Childless Hope: Examining Assisted Reproductive Technologies in Ultra-Orthodox Judaism

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Abstract

This project is a Religious Studies and Bioethics paper examining assisted reproductive technologies in Ultra-Orthodox Judaism. The commandment, “be fruitful and multiply” is critical to Ultra-Orthodox Judaism as a prescribed commandment from the Torah. The inability to procreate can be seen as embarrassing or shameful among married couples in Ultra-Orthodox Jewish communities. This paper addresses the permissibility of artificial insemination, in vitro fertilization, and surrogacy among Ultra-Orthodox Jews. On a larger level, the paper examines how Ultra-Orthodox Judaism engages with modern medical technologies. It is important to acknowledge that many assisted reproductive technologies come with challenges and restrictions. The issue is further complicated when examining egg storage and donation, an important aspect of assisted reproductive technologies. Some of the growing biotechnologies may be at odds with traditionalist religious communities, such as Ultra-Orthodox Judaism. This project has significance for examining how traditionalist communities adapt to modern technologies.

Keywords: ultra-orthodox, reproductive technologies, infertility, procreation, Judaism, sperm, ovum, surrogacy

Introduction

Rivka and Michael Bresler, Ultra-Orthodox Jewish newlyweds in Baltimore, started trying to have children when Rivka was 23 years old. Young and ostensibly healthy, the couple never thought that they would have any fertility issues. After five months of trying, Rivka became pregnant but shortly after—a mere eight weeks—she miscarried. After visiting her doctor, she was reassured that she would quickly become pregnant again. Nine months later, she was still not pregnant. After undergoing tests, the doctors found that there were some irregularities in Rivka’s hormone levels and that the solution for her to have children would have to be in vitro fertilization [IVF]. After the first round of IVF Rivka and Michael lost the embryos. Although the Breslers felt defeated, they were not ready to give up; they were determined to have a child. Fortunately for the Breslers, the second round of IVF took and resulted in their first child.¹ Had they continued to have problems conceiving a child the Breslers may have needed to seek out additional reproductive options.

After examining different assisted reproductive technologies in the context of halakhic law, I argue, in spite of the rule-bound culture that informs laws that govern Ultra-Orthodox Jewish communities, there is flexibility in terms of benefiting from medical advancements. Reproductive technologies are seen as a reasonable solution to fertility concerns, though there are challenges in terms of marital sanctity and legitimacy of children that must be dealt with.

Situations like the Breslers’ highlight the questions that arise when an Ultra-Orthodox couple is grappling with infertility. This paper addresses the question of how heterosexual, married, infertile, Ultra-Orthodox Jewish couples approach the Torah commandment as written in Genesis 1:28 of “be fruitful and multiply?” This is an important question to explore because religious Jews tend to have many children. Not only is procreation commanded in the Torah, but some theological interpretations have taken the commandment to “be fruitful and multiply” to mean, “every person who [does not] have children is considered dead.” This is a very extreme consideration, and in doing so creates a lot of pressure on couples to have children. In terms of structure, this paper begins by explaining Ultra-Orthodox Judaism and then further discusses reproductive technologies in terms of halakhic law, each section building on the previous one in terms of complexity of the topic.

**Demographics**

The parameters of the community being examined must be established in order to effectively investigate the needs and restrictions of the community. It is important to establish the differences between groups within Orthodox Jews: for the purposes of this paper, Ultra-Orthodox Jews are to be defined as those who strictly adhere to halakhic law. Halakhic law is essentially the written Jewish laws. Strict adherence to these laws does not allow for as much integration into contemporary society as compared to Modern Orthodox Judaism. These halakhic communities are often closed and self-sufficient, allowing people to maintain a level of separation from society as a whole. This is one layer of complexity when discussing the challenges of Ultra-Orthodox Jews; the added complexities of their political opinions in conjunction with their restrictive religious rules makes interpreting the right actions with taboo issues like infertility difficult. Part of the reasoning behind the proscribed discussion of infertility is the importance of procreation.

In looking at the convention of marriage, which is part of the fulfillment of halakha, having children is the primary purpose for marriage. Since having children and maintaining the rigid family structure are so important in the Ultra-Orthodox community, the inability to fulfill either of those obligations is not an option. Since this is not an option, there is great social and societal pressure placed on Ultra-Orthodox couples to have children. Those pressures make it more unrealistic for couples to feel like normal, full-functioning members of their communities without children. The desire to have many children is apparent based on examining fertility rates in Israel among the Ultra-Orthodox: in the 1980s there were an average 6.5 children for each Israeli Ultra-Orthodox woman; in the 1990s, the number rose to 7.6. With rising numbers, it is clear that there is either a strong desire or pressure to have children, one so strong that women are actually having more children in practice based on the rising rate, making the inability to do so problematic in these communities.

Controversies like infertility are difficult to discuss in tight-knit and isolated communities like those of the Jewish Ultra-Orthodox. This is in part due to the complexities of the issue; infertility can manifest in different ways for different couples, with the infertility symptoms coming from either the male or the female within the couple. Infertile couples are considered any couples who have had “the inability to achieve a pregnancy after one year of regular, unprotected sexual relations or the inability of the woman to carry a pregnancy to live birth.” In Ultra-Orthodox Judaism, the inability to have children, or barrenness, is considered to be an

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illness. Since barrenness is an illness, couples are able to treat and overcome the illness by putting their health and wellness needs as a higher priority than halakhic law.8 These couples are presented with an ethical dilemma in which they have to prioritize which is more important: the commandment to “be fruitful and multiply” or the restrictions that their religious practice place on assisted reproduction. This is because personal health and well-being are upheld as of the utmost importance, making flexibility with health care treatments important. This stipulation allows couples to explore the many options that reproductive technologies provide for infertile couples. While this provides flexibility for many couples, it also brings up concerns of the legitimacy of children and sanctity of marriage.

Assisted Reproductive Technologies

This project investigates three major reproductive technologies that are often interrelated but they are not exclusive of one another. Before the reproductive technologies can be examined under Jewish Law however, each one must be defined scientifically. Each technology will be discussed in order from least to most medical intervention/assistance for the couple. In the sections that follow, I examine artificial insemination, in vitro fertilization and surrogacy.

Artificial Insemination

There are three types of artificial insemination: homologous, combined, and heterologous (donor). Homologous artificial insemination is for men who are impotent but not sterile, or who have wives with conception difficulties. The process that occurs is that “semen must be extracted from husband himself and artificially placed in his wife.”9 The issue of biological parentage is not in question with this method because the genetic material, the sperm and egg belong to the couple who is attempting to conceive. This method is probably the least assistive of the three aforementioned methods. The next method is called combined artificial insemination, which is the least common method used. This method is used when the husband is not sterile but instead expels few active sperm. In order to compensate for these inequities the “husband’s semen is combined with semen of an unknown donor (or donors), whose semen complements that of the husband.”10 The last method is heterologous artificial insemination, which is used most often when the husband is sterile because the semen “employed is provided by an unknown donor (or donors), the husband is excluded.”11 Artificial insemination, depending on the method, is one of the least medically invasive procedures. However, from a religious perspective, it is quite complicated. Most of the complications come from the collection of sperm and/or the source of the sperm, whether it is from the husband or a donor. Two of these complications have to do with the collection of sperm and maintaining the sanctity of marriage and, as a result, the legitimacy of the child.

When using the husband’s sperm, the process is less complicated and is usually the first alternative option sought once a couple has had difficulty conceiving. The primary concern when using artificial insemination with the husband’s sperm is the collection method: Rabbis have not come to an agreement as to whether or not masturbation is an acceptable method of sperm collection.12 Although many rabbis are in disagreement about masturbation as a collection method, they do however agree that the sperm is not being wasted because the intent is conception.13 This is important because Ultra-Orthodox Jewish practices are capable of making an exception as long as the direction and intention of action is of the right mind. A different method of collection is coitus interruptus, which avoids the issues that rabbis have with masturbation.14 With coitus interruptus, the sperm can be collected right away and put into a bottle, or it can be collected via condom without spermicide.15 In doing this,
Ultra-Orthodox Jews are able to engage in the use of technology without compromising their beliefs. Genetic material other than the husband’s, donor sperm, carries different complications, mostly for women, and the children who result from the pregnancy. If a woman is inseminated by sperm that is not her husband’s, she is considered adulterous under some interpretations of halakhic law. If a woman commits adultery, her child would be considered a mamzer, which is an illegitimate child who is not afforded the same rights under Jewish law. The Talmud states that if a woman conceives after bathing in a public bathhouse, it is assumed that the sperm came from an anonymous donor and that she is not pregnant by her husband, which would be considered adultery. The idea here is not that she is going to a public bathhouse to have intercourse with an anonymous man, but that if there was some sort of sperm deposit in the water of the bath, she could become impregnated—regardless of the likelihood that conception would occur in that situation. While this is one example of adultery, as prescribed by halakha, there are objections to this interpretation. Most rabbis have concluded that artificial insemination by donor is not in fact adultery because in order for a woman to commit adultery, there must be sexual intercourse involved, and since there is no adultery technically committed, the child is not considered a mamzer. Without mamzer status, the child can enjoy full religious privileges. Therefore, while it is true that artificial insemination is problematic and raises questions of marital sanctity, it does not necessarily mean that it is viewed as an unreasonable treatment for infertility.

In Vitro Fertilization

The next reproductive technology, in vitro fertilization (IVF), is more complicated. To start, in vitro literally translates to “in glass,” so IVF is a reference to the glass petri dish in which fertilization occurs. More specifically, IVF is when both the sperm and egg are removed from the husband and wife, and then “introduced artificially into the wife’s uterus as a zygote formed in a laboratory dish.” After the transfer is completed, implantation into the uterus and further gestational development is to proceed naturally. Since IVF includes the implantation of a zygote into the uterus, it is also important to surrogacy, as it is part of the process when donor materials are implanted. Many of the conflicts that stem from artificial insemination further manifest during in vitro fertilization. There are however, some added issues with this more complex technology. IVF can happen in a multitude of ways and there are a lot of circumstances that need to be considered, such as whether or not the sperm, egg, or both are donated.

In vitro fertilization using the husband’s sperm is more permissible. By using only the genetic material of the intended parents to conceive, there are no issues concerning adultery; the only third parties involved are those that work in the lab responsible for conception of the zygote. Without concerns of adultery, many rabbis find this to be a permissible method of reproductive assistance. If female infertility is present, IVF is a method that allows men to be able to fulfill the commandment to be fruitful and multiply. Under Jewish law, the inability to have children is grounds for divorce; it is in the interest of most couples to have children if they are able, or to seek help if they cannot in order to preserve their marriage.

With adultery as one of the major concerns with artificial insemination, rabbis have taken a closer look at text in the Torah. The direct prohibition is that of a man impregnating a woman who is not his wife. With the monumental growth in technology within the last 50 years, women are able to be impregnated via lab procedures and not just through sexual intercourse. There is no prohibition against embryo transfer in the Torah, but...
simply because it did not exist. With this added loophole, IVF would be permissible once the embryo has been conceived as far as risk against adultery is concerned and there would be no violation in the sanctity of the marriage.

In fact, permissibility of IVF can be beneficial to a marriage: IVF can bring a child into the world for a couple that otherwise would not have been able to do so to bring “harmony to the family, and contribute to the strengthening of the community.” IVF enables couples who would not otherwise be able to have children to do so, and in doing so are able to maintain their standing as accepted members of their communities.

In addition to the complications during sperm collection during IVF, there is an added layer of complication inherent in the scientific process. Rabbi Eliezer Yehudah Waldenberg does not accept IVF, because it deviates from natural conception and reproduction, and it is “upsetting the order of creation” and thus it is not possible for that husband and wife to be the true parents of the child. Even if he were to accept such a procedure, he believes that it would be impossible to create an environment where the standards of halakha are met; the risk of any sort of mis-doings in the scientific process are too high for Rabbi Waldenberg. By mis-doings, he means any chance of fertilizing the wrong eggs with the wrong sperm or other errors however, theoretically if there were zero chance for mistake, he would find the process permissible. While it is important to maintain the sanctity of the process for Rabbi Waldenberg, he is flexible in terms of finding a technology that is considered unnatural to be permissible if it meets the appropriate standard. Rabbi Waldenberg is not making a call for religious officials to be integrated into fertility labs, but he is stating that there is a need for the development of a better technological process that carries less risk.

In vitro fertilization is so technologically advanced that most halakhic laws are not up to date on the process; however, with the correct process and supervision, IVF can be seen as permissible.

**Surrogacy**

There are two types of surrogacy that women are involved in that will be addressed here: Ovum surrogacy and gestational surrogacy. Both of these types of surrogacy can manifest in different ways. Surrogacy is when the womb and/or ovum of another woman is used to either help conceive or carry a pregnancy. A surrogate can conceive via one of two methods: intercourse or artificial insemination using one of the methods described above. By using either of these methods, the surrogate mother would not just be the gestational carrier, but she would also be related to the child genetically. There are other surrogate options through IVF: a surrogate can have a fertilized ovum implanted into her uterus and carry the pregnancy, and in a sense simply be lending her body to cultivate a child. There are also cases where three women are involved, one donates an ovum, another leases her uterus and the third becomes the mother. To put it simply, there are two main types of surrogacy and they can be defined in the following way: Ovum surrogacy is when both the ovum (egg) and womb belong to the surrogate, and artificial insemination (using the father’s sperm) is used to fertilize the ovum. Gestational surrogacy only occurs when the womb of another woman is used.

In setting aside medical intervention, and using a more assistive but less medically invasive technology, surrogacy has a clear example from the Torah to reference. There is a direct example of surrogacy written in the book of Genesis so it is an issue that has been vetted more fully than artificial insemination and in vitro fertilization. In Genesis, Sarah gives her maid, Hagar, as a surrogate to bear Abraham a child. She uses both the ovum and the uterus of Hagar in this case.

Since there is such a clear example in the Torah,
the **halakhic** rulings are extensive and fairly clear. It is important to remember though, that like many other reproductive technologies, surrogacy should be seen as a last resort in the case that a couple can not have children.\(^{35}\)

In the case of gestational surrogacy only the uterus is being used from another woman; the egg and sperm would belong to the intended parents of the child. The same implications that exist with in vitro fertilization exist with gestational surrogacy. The added issue is the fact that the child is not coming from the body of the intended mother, affecting whether or not the child is seen as Jewish within the community since according to Jewish law a child inherits religion from their birth mother.\(^{36}\) If a child is physically born to a surrogate who is not Jewish, the child would not be considered Jewish. However, if the woman converts to Judaism during her pregnancy regardless of whether or not she was Jewish at the time of conception, the child would then be born to a Jewish mother and thus be considered Jewish.\(^{37}\) The body of the birth mother is seen as most important: Jewish genetic material has not been stressed until recently.

The ovum surrogate is the genetic parent of the child. In some cases it may be a woman who cannot carry her own pregnancy; in other cases the woman cannot use her own eggs to conceive a child. The intended parents, or often the genetic parents, depending on whether or not donor material is used, have become more important to the impending religious identity of the child. The genetic mother in this case is the intended mother, and the mother who is going to raise the child should be able to pass down her religion in addition to her genetic material.\(^{38}\) Another explanation for genetic religious inheritance is that ovum donation is seen as a type of organ donation; organs that are donated are seen as becoming a part of the body of the recipient.\(^{39}\) The larger implications of this are to then examine whether or not the fetus or surrogate mother is seen as Jewish, or if her uterus is then Jewish. Ovum surrogates though, do not affect the religious status of the child; that stipulation comes from the birth mother. Even though surrogacy creates issues concerning parentage and religious status of the child, because there is a clear example in the Torah, surrogacy under the correct circumstances is a viable option for infertile couples.

**Biological Material Storage and Donation**

Biological material storage is an important consideration because it is an element of each reproductive technology this paper discusses, and it raises many of the same questions the reproductive technologies themselves raise. Cases of any sort of biological material donation, whether egg or sperm, are issues that need to be addressed. As with the donation of sperm, adultery is considered an issue in the case of egg donation. In Israel, where there are many Jewish influences on civic laws, there are two somewhat contradictory regulations initially imposed on egg donation. The first regulation is that the woman has to be unmarried in order to avoid the bastardization of the child.\(^{40}\) Another regulation is that the woman would have already had children if she were donating eggs.\(^{41}\) This would make sense because then there would be no risk to her own eggs or ability to have children; however, this is contradictory because there is an assumption that if she already has children, she would also be very likely to be married. If she is married, she could then be dealing with issues of adultery or bastard children.

While most couples seek out Jewish biological material, some say that non-Jewish sperm is actually the route that couples should take when using donated material. Despite the issues of marital sanctity, some halakhic authorities say that because artificial insemination has no physical biological connection, because conception did not occur naturally through sexual intercourse, the genetic connection to the child would only exist with the non-Jewish donor sperm.\(^{42}\)

\(^{35}\) Spitz 1996

\(^{36}\) Spitz 1996

\(^{37}\) Spitz 1996

\(^{38}\) Spitz 1996

\(^{39}\) Spitz 1996


\(^{41}\) Shapira 1987

\(^{42}\) Grazi, Richard V., and Joel B. Wolowelsky. “Addressing the idiosyncratic needs of Orthodox Jewish couples requesting sex selection by preimplantation genetic diagnosis (PGD).” Journal of Assisted Reproduction
Jewish sperm in no way compromises the sanctity of the marriage of any Jewish man, which is a concern when using reproductive technologies. The man would not be violating the sanctity of marriage because he would not be inseminating a woman who is not his wife. There is an additional fear that if the sperm of a Jewish male is used, and then he has children with another Jewish woman, that those two children could marry each other, and then there would be a marriage between half siblings, which is prohibited.\textsuperscript{43} At the same time, however, fertilizing more than one embryo is not as problematic.

Often during IVF multiple embryos are fertilized, but not all of them are implanted. In the secular world, the standard custom is to freeze the extra ones. In the case of Jewish law, creating and then consequently freezing extra embryos (fertilized eggs) would be permissible.\textsuperscript{44} The reasoning behind this is because it would increase the success of the potential donor, or woman who is intending to get pregnant, and at the same time would decrease the amount of risk since the eggs would only need to be collected once.\textsuperscript{45} So long as the material is used for the initial intended use, there is no further scrutiny of the material. In case the use changes, there are more complexities, such as donating surplus embryos, research, or just not transferring the embryo. The core issue with any sort of donated biological material is the potential violation to the sanctity of marriage for the donors or those who are receiving the material. There is the risk that if the child is not genetically or physically related to the parents, he or she could theoretically add strain to their marriage.\textsuperscript{46}

\textbf{Adoption}

Some couples may prefer to not use medical intervention, choosing to either remain childless or to adopt children into their family. However, adoption is unacceptable under halakhic law because parentage cannot be established through a contract that affects family relationships and religious status. Adoption and foster care have separate and Genetics (2006): 421-425.

\textsuperscript{43} Graziet al. 2006
\textsuperscript{44} Mackler 1997
\textsuperscript{45} Mackler 1997
\textsuperscript{46} Mackler 1997

This means that parents and children are only connected through natural means, that is physical or genetic, not legal documents. If adopting children is not seen as legitimate, then it seems that the only option left for Ultra-Orthodox couples is the use of assisted reproductive technologies.

As previously mentioned, the laws (criminal, civic, etc.) in Israel are influenced by halakha since it is a Jewish State; however, Israeli laws are not nearly as restrictive as halakha. With the influence of halakha on Israeli law, adoption policy in Israel is very difficult to navigate, making reproductive technologies and medical intervention a much more permissible and realistic solution to infertility. With the government providing subsidies for reproductive technologies, that intervention is encouraged. In Israel, the waiting period for a healthy baby can be up to a decade for those seeking adoption.\textsuperscript{48} With such a long wait for a child, using adoption as a means of having children is nearly unattainable, especially when compared to available reproductive technologies of today.

If a couple were to finally receive an adopted child, there is a difference in parental status for a child who is not genetically related to the parents. According to halakha, foster and adoptive parent relationships are essentially the same; the child is seen as a ward of those parents, meaning that they have to take responsibility for that child.\textsuperscript{49} There have been some rulings made however concerning the obligation of a person who is to take responsibility for a child. An adult could essentially assume the management role of all aspects of a child’s life such as finances, education, and health, but under Jewish law, just because an adult has taken on this

\textsuperscript{49} Grazi, Richard V., and Joel B. Wolowelsky.
role, it does not establish parentage.\textsuperscript{50} If a person does take on that role as parent, it is not enough to establish parentage because that person does not have natural parentage rights to the child nor does the child inherit anything from that person in terms of religious status.

**Conclusion**

Reproductive technologies are a new and acceptable method for couples who are infertile and cannot have children and a family among Ultra-Orthodox Jews. There are, however, issues that complicate using medical intervention; the primary concerns for couples are preserving the sanctity of marriage and maintaining the legitimacy of the child. If those two needs are met, then reproductive technologies are viewed as acceptable solutions to infertility.

Using any number of the assistive methods enables infertile couples to gain more than just a family. Not only are they able to have children, they are also able to fulfill much more within their communities. Having children truly allows these couples to live, as discussed by some theological commentators. These couples are able to have a more fulfilling marriage, be viewed as socially equal to their child-bearing counterparts in their communities, and lead more socially rewarding lives due the use of reproductive technologies. The flexibility that is found within halakha is very important in guiding the decision to use reproductive technologies.

Ultra-Orthodox Judaism allows for couples to negotiate within the science of reproductive technologies in order to have children; reproduction is more important that the possibility of non-compliance with halakhic law. With the various ways to avoid illegitimate children and preserve the sanctity of the marriage, Ultra-Orthodox Jews are able to seek scientific intervention in order to have children. In fact, permissibility of reproductive technologies could be beneficial to a marriage. Bringing a child into the world for a couple that otherwise would not have been able to do so to bring “harmony to the family, and contribute to the strengthening of the community.”\textsuperscript{51} Reproductive technologies enable couples to feel more accepted as members of their communities without having to carry the shame of not having children.

\textsuperscript{50} Berenbaum, Michael, and Fred Skolnik.

\textsuperscript{51} Mackler 1997
Modern Orthodox Judaism enables its members to integrate into secular society. Many modern orthodox Jews are well educated and adhere to the norms of secular culture.

