in their night clothes lying side-by-side in bed. The woman turns to the man and says, "Honey, I went to the sperm bank for semen. Then I picked up a donated egg and had it fertilized at a lab and implanted it in a 60-year-old surrogate mother.... Was it good for you?"

Astonishment and irony aside, artificial modes of reproduction have surely raised a whole host of questions which contemporary ethicists and religious leaders must confront. How do these new forms of non-coital and donor-assisted reproduction alter the nature of conception, the family, and our views of social existence? Should artificial reproduction be allowed to become a commercial venture? Should any boundaries be placed on the ability of adults to employ these technologies so that their right to procreate would be limited? These dilemmas and more have been posed by recent medical advances in reproductive therapies.[2] They are not always easily resolved and they have given rise to considerable controversy among diverse commentators and thinkers. Unanimity of opinion among ethicists has hardly been forthcoming and no consensus on the questions posed by these technologies has yet emerged. As medical ethicist George Annas of Boston University has pointed out: "Artificial reproduction is defended as life-affirming and loving by its proponents and denounced as unnatural by its detractors."[3]

These reproductive technologies and the quandaries they present have not escaped the attention of *halakhic* authorities. Leading *halakhists* in every

denomination of Jewish life - Reform, Conservative, and Orthodox - have begun to address many of these issues. One need only consult the writings of our Reform colleagues, Walter Jacob and Moshe Zemer, and Conservative authorities such as Elliot Dorff and Daniel Gordis, as well as Orthodox rabbis and physicians such as J. David Bleich and Moshe Tendler, for evidence of the interest these technologies have evoked and the variety of responses they have elicited. This paper will deal with one circumscribed topic - artificial fertilization - in the vast field of artificial reproduction. Two responsa on the topic of artificial fertilization (*hafrayyah melakhutit*) issued by two different Israeli Orthodox rabbinical leaders will provide the central focus of discussion. The first responsum to be considered was issued in 1981 by Rabbi Eliezer Waldenberg of Jerusalem, the *Tzitz Eliezer*, well-known as the world's leading Orthodox *halakhic* authority on issues of medical ethics, while the second responsum was written in 1988 by Rabbi Hayyim David Halevi, the Chief Rabbi of Tel Aviv-Jaffo, one of the most prolific authors of responsa on the modern Israeli scene.[4] Following the presentation of these responsa and the *halakhic* concerns and cautions, these Orthodox rabbis raise; issues of genetic, biological, familial, feminist, and social concern occasioned by these writings will be considered, as well as the manner in which such considerations ought to inform Liberal Jewish deliberations on this and related matters.

THE RESPONSUM OF RABBI ELIEZER WALDENBERG

In 1981, three years after the world's first child conceived by means of in vitro fertilization was born in England and after such a procedure was replicated with success in half-a-dozen other cases in various parts of the world, Dr. David M. Meier, Director of Shaarei Tzedek Hospital in Jerusalem, asked R. Waldenberg to provide an *halakhic* response to this "new medical technique - artificial fertilization in a petri dish," whereby children could be conceived non-coitally. Dr. Meier began his query to R. Waldenberg with a straightforward explanation of the medical procedure involved in employing this therapy for an infertile married couple. Ova, he wrote, are removed from the woman by laparoscopy and then placed in a petri dish (a laboratory medium) with sperm ejaculated by the woman's husband for fertilization.

After undergoing a number of cell divisions, the developing zygote is inserted into the uterus of the woman from whom the ovum was removed and from there the pregnancy continues until the child is born. In this instance, where the genetic, gestational, and birth mother were one and the same, and where the semen to fertilize the ovum was donated by the husband, Dr. Meier desired to know if there was any *halakhic* objection to employing this procedure as a way to alleviate infertility.

R. Waldenberg responded to Dr. Meier in a responsum dated 8 Elul, 5741 (September 7, 1981). He replied, in his prologue to the responsum, that there were, in his opinion, both implicit and explicit "*halakhic* stumbling blocks" to the procedure. Artificial insemination (*hazra'ah melakhutit*), he noted, had already been the subject of a great deal of *halakhic* literature.[5] He himself countenanced artificial insemination, but only when every effort to conceive "naturally - *k'derekh kol ha'aretz*" had been exhausted. If, after ten years had passed, the woman was not pregnant, or if an Orthodox doctor indicated prior to the passage of this ten-year period that the woman could not become pregnant "in a natural manner," artificial insemination could be permitted if the donor was the husband of the woman. R. Waldenberg, in his responsum on artificial insemination, also voiced total opposition to this procedure when the donor of the semen was a male other than the husband. Indeed, in such an event the woman "was obligated to receive a divorce from her husband."[6] In other words, he restricted his *heter* for artificial insemination only to instances of AIH (artificial insemination when the husband is the sperm donor). It did not extend to AID (artificial insemination when the sperm donor is not the husband).

R. Waldenberg's ruling on the matter of artificial insemination and the limited scope of his permission casts light on his holding in this case of artificial fertilization. Due to the number of steps involved in artificial fertilization, the possibility of fraud and abuse - apart from simple error - was great, and there was no way, in R. Waldenberg's opinion, to guarantee that the donor would be the husband. He dismissed the assurances of the medical community as to their reliability in this matter as "a total lie - *shav va'sheker*

havtahatam zot" designed to assuage public outcry against this medical innovation. R. Waldenberg's opposition, at this point in his responsum, to artificial fertilization as an acceptable form of non-coital reproduction was based upon his fear that family lineage would be confused and that the traditional understanding of the family could be blurred by a technology that so easily allowed for a separation between genetic, gestational, and rearing parents. "Heaven forfend," he exclaimed, "against anarchy (*hefkeirut*) such as this which is likely to erupt into serious breaches against the wall [that protects] the purity (*b'homat hataharah*) and lineage of the family (*v'hayihus hamishpahti*)." With this, R. Waldenberg's prologue to the responsum came to an end. His aversion to the possibility of collaborative conception between donors and gestators in this mode of artificial reproduction led him to condemn artificial fertilization as a Jewishly-sanctioned solution to the problem of infertility - even for a married couple!

The remaining sections of R. Waldenberg's responsum only reinforced the substance of his ruling on this matter. In the course of elaborating upon his decision, R. Waldenberg made a great effort to distinguish *halakhically* between artificial insemination and artificial fertilization as non-coital modes of assisting infertile couples in their quest and desire for progeny. The former therapy, as stated above, could be permitted in certain instances. The latter, he felt, was always to be condemned. There was no symmetry between the laws governing artificial insemination and those addressing artificial fertilization. In the former procedure, the husband's sperm was inserted directly into the womb of his wife. She either became pregnant or she did not "in a natural manner (*b'ofen tiv'i*)." All of the husband's sperm, in the case of artificial insemination, could be deposited into the wife's uterus where it would remain as it would "in natural intercourse." Artificial insemination need not involve "a wasting of seed." In the case of artificial fertilization, such was not the case. The remaining sperm not used in the artificial fertilization of the ova in the petri dish were either "wasted" or, echoing a theme voiced earlier in his responsum, used to fertilize the eggs of another woman! The husband, in cases of artificial fertilization, was therefore guilty of violating the *halakhic* ban against "the spilling of seed."

The distinction to be drawn between artificial insemination and artificial fertilization as permissible and impermissible modes of non-coital reproduction was to be made by R. Waldenberg in other ways as well. In the case of artificial insemination, it was possible to argue that the man fulfilled his obligation to "be fruitful and multiply." This was because his semen was directly injected into the womb of his wife as it would be in an instance of "natural insemination." The process of gestation would be the same whether the sperm was inserted artificially or naturally. Thus, many authorities, like Waldenberg himself, relied upon this understanding during "a time of emergency" so as to permit AIH as an *halakhically*-sanctioned mode of non-coital reproduction.

Artificial fertilization, R. Waldenberg wrote, was different. He stated, "They (the couple) alter the order of creation through [this] (*heim m'shanim bazeh sidrei bereishit*), and the sperm of the husband does not enter the uterus of the mother but is placed into a petri dish." So, too, with the woman. A surgical technique is employed to remove her ova and place them in the petri dish, outside the body of the woman. There is thus "no relationship - *ein bo inyan k'lal shel hityahasut*" between the fertilized ovum and the couple, as the process of fertilization in the petri dish takes place outside the body in the dish for a period of a week or longer[7] until the doctors are certain that fertilization has taken place. Only then is one ovum implanted in the womb of the mother. R. Waldenberg therefore condemned artificial fertilization as an "unnatural process both from the standpoint of the man and the standpoint of the woman - *ein hazra'ah k'darkah, lo mi'tzad ha'ish v'lo mi'tzad ha'ishah.*" It is a "third power (*koah sheli'shi*)," i.e., the petri dish, "that causes [the conception to occur]."[8]

R. Waldenberg's observations here, as Rabbi J. David Bleich has noted, "are not based upon cited precedents or analogy to other *halakhic* provisions."[9] However, R. Waldenberg's sentiments on in vitro fertilization (IVF) do parallel a position that Rabbi Michael Gold has associated with some of the teachings of the Catholic Church. As Rabbi Gold states, "Many ... religious leaders ... in the Catholic Church ... have objected to these procedures

as 'unnatural'.... In vitro fertilization ... has been attacked by the Catholic Church as contrary to natural law. To quote a recent Catholic legal document: 'Advances in technology have now made it possible to procreate apart from sexual relations through the meeting in vitro of the germ cells previously taken from the man and the woman. But what is technically possible is not for that very reason morally admissible.... Marriage does not confer upon the spouses the right to have a child, but only the right to perform those natural acts which are *per se* ordered to procreation.'" [9]

R. Waldenberg's position and the concerns he advanced in this section of his responsum demand commentary. I will reserve my own for later. For the time being, it is sufficient to note that R. Waldenberg would undoubtedly both be stung by R. Bleich's critique and possibly surprised to see how closely his own views parallel those of certain Catholic teachers. Nevertheless, it should not obscure the fact that this reasoning allowed him to assert that the commandment of, "be fruitful and multiply", was not fulfilled through an "unnatural mode of non-coital reproduction" such as artificial fertilization. The Torah, R. Waldenberg averred, teaches that no commandment is fulfilled when it is performed "in an unnatural manner." IVF was no exception. Nor, R. Waldenberg wrote, was the corollary *mitzvah* of "*lashevet yatzrah*" (derived from *Isaiah* 45:18 - "Not for void did God create the world, but for habitation - *lashevet* - did God form it - *yatzrah*") "fulfilled by this operation which is performed in an unnatural and abnormal manner."

In the penultimate section of his responsum, R. Waldenberg displayed an almost Luddite aversion to this particular type of advancing medical technology and expressed his fear that an acceptance of in vitro fertilization as a legitimate form of non-coital reproduction technology would lead humanity onto a "slippery slope" from which there would be no escape. Medical technology would soon be able to produce "biological creatures" from single cells conceived and nurtured solely within the laboratory. Such "creatures" would have been produced with no recourse to "natural modes of reproduction" and would bear no relationship to humanity. They would have neither father nor mother. The technology involved with in vitro fertilization

must therefore be resisted, as it would lead to untoward consequences for humanity.

Finally, in concluding his responsum, R. Waldenberg returned to several themes he had outlined at the beginning of his opinion. As no procedure, he wrote, could guarantee with absolute certainty that the identity of the sperm donor would not be mixed up or confused, then grave genetic and familial problems could arise in connection with this therapy. In apocalyptic tones he wrote, "The earth will be full of incest and a father may well marry his daughter and a brother might marry his sister," since the identity of a sperm donor might well remain unknown and his anonymous identity might well be protected by law. Indeed, it would not be unthinkable, in light of this, that a single man's sperm might well impregnate thousands of women over the course of a year. The potential consequences of this procedure were, R. Waldenberg stated, "shocking and alarming!... Is the fear associated with the prospect of a father marrying his daughter or a brother marrying his sister not one based on a real and immediate possibility? Therefore, no leniency can be permitted in this matter. ... In my humble opinion, the *halakhah* absolutely does not countenance or permit artificial fertilization in a petri dish." With this final statement, Rabbi Waldenberg concluded his responsum.

RABBI HAYYIM DAVID HALEVI - A DIFFERENT SENSIBILITY

Eight years later, on 15 *Kislev*, 5749 (November 24, 1989), a related, but distinct, set of questions apart from those posed to R. Waldenberg concerning the *halakhic* attitude toward artificial fertilization were addressed to Rabbi Hayyim David Halevi of Tel Aviv-Jaffo by an anonymous doctor. The physician, apparently an American, wrote that his questions dealt with "artificial fertilization in a petri dish. Nearly every medical laboratory in the United States which deals with fertilization customarily gathers a number of ova from the mother at one time and mixes them with the ejaculate of the father in the petri dish. [The doctors] examine the ova after they have been fertilized for several days, and then they decide which of them they will inject in the womb of the mother. My question is, 'What is the *halakhic* standing of

the ova that were fertilized during the time that they were still in the dish? ... Is it permitted to dispose of the ova that were not selected for transplantation?"

R. Halevi felt it necessary to begin his responsum by dealing with the issue of Jewish law's attitudes toward artificial fertilization in general. Only then could he address the specific question of the pre-embryo's moral status. He noted that the previous decade had witnessed a contrariety of *halakhic* opinion on this matter. No consensus had emerged among the "Sages of this generation" on the issue. Some authorities permitted it if great care was taken to assure that only the ova of the mother and the semen of the father [i.e., husband and wife] were used, and if there was no shred of suspicion that the ova or semen were donated by any other person. Rabbis in this group maintained that the father did fulfill the commandment of "be fruitful and multiply" through IVF, and they gladly permitted employment of this non-coital method of reproduction for a couple which was otherwise unable to conceive. In opposition to them, other rabbis asserted that the child produced by such a procedure had no relation to his parents at all, and the father did not thereby fulfill the commandment to "be fruitful and multiply," though he did, in their opinion, fulfill the *mitzvah* of *"Iashevet yatzrah."* Yet others in this latter group, like R. Waldenberg, were even more stringent. They insisted that the father did not even fulfill this latter commandment thereby, and they attacked the permission to sanction this technology ferociously and claimed that one could never depend upon the veracity of the doctors in this matter. R. Halevi, up to this point in his responsum, simply listed these various positions. There was clearly no agreement among Orthodox authorities on this matter. It appeared, as R. Halevi presented these opinions, that a variety of opposing *halakhic* positions were equally valid and that an Orthodox Jew could select among them with a clear conscience that he or she was electing an *halakhically* legitimate option.

R. Halevi himself failed to offer an explicit judgment as to which viewpoint he favored. However, he proceeded by observing that many Orthodox Jewish couples availed themselves of this technology and that these Jews who did so undoubtedly depended upon those authorities who were

lenient on this issue. Inasmuch as R. Halevi himself neither protested this practice nor castigated those rabbis who offered such permission, one can only assume that he felt IVF was an *halakhically* sanctioned method for resolving the problem of infertility for married couples. For those Jews who followed the lenient authorities on this issue, it was permissible, R. Halevi ruled, to dispose of those ova which were not selected for transplantation since the law forbidding abortion applied only to a fetus in the womb of a woman. He did not explain fully why a judgment that embraced artificial fertilization as a permissible *halakhic* solution to the problem of infertility for married couples necessarily led to the position he sanctioned concerning the disposal of pre-embryos. Indeed, his decision to permit the disposal of the pre-embryo was reached independently of any considerations regarding artificial fertilization. Instead, his reasoning about the status of the pre-embryo stemmed from a judgment that abortion did not constitute murder in Jewish law. Therefore, the disposal of the pre-embryo was not absolutely forbidden.

R. Halevi did not feel such judgment justified destroying such ova cavalierly. After all, the pre-embryo, as well as the fetus, deserved profound respect as each possessed the potential to develop into human life. Yet, as they had not yet attained that status, discard of the former or abortion of the latter was permissible when good reasons for such actions could be put forth. The inclination to decide in this manner was further revealed in the second part of his responsum. Here he took note of a previously infertile woman who had taken medication to reverse her condition. As a result of the medication, it was not uncommon, R. Halevi noted, for a multiple pregnancy to result. Indeed, sometimes as many as eight or nine ova were fertilized. Even though each ovum may initially be healthy, R. Halevi wrote that "if the pregnancy continues, it is a virtual statistical certainty that all of [the ova] will be born prematurely (around 26 weeks into the gestational period) and, in light of this, they will be very weak, with physical defects or serious brain damage. The absolute majority of these premature infants will either die in a few weeks after their birth or will suffer greatly all the days of their lives. The situation of the premature infant is aggravated even more if the moment of birth is even earlier and the moment of birth is influenced by the number of fertilized eggs." R.

Halevi concluded this section of the responsum by observing, "One should also consider the danger to the pregnant mother who is carrying so many fetuses."

The question to be addressed here concerned the procedure of "reducing the number of fetuses - *dilul ha-'ubarim*." In the first trimester of pregnancy common practice is for a needle to be inserted into the womb in order to kill several of the fertilized ova. The purpose of this procedure is to assure that one or two of the fetuses remain alive, are born, and grow up "whole and healthy - *beri'im u'sheleimim*." Statistics indicated that there was little risk of danger to either the mother or the remaining fetuses if one or two were carried to term, and that there was significant risk if four or more were. Statistical evidence concerning three was inconclusive. R. Halevi had to determine whether it was permissible to engage in this procedure and, if so, until what point in the pregnancy was destruction of the fetuses allowed? Finally, an ancillary query asked R. Halevi to determine how one would decide how many ova to remove?

Rabbi Halevi noted that on these questions, as with the set of questions posed to him in the first part of the responsum, there was much disagreement among the rabbis. Here, as in the initial section of his reply, he contended that an answer to the question was contingent upon determining the Jewish view on abortion. Some authorities, R. Halevi reported, maintained that aborting a fetus fell under the category of "destroying a soul - *ibud nefesh*." These rabbis ruled stringently on such questions and were inclined to discourage the use of fertility drugs to stimulate ovulation precisely because of the type of questions R. Halevi now faced. However, these authorities were in the minority. Most rabbis ruled leniently on such questions because they did not view the destruction of an ovum or even a fetus as "murder."

In view of this, R. Halevi wrote, "Inasmuch as it has already been established that if these ova remain alive they will be born with serious physical birth defects or brain damage, we may certainly rule leniently and destroy several of the fetuses on the condition that one or two remain who will

be born whole and healthy." It would be best to perform this procedure as early as possible in the pregnancy. However, if the procedure were not done in an early stage for any reason, "there is no impediment to perform the operation at any moment that is possible." The exact number of ova that should be destroyed depended upon the judgment of the doctor. However, as the statistical probability was that two could be carried to full term and emerge as healthy and intact babies, R. Halevi felt that there was an obligation to leave two ova intact. Therefore, even here he observed that if there was any reason to assume that two fetuses would endanger either the mother or the other fetus, or if there was any other consideration (e.g., the health and strength of the mother) guiding the decision of the doctor, then it was permitted to destroy one of the two remaining ova.

While R. Halevi may have possessed personal reservations or misgivings about this technology and the allied questions it raised, he did not mention them. He clearly believed that it was *halakhically* permitted to authorize medical interventions which would aid a married couple in overcoming their problems with infertility. In vitro fertilization or the use of fertility drugs to stimulate ovulation, far from being *halakhically* proscribed, were regarded by R. Halevi as praiseworthy means for assisting married couples in their attempts to "be fruitful and multiply" and "inhabit the world." It is clear that the issues that so provoked R. Waldenberg did not disturb him. R. Halevi's sensibilities as reflected in this responsum were clearly distinct from those of his Jerusalem colleague.

REFLECTIONS AND COMMENTARY

The modes of reproduction that constitute the subject matter of the responsa considered in this paper have presented severe challenges to those who would seek guidance from halakhah on the issue of artificial fertilization. Collaborative techniques that enable persons to routinely separate genetic, gestational, and social aspects of parenting have virtually no precedent in Jewish law. The sparseness, if not the total absence, of traditional sources that directly address the issues involved in arriving at a Jewish position on artificial

fertilization is reflected in the inability of either R. Waldenberg or R. Halevi to cite direct precedents that would inform a Jewish position on this matter. Indeed, this paucity of sources in their responsa is quite striking. However, in light of the novel problems produced by contemporary advances in medical technology, it is not surprising.

Rabbi Herschel Schachter of Yeshiva University has observed that when *halakhic* decisors confront a particular issue, they do what *poskim* have done for centuries. They juxtapose "the particulars of [their] own case and various *halakhic* precedents and principles, thereby deciding into which category [their] own case falls. Then [they] must apply these precedents and principles to the situation at hand." The problem, R. Schachter asserts, is that situations presented to rabbis by advances in medical technology are "unique to our generation." There simply may be no precedent to offer guidance.[10]

Rabbi Ezra Bick of Yeshivat Har Etzion in Israel echoes R. Schachter's observation and maintains that certain questions related to IVF are simply "not susceptible to the classic *halakhic* approach of analogy with an existent *halakhic* ruling." There exists "no clear indisputable *halakhic* source" for determining "motherhood" in a case of IVF where the genetic donor of the ovum and the woman who carried the fetus to term and gave birth to it are distinct. "Is there any halakhic source sufficient to resolve [this question]?", R. Bick queries. "The answer," he responds, "is no."[11]

What then is one to do in an instance such as this when no Biblical or Talmudic source speaks directly to the welter of issues under consideration? Furthermore, how are we, as liberal Jews, to evaluate responsa such as the ones under discussion in this paper when the ethos and proclivities that inform their decisors are so removed from the sensibilities and concerns that inform so many liberal Jews? After all, the irony that no woman's voice is heard in this entire discussion concerning procreation cannot avoid capturing the attention of many a liberal Jew![12] Indeed, in reading these responsa, one hears the echoes of a warning issued by Professor Norma Juliet Wikler of the University of California at Santa Cruz when she writes of the new reproductive

technologies, "Feminists fear that the application of the new reproductive technologies will be manipulated so as to limit women's autonomy ... [as well as] a woman's right to control her body." While Professor Wilder applauds and endorses many of the new reproductive technologies, including artificial fertilization, she fears "the consequences of these technologies if they are not controlled by women for women."[13] One need not affirm all of Professor Wilder's sentiments to acknowledge that all decisions made in this area must be fully informed by women's diverse views as well as by a feminist ethos that would consider these questions in the context of society and interpersonal relationships. Rules alone will not be sufficient to guide us through the thorny ethical thicket this, or any other, area of bioethics presents.

Nor is the notion that a single parent or a gay or lesbian couple might desire to employ this technology to fulfill their own reproductive urges even considered in the responsa analyzed in this paper. The ideal of the "procreative, heterosexual" family surely is privileged in this discussion. Yet, as many could undoubtedly attest, significant numbers of single, homosexual, and lesbian people have availed and desire to avail themselves of these technologies in order to achieve the same reproductive goals as infertile heterosexual married couples. A liberal Jewish approach to this question must consider all these persons, as well as the individual voices of men and women, when speaking about ethical issues associated with the techniques and therapies of artificial procreation. A liberal *halakhah* must orient itself in a manner that is more inclusive than is reflected in these responsa.

What then can traditional *halakhah* and traditional *halakhists* offer liberal Jews that would strike us as true and provide us with guidance as we confront the issues of artificial fertilization raised in this paper? The answer, despite all the misgivings and reservations I have expressed, is that these and other responsa can teach us a great deal. They and the tradition embody elements of truth and we will be impoverished if we ignore many of the sentiments and views expressed in them as we attempt to construct a liberal Jewish approach in this area. Indeed, these responsa indicate that the ethical issues involved in this field are rather complex. For most liberal Jews, and, as

R. Halevi testified, for most *halakhic* authorities as well, advances in non-coital reproductive technologies are to be applauded and welcomed. They allow otherwise infertile persons to experience the blessing of conception. As Rabbi Moshe Zemer has phrased it, "Sages throughout the generations ... were lenient [in these matters] and encouraged infertile couples to be helped by such medical treatment and by other new medical discoveries so that the first commandment in the Torah, 'Be fruitful and multiply, and fill the earth,' could be established."[14]

The procreative bias of the tradition surely provides all Jews with a powerful conceptual apparatus with which to approach these developments in the field of reproductive technology. It can lead, R. Waldenberg notwithstanding, to a celebration of these discoveries for they permit previously infertile persons to experience some, if not all, of the genetic, biological, and social components of parenting. Furthermore, R. Halevi's concerns about the viability and health of the fetus indicate that collaborative forms of conception should be heralded because they possess the potential to avoid the transmission of certain genetic diseases. As Rabbi Gold states, "Using the techniques of in vitro fertilization, an egg can be fertilized outside the womb and then can be genetically manipulated before it is implanted in a woman's uterus. There are obvious advantages to genetic engineering. Someday it may be possible to cure such genetically based diseases as hemophilia, diabetes, sickle cell anemia, and Tay Sachs."[15]

For this reason, R. Waldenberg's view that techniques such as IVF represent an unjustified tampering with the "natural processes" of creation is unacceptable. To accept his argument on this point would be to condemn all technological intrusions into the natural order. All medical treatment objectifies and attempts to manipulate the natural order for human ends. Judaism applauds the active efforts of medical science to ameliorate the physical condition of humanity.[16] Extracorporeal conception no more tampers with the body than any other medical procedure. Reproductive interventions are no different in kind or degree from other interventions in the natural order.

On the other hand, one need not fully embrace the apocalyptic vision of a mutant race of "biological creatures" conjured up by R. Waldenberg to recognize that these techniques can easily be abused. Programs of government-sponsored eugenics have not been confined in this century to the literary imagination of a Huxley in his *Brave New World*. One need only consider how Adolf Hitler and Dr. Mengele attempted to transform such fantasies into practice to recognize how dangerous and open to abuse such visions can be. On a more prosaic level, R. Waldenberg's fears indicate that people might try genetically to engineer such "desirable traits" as strength, intelligence, beauty, and gender. There is no reason to assume that the manipulation of genes will be confined to the cure of serious diseases. Nor should the possibility that these technologies could transform lower class women into reproductive machines who could be exploited by members of the upper classes be overlooked. Jewish law would presumably look askance upon such developments.

R. Waldenberg's responsum has the virtue of reminding its readers that non-coital reproductive technologies are in and of themselves morally neutral. Depending upon the context, these technologies may be employed for either desirable or abhorrent ends. They can be used to demean human dignity. At the same time, they increase reproductive choice. They allow women to control the time of their pregnancy and permit infertile couples to raise children of their own genes and gestation. Women without ovarian or uterine function can be genetic and gestational, as well as rearing, parents. R. Waldenberg's writings indicate that these non-coital reproductive technologies must be approached cautiously. While these cautions do not justify denial of safe and effective infertility treatments for both individuals and couples who desire them, they do indicate that procreative autonomy ought not to be regarded as an absolute good - even by liberal Jews. These reproductive technologies cannot be viewed abstractly, apart from the people and goals they are serving. Social and familial concerns which seek to minimize harm and maximize benefits for donors, recipients, offspring, and society occupy a legitimate role in Jewish reflections on established and developing reproductive procedures.

Such a perspective parallels considerations voiced by Maura A. Ryan, a Yale-educated feminist ethicist, when she contends, "A feminist perspective [on these technologies] includes commitments to human relationality as well as autonomy, and attention to the social context of personal choices. Questions of individual freedom, even in matters of reproduction, must be raised in conjunction with other equally compelling considerations about what is needed for human flourishing and what is required for a just society." [17] Ryan argues, quite cogently, that "persons ought to be protected in their right to determine when and in what manner they will reproduce, and they should be free to shape familial life in a way meaningful for them. But such a right should not be understood as unlimited, as extending as far as the acquisition of a concrete human being." [18]

Ryan insists that one of the problems surrounding much current discussion of these technologies is that too often only "the procreative initiator's interests" are considered, while a concern for the persons who collaborate with such parties and the interests of the offspring of such unions tend to be ignored. "The question of how such treatment may affect that child's quality of life, sense of identity, or development is hardly raised. ... Interest in a genetically related child cannot be seen as an independent end, the value of which automatically discounts concern for the future state of the offspring, [or] for the physical and emotional safety of the collaborators." This means, as Ryan sees it, that "particular techniques used in collaborative reproduction need separate evaluation." [19]

Surrogacy, in Ryan's opinion, is morally problematic as the potential for psychosocial conflict among donor, gestator, and offspring would be great. Given the complexities of human relationship, Ryan doubts whether an *a priori* contract between donor and gestator could ever account for the myriad emotional bonds and/or conflicts that might well develop among these parties. The actions and feelings of Mary Beth Whitehead and the Sterns in the famous case of Baby M only indicates how well-founded Ryan's strictures are in this matter. AID or IVF, in contrast, would be acceptable "as the risks to the donor are small and the benefit great." [20] Yet, even here a cautionary note must be

sounded. One need not adopt the alarmist tone of a Rabbi Waldenberg to acknowledge that artificial conception raises the hypothetical possibility that a single donor might sire genetic siblings living in the same community. The right of children conceived through such means, regardless of the collaborators' desires, to learn of their genetic origins therefore seems reasonable. Furthermore, children, in their quest for identity, often seek knowledge of their biological origins. One need only think of adopted children who wish to discover their birth parents' identity. The same psychological forces that drive such children may inform these children as well. At the very least, such matters ought to be placed on the agenda of the Jewish community as it discusses these issues.

Ryan's article and the concerns she voices in it resonate loudly to a Reform Jewish community whose theological anthropology is steeped in Martin Buber's teachings on the reality of relationship among persons as the irreducible datum of human experience and in Eugene Borowitz's notions of the "Covenantal Self" as the foundation for Jewish thought and action. [21] The individual self, living in splendid isolation, can never be the Archimedian point from which liberal Jews begin their theological and ethical reflections. Jewish commitments rather demand that persons be viewed as embodied and relational, as well as autonomous.

Non-Orthodox *posqim* on questions of artificial conception have already implicitly recognized this in their writings. Conservative Rabbi David Golinkin, head of the Rabbinical Assembly's Israeli Law Committee, has treated the question of AID in the context of Jewish family concerns.[22] Similarly, Rabbi Walter Jacob, in a case dealing with IVF with ova donated by the wife's first cousin, wrote, "We would give reluctant permission to use IVF in the manner you have described. The potential problems are numerous and should lead to great caution." [23]

In this instance, Rabbi Jacob obviously decided that the parents' desire to produce an offspring as well as the benefit to the child of existence as opposed to non-existence outweighed the potential psychological problems

that might arise. However, his last cautionary remarks reflect his own awareness of the complexity of the issues involved in therapies such as in vitro fertilization. Knowledge that a therapy is effective does not obviate the question of whether there is a moral need for a discussion of its application. Liberal *halakhists* must continue that discussion and spell out its ramifications in light of the concerns voiced above.

This paper has not sought to provide anything approaching a broad survey of the many responsa written on matters of artificial reproduction in general and artificial fertilization in particular. Nor has it attempted to provide definitive answers to the many questions advances in this field present. It has rather sought, in a modest way, to present two Hebrew language responsa on this subject to supplement previously published work in English on this area. Most importantly, it has employed these responsa as vehicles to alert its readers to the complex nature of the moral and Jewish concerns that surround this technology. Hopefully, it will serve as a springboard for advancing Reform as well as traditional Jewish discussions on these and related issues.

Notes

1. The New York Times, January 11, 1994, p. A1.

2. During the last decade leading journals of medical ethics such as *Second Opinion*, the *Hastings Center Report*, and the *Kennedy Institute of Ethics Journal* have been replete with articles devoted to the variegated nuances and issues of this topic.

3. George J. Annas, "Redefining Parenthood and Protecting Embryos," in *Judging Medicine*. Clifton, N.J., 1988, p. 59.

4. Waldenberg's responsum can be found in *Tzitz Eliezer* 15:45. Halevi's responsum is located in his *Mayyim Hayyim*, no. 61.

5. Waldenberg's review of this literature is found in *Tzitz Eliezer* 9:51, chapter 4, sections 17-18 and 20-21.

6. *Ibid.*, 13:93.

7. R. Waldenberg uses the terminology of "a week or longer." This is a bit of an exaggeration. Common practice is for the fertilization to take place for only several days. It may be that R. Waldenberg's contention reflects the state of this therapy at that time. It may also be that he simply wanted to emphasize that there was an extensive duration of time in which the ovum was removed from the mother's body. However, from R. Waldenberg's standpoint, the actual time outside of the mother's body would only be a technicality and would have had no bearing on the point he was making.

8. J. David Bleich, "In Vitro Fertilization: Questions of Maternal Identity and Conversion," *Tradition* Vol. 25, No. 4, 1991, p. 82. As my aims in this article are broader than determining the *halakhic* identity of the fetus' "mother", i.e., who has the Jewish legal right to claim maternity in cases of in vitro fertilization, my goal is distinct from Rabbi Bleich's. I will not comment upon his article except to note that an interesting and discerning response to many of the points Rabbi Bleich makes in his piece can be found in Ezra Bick, "Ovum Donations: A Rabbinic Conceptual Model of Maternity," *Tradition* Vol. 28, No.1, 1993, pp. 28-45.

9. Michael Gold, *And Hannah Wept: Infertility, Adoption, and the Jewish Couple*, Philadelphia, 1988, p. 104.

10. Herschel Schachter, "Determining the Time of Death," *Journal of Halacha and Contemporary Society* Vol. XVII, 1989, p. 32.

11. Bick, "Ovum Donations," pp. 28, 32, and 38.

12. I am mindful that R. Halevi considers the health of the mother in rendering his decision. However, the personal, direct voice of the woman - or men for that matter - is never heard in either his or R. Waldenberg's response. In light of my own sensibilities and beliefs, I find this a glaring omission and weakness in the process of Jewish legal decision-making on this and other issues. For a powerful and insightful article on this point, see Dena Davis, "Beyond Rabbi Hiyya's Wife: Women's Voices in Jewish Bioethics," *Second Opinion* Vol. 17, 1991, pp. 10-30.

13. Norma Juliet Wikler, "Society's Response to the New Reproductive Technologies: The Feminist Perspectives," *Southern California Law Review* Vol. 59, 1986, pp. 1044 and 1050.

14. Moshe Zemer, *Halakhah Shefuyah*, Tel Aviv, 1993, p. 288.

15. Gold, *And Hannah Wept*, p. 147.

16. *Ibid.*, p. 82.

17. Maura A. Ryan, "The Argument for Unlimited Procreative Liberty: A Feminist Critique," *Hastings Center Report* Vol. 20, No. 4, 1990, p. 6.

18. *Ibid.*, p. 7.

19. *Ibid.*, p. 11.

20. *Ibid.*

21. For Borowitz's notion of the "Covenantal Self" see his magnum opus, *Renewing the Covenant*, Philadelphia, 1991, as well as an explication of his thought on this subject in David Ellenson and Lori Krafte-Jacobs, "Eugene B. Borowitz," in Steven T. Katz, ed., *Interpreters of Judaism in the Late Twentieth Century*, Washington, D.C., 1993, pp. 21-26. One should also note that this covenantal approach to Jewish theology and the application of this approach to questions of ethical import are not confined to Eugene Borowitz or other liberal Jewish thinkers. Irving Greenberg and David Hartman are Orthodox rabbis who also embody it. For an insightful discussion of their religious thought and its "covenantal" dimensions, see David Singer, "The New Orthodox Theology," *Modern Judaism* Vol. 9, No. 1, 1989, pp. 35-54. In my own piece, "How to Draw Guidance from a Heritage," in Barry S. Kogan, ed., *A Time to be Born and a Time to Die*, New York, 1991, pp. 219-232, there is an analysis of these thinkers and an exposition of how they have applied this covenantal approach to Jewish ethics.

22. *Responsa of the Va'ad Halacha of the Rabbinical Assembly of Israel* Vol. 3, 5748-5749, pp. 83-92.

23. Walter Jacob, *Contemporary American Reform Responsa*, New York, 1987, p. 32.

From Tears of Sorrow, Seeds of Hope: A Jewish Companion for Infertility and Pregnancy Loss
By
Rabbi Nina Beth Cardin

Words of comfort for a woman who cannot conceive

"A couple in which the wife is infertile should continue to enjoy loving relations, for the drops produced from their love are not wasted. God assigns to them heavenly angels who watch over them. Some time in the future, they will be given a body. And at the end of time, every child will recognize their parents."

A prayer of renewal for husband and wife

We have traveled far together, you and I. From the heights of dreams, to the depths of despair, we soared and sailed and sought together. We are tired and bruised. At times we tended more to the task of creating a child than to loving each other. But now is the time for us to return to one another as lovers. For I am yours and you are mine. Just as we traveled this way together till now, so will we choose a new way together.

It won't be easy. The bumps and turns of the old path hurt, but they had become familiar to us. Now, we go in uncharted terrain. There will be things to discover; things to relearn. With patience, we can find the ways of joy in them and set the rhythms that will guide our days. With tenderness, we can set fresh goals for ourselves and begin our family again, anew.

Precious Gift

The story is told of a woman in Sidon who lived ten years with her husband without bearing a child. Knowing that the law required them to part from each other, the two came to R. Shimon bar Yochai, who said to them: "By your lives, even

as you were married over food and drink, so must you part over food and drink."

They followed his advice and, declaring the day a festal day, prepared a great feast, during which the wife gave her husband much to drink.

In his resulting good humor, he said to her, "My dear, pick any desirable article you want in my home, and take it with you when you return to your father's house."

What did she do? After he fell asleep, she beckoned to her menservants and maidservants and said to them, "Pick him up, couch and all, and carry him to my father's house."

At midnight he awoke from his sleep. The effects of the wine had left him, and he asked her, "My dear, where am I?"

She replied, "You are in my father's house."

He: "But what am I doing here?"

She: "Did you not say to me, Pick any desirable object you like from my home and take it with you to your father's house? There is no object in the world that I care for more than you."

On accepting infertility

Kaddish for the end of biological fertility

Kaddish is a storied prayer. It punctuates all formal services, closing one grouping of prayers and opening another. It speaks of God's grandeur and our desire to proclaim it. It is recited when we end a session of Torah study and when we remember a life that has ended. It is only said in the company of ten or more. It is a prayer of boundaries and bindings. Recited in Aramaic, the vernacular of the culture in which it was crafted, it is the people's prayer.

In the version below, Rabbi Geela Rayzel Raphael expands each word of the Kaddish, entering it, fighting it, wrapping herself inside it for comfort. Sometimes her ruminations play off the meaning of the word; sometimes they echo the sounds of the letters. At a time when a space in her life is being closed and locked away, she opens the words of this prayer and creates new places to live.

Yitgadal—May God's name grow great:
I will never be a mommy again from my own belly.
I won't nurse or grow large.
I couldn't hold you in my womb and I won't hold you in my arms. You won't grow within me. I won't grow as much without you.

V'yitkadash—May God's name be made holy:
I won't be made holy by the process of conception, pregnancy, and birth.
I won't bring that spark of Divinity into the world through my body.
Shmei raba—the great name:
My name will not be made great through my children. I will not use my power to name.

B'alma di'vra khirutei v'yamlikh malkhutei, b'chayeikhon u'v'yomeikhon v'chayei d'khol beit yisrael ba'agalab u'vizman kariv v'imru amen—May God complete the holy realm in your own lifetime, in your days, and in the days of all the house of Israel, quickly and soon, and let us say, Amen.
In all my life and all my life with people, I never expected this. As my days and life pass, I grieve over days of waiting and hoping and praying for life.

Y'hei shmei raba mevorakh l'olam ulalmei almaya—May God's great name be blessed forever and ever.
May Your name be blessed forever, even if I never name

Yitbarakh—May God's name be blessed.
May You be blessed even if I haven't been blessed with a child.

V'yishtabach—May it be praised
May Your name be praised even if I can't find the words to praise from my darkness.

V'yitpa'ar—May it be glorified
May Your name be glorified, even if I am unable to express glory at this time.

V'yitromam—May it be raised
May You be raised, even if my belly does not grow with child.

V'yitnasei—May it be honored
May You be held in honor, even if I never hold a child in my womb.

V'yit'hadar—May it be viewed with awe
May You be viewed with awe, even if I never experience the awe of birth.

V'yit'aleh—May it be embellished
May You be embellished, even if I do not decorate a child's room.

V'yit'halal—May it be hallowed
May You be hallowed, even if I feel hollow.

Sh'mei d'kud'sha, brikh hu—The holy Name be blessed
May Your name be blessed as my soul cries.

L'ayla min kol birkbata v'sbirata, tusbb'cbata v'necbemata da'amiran b'alma v'imru amen—May the blessed name of holiness be hailed, though it be higher than all blessings, songs, praises, and consolations that we utter in this world, and let us say, Amen.

May Your name be higher than all the blessings, songs, praises, and consolations that I can offer at this moment due to my grief.

Y'bei sblomo raba min shamaya v'chayim aleinu v'al kol yisrael v'imru amen—May there be abundant peace from heaven and good life, upon us and upon all Israel, and let us say, Amen.

May You rest peacefully with Your decision not to grant me a child, knowing I suffer so, and may I yet find peace of mind.

Oseb sbalom bimromav, bu ya'aseb sbalom aleinu v'al kol yisrael v'imru amen—May the One who makes peace in high places, make peace with us, for Israel and all the inhabitants of the earth, and let us say, Amen.

May You who make peace, find a way to help me make peace with this, so that I may walk in comfort with Israel, and all others who dwell on this earth. Help me find peace, and move on.

A ritual for accepting infertility

This is a rededication ritual that may be done in the home or in a rabbi's study. It may be performed by the couple alone or in the presence of others. It may done at *Havdalah*, at the end of Shabbat; or on Rosh Chodesh, at the beginning of a new month. Begin with a candle. On the table should be a cup of wine and a napkin.

The rabbi, friend, or family member begins:

We are here to witness the rededication of this husband and wife. They have traveled far together, much in joy but some in sorrow. In their journey toward parenthood, they have discovered places they never expected to go, shared experiences they wished they'd never known. They stand here as one—their stories bound together, woven in a tale of tears and strength.

The travels along this path are done.

Now, for a moment, it is time to rest, in the shelter of each other, beneath the protective cover of God. As the poet Bialik says: "Draw me close, beneath your wing; as a mother, or sister, when I despair. Your lap is a refuge for my head; a nest for my rejected prayers."

Holding hands, the couple recites the following prayer:

How wondrous is Your world, O God!
It is bursting with Your creations.

It was not this way that we would build our home.
Still, God, You have blessed us.
Your light has guided our steps.
As we loosen our hold on the sorrow and dreams of the past
so let them loosen their hold on us.
Restore pure tenderness and love to our marriage, like that
of the first man and woman in Eden long ago.
God, grant us release and bless us with healing
Grant us release and bless us with peace.
Let us give to the children of the world, as though they
were our own.
May once again the sounds of joy and happiness, delight
and rejoicing be heard in this household of Israel.
Blessed are You, dear God, who creates joy between
husband and wife.

To recognize this new stage of marriage, the couple takes a drink from the same cup of wine, as they did under their wedding canopy. And to symbolize the letting go of their dream and the renewal of their marriage, the couple may wrap a glass in the napkin, place it on the ground, and break it.

As their next act, the couple may choose to dedicate themselves to a charitable cause, like giving to a local scholarship fund, a children's charity, or assisting other children in need. For tradition tells us that those who assist in the raising of another child are considered as if they too are parents.

A *Tashlikh* ritual for accepting infertility

Bonnie and Lawrence Baron built a ritual of loss and new beginnings upon the tradition of *Tashlikh*, the classic act of renewing ourselves by symbolically discarding our sins, or in this case, our feelings and emotions that hold us back and weigh us down. Below are selections and adaptations from their ceremony. The ritual should be held at the waterside, in an open field, or by some woods.

The couple opens the ceremony with the following words:

> To everything there is a season: a time to embrace and a time to stand back; a time to sow and a time to reap; a time to laugh and a time to weep; a time to hold on and a time to let go. Our time to sow has ended; our time to let go has begun. Still, in the recesses of our minds there lingers the thought: perhaps it would have worked next time. Perhaps we should try once again. Therefore, we need to cast away our regrets and "what ifs" like the sins we throw into the water on Rosh Hashanah. Let this moment be the New Year for us. To paraphrase the prophet Micah, "God will have compassion on us. We will cast all our qualms and dim hopes into the depths of the sea." (Mic. 7:19)

The couple then takes bread crumbs, or fallen seeds or nuts, or rocks and throws them into the water, or across the field, or into the woods.

After a moment, all those present may pick up nuts or stones to throw, too, and join their friends in ridding themselves of past dreams and unrealized expectations. Then, the gathering turns back to the couple and says:

> A pronouncement of the word of the Lord to Israel through Malachi: I have shown you love, said the Lord . . . and I will pour down blessings upon you. . . . And all the nations of the world shall account you happy." (Malachi 1:1–2, 3:10, 12)
>
> So may you find it, and so may it be God's will.

And the couple says:

> Amen.

CCAR Responsa

In Vitro Fertilization and the Status of the Embryo

5757.2

She'elah

In the procedure known as in vitro fertilization (IVF; the "test tube baby"), human ova are removed from the womb and placed in a petri dish, where they are fertilized with sperm. The usual procedure is to choose the "best" of these embryos or zygotes for implantation into the womb (of either the ovum donor herself or of a "host mother") and to discard the rest. What is the status of the zygote with respect to "humanhood"? May those zygotes not chosen for implantation be used for medical research? May they be offered to another couple, and if so, who are ultimately the parents of the child? Perhaps we should be guided by the ruling of Rav Hisda in *BT* Yevamot 69b that prior to forty days gestation the human fetus is but "mere water" (*maya be'alma*) and does not warrant independent status under *halakhah*. (Rabbi Thomas Loucheim, Tucson, AZ)

Teshuvah

The development of the procedure of in vitro fertilization, which creates and maintains a human embryo outside the womb, raises many difficult religious and moral questions, some of the most important of which are noted in our *she'elah*. In addressing them, we as rabbis must first of all be guided by the Jewish legal tradition, as we understand it from our own liberal Jewish perspective, although we recognize that our tradition may offer but limited practical guidance on issues of this sort.[1] And as liberal rabbis, we shall consider as well the findings of contemporary biological science, medicine and genetics.

1. In Vitro Fertilization as a Medical Procedure. We begin by considering briefly a basic issue implied by our *she'elah*: the permissibility or advisability of in vitro fertilization as a medical procedure.[2] To answer this question, we must address to IVF the same inquiry we apply to all medical issues: does the medical benefit which might accrue from the procedure justify its risks? Jewish tradition teaches us to regard our lives and our bodies as gifts from God and therefore prohibits us from placing them in needless danger[3] or subjecting them to unnecessary physical damage.[4] These concerns are set aside, of course, in the case of legitimate medical need,[5] since medicine is a *mitzvah*.[6] By "medicine" we mean the wide array of chemical, surgical, and other procedures aimed at the correction or control of disease. And by "disease" we mean a condition in which some aspect of our biological or psychological systems does not function properly.[7] Accordingly, we may define human infertility as a disease and the procedures designed to correct it as medicine. We might add that since Jewish tradition and Reform Jewish teaching see the birth of children as a blessing to their parents and to the entire community of Israel,[8] the development of technologies which enable the infertile to bring children into the world should be similarly be welcomed as a blessing to humankind. Since current information indicates that IVF is not associated with unacceptable risks to either the health of the woman or of the child, we see no reason no oppose the procedure or to issue any warnings concerning it. On the other hand, those considering IVF must take into account the normal medical risks of any surgical procedure, as well as the psychological stress involved in fertility treatments, before they decide to use it.

2. The Status of the Embryo at Less than Forty Days. Our *sho'el* is correct that the sources regard a human embryo of less than forty days gestation as *maya be`alma*, "mere water", and therefore not a "fetus" (*ubar*) at all.[9] On this basis, a number of authorities are willing to rule more leniently on the question of abortion: that is to say, if we presume a prima facie halakhic prohibition against abortion,[10] that prohibition either does not apply or is much less stringent with regard to a fetus at less than forty days following conception.[11] By extension, we would expect an even more permissive attitude concerning an embryo which, because it exists outside the womb, is not defined as a "fetus." This is indeed the case. One leading contemporary halakhist rules that it is forbidden to set aside the laws of Shabbat in order to save the life of an embryo in a petri dish, even though we are permitted to violate Shabbat on behalf of a fetus.[12] In a ruling which touches directly upon our own *she'elah*, R. Chaim David Halevy permits a hospital or clinic to discard "excess" embryos created for purposes of IVF, explaining that the prohibition against abortion relates only to the *fetus* and not to an embryo maintained outside the womb.[13] A similar decision is rendered by R. Mordekhai Eliyahu.[14]

3. In Vitro Fertilization as Healing (Refu'ah). We agree with these decisions, but we think it vital to expand their rationale. The absence of an explicit prohibition against destroying an embryo does not in and of itself justify the act of destruction, any more than the definition of an early-stage fetus as "mere water" automatically permits an abortion. Like the fetus, the zygote is not a legal person.[15] Yet it most definitely is a person "in becoming," possessing all the necessary genetic information; it lacks only gestation, development *in utero*, to realize its biological potential. Rather, just as we require some warrant, however "slim,"[16] to abort the fetus, so too we should seek some positive reason to argue on behalf of the destruction of this microcosm of the human being.

We find this reason in the nature of IVF as a form of *refu'ah*, of healing, a medical response to the disease of infertility. As we have already written, actions which might under other circumstances be forbidden may be undertaken if they constitute a proper element of a therapeutic regimen: in other words, if they are defined as *medicine* and contribute to the treatment of disease. Thus, although we would certainly oppose the wanton destruction of human embryos, we can permit the discarding of excess embryos as a necessary part of the IVF procedure. We say "necessary" because 1) multiple embryos must be created in order for the procedure to be feasible and effective; and 2) to require that each and every zygote be preserved would likely place a cumbersome burden upon hospitals and laboratories. Under such conditions, many of these institutions would likely refuse to perform IVF, thus rendering the procedure intolerably expensive or simply unavailable to many of those who seek it. Given that our tradition does not expressly forbid the destruction of the embryo, the positive value of IVF as a medical therapy clearly justifies the necessary discarding of excess zygotes.

Moreover, since IVF is a means by which Jews can fulfill the *mitzvah* of childbearing, for whose sake a number of important ritual prohibitions can be waived,[17] we think that our tradition would permit us to discard the excess embryos as a necessary means of enabling Jewish people to build families and bring children into the world.

4. Medical Experimentation. If in the name of "medicine" it is permitted to discard the excess embryos created during IVF, then it is certainly permitted to utilize these embryos for research intended to increase our life-saving scientific knowledge. We would add the proviso that whether it be discarded or used for research, the embryo be treated and handled with an attitude of respect and reverence that is befitting of that which, after all, a *potential* person, a *nefesh* in becoming.[18]

5. Parenthood. Who are "ultimately" the parents of a child created by IVF? This question has been considered by several Orthodox halakhists, whose arguments--and our difficulties with them--we summarize here.

R. Eliezer Yehudah Waldenberg rules that a child conceived outside the womb has no parents: it bears no halakhic relationship either to its biological parents or to the "host mother," the woman who carries the child to term.[19] He cites as support a statement by Maimonides in the *Moreh Nevuchim* that "human organs cannot exist separately from the body and still be regarded as fully human."[20] Thus, an ovum detached from its "natural" place ceases to be a human ovum. He quotes as well the talmudic dictum that "a fetus in the womb of a Canaanite slave is like the fetus of a beast."[21] He interprets this to mean that "no *yichus* (familial relationship) is possible outside the womb of a Jewish woman"; hence, the embryo created in a petri dish enjoys no *yichus* or familial relationship at all. Both of these proofs, however, are clearly flawed. In mentioning Maimonides' philosophical treatise, Waldenberg relies upon the latter's *scientific* judgment, the truth of which depends upon its accuracy as a description of physical reality. That judgment, while it may have corresponded to the best available scientific knowledge in the twelfth century, is now outdated; today, it is possible to establish that an organ is "human" by means of chemical and genetic testing. If we wish to base our religious decisions upon scientific information, it is incumbent upon us to use the best science available, as did Maimonides himself, rather than enslave our scientific judgments to standards which science itself has long since abandoned. Waldenberg's talmudic evidence, meanwhile, does not prove that *yichus* is created exclusively within a Jewish womb.[22] The text speaks instead to the "matrilineal" principle of Jewish descent: traditional *halakhah* does not recognize the legal bond between a father and his child by a non-Jewish woman. This says nothing at all about the case in which the donors of the biological materials for IVF are both Jews.

Other authorities hold that a child created by IVF is the offspring of the woman who bears it, whether or not she conceived it.[23] They base this conclusion upon an analogy to the talmudic passage concerning a woman who converts to Judaism during pregnancy.[24] Since "one who converts is like a newborn child,"[25] these authors reason that both the woman and her fetus become "newborn": *i.e.*, all prior families ties (*yuchasin*) are cancelled, including the relationship between this mother and her fetus. Yet once the child is born the *halakhah*, for purposes of the law of incest, recognizes it as this woman's child. The authors infer therefore that it is *birth*, rather than conception, which in all cases establishes the mother-child bond, so that the child conceived by IVF is the legal offspring of the "host mother." While this conclusion is open to halakhic criticism (since the sources in question can be interpreted in several different ways),[26] we would question the aptness of the analogy itself. Jewish law defines the Jew-by-choice as a "newborn child" for *religious* rather than for biological reasons. The *ger* or *giyoret* who enters our community and embarks upon a life of Torah and *mitzvot* most definitely becomes a "new person." In the eyes of the talmudic sages, conversion marked a sharp and irrevocable break with one's past and with one's connections to the non-Jewish world. However we understand this concept today, it has nothing to do with the case of an embryo conceived through IVF. This fetus may experience a change of place, but unlike the proselyte it undergoes no transformation of religious status.

We learn two things from these observations. First, rabbinic scholars ought to acknowledge that traditional techniques of halakhic analysis, in particular the case method of reasoning by analogy, are of limited usefulness in an area dominated by technological novelty and innovation. The

tortuous logic of the arguments we have just cited demonstrates that there may simply be no precedents or source materials in talmudic literature that offer plausible guidance to us in making decisions about these contemporary scientific and medical issues.[27] Second, given our positive attitude as liberal Jews toward modernity in general, it is surely appropriate to rely upon the findings of modern science, rather than upon tenuous analogies from traditional sources, in order to render what we must consider to be *scientific* judgments. To ask "who are this person's biological parents?" is to ask a scientific question whose answer is determined according to accepted scientific indicators; *i.e.*, genetic testing. Hence, the biological parents of the child are those who donated the sperm and the egg from which he or she was fertilized.

In the event that a child is born to or raised by parents other than those who donated the sperm and the egg, he or she becomes the adoptive child of those parents. This does not present inordinate difficulties under Jewish law. As we have written elsewhere,[28] adoptive parents are a child's *ultimate* parents; those who raise, care for, educate and love the child during his or her life assume full parental status. It is to them that the child owes the duty of honor and reverence.[29] The child adopted by another couple has no legal or religious relationship to the donors of the egg and sperm, although for personal, medical, and genetic reasons the child or his/her guardian should be permitted to discover the identity of the biological parents at an appropriate time.

Conclusion. To summarize:

1. A human embryo or zygote is, like the fetus, a potential but not a legal person, and there is no explicit Jewish legal prohibition against its destruction.
2. In vitro fertilization is a legitimate medical therapy, offering realistic hope to many who seek to build families. Since the creation of multiple embryos is a necessary element of IVF, and since the preservation of "excess" embryos may constitute a serious impediment to the availability of this procedure, it is permissible to discard those embryos.
3. The embryo may be used for medical research, provided that it is handled with the proper respect and reverence.
4. The embryo may be offered to another couple. The child will be the biological offspring of the man and woman who donated the sperm and the egg. Those who raise the child are his or her "ultimate" and "real" parents.

NOTES

[1] See the article by our colleague David Ellenson, "Artificial Fertilization (*Hafrayyah Melakhotit*) and Procreative Autonomy," in W. Jacob and M. Zemer, eds., *The Fetus and Fertility in Jewish Law* (Pittsburgh and Tel Aviv: Freehof Institute of Progressive Halakhah, 1995), 19-38.

[2] This fundamental question has never been addressed to or by the Responsa Committee. Therefore, while our *she'elah* proceeds on the assumption that the answer is affirmative, we find it necessary to fill this lacuna in our existing literature.

[3] See Deut. 4:15, Lev. 18:5 and *BT* Yoma 85b; Isserles, *YD* 116:5.

[4] *M.* Baba Kama 8:8; *BT* Baba Kama 91a-b; *Yad* Chovel 5:11 *SA* CM 426:31. An instance of unnecessary physical damage would be purely surgery undertaken for purely cosmetic reasons; see *Teshuvot for the Nineties*, no. 5752.7.

[5] See the following responsa in *Teshuvot for the Nineties*: treatment for severe pain in terminally-ill patients (responsum 5754.14); medical experimentation under carefully controlled conditions (5755.11); on cosmetic surgery (5752.7); and abortion performed for the mother's "healing" (*refu'at imo*; 5755.13).

[6] The *mitzvah* is *pikuach nefesh*, the saving of human life. See Nachmanides, *Torat Ha'adam* (Chavel ed.), 41-42, and *SA* YD 336:1.

[7] This suggests that the definition of "disease" is largely a matter of social construction: that part of our biological or psychological systems is functioning "improperly" is a judgment we make based upon a conception of what "proper" functioning is.

[8] Gen. 1:28; *M. Yevamot* 6:6; *Yad, Ishut* 15:1, and *SA EHE* 1:1. For Reform Jewish teachings concerning the *mitzvah* of having children, see *Gates of Mitzvah*, 11, and *American Reform Responsa*, no. 132.

[9] Rav Chisda's position in the Talmud is cited as *halakhah* in *Yad*, Terumot 8:3.

[10] Most halakhic authorities hold that there exists a prohibition (*isur*) against destroying a human fetus without sufficient cause, although there is a good deal of dispute as to the precise definition and legal basis of this prohibition; see R. A.S. Avraham, *Nishmat Avraham*, CM 425:2, sec. 1, for discussion. As to the debate over what counts as "sufficient cause" or warrant for abortion, see our responsum 5755.13.

[11] R. Ya`akov Emden, *Resp. Chavat Ya'ir*, no. 31; R. Yechiel Ya`akov Weinberg, *Resp. Seridey Esh* 3:127 (p. 341); R. Eliezer Yehudah Waldenberg, *Resp. Tzitz Eliezer* 7:48, ch. 1 (pp. 190-191).

[12] R. Shmuel Halevy Wasner, *Resp. Shevet Halevy* 5:47. The permit to perform otherwise forbidden work (*melakhah*) on Shabbat or Yom Kippur in order to save a fetus is found in *Halakhot Gedolot* (Laws of Yom Kippur; Warsaw ed., 31c; ed. Hildesheimer pp. 319-320) and cited by Nachmanides (*Torat Ha'adam*, ed. Chavel, pp. 28-29), who applies it even to a fetus less than forty days old. This would seem to be a contradiction: if it is not forbidden to destroy a fetus at this early stage, on the grounds that it is not a "fetus" at all, how can it be allowed to transgress the laws of Shabbat, an otherwise capital offense, in order to save it? Yet this problem can be resolved, for even at less than forty days the fetus is still a life in becoming, and we are taught that the duty of *pikuach nefesh*, the saving of life, applies even to cases of *safek*, when we are uncertain that "life" can be saved by our action (*BT* Yoma 85b; see *Resp. Seridey Esh loc. cit.*). Moreover, we might also remove the difficulty by saying that the permit to violate Shabbat and Yom Kippur applies in fact to saving the life of the *mother*, not that of the fetus (*Hil. Harosh*, Yoma 8:13; R. Nissim Gerondi to *Alfasi*, Yoma, fol. 3b).

[13] See *Sefer Assia* 8 (1995), 3-4. Halevy, it should be noted, does not express a clear opinion as to whether the procedure of IVF is itself permitted; he explicitly notes that his ruling applies only to individuals or institutions who "adopt the opinion of those who permit (the procedure)."

[14] *Techumin* 11 (1991), 272-273.

[15] "The fetus is not a legal person" (*lav nefesh hu*); see Rashi, *BT* Sanhedrin 72b, *s.v. yatza rosho*, and *Sefer Me'irat Eynayim*, CM 425, no. 8.

[16] The language is purposefully reminiscent of that utilized by R. Ben Zion Meir Hai Ouziel (*Resp. Mishpetey Ouziel* 3, Choshen Mishpat, no. 47), who permits abortion when there is a "slim pretext" (*sibah kelushah*) on which to argue that the procedure is necessary to safeguard the mother's health.

[17] Although this remains somewhat controversial; see the discussion on artificial insemination in A.S. Avraham, *Nishmat Avraham*, EHE 1, pp. 5ff.

[18] On medical experimentation in general, see our responsum 5755.11 and R. Walter Jacob, *Questions and Reform Jewish Answers*, no. 152.

[19] *Resp. Tzitz Eliezer* 15:45.

[20] *Moreh Nevuchim* 1:72.

[21] *BT* Kiddushin 69a.

[22] The child of two gentiles *is* their legal offspring; see *Encyclopedia Talmudit* 5:289-295. Indeed, the passage in *BT* Kiddushin says only that the child is not related to the Jewish father (see Rashi, *s.v. kevelad bema`ey behemah damey*); this does not affect the existence of *yichus* between the mother and the child.

[23] See the articles by R. Zalman N. Goldberg and R. Avraham Kilav in *Techumin* 5 (1984), 248-267.

[24] *BT* Yevamot 97b.

[25] *BT* Yevamot 22a and parallels.

[26] See R. Yehoshua Ben-Meir in *Assia* 8 (1995), 73-81 and 153-168: the texts support various conclusions: the child is the offspring of the biological mother; the child is the offspring of the birth mother; the child is the offspring of both; the child is the offspring of neither. Not surprisingly, he concludes that "this question requires careful analysis and decision by the leading authorities" (81).

[27] See Ellenson (note 1, above).

[28] *Teshuvot for the Nineties*, no. 5753.12.

[29] See Ex. 20:12 and Lev. 19:3. A parent may waive the honor and reverence owed him or her by a child. The decision to allow one's biological child to be raised by others, though made for good and noble reasons, constitutes such a waiver.

CCAR Responsa Committee

In Vitro Fertilization and the *Mitzvah* of Childbearing

5758.3

She'elah

A couple in my congregation have been trying without success to conceive a child. They have consulted a specialist about the possibility of in vitro fertilization (IVF). They have been told that this procedure will likely involve extensive and uncomfortable testing and great financial expense. They wish to know whether Jewish tradition would require or urge them to undertake the personal, physical, and monetary burdens of IVF in order that they may fulfill the *mitzvah* of procreation. (Rabbi Mark Glickman, Tacoma, Washington)

Teshuvah

I. Childbearing, Jewish Tradition, and Reform Judaism. Our tradition indeed considers procreation to be a *mitzvah*, and Reform Judaism affirms this *mitzvah* as one of the highest values of Jewish life.

In biblical literature, children are a palpable sign of God's blessing (Psalm 128). Infertility, by contrast, is viewed as a tragedy. Children signify hope; childlessness is a synonym for despair; and the birth of a longed-for and prayed-for child is grounds for great exultation and joy.[1] The very Hebrew word that denotes the infertile person—*`a-q-r/h*, "the barren one"[2]—suggests the sadness and emptiness of a life without children. Infertility is the occasion of profound sorrow, a grief so vividly expressed by Rachel, who cries "give me children, or I shall die" (Genesis 30:1), and by Abraham, who declares that in the absence of children all other blessings are worthless (Genesis 15:2).[3] It is with these sentiments in mind that the prophet utilizes the language of infertility to depict the sacred history of Israel. Jerusalem, lifeless in exile, is portrayed as a childless woman, and God's redemption is heralded in the call: "Rejoice, O barren one, who has not given birth . . .

for the children of the desolate one will outnumber those of the one who is married" (Isaiah 54:1). Fertility, among the rewards we are promised for observing God's commandments (Exodus 23:26; Deuteronomy 7:14), will ensure the future of Israel; barrenness is the end of the chain that links generation to generation in the transmission of Torah.[4] It is little wonder that our sages, reading these texts, could declare that "one who is without children is considered as though dead."[5]

It is understandable, then, that procreation (*periyah ureviyah*) becomes a *mitzvah*, a religious obligation for the Jew, derived from Genesis 1:28: "God blessed [the man and the woman] and said to them: Be fertile and increase, fill the earth and master it."[6] Technically, this obligation is fulfilled when one has produced a son and a daughter;[7] nonetheless, "a man who has already fulfilled this *mitzvah* is forbidden by way of rabbinic ordinance to desist from procreation so long as he has the power to engage in it."[8] Traditional *halakhah*, based upon a contentious interpretation of the language of the verse, regards procreation as a *mitzvah* for the man and not for the woman.[9] This distinction may seem a curious one; after all, *both* a male and a female are needed to procreate. Still, since childbirth has always involved significant medical risks for women, the predominant halakhic view may have been motivated by the desire to protect those women for whom pregnancy might pose an unacceptable danger to life and health.[10] Whatever its medical origins, this distinction is simply a way of saying that it is the man and not the woman who bears the legal responsibility imposed by the commandment. Thus, a man who has not yet become a father must marry a woman capable of bearing children, and the court (*bet din*) is empowered to compel him to do so.[11] In addition, a husband whose wife cannot conceive is entitled—and may even be required—to divorce her in order to marry a woman who can bear children.[12] A woman is exempt from these requirements. This imbalance is remedied, however, by the following three factors. First, communities, by long-standing custom, do not exert their coercive legal powers to force men to meet their procreative duties.[13] Second, although women are not considered exempt from the terms of Genesis 1:28, some authorities hold that they do partake in the related requirement, derived from Isaiah 45:18 (*lashevet yetzurah*), to "settle" the earth, to contribute to its habitation by bringing children into the world.[14] And third, even if women are not technically "commanded" to bear children, the rabbis acknowledge that they, no less than men, are *entitled* to the blessings of parenthood. For this

reason, the *halakhah* permits a childless woman whose husband is infertile to demand a divorce in order to marry a man who can give her children.[15]

Reform Jewish teaching is in substantial accord with that of our sacred texts. Though many cultural differences separate our worldview from that of our ancestors, we still hold that "it is a *mitzvah* for a man and a woman, recognizing the sanctity of life and the sanctity of the marriage partnership, to bring children into the world."[16] Indeed, given our commitment to gender equality in the realm of religious observance, we would apply the terms of this *mitzvah* to women and to men alike.[17] And just as our tradition understands *periyah ureviyah* as an essentially *Jewish* obligation,[18] Reform Judaism admonishes us to bear in mind the Jewish dimensions of this subject. We may be rightly concerned about the problem of world overpopulation. And human beings in any case have the right to determine the number of children they should have. On the other hand, "Jews have seen their progeny . . . as an assurance of the continued existence of the Jewish people."[19] "In considering family size . . . parents should be aware of the tragic decimation of our people during the Holocaust and of the threats of annihilation that have pursued the Jewish people throughout history." Therefore, "couples are encouraged to consider the matter of family size carefully and with due regard to the problem of Jewish survival."[20]

None of this implies that procreation is an absolute requirement for every person. As Reform Jews, we place a high value upon personal freedom in the realm of religious observance. Phrases such as "absolute requirement" are conspicuous by their absence from typical Reform Jewish religious discourse. With respect to this particular observance, there have always been those who could not and did not have children; similarly, "there are people who, for a variety of reasons, will be unable to fulfill this *mitzvah*." Like other *mitzvot*, this one is incumbent only upon "those who are physically and emotionally capable of fulfilling it. Those who cannot are considered no less observant and no less Jewish."[21] Yet this understanding attitude should not be taken to mean that we are somehow neutral as to the decision of a Jewish couple to have children. To say that "procreation is a *mitzvah*" is to say that it is a positive good and that, barring truly extenuating circumstances, it is the choice that Jews *ought* to make for their households and families.

For this reason, our *sheelah* is an especially profound one. The couple who submit it clearly take their Judaism seriously. As such, they

regard children not only as the fulfillment of a personal desire but also as the realization of a *mitzvah*, an act by which we Jews constitute ourselves as a people and as a religious community. The procedure of in vitro fertilization (IVF) may offer the only hope for them to conceive a child. They wish to know whether Jewish tradition and Reform Jewish tradition, both of which stress the importance of having children, teach that they *ought* to undergo this procedure despite their aversions to it. It is to this issue that we now turn.

II. Artificial Techniques of Human Reproduction: A Reform Jewish View.

In ancient times, the accepted response to barrenness was prayer. Since it was natural to regard infertility as a divine punishment, an "act of God,"[22] the proper course of action was to turn to God in supplication, as did Abraham (Genesis 20:17), Isaac and Rebecca (Genesis 25:21),[23] and Hannah (I Samuel 1–2). Indeed, a refusal to pray on behalf of the infertile was considered an act of grave moral insensitivity. Thus, the rabbis criticize Jacob's angry response to Rachel ("Can I take the place of God, who has denied you fruit of the womb?"—Genesis 30:2) with a question of their own: "Is this how one responds to those who suffer?"[24] Significantly, these episodes are cast in a therapeutic context. Infertility is a disease, an ailment that can be "cured" by the correct remedy. And as is generally the case in biblical and much rabbinic literature, the best available "therapy" for childlessness, as with all other diseases,[25] is prayer.

Since then, much has changed. Where healing was once effected primarily by means of prayer, Jewish tradition has for many centuries accepted the practice of medicine (*refuah*) as the correct therapy, the right response to disease. Medicine, our sources tell us, is a *mitzvah*; it is the way in which we most often fulfill our obligation to save life (*piquah nefesh*). While it is surely a good thing to ask God's blessings upon those who are ill—and we do so in our liturgy—prayer is no longer sufficient therapy. As the talmudic saying puts it, "One who is in pain should go to the doctor."[26] When we are ill, we must avail ourselves of the remedies devised through human wisdom and scientific knowledge and not place our exclusive reliance upon the hope that God will intervene in the workings of nature.[27]

From all this, it follows that the various technologies which enable the infertile to conceive ought to be understood as medicine. Our committee has indeed taken this position with respect to artificial reproductive techniques in general[28] and IVF in particular.[29] Human infertility is a disease, not because it threatens the life and health of the infertile but because it frustrates our attainment of the goal—the

mitzvah—of bringing children into the world.[30] The scientific tools developed to cure this disease are therefore advances in medicine and should be welcomed, as we welcome other medical advances, as a positive good. The question we must answer at this juncture is the extent to which this particular kind of medicine ought to be regarded as obligatory. Medical treatment, after all, is a *mitzvah*, understood in our tradition as a religious duty. And in cases where the medical procedure indicated for a specific condition is a tested and proven one (*refuah beduqah* or *refuah vada'it*), offering a reasonably certain prospect of successful treatment, the tradition holds that a patient is obligated to accept the treatment and can even be compelled to do so.[31] Does IVF, which we clearly regard as medical treatment for disease, fall into this category of "tested remedy"? If it does, then we would have strong grounds on which to urge the couple who bring this *sheelah* to undertake the procedure despite its discomfort and its cost.

III. IVF as a Medical Procedure. The technology of in vitro fertilization, first developed over fifty years ago, led to a live human birth in 1978.[32] It is a "medically indicated" treatment for infertility resulting from blockage of a woman's fallopian tubes, male infertility, endometriosis, and "other multiple causes."[33] The procedure may be summarized as follows.[34] The woman's ovaries are stimulated with fertility drugs to produce multiple eggs.[35] The woman's response is monitored by means of urinalysis, blood samples, and ultrasound. Once the eggs are released, the physician may retrieve them through laparoscopy, done under general anesthesia, in which a surgeon inserts a hollow needle, guided by an optical instrument called a laparoscope, into the woman's abdomen. Alternately, the needle may be inserted into the vagina, guided by ultrasound. This latter method requires only a local anesthetic. Upon retrieval, the eggs are placed in glass dishes and combined with semen collected from the woman's partner or a donor. The dishes are placed in an incubator for twelve to eighteen hours. If an egg is fertilized and develops into an embryo, it is transferred into the uterus by means of a catheter inserted into the vagina. Should the embryo become implanted in the uterine wall, pregnancy will be detected about two weeks later.

The medical effectiveness of this complicated procedure might be evaluated in one of two ways. First, given that "tens of thousands of embryo transfers are carried out each year internationally, and thousands of babies have been born" as a result of this therapy,[36] we might well say that in vitro fertilization works, that it has been tested and found to be a "successful" response to the disease of infertility. Yet if

we consider the figures from the standpoint of IVF's rate of success, we find much less ground for encouragement. Estimates range from a rate of 16.9 percent to 27.9 percent live births for each group of eggs collected in fertility clinics in the United States, a number that "remains lower than one would like and has not improved much during the last five years."[37] This rate, moreover, declines further when it is calculated from the beginning of the IVF process, from the point of hormonal stimulation rather than from the collection of the eggs.[38] Such numbers, while they indicate that an infertile couple's chances of conception greatly improve with IVF, do not suggest a therapy that offers "a reasonably certain prospect of successful treatment," the standard we have set for *refuah beduqah*.[39] We might well expect the success rate to improve as IVF techniques are refined in coming years. At present, however, these statistics virtually beg us to conclude that, though in vitro fertilization offers much hope to those who seek children, it cannot yet be considered a "cure" for the disease of infertility.

IV. IVF—An Obligation? Given these facts, we are in a better position to address the question: Does Jewish tradition require an infertile couple to undergo in vitro fertilization if that procedure is seen as the only means by which they might conceive a child?

We cannot deny, first of all, that in vitro fertilization counts as one of the "miracles" of modern medicine. We would be ungrateful indeed should we fail to acknowledge our good fortune to live in an age that has devised such a means for overcoming a condition which for many centuries has brought great sadness to women and men. Rabbis who counsel infertile couples should not fail to emphasize this blessing offered us by science, with the wonderful possibilities it opens for those who yearn to fulfill the *mitzvah* of procreation. Still, there is a crucial difference between possibility and reality, and the reality of IVF's success rate suggests that the procedure does not qualify as a "tested and proven" treatment (*refuah beduqah*) for infertility. We have written in connection with other medical conditions that, if a particular treatment cannot be considered a *refuah beduqah*, "if its therapeutic effect upon the disease is uncertain at best, then the patient is not required to accept it."[40] That reasoning, we think, most certainly applies to this case.

To say that a person is "required" or "obligated" to accept a particular medical treatment means as well that, as best as medical opinion can determine, the therapeutic benefits of the treatment significantly outweigh its potential risks and side effects. To be sure, the benefits of IVF are obvious, in the form of the "thousands of babies" it has

brought into the world, and its untoward side effects are not so clear. Physicians, for example, report that the general risks of surgery to the infertile woman "have been minimized with careful medical practice, . . . [and] the birth defects that have been observed [in children born of IVF] occur in frequencies and types not significantly different from that found in the general population." On the other hand, "these comforting results are . . . all short term." There is some evidence that the use of fertility drugs for ovarian stimulation may significantly increase the risk of contracting ovarian cancer later in life. In addition, little is known about the long-term potential for introducing genetic defects that become manifest later in the child's life. The increased frequency of multiple births, resulting from implantation of several embryos in the uterus at a time, is another source of health risk, as is the use of cryopreservation (freezing of embryos for later implantation).[4] It is understandable that some women do not wish to accept these potential health risks for themselves or for the children they might conceive.[5] And however we ourselves might draw that fateful balance between the possible blessings and the potential risks of IVF, the dubious success of this procedure makes it difficult in the extreme for us to assert that a particular woman is somehow "required" to undertake the procedure.

Then, too, we cannot ignore the matter of cost. As of a few years ago, the estimated expenditure for a couple in the United States achieving a successful delivery by IVF ranged from $44,000 to $211,940, the costs rising (and chances of success diminishing) with each failed cycle of treatment.[6] True, we might say that "money is no object" and that successful medical treatment ought to be regarded as a "priceless" commodity. But how "successful" is this treatment? Given that failure is the probable outcome of each IVF treatment cycle, it is again difficult to justify an "obligation" to undertake its extraordinary expense.

Finally, let us not lose sight of what our *sheelah* terms the "personal" burdens associated with IVF. Any surgery is an invasive procedure which by its nature inflicts physical discomfort and psychological distress upon the patient. This particular form of surgery, an arduous process that offers uncertain prospects of success and which touches upon some of the most sensitive aspects of personality and marital life, may well cause even greater suffering. Infertile women and couples who have reached the point of considering IVF have already traveled a difficult and painful road in their lives. To tell them that they are "required" to submit to this procedure—especially

when it does not offer them a prospect of probable success—is but to increase to no good purpose the anguish they have already suffered. In cases such as this, we think it better to follow instead the counsel of compassion, of *rahmanut;* let us listen to the voice of those who suffer rather than insist they hearken to ours.

Conclusion. Jewish tradition regards the bringing of children into the world as a *mitzvah,* a religious duty. At the same time, it does not require or oblige this couple to undertake in vitro fertilization. How can an act be both a *mitzvah* and yet not obligatory? One way of thinking about this question is to remind ourselves that the word "*mitzvah*" can indicate a general religious requirement, one that applies to most of us, even the preponderant majority of us, most of the time, but which exempts particular individuals depending upon the circumstances of their lives. For example, Jewish law recognizes that, in general, we all bear the duty to save human life, to rescue those who are in danger, but this obligation does not apply to the individual who for some reason is "unable" to perform the rescue.[44] With respect to our issue as well, while it is true that as a species and as a people we are "required" to bring children into the world, it is also true that Jewish law accepts that there are exceptions to the general rule. Thus, it neither compels individuals to marry nor infertile couples to divorce.[45] And, significantly, it does not demand that a woman sacrifice her health for the sake of this *mitzvah;* as one eminent authority has put it, "One is not required to lay waste to one's life in order to 'settle the world.)"[46]

We might also keep in mind that our tradition draws a distinction between *mitzvot* which are defined as *hovah* and those that are not. A *hovah,* or "obligation," is a religious duty that one is required to perform, regardless of the expense or inconvenience involved. At the same time, there are a number of *mitzvot* that do not impose absolute requirements; "one who performs this act receives a heavenly reward for doing so, but the one who does not perform it is not punished thereby."[47] We might say that the decision to undertake IVF falls into this latter category. Reform Jewish teaching would endorse this distinction. It is certainly a *mitzvah* to have children, and couples considering IVF or similar procedures deserve our full encouragement and support. Still, if this couple decides against IVF, we must pay the highest deference to their freedom, human dignity, and unique experience.

Finally, we should note that IVF and other artificial techniques of reproduction are not the only means whereby this couple might hope to fulfill the *mitzvah* of bringing children into the world. They may cre-

ate their family by way of adoption, for as we have noted elsewhere, the relationship created by adoption is equivalent in every respect to that between parents and their biological children.[8] Should the couple choose to take this path to parenthood, they are entitled to all the assistance and encouragement that our community can offer them as they continue to enlarge their Jewish household.

CCAR Responsa Committee
Mark Washofsky, chair; Joan S. Friedman; Walter Jacob; Yoel H. Kahn; David Lilienthal; Bernard Mehlman; W. Gunther Plaut; Daniel Schiff; Faedra L. Weiss; Moshe Zemer.

Notes

1. Such as Hannah's prayer of thanksgiving (I Samuel 2) and Sarah's happiness (Gen. 21:6–7).
2. Although the Bible refers more often to female than to male sterility, the latter is not unknown. See Deut. 7:14 and Rashi *ad loc.*
3. Other examples include Sarah (Gen. 16:2; see Rashi *ad loc.*, from *Bereshit Rabah* 45:2), Isaac and Rebecca (Gen. 25:21); Hannah (I Samuel 1–2), and the Shunamite woman (II Kings 4).
4. See the comment of Sforno to Exod. 23:26.
5. *BT* Nedarim 64b; Rashi to Gen. 30:1. The *Torah Temimah* comments upon that verse: "the Talmud teaches here that the course of life is a thread that stretches from parents to children. When one has no children, the life-thread of that individual has been severed, and he is as though dead." See also *Bereshit Rabah* 45:2, cited in note 3: one who is without children lies in a state of "ruin" (*harus*; a play on the biblical term *ibaneh* in Gen. 16:2).
6. The *midrash* which derives the law from Gen. 1:28 is found in *M.* Yevamot 6:6. On the law itself, see *Yad*, Ishut 15:1 and *SA* EHE 1:1. It is interesting that although this verse is addressed to Adam and Eve and therefore to all humankind (and compare Gen. 9:1), the *halakhah* does not count procreation as one of the "Noahide" *mitzvot*: it is an obligation for Jews alone (*BT* Sanhedrin 59b). For this reason, a Gentile who has children and then converts to Judaism has fulfilled the obligation to procreate provided that the children convert as well (*Yad*, Ishut 15:6; *SA* EHE 1:7). Although some *poskim* disagree, holding that a proselyte's Gentile children do "count" toward fulfillment of the *mitzvah* (*Resp. Maharil*, no. 223), others note that this has to do with the issue of relationship (*yichus*: Jewish law recognizes the legal relationship between members of Gentile families), and we should not infer from this dispute that either side holds procreation to be a *mitzvah* for Gentiles as well as for Jews (*Tosafot*, Yev. 62a, s.v. *beney*).
7. *M.* Yevamot 6:6, according to the position of Beit Hillel, who derive the "male and female" standard from the precedent of Adam and Eve, as

opposed to Beit Shamai, who rely on the precedent of Moses, who fathered two sons. *Yad*, Ishut 15:4; *SA* EHE 1:5.

8. *Yad*, Ishut 15:16, from the statement of R. Yehoshua, *BT* Yevamot 62b.

9. See *M.* Yevamot 6:6 and *BT* Yevamot 65b. The *setam mishnah* assigns the *mitzvah* of procreation to the man, while R. Yochanan b. Beroka, noting that the language of the verse is in the plural voice, holds that both the male and the female are obligated under the commandment's terms. The Talmud explains the *setam* position by the text's word *vekhivshuhah*, "and master it," literally, "and conquer it": just as it is the way of the male, and not the female, to "conquer," so does the rest of the verse, including the words *peru urevu* ("be fruitful and increase") apply exclusively to the male. The meaning of "conquest" here is ambiguous: although the term may well refer to warfare, a traditionally male pursuit, some sources suggest that it deals with the husband's mastery or dominance in the marital home; see *Bereshit Rabah* 8:12 and Bartenura to the *mishnah*. The Talmud, continuing the debate, replies on behalf of R. Yohanan b. Beroka that the word *vekhivshuhah*, like the rest of the verse, is written in the Hebrew plural; thus, it applies equally to the woman and to the man. The response to this is that whereas the word is *vocalized* in the plural, it is written *haser*, "defectively," as though it is a singular word, indicating that the Torah limits the obligation of this verse to the male alone. The later *halakhah*, beginning with the talmudic *sugya* at *BT* Yevamot 65b, accepts the *setam* position as authoritative (*Halakhot Gedolot*, ed. Hildesheimer, 2:240–241; *Yad*, Ishut 15:2; *SA* EHE 1:13).

10. The talmudic discussion does not mention these medical considerations. Later authorities, however, might well take them into account in their understanding of a woman's religious obligation with respect to childbearing. See *Resp. Hatam Sofer*, EHE 20, discussed below at note 46: a woman is not obligated to conceive under the terms of Isaiah 45:18 when the pregnancy poses more than the usual health risk.

11. *BT* Yevamot 64b; *Hilkhot HaRosh*, Yevamot 6:16; *SA* EHE 1:3.

12. *BT* Yevamot 65a–b and Ketubot 77a; *Yad*, Ishut 15:7–8; *SA* EHE 154:6.

13. *Resp. R. Yitzhak b. Sheshet*, no. 15, and Isserles to EHE 1:3.

14. This theory is developed by the Tosafot (Gitin 41b, *s.v. lo*; Bava Batra 13a, *s.v. shenesmar*). The requirement of *leshevet yetzarah*, because it is derived from a prophetic source (*divrey qabalah*), is considered less stringent than that of *periyah ureviyah*, which is based upon a verse in the Torah. Nonetheless, the fact that women may be subject to this requirement makes a difference in traditional halakhic thought. Thus, the permit to sell a *sefer torah* in order to raise the funds needed to marry applies to women as well as to men, since women, though they are not obligated under Genesis 1:28, are nonetheless "covered" by Isaiah 45:18. See *Magen Avraham* to *SA Orah Hayim* 153, no. 9; *Bet Shmuel* to *SA* Even Ha`ezer 1, no. 2; and *Resp. Tzitz Eliezer* 10:42.

15. *BT* Yevamot 65b; *Yad*, Ishut 15:10; *SA* EHE 154:6. Should the husband refuse this demand, the court may compel him to issue a *get*.

16. *Gates of Mitzvah*, A-1, 11.

17. In this, we would follow the position enunciated by R. Yochanan b.

Beroka in *M.* Yevamot 6:6 and *BT* Yevamot 65b; see note 9. His *midrash*, that the biblical verse speaks in the plural, is surely more compelling than that which supports the opposing view. We would categorically reject any attempt to determine religious obligation based upon some "tendency" of males toward conquest or domination.

18. See note 6.

19. *Gates of Mitzvah*, 9.

20. *Ibid.*, A–2, 11.

21. *Ibid.*, note. See also the sources cited in note 13: the "long-standing custom" in traditional Jewish practice "is not to coerce on this matter." The community, that is to say, does not intervene in the lives of couples who for any reason do not have children.

22. See Genesis 20:18 ("for God had closed fast every womb of the household of Avimelekh"; Genesis 29:31 and 30:3 ("Can I take the place of God, who has denied you fruit of the womb?"); I Samuel 1:5–6 ("for God had closed her womb").

23. Although according to the literal sense of the verse Isaac prayed alone, the rabbis understand the words *lenokhah ishto* to mean that both husband and wife offered prayers; Rashi *ad loc.*, from *Bereshit Rabah* 63:5.

24. *Bereshit Rabah* 71:7. The *midrash* continues: "by your life, your [Jacob's] sons will one day pay fealty to her son" (i.e., Joseph; see Gen. 50:18–19, especially Joseph's repetition of his father's words: "can I take the place of God?").

25. The idea of disease as a divine recompense for our misdeeds and of healing as a sign of God's favor appears throughout our texts. See, for example, Exod. 23:25; Lev. 26:16; Deut. 7:15; *BT* Berakhot 60a (bottom, the prayer which suggests that human beings have no business engaging in medicine in response to illness); and especially the comment of Nachmanides (Ramban) to Lev. 26:11.

26. *BT* Bava Kama 46b.

27. As Ramban writes (to Lev. 26:11), once Israel chose to live its life in accordance with the laws of nature, rather than according to God's special providence, "the Torah will not make its laws depend upon miracles." That is to say, if *piquah nefesh* is a *mitzvah* (see *BT* Yoma 85b to Lev. 18:5), then the correct way to fulfill that obligation is through the practice of medicine, which unlike prayer does not require a special intervention by Heaven. For a more detailed discussion see *Teshuvot for the Nineties* (*TFN*), no. 5754.18, 373–375.

28. See *American Reform Responsa* (*ARR*), nos. 157–159.

29. See our responsum no. 5757.2, "In Vitro Fertilization and the Status of the Embryo."

30. On this, see responsum 5757.2 at note 7: "by 'disease' we mean a condition in which some aspect of our biological or psychological systems does not function properly." And in the note itself: "This suggests that the definition of 'disease' is largely a matter of social construction: that part of our biological or psychological systems is functioning 'improperly' is a judgment we make based upon a conception of what 'proper' functioning is. Accordingly, we may define human infertility as a disease and the procedures designed to correct it as 'medicine.'"

31. See our discussion in *TFN*, no. 5754.14, 348–349, at notes 38–40.
32. J. Rock and M. F. Menkin, "In Vitro Fertilization and Cleavage of Human Ovarian Eggs," *Science* 100:105 (1944); P. C. Steptoe and R. C. Edwards, "Birth after Reimplantation of a Human Embryo," *Lancet* 2:336 (1978).
33. Joseph Schenker, M.D., "Medically Assisted Conception: The State of the Art in Clinical Practice," in Patricia Stephenson and Marsden G. Wagner, eds., *Tough Choices: In Vitro Fertilization and the Reproductive Technologies* (Philadelphia: Temple U. Press, 1993), 25–36. The citation is at p. 26. Dr. Schenker is professor of obstetrics and gynecology at Hadassah Medical Organization, Jerusalem. At the time of this writing, he was chair of the department and president of the Israeli Society of Obstetrics and Gynecology.
34. This description is taken from Andrea L. Bonnicksen, "In Vitro Fertilization and Embryo Transfer," *Encyclopaedia of Bioethics* (New York: Simon and Schuster MacMillan, 1995), 2221ff.
35. Schenker, *loc. cit.*, adds that the current trend is away from drug-stimulated menstrual cycles and toward "natural cycle IVF," which poses fewer risks to woman and child.
36. Bonnicksen, 2222.
37. See Michael E. McClure, M.D., "The 'Art' of Medically Assisted Reproduction: An Embryo Is an Embryo Is an Embryo," in David C. Thomasma and Thomasine Kushner, eds., *Birth to Death: Science and Bioethics* (Cambridge: Cambridge U. Press, 1996), 35–49. Dr. McClure is the chief of the Reproductive Sciences Branch, Center for Population Research, National Institute of Child Health at the National Institutes of Health, Bethesda, Maryland. The citation is at p. 42.
38. One such estimate, taken from a survey of several national registries, is a success rate of 9 percent to 13 percent. See Jean Cohen, "The Efficiency and Efficacy of IVF and GIFT," *Human Reproduction* 6 (1991), 5:613–618.
39. It could be argued that the 16.9 percent to 27.9 percent success rate ought to be accepted as a "proven treatment" because it raises the chances of conception to a level roughly equivalent with natural conception. But this is not what we think *refuah beduqah* means. The infertile couple do not measure medical success by the degree to which their attempts to conceive enjoy the same rate of success as that of other couples. For them, "success" means a successful conception leading to a live birth. Such is a reasonable definition, as it is the prospect of actually having a baby that brings them to IVF in the first place. And until the rates of conception and live birth significantly improve, we do not think the procedure currently qualifies as *refuah beduqah*.
40. *TFN*, no. 5754.14, at pp. 348–349.
41. McClure, 43–46.
42. See Cynthia B. Cohen, "'Give Me Children or I Shall Die!' New Reproductive Technologies and Harm to Children," *Hastings Center Report* 26:2 (March–April 1996), 19–27, arguing that a decision not to have children is certainly ethical if we know we are subjecting them to significant risk by conceiving them through artificial technologies.

43. McClure, 43.
44. See *BT* Sanhedrin 74a, from Lev. 19:16 ("do not stand idly by the blood of your fellow"), which declares that whoever sees his fellow in danger is "obliged" (*hayav*) to save him, and *Yad*, Rotzeach 1:14, where this obligation is formulated thus: "whoever *is able* [emphasis added] to save [another] and does not do so violates the commandment 'do not stand idly by the blood of your fellow.'"
45. And, again, see the sources at note 13: it has long been customary *not* to coerce over this very matter.
46. *Resp. Ḥatam Sofer*, EHE, no. 20.
47. The quotation, taken from *Mishnah Berurah* 260, no. 1, is found as well in Isserles, *Darkei Moshe* to *Tur* OC 260; he in turn derived it from the 13th-century work *Or Zaru'a*, Hil. Erev Shabbat, par. 7. The talmudic source is *BT* Shabbat 25b: "the kindling of the Shabbat lamp is an obligation (*ḥovah*), while washing one's hands and feet in warm water on Friday afternoon (see Rashi *ad loc.*) is a voluntary act (*reshut*); but I [the transmitter of this statement] say that the latter is a *mitzvah*," meaning neither obligatory nor entirely "optional." On this subject in general, see the article "Ḥovah, mitzvah, ureshut," *Encyclopaedia Talmudit*, vol. 12: 645–679.
48. *TFN*, no. 5753.12, 201–208.

THE TRANSPLANTED OVUM

QUESTION:

The gynecological procedure involved in the question is as follows: A fertilized ovum will be removed from a woman's womb and inserted into the womb of another woman, who will then bear the baby for the full term of months and is expected to give birth to a normal child. The question is, will this baby be considered to be the child of the donor of the fertilized ovum or of the woman who carried it in her womb for full term and gave birth to it? (Asked by Rabbi Harold L. Robinson, Hyannis, Massachusetts.)

ANSWER:

IT IS NOT quite clear whether the procedure described has already been practiced a considerable number of times or whether it is just contemplated and is for the present theoretical. Even if it is only theoretical, it is an interesting and important question because it may become practical (if actually feasible); then, as the practice becomes widespread, it will certainly find strong echoes in the Jewish legal literature. What, then, is (or would be) the Halachic attitude to this procedure of transplanting a fertilized ovum from one woman's womb to another's?

As far as I know, there has not been the slightest mention of such a procedure in the Halachic literature. If the practice becomes known, the earliest mention of it will

very likely be in the medical-legal symposia conducted in Israel these days and published under the imprint *Assia*. When the matter *will* be discussed, it is fairly clear that the basic question will be that which is asked here, namely, what is the parentage of the child. It is also clear on what basis the discussion will begin and proceed.

The foundation for this forthcoming Halachic discussion on ovum transplants will be the already well known practice of artificial insemination, which, although also fairly new, has been widespread enough to find considerable discussion in the Halachic literature.

As for this debate on artificial insemination, like all such Halachic debates, it is based upon the Talmud. The Talmud (*Chagiga* 14b–15a) discusses a question based upon the Biblical verse in Leviticus 21:13–14, which states that the High Priest may marry only a virgin. The Talmud then asks this question of Ben Zoma: If a High Priest had married a virgin but then discovered that, although still a virgin, she is pregnant, what is the status of the child, etc.? Ben Zoma is asked how it was possible that this wife of the High Priest could be pregnant and yet remain a virgin. He said that it was possible that she was impregnated in the bath. Rashi explains this answer as follows: In a public bath place, some male bather had emitted semen, and later this young woman, bathing there too, was impregnated by it. (By the way, a gynecologist has implied to me that this Talmudic idea of impregnation without intercourse is quite possible.) This Talmudic idea of a woman thus receiving sperms without sexual intercourse is the basis of all the Halachic debate on artificial insemination. It will also be the basis of the debate on the question you have raised here.

By the way, Dr. Alexander Guttmann of the College faculty and I have both written responsa on artificial insemination. They are found in the *Conference Year Book*, Vol. 62. I will mention now only the two latest responsa on the subject, namely, one by the former Sephardic Chief Rabbi of Israel, Benzion Uziel (in *Mishpotey Uziel, Even Hoezer*, #19), and also one by Moses Feinstein, the most honored American Orthodox respondent, in his second volume on *Even Hoezer* #11. I mention both of these scholars to point out the rather important fact that after perhaps thirty years of Halachic debate, these leading authorities disagree with each other on the basic problem of the child's paternity in artificial insemination. Benzion Uziel is inclined to the opinion that the mother who receives the seed in artificial insemination is the true parent, whereas Moshe Feinstein believes that the donor of the seed in artificial insemination is the true parent.

It might be worth mentioning that Feinstein's decision that it is the donor who is the true parent is not an absolutely firm conviction with him, because, he says, although the donor is to be considered the parent, he is not a parent to the extent that the child born from his donation would free his wife from *chalitza*. That is to say, if a man dies childless, his wife cannot remarry unless her brother-in-law gives her *chalitza*, but if her husband has had a child from any woman (even a woman who was not his wife), the wife is freed from *chalitza*. In other words, Moses Feinstein says that the donor is to be the parent, but not completely so; if he has no other children, his wife must undergo *chalitza* if he dies.

It is, then, upon the basis of the laws developed in the debate over artificial insemination that the question of

paternity involved in the ovum transplant will be decided; and since the question of paternity in artificial insemination is still a subject of disagreement between the two prime authorities, we may well say that the question of paternity and inheritance in the case of the ovum transplant is quite open and undecided. It will, of course, have to be cleared up later if the practice becomes widespread, but at present we may say it is an open question.

I am now informed that the actual situation is as follows: The sperm from the husband of the infertile woman is placed in the womb of another woman, the ovum donor, by means of artificial insemination. Thus the ovum of the ovum donor and the sperm of the husband are united and the ovum becomes impregnated. After a brief time, this impregnated ovum is put into the womb of the barren wife and she carries it to full term and a normal baby is then born. As to this situation, it should be mentioned that the mixing of a man's seed with the ovum of a woman not his wife cannot be considered adulterous. If it were adulterous, then the child would be considered a *mamzer*. But it is not adulterous because in this mixture of sperm and ovum there is no *bodily* contact. This decision was already made by many authorities in the case of artificial insemination. So, first of all, it is to be stated that there is no Jewish legal objection to this mixture of sperm and ovum.

As for the parentage of the child, it is almost impossible to come to a definite conclusion on the basis of the Halachah, inasmuch as this situation is totally unprecedented. However, while we cannot be certain, we can speak of the probabilities involved here. In general, the tendency of Jewish law is to emphasize the relation of the

child to the *paternal* parent. This is based first upon the Mishnah *Kiddushin* 3:12. The rule there given is as follows: Whenever there is a valid marriage and no sin involved, the child has the status of the male parent. Thus, for example, if a Kohen marries an Israelite woman, such a marriage is both valid and without sin, and therefore the child follows the male and is a Kohen. So, too, if an Israelite marries a Kohen woman, this again is a valid, sinless marriage, and the child again follows the male and is Israelite since his father is Israelite. In other words, the general rule of the law with regard to normal, everyday marriages is that the child has the status of the father. This is discussed in the Talmud, *Kiddushin* 66b–67a. Rashi there explains why, in general, in normal marriages the child follows the status of the father rather than that of the mother. He bases it on Scripture, the first chapter of the Book of Numbers, which says a number of times that the Children of Israel shall be numbered according to their *father's* house.

There is also a second consideration. The fertilized ovum is carried in the womb of the wife for full term. Does the fact that the body matures in the womb of the wife have any bearing on the status of the child? It does, definitely. This can be seen from the special case of a pregnant proselyte. A woman became pregnant while a Christian (presumably pregnant by a Christian man). During her pregnancy, she becomes converted to Judaism. After her conversion, her child is born. What is the status of the child? Is it a Gentile who needs to be converted, since both parents were Gentile? The answer of the overwhelming number of authorities on this matter is that the child is part

of the mother's body and the conversion ritual (the *mikvah*) converts not only the mother, but the child that she is carrying (see the authorities cited in the responsum, "The Pregnant Proselyte," in *Modern Reform Responsa*, pp. 143 ff.).

While the situation here is far different from normal marriage, the attitude of the law to normal marriage may serve as an analogy in this special situation. Since the tendency of the law is to emphasize the influence of paternity, and since the wife carries the child and, therefore, according to the law her status impresses itself upon the child, these constitute two reasons why the child here in question should be considered the offspring of the married couple. Of course, as has been said, the situation is unusual, but the likelihood is that as the study of this problem develops, the tendency of the law will likely be to reach the above conclusion.

Subject: *Pregnancy reduction.*

Question: Does Judaism sanction pregnancy reduction in multiple gestation under any circumstances? Is the abortion of one or more fetuses with a serious genetic or other disease or defect permissible to allow the other normal fetus or fetuses to be born healthy? Is the selective reduction to two or three normal fetuses from quadruplets, quintuplets, sextuplets, or more permissible to allow the others to be born healthy? Since the chances of salvaging healthy infants in women with five or more fetuses are extremely poor, can all the fetuses be aborted? Is it permissible to selectively abort a fetus who is endangering the life of the mother and perhaps the lives or health of the other fetuses as well?

Answer and Comment: The recent advent of in vitro fertilization and the induction of ovulation by hormones has resulted in the not infrequent occurrence of multiple gestations in which pregnant women may be carrying up to seven or eight fetuses at one time. The incidence of maternal morbidity and mortality is much higher in multiple pregnancy than in single pregnancy. Pregnancy reduction, that is, the intrauterine destruction of some of the fetuses so that the others might live is an option frequently suggested to the prospective parents. This option is offered to reduce the high risk of maternal complications as well as to reduce the high fetal morbidity and mortality associated with multiple pregnancy.

Judaism does not sanction termination of pregnancy for the sake of the fetus. Therefore, grounds for permissibility of pregnancy reduction must rest on the consideration that continuation of a multiple pregnancy constitutes a significant hazard to the health and/or life of the mother. Another area of leniency in Jewish law might be the first forty days after conception during which time considerable rabbinic opinion permits abortion even in the absence of a clear threat to the mother's health or life because prior to forty days the small embryo is not considered to have a firm claim on life. This is especially so when each embryo is endangered by the presence of the others.

In multiple pregnancies, medical technology using ultrasonic guidance is sufficiently sophisticated today to allow the gynecologist to successfully perform pregnancy reduction prior to forty days after conception. Therefore, since most rabbis permit termination of preg-

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nancy during this period even without a strong maternal medical indication, it seems likely that they will be lenient and allow the destruction of some embryos before forty days in order to allow the others to mature and be born healthy. . . .

SECTION III

COUNSELING RESOURCES

1.**American Infertility Association (AIA)**, formerly Resolve of New York City
AIA is a national nonprofit volunteer organization providing information, education, counseling, referral, and support to people experiencing infertility, adoption, and reproduction disease.
(212) 764-0802

2. **RESOLVE The National Infertility Association**
1310 Broadway, Somerville, MA 02144
(617) 623-0744
Email: resolveinc@aol.com

3. **Pregnancy Loss Support Program** for Miscarriage, Stillbirth, and Newborn Death
A project of National Council of Jewish Women New York Section
(212) 535-5900

TEXT RESOURCES

1. "The Halakhic Chapter of Ovarian Transplantation". Rabbi Edward Reichman. Tradition. Vol. 33. No. 1 Fall 1998. P 31-70

2. "The Rabbinic Conception of Conception: An Exercise in Fertility". Rabbi Edward Reichman. Tradition. Vol. 31 No. 1 Fall 1996. P 33-63

3. "Halakhic Approaches to the Resolution of Disputes Concerning the Disposition of Preembryos". Yitzchzk Breitowitz. Tradition. Vol. 31 No. 1 Fall 1996. P 64-91

4. Jewish Law and the New Reproductive Technologies: Ed. Feldman and Wolowelsky. KTAV. 1997

5. Assisted Reproductive Technologies. NY State Task Force on Law and Life. NYC, NY. April 1998