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April 16, 2013

“Bring Me the Sword!”: A Comparative Analysis of How a Modern Day King Solomon Might
Approach Assisted Reproductive Technologies From the Jewish and Roman Catholic
Perspectives

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Abstract

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By Jessica Ginsberg

The advancement of reproductive technologies has caused modern medical science, jurisprudence, and ancient religious tenets to intersect in profound and unprecedented ways. With infertility plaguing over 10% of women in the United States and 10-15% of married couples, different types of aggressive infertility treatments, many of which involve three or more parties, are becoming more common as couples and individuals aim to start families. Not only has the increased use of different reproductive technologies generated ethical dilemmas and bred political controversy, but also, on a broader level, it has challenged traditional understanding of familial relations and blurred notions of identity and consanguinity.

Two vocal informants that shape contemporary conversation regarding the moral and ethical implications surrounding the use of assisted reproductive technologies are the Roman Catholic and Jewish traditions. This paper explores Catholicism and halakhic Judaism's understandings of the role of the family, origins of life, and the paradoxical relationship between divine sovereignty and human stewardship in the context of specific technological interventions in the reproductive process.

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“Bring Me the Sword!”: A Comparative Analysis of How a Modern Day of King Solomon Might Approach Assisted Reproductive Technologies From the Jewish and Roman Catholic Perspectives

Introduction

Two women came to King Solomon and stood before him. The first woman said: "My Lord, this woman and I dwell in the same house, and I gave birth to a child while with her in the house. On the third day after I gave birth, she also gave birth. We live together; there is no outsider with us in the house; only the two of us were there. The son of this woman died during the night because she lay upon him. She arose during the night and took my son from my side while I was asleep, and lay him in her bosom, and her dead son she laid in my bosom. when I got up in the morning to nurse my son, behold, he was dead! But when I observed him (later on) in the morning, I realized that he was not my son to whom I had given birth!"

The second woman replied: "It is not so! My son is the live one and your son is the dead one!"

The first woman responded: "It is not so! Your son is the dead one and my son is the living one!"

They argued before King Solomon.

King Solomon said: "this woman (#2) claims 'My son is the live one and your son is the dead one, 'and this woman (#1) claims 'Your son is the dead one and my son is the living one!'"

King Solomon said, "Bring me a sword!" So they brought a sword before the King. The King said, "Cut the living child in two, and give half to one and half to the other"

The woman (#2) turned to the King, because her compassion was aroused for her son, and said:

"Please my Lord, give her the living child and do not kill it!"

But the other woman (#1) said: "Neither mine nor yours shall he be. Cut!"

The King spoke up and said: "Give her (#2) the living child, and do not kill it, for she is his mother!" All of Israel heard the judgment that the King had judged. They had great awe for the

King, for they saw that the wisdom of God was within him to do justice. [I Melachim 3:16 - 27].

*The woman was rightfully awarded custody of her son.*¹

This scenario, commonly titled *The Judgment of Solomon* has been lauded as the archetypal example of the shrewd judgment and judicial wisdom exemplified by a biblical leader. Without any medical instruments or scientific resources to verify the biological mother, King Solomon utilized the tools at his disposal - relying on his wisdom, ability to reason, and profound understanding of human nature - to provide the most informed judgment in selecting the rightful mother.

Because alternative options such as egg donation, in vitro fertilization, and embryo transfer did not exist during the time of the great King Solomon, only one of the two women could have rightfully claimed motherhood. But what might Solomon have done if a technology existed that made it possible for both women to be the child's mother? What if both women cried out when Solomon proposed to slice the baby in half with a sword and both women could offer legitimate claims to biological relations to the child?

Fast forward roughly 3,000 years to the present, and the problem of deciding biological rights becomes wildly complex. Whereas biblical solutions to infertility and biological relations involved cultural norms, logic and reason, a King Solomon of 2013 can no longer assume the a woman who carries and gives birth to a child is genetically related. Instead, Solomon would have to consider technologies such as artificial insemination, in vitro fertilization, and gestational surrogacy while reaching deeply into his expanded toolbox of technological and ethical options. In a world of cutting edge assisted reproductive technologies (ART), two women could rightfully declare relations to the child and both claims could be perfectly valid. Additionally, two men, a

¹ Cohen, Baruch C. "The Brilliant Wisdom of King Solomon." *Jewish Law Community*. Ed. Evan Kusnitz. Ira Kasdan, 10 July 1998. Web. 15 Mar. 2013. <<http://www.jlaw.com/Commentary/solomon.html>>.

sperm donor and an adoptive “social father,” could both press for legitimate paternal rights to a child conceived through donor insemination.²

The spawning of advanced technologies causes modern medical science, jurisprudence, and ancient religious tenets to intersect in unprecedented ways. With infertility plaguing over 10% of women in the United States and 10-15% of married couples, different types of infertility treatments, many of which involve three or more parties, are becoming more common as couples and individuals aim to start families.³ Not only has the increased use of different reproductive technologies generated ethical dilemmas and bred political controversy, but also, on a broader level, it has challenged traditional understanding of familial relations, identity, and kinship. King Solomon’s application of wisdom and understanding of human nature to render fair judgment, though ingenious for his time, would be woefully insufficient in an environment where ART blurs familial and kinship bonds. In effect, ART requires science and religion to redefine formerly understood notions of consanguinity and nature.

Two entities that shape and influence the conversation regarding the moral and ethical implications surrounding the use of assisted reproductive technologies are the Roman Catholic and Jewish traditions. Both Judaism and Roman Catholicism embody a system of laws and ethics that draw upon values and notions of human nature rooted in the Hebrew Bible, or Old Testament. Halakha, the collective body of Jewish law and tradition that guides religious and daily life, serves as the binding source of law for the Conservative and Orthodox movements within the Jewish tradition while the New Testament, Canon law and magisterial

² This paper will define social father as a man who is genetically unrelated to a child but raises and serves as the child’s father-figure.

³ "Infertility." *Mayo Clinic*. Mayo Clinic, 9 Sept. 2011. Web. 12 Dec. 2012.

pronouncements shape the Catholic perspective.⁴ As new technologies redefine the traditional family structure and alter the course of human procreation as we know it, both faiths apply their unique interpretive methods to reconcile scientific advancements with deep-seeded religious beliefs.

A basic study of the Jewish and Roman Catholic laws and ethics reveals two faiths grounded by common values and centered around the family unit. Both religions understand the full blessings of marriage to include children as well as loving companionship and maintain that procreation normatively occurs within marriage as a result of marital intercourse. The introduction of assisted reproductive technologies into the family unit potentially strikes at the heart of both religions as it threatens to disrupt and derail the traditional family structure, and, as a consequence, forces both communities to reevaluate issues concerning God's will, direct human action, and the relationship between God and medicine. The Catholic and Jewish traditions diverge with regard to how to identify and balance values such as human dignity, the procreative and unitive dimensions of marriage, and human stewardship that is active, conscious and respectful of divine sovereignty.

Before proceeding with the remainder of this paper, acknowledgement of some of the overarching differences in the authoritative makeup of the Jewish and Catholic traditions deserves attention so that the reader is fully aware of some of the hermeneutical, structural, and methodological discrepancies. Both traditions derive fundamental understandings of normative family structure, marriage, and kinship relations from the Hebrew Scriptures. Yet the ways in

⁴ This paper will treat halakha and Jewish ethics as synonymous. However, there is an argument among scholars in the Jewish tradition that there is a system of ethics that exists independently of halakha. As would be expected, contemporary Jewish scholars vary widely on the spectrum of the intersection among law, morality, religion, and ethics. For further study on this topic, please refer to Elliot N. Dorff, *Matter of Life and Death: A Jewish Approach to Modern Medical Ethics* (Philadelphia: Jewish Publication Society, 1998), Appendix (pp.395-417); Lichtenstein, Aharon. "Does Judaism Recognize An Ethic Independent of Halakhah?" *Leaves of Faith: Selected Essays of Rabbi Aharon Lichtenstein*. Vol. 2. Jersey City: Ktav Publishing House, Inc., 2004. 33-56. googlebooks. Web. 8 Mar. 2013.

which these values are weighed, interpreted and applied differ tremendously. Whereas Catholic writers tend to focus on what can be learned from the narrative, with a special emphasis on the reproductive and family models put forth in the book of Genesis, the Jewish tradition draws primarily from a “legacy of legal writing that is no less intrinsically flexible than narrative models, and sometimes much more so.”⁵ Rabbi Dr. Don Seeman asserts, “Jewish law tends to derive not from the open-ended narrative analysis favored by many Christian ethical writers, but from a more formal and abstract notion of discrete and bounded legal prohibitions...that constitute a negative limit for human behavior rather than an simulacra of some positive ethical ideal.”⁶ As will be discussed in further detail later, the Hebrew Bible serves as basis for Jewish and Catholic understanding and instruction for the family model and human behaviors. Yet this common source is merely a starting point. More important to the analysis of Jewish and Catholic approaches toward assisted reproduction are the interpretive practices and hermeneutic strategies applied by authorities within each religion.

The Roman Catholic tradition follows a strict hierarchical structure whereby the magisterium serves as the centralized and ultimate teaching authority of the Church hierarchy. It is widely accepted that:

"the task of giving an authentic interpretation of the Word of God, whether in its written form or in the form of Tradition, has been entrusted to the living teaching office of the Church alone. Its authority in this matter is exercised in the name of Jesus Christ. This means that the task of interpretation has been entrusted to the bishops in communion with the successor of Peter, the Bishop of Rome....The whole body of the faithful...cannot err in matters of belief. This characteristic is shown in the supernatural appreciation of faith

⁵ Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 342. Print.

⁶ *Ibid.*, p. 349.

(sensus fidei) on the part of the whole people, when, from the bishops to the last of the faithful, they manifest a universal consent in matters of faith and morals.”⁷

Consistent and harmonious principles and themes thus pervade the doctrines, encyclicals, and teachings produced by the magisterium. Though differences among Catholic theologians exist regarding the extent to which the authority of the magisterium is absolute and the extent to which individuals may use other sources of knowledge to conscientiously dissent, it is widely accepted that the magisterial authority draws from a single sacred “deposit of faith” and the authoritative moral knowledge produced therefrom is revealed in the name of Jesus Christ. Especially when compared to the decentralized, casuistic Jewish authoritative structure, Catholic interpretive tradition is much more concentrated in the church teaching authority, and any deviation from the established canon would take much longer to resonate in Church doctrines.

By contrast, Judaism is characterized by a denominational diversity, a rich and dynamic interpretive tradition that celebrates discussion and debate and welcomes uncertainty and pluralism. Throughout Jewish history there have always been differing schools of thought and practice, beginning with debates between prophets and kings in the First Temple Period to scholarly and philosophical debate between medieval rationalists and mystics to the range in Jewish movements today.⁸ As articulated by anthropologist Susan Martha Kahn, “[t]hey differ by ethnic group, education tradition, regional background, and many other factors. Although some contemporary rabbis have greater followings than others, there is no living individual rabbi whose rabbinic authority is accepted by all Jews. Whereas [divine teaching that informs] papal

⁷*Catechism of the Catholic Church*. Ed. Pope John Paul II. Vatican City: Libreria Editrice Vaticana, 1993. *Vatican*. Web. 10 Apr. 2013. <http://www.vatican.va/archive/ENG0015/_INDEX.HTM> 85-92. For the remaining of this paper, references to this document will be shortened to *Catechism*.

⁸Dorff, Elliot N., and Jonathan K. Crane. "Why Study Jewish Ethics?" 2012. *The Oxford Handbook of Jewish Ethics and Morality*. Ed. Dorff and Crane. New York: Oxford University Press, 2012. 1-24. Print. Rabbis Crane and Dorff are Rabbis of the Conservative movement.

authority is absolute, rabbinic authority is decentralized, variable, yet binding.”⁹ While halakha is considered binding by the Conservative and Orthodox movements, many contemporary Jewish bioethical scholars of these denominations enjoy an interpretive liberty when applying early Jewish authoritative texts to contemporary issues. As noted by Dr. Seeman, “Halacha presents itself as a species of positive law that has been revealed, transmitted and elaborated in legal discourse over an extended period....it is precisely the legalistic emphasis on discrete prohibitions that has given Jewish bioethical deliberation so much more flexibility...”¹⁰ Although rabbinic discrepancy over the permissibility of assisted reproductive techniques pervades halakhic bioethical discourse, the burden tends to fall on those who oppose a particular practice, requiring an explicit and definitive legal basis to categorize a specific technology absolutely impermissible.

According to *The Oxford Handbook of Jewish Ethics and Morality* “[g]iven that, on any specific issue one cannot accurately speak of what Judaism says about it; one can only describe how a particular Jew or community of Jews interprets and applies the tradition to the specific area of concern. The interpreter then has the burden of providing arguments to show that his or her interpretation is a plausible (but never an exclusive) reading of the tradition.”¹¹ This paper, therefore, will track the halakhic conclusions established by many of the mainstream modes of interpretation and reasoning, and will only distinguish between Conservative and Orthodox commentaries when absolutely necessary. While reading this paper, it is imperative the reader is

⁹Kahn, Susan Martha. *Reproducing Jews: A Cultural Account of Assisted Conception in Israel*. pp. 92-3. Durham: Duke University Press, 2000. Print.

¹⁰ Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." Kin, Gene, Community: Reproductive Technologies among Jewish Israelis. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 349. Print.

¹¹ Dorff, Elliot N., and Jonathan K. Crane. "Why Study Jewish Ethics?" 2012. *The Oxford Handbook of Jewish Ethics and Morality*. Ed. Dorff and Crane. New York: Oxford University Press, 2012. 1-24. Print. For further study on this topic, see Woodchoppers and Respirators: The Problem of Interpretation on Contemporary Jewish Ethics," *Modern Judaism* 10:2 (February 1990), 17-42

aware that the sources used, though fully credible and knowledgeable scholars in their respective denominations and fields, do not necessarily reflect the absolute opinion of a particular denomination or movement within Judaism. In fact, as will be made abundantly clear in the chapters that follow, in the context of issues surrounding assisted reproductive technologies, Jewish law typically does not enforce a fixed, overarching policy. Instead, as explained by Rabbi Michael Broyde, “[a]s has been noted in a variety of sources and in diverse contexts, Jewish law insists that new technologies-and particularly new reproductive technologies-are neither categorically prohibited nor categorically permissible. Rather, they are subject to case-by-case, method-by-method analysis of the consequences of the new technology as well as the methodology employed, and both need to be permissible for new technology to be proper in the eyes of Jewish law.”¹²

Due to the accepting interpretive nature of Talmudic, rabbinic responsa and other authoritative legal sources, Jewish thinkers will often put forth multiple and often contradicting opinions regarding the permissibility of certain assisted reproductive technologies, drawing from a vast reservoir of sources and using logic, case precedent, and reason to support their argument. Acclaimed bioethicist Rabbi Baruch A. Brody notes, classical Jewish ethics

“is committed to the legitimacy of a wide variety of values, and it recognizes that which value takes precedence varies from one case to the other. In this way, classical Jewish ethics is a form of pluralistic casuistry. This explains why its main texts (including the Talmud and its commentaries, the codes and their commentaries, and the responsa literature) are focused on a consideration of an ever-expanding number of cases, with no attempt made to resolve them by appeal to a few fundamental principles or to some hierarchical structure of values.”¹³

¹²Broyde, Michael J. *Pre-Implantation Genetic Diagnosis, Stem Cells and Jewish Law*, 38(1) *Tradition: A Journal of Jewish Thought*, 56 (Spring 2004).

¹³Brody, Baruch A. "Jewish Reflections on Life and Death Decision Making." *Jewish and Catholic Bioethics: An Ecumenical Dialogue*. Ed. Edmund D. Pellegrino and Alan I. Faden. N.p.: Georgetown University Press, 2000. 17. Print.

In light of the expansive nature of this topic, this work is not intended to provide an exhaustive list of all opinions and viewpoints within the Jewish and Catholic faiths nor does this paper claim to speak on behalf of the Catholic Church or Jewish law. Rather, it will draw primarily from magisterial teachings and the more vocal and widely accepted bioethical voices of the Jewish tradition. Discussion of Jewish bioethics will derive from halakhic commentary and will allude to predominantly Orthodox and Conservative Jewish interpretations. Additionally, it must be noted that Jewish law and Catholic law do not function in the same way. As discussed in *The Oxford Handbook of Jewish Ethics and Morality*, “readers who are used to other traditions may expect Judaism to be well defined within authoritative bounds, as, say, the Catholic tradition is. In fact, however, Judaism is a very feisty tradition, one that loves argument and counterargument. The fact that there are multiple approaches to ethics within Judaism is thus only one manifestation of the great tolerance Judaism has for questions and multiple answers.”¹⁴ While the Catholic tradition, too, employs methodical modes of argument and counterargument as in the expansive works of Thomas Aquinas, it must be made abundantly clear that the employment of these argumentative techniques do not function in the same way nor does the Jewish tradition offer a counterpart to the Roman Catholic Church’s magisterium. Nevertheless, halakha does offer legal and ethical guidelines that reflect generally accepted strains of Jewish thought.

This paper explores Catholicism and halakhic Judaism’s understandings of the role of the family, origins of life, and the paradoxical relationship between divine sovereignty and human stewardship in the context of specific examples of scientific intervention in the reproductive process. Chapter 1 will address some of the common beliefs and values held by the Catholic and

¹⁴Dorff, Elliot N., and Jonathan K. Crane. "Why Study Jewish Ethics?" 2012. *The Oxford Handbook of Jewish Ethics and Morality*. Ed. Dorff and Crane. New York: Oxford University Press, 2012. 3. Print.

Jewish traditions as they apply to matters of reproduction, family lineage, and the role of human beings in the fulfillment of divine commandments. The following sections will hypothesize how a modern day King Solomon might rule on the permissibility of artificial insemination, in vitro fertilization and gestational surrogacy. Furthermore, it will analyze how and why the rulings of a King Solomon adhering to the teachings of the Roman Catholic magisterium might differ from his halakhically abiding Jewish counterpart. While the majority opinion of both faiths will function as the primary focus, the paper will occasionally introduce minority or dissenting opinion to reinforce the interpretive context of the debate. The paper will then conclude with a brief discussion of the implications for future technological advances in the field of assisted reproduction.

Chapter I: Foundations

Judaism and Catholicism, two highly influential monotheistic religions, share several substantive positions on human behavior that are firmly grounded in an ultimate source of morality based in the words of one omnipotent God. Rooted in scriptural exegesis and theology, the most basic starting point from which Judaism and Christian Catholicism develop can be found in the ancient Hebrew scriptures, commonly referred to as the Hebrew Bible in Judaism and the Old Testament in Christianity. More specifically, the book of Genesis functions as a springboard from which Jewish and Catholic bioethical discourse establishes fundamental values regarding human life, human rights, and human nature. Beginning with the story of creation and the progenitors of humanity, Adam and Eve, the Scripture invokes the symbolic relation between creation and procreation that pervades the text. Christian and Jewish bioethical discourse often revert back to the book of Genesis to guide and mold their understanding of the procreative process and human life.

Whereas Adam and Eve and the story of creation provide an introduction to humanity, man's relationship to the one omnipotent God, and basic tenets of moral behavior, the biblical character Abraham serves as linchpin of the faith from which the Jewish, Christian, and Muslim communities emerge, and thus may function as a useful starting point for a comparative analysis of Jewish and Catholic bioethical discourse regarding assisted reproductive technologies.¹⁵ In Chapter 17 of the book of Genesis, God promises Abraham, patriarch to the three major monotheistic religions, "I will make you exceedingly fertile; and make nations of you; and kings shall come forth from you."¹⁶ Ironically, despite God's repetitious insistence that Abraham will

¹⁵ Peters, F. E. *The Children of Abraham: Judaism, Christianity, Islam: A New Edition*: Princeton University Press, 2006. Print.

¹⁶ Genesis 17:6 (All Scripture citations are from the *JPS Hebrew-English Tanakh*. Jewish Publication Society, 1999. Print.)

be “father of a multitude of nations,” Abraham and his wife, Sarah, struggle to conceive.¹⁷ In fact, it may be noteworthy to point out that three of the four matriarchs of the Old Testament - Sarah, Rebecca, and Rachel - struggled with barrenness and infertility. Given the tremendous strife endured by these women in their efforts to continue their family’s lineage, it is no wonder that the Jewish and Christian traditions have devoted much thought, analysis, debate, appreciation and reflection on issues surrounding procreation and family structure. Thus, before analyzing the ways in which Judaism and Catholicism differ in their approaches to assisted reproductive technologies, it is imperative to first take a look at some of the common values that shape these two faiths.

Human Life and the Image of God

Both the Jewish and Catholic traditions use the theological base of creation to affirm dignity of the human person. As stated in the book of Genesis, “God created man in His image, in the image of God He created him; male and female He created them.”¹⁸ While debate over the image of god motif has been contemplated for centuries, for purposes of this paper it is important to note that the powerful divine image motif informs both traditions’ appreciation of man’s uniqueness, intrinsic dignity, and worth.¹⁹ As creatures imbued with divine characteristics, human beings are endowed with the unique gift of freedom and the responsibilities of moral agency, whereby man must recognize and respect the divine characteristics within himself as well as within his fellow man. Inherent in these divine attributes is the universal charge for man to value and respect all humans as created in the image of God. Both Catholic and Jewish ethics stem from the belief that living a moral life in

¹⁷ Genesis 16:1-3

¹⁸ Genesis 1:27

¹⁹Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 19. Print.

accordance with God's teachings illuminates divine attributes within man and establishes a baseline standard to recognize and respect the human dignity of every person.

An analysis of Catholic and Jewish interpretations, inferences, and commentaries on Genesis 1:27 reveals the foundation for each religion's understanding of human nature. In the Jewish tradition, one of the great Tannaitic Jewish sages of the 2nd century, Ben Azzai, identified the verse affirming man being created in God's image as the bedrock of all biblical morality. His insistence that man created in the divine image functions as the greatest principle of the Torah arguably hints at notions of universal human dignity; implying that those who do not respect the divine image in themselves will not be able to respect the divine image in others, and to insult or harm the divine image in any of its forms is to deny the essential brotherhood and sisterhood of humankind. Conversely, those who accept the view that all of mankind was made in the divine image will respect all people.²⁰ Further, Rabbi Joseph Soloveitchik, one of the great 20th century rabbinic authorities, points out that "*kevod haberi'ot* (respect for human dignity) and social justice are implicit in the biblical concept that man was created in God's image," thereby emphasizing the intrinsic link between human dignity and man as being in the image of God.²¹

The divine image motif marks a profound impact on Jewish law and ethics, specifically as it informs the fields of medicine and technology. The Jewish legal system does not categorically adhere to a classic universal law doctrine; however, recognition and respect for the divine image inherent in every human being establishes an underlying moral imprint on the Jewish tradition. As noted by Sinclair, Jewish biomedical law possess a source in "universal,

²⁰ Sifra, Kedoshim 4:12. Genesis Rabba 24:7 quoted in Mackler, Aaron. Introduction to Jewish and Catholic Bioethics: A Comparative Analysis. 1st. Washington D.C.: Georgetown University Press, 2003. 3. Print.

²¹Besdin, Abraham R. "Festival of Freedom." Reflections of the Rav: Lessons in Jewish Thought Adapted from Lectures. 2nd ed. Jerusalem: Ktav, 1993. 190. Google Books. Web. 02 Apr. 2013. <<http://books.google.com/books?id=75WlJgOIHfgC>>.

rational, morality. This characteristic indicates an affinity with natural law in general jurisprudence....Suffice it to say at this stage that there is an affinity but not an identity.”²² While halakha does not possess an equivalent to a fully formed natural law doctrine that largely shapes Catholic moral theology, the call to recognize the divine image in every human being serves as an impetus for a fundamental universal morality that is embedded in the Jewish legal tradition. According to Rabbi Abraham Isaiah Karelitz, “It is Halakhah which determines that which is permitted and that which is forbidden in the realms of ethics.”²³ Specifically in the context of infertility and assisted reproduction, the Jewish tradition understands a person’s value and human worth to “derive 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...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.”²⁴ As will be demonstrated in the following chapters, appreciation for all persons as beings created in the divine image and biblical precedent for procreation outside the sexual union fuel many of the tradition’s permissive arguments for using various assisted reproductive technologies. Behind the permissive approaches is an understanding that engaging in invasive reproductive procedures does not violate or fall short of moral or ethical standards, but rather opens the possibility for an otherwise infertile couple to start a family.

Universal natural law principles maintain a more vocal and pronounced presence in Church teaching. The Catholic tradition, too, draws on Genesis 1:27 to develop notions of

²² Sinclair, Daniel B. *Jewish Biomedical Law: Legal and Extra-Legal Dimensions*. New York: Oxford University Press, 2003. *Oxford Scholarship*. 10 Apr. 2013. 2. Web.

²³ Karelitz, R. Abraham. *Hazon Ish al Inyanei Emunah, Bitahon Ve’Od*. Jerusalem. S. Greineman. 21. 1954. quoted in Berko, Netanel. "Jewish Bioethical Perspectives on Therapeutic Use of Stem Cells and Cloning." *And You Shall Surely Heal*: 155. The Albert Einstein College of Medicine Synagogue Compendium of Torah and Medicine. Web. 10 Apr. 2013.

²⁴ Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 43. Print.

intrinsic divine value inherent in every person. The *Catechism of the Catholic Church* states, “[b]eing in the image of God the human individual possesses the dignity of a person, who is not just something, but someone...And he is called by grace to a covenant with his Creator, to offer him a response of faith and love that no other creature can give in his stead.”²⁵ At the root of Catholic tradition’s appreciation for human life is the notion that all persons share equally in the dignity of human nature, and thus must be afforded fundamental human rights.

Arguably the most crucial distinction between Jewish and Catholic understanding of human dignity in the context of human intervention presides over the point at which man is sealed with God’s image, and consequently his status as a human being with body and soul.²⁶ Catholicism adamantly maintains man is sealed with God’s image at the moment of fertilization and thus man,

“from the first moment of its existence, that is to say, from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality. The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life”.²⁷

Though the exact moment at which the soul comes into being remains unclear, the Church draws from conclusions produced by biological science to affirm that the genetic identity of a human being is already present in the zygote.²⁸ As emphasized in *Donum Vitae*:

²⁵ *Catechism* 357

²⁶ Theology on relationship between the body and soul is a rich and developed area in the Catholic traditions. As articulated by Thomas A Shannon and Lisa Sowle Cahill, “It is this recognition of a basic consistency in human moral experience - not only as free and rational but also as embodied and effective-that above all else characterizes the natural-law tradition.” Though I will not directly address the complex Catholic understanding of the dual nature of the human person, you will find references to this topic punctuated throughout the piece. A further discussion of ART would benefit from a nuanced study of theology of the body. The Catholic tradition has produced a vast amount of literature addressing this subject, most notably *A Theology of the Body* by Pope John Paul II. The Jewish tradition, too, has produced a vast amount of literature on this topic.

²⁷ *Donum Vitae* §5, I, 1

²⁸ *Donum Vitae* §4

"It would never be made human if it were not human already. To this perpetual evidence ... modern genetic science brings valuable confirmation. It has demonstrated that, from the first instant, the programme is fixed as to what this living being will be: a man, this individual-man with his characteristic aspects already well determined. Right from fertilization is begun the adventure of a human life, and each of its great capacities requires time ... to find its place and to be in a position to act".²⁹

While current scientific data cannot identify a spiritual soul, "the conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of this first appearance of a human life."³⁰ From this understanding, the Catholic Church, authority and protector of human dignity, demands that all forms of human intervention, beginning from the treatment of the fertilized the embryo, must first and foremost treat all humans with respect and dignity and adhere to these fundamental principles derived from the seal of the divine image in man.

By contrast, the Jewish tradition offers a breadth of opinions regarding the point at which ensoulment and the seal of the divine image occurs. Talmudic texts support different views, ranging from conception; at formation (40 days after insemination); at birth; and some sources even claim as late as when the child can first say 'amen.'³¹ As will be elaborated in the section on the status of the embryo, because the Jewish tradition does not equate the status of a newly formed fetus with that of a human living outside the womb, many Jewish thinkers do not consider implications of halakhic and universal moral law to be fully applicable to the fetus.

The role of God: Balancing Respect for Divine Sovereignty and Human Intervention

Debate surrounding medical technologies that assist or intervene in the procreative process marks a complex intersection between respecting God's creative sovereignty on the one

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ For Talmudic references, see *Babylonian Talmud Sanhedrin* 91b; Mishnah, *Oholoi* 7.6; *Babylonian Talmud Sanhedrin* 72b, *Babylonian Talmud Hullin* 58a; *Babylonian Talmud Gitlin* 23b.

hand and exercising human stewardship on the other. One recurring conflict central to the tension between medical technology and theology is the accusation that man encroaches on God's sovereignty, or more colloquially is "playing the role of God." Both Judaism and Catholicism adhere to the bible's emphatic portrayal of God as the sole undisputed sovereign ruler. The first three chapters of the book of Genesis establish God's dominion over the universe and his setting of limits on the permissible scope of human activity.³² However, as discussed earlier, humans enjoy the elevated status as beings created in the image of God, imbued with creative capacities and moral agency and charged with the task to "fill the earth and subdue it."³³ Though both traditions recognize this hierarchical structure of God as the creator and sole authority over the universe and man as ruler of the natural world, Judaism and Catholicism differ with regard to scope of human intervention, drawing different boundaries around man's role in the blurred relationship between divine sovereignty and human stewardship.

Catholicism

Specifically within the context of biotechnology, the magisterium only permits procedures that protect "the proper place of God within the acts of procreation."³⁴ As proclaimed in the bishops' *Ethical and Religious Directives*,

"[c]reated in God's image and likeness, the human family shares in the dominion that Christ manifested in his healing ministry. This sharing involves a stewardship over all material creation (Gn 1:26) that should neither abuse nor squander nature's resources. Through science the human race comes to understand God's wonderful work; and through technology it must conserve, protect, and perfect nature in harmony with God's purposes."³⁵

³² Mackler, Aaron. *Introduction to Jewish and Catholic Bioethics: A Comparative Analysis*. 1st. Washington D.C.pp. 7: Georgetown University Press, 2003. Print.

³³ Gen 1:28

³⁴ Alvare, Helen M. "Catholic Teaching and the Law Concerning the New Reproductive Technologies." *Fordham Urban Law Journal* 30.1 (2002): 129. Heinonline. Web. 28 Mar. 2013.

³⁵ *Ethical and Religious Directives for Catholic Health Care Services*. Ed. Committee on Doctrine of the National Conference of Catholic Bishops. 4th ed. Washington D.C.: United States Conference of Catholic Bishops, Inc., National Catholic Bioethics Center. Web. 2 Feb. 2013. <<http://www.ncbcenter.org/page.aspx?pid=1235>>.

The magisterium understands the mandate to ‘love thy neighbor’ as God’s affirmation that healing, medical research and certain medical interventions are appropriate acts of human stewardship. In fact, the Church encourages responsible research pursuits, arguing that research aimed at reducing human sterility is to be encouraged, under the condition that it is placed "at the service of the human person, of his inalienable rights, and his true and integral good according to the design and will of God."³⁶ At the same time, however, other values place limits on the extent to which man can impinge. As noted in the *Catechism of the Catholic Church*, “Research or experimentation on the human being cannot legitimate acts that are in themselves contrary to the dignity of persons and to the moral law. The subjects' potential consent does not justify such acts...Experimentation on human beings does not conform to the dignity of the person if it takes place without the informed consent of the subject or those who legitimately speak for him.”³⁷ Thus, as will be discussed in further detail later, the Catholic magisterium considers assisted reproductive medical interventions that directly interfere with the natural procreative process as a violation of the offspring’s human dignity and in conflict with divine and natural law.

Judaism

Judaism, too, recognizes the first three chapters of Genesis both as a proclamation of God’s absolute sovereignty and as instruction for man to establish dominion over the world. Specifically in the context of medical intervention and healing, the relationship between man and God is a type of partnership, whereby the tradition appreciates the practice of medicine as a divinely authorized aid to God. According to Rabbi Dorff, “we are God’s ‘partners in the ongoing act of creation’ when we improve the human lot in life.”³⁸ Though at times the Bible

³⁶ *Donum vitae*, §Intro, 2.

³⁷ *Catechism*, 2295.

³⁸ Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 52. Print.

depicts God purposefully causing human suffering, as in the cases of famine and illness, the Jewish tradition negates a purely faith based, hands-off approach to sickness, and instead understands healthcare and most medical interventions as a responsible exercise of human stewardship in cooperation with God's creative plan.³⁹ The Jewish tradition's understanding of the duty to heal combined with man's innate capacity for learning, research, and discovery forms the backdrop to an overwhelmingly favorable position toward using technological and medical developments to cure illness, which includes struggles with infertility. In summarizing medieval Jewish scholar Moses Maimonides' stance on medicine and healthcare, halakhic and bioethics scholar, Noam Zohar asserts, "God acts in the world chiefly or even solely through natural causality. Sound medicine, like sound technology in general, is itself an instance of God's providence."⁴⁰

Family and Marriage values

Catholicism

Recognizing God's intent for humans to live socially and man's intrinsic need for companionship, the Church places family life at the core of society, with marriage functioning as the glue binding the family together.⁴¹ When a married couple engages in the marital act, they are "giving themselves to each other as irreplaceable and non-substitutable persons complementary in their sexuality, and opening themselves to the gift of human life."⁴²

³⁹ Prominent biblical commentators, such as Maimonides, Rabbi Samson Raphael Hirsch, and Rabbi Baruch ha-Levi Epstein (Torah Temimah) understand certain biblical verses, including "And heal he shall heal," (Exodus 21:19) and "And thou shalt restore it to him" (Deut. 22:2), and "Neither shalt thou stand idly by the blood of thy neighbor" (Levit. 19:16) as not only permission, but an obligation to intervene and heal.

⁴⁰ Zohar, Noam. *Alternatives in Jewish Bioethics*. Albany: State University of New York Press. 31. 1997. qtd in Mackler, Aaron. *Introduction to Jewish and Catholic Bioethics: A Comparative Analysis*. 1st. Washington D.C.: Georgetown University Press, 10. 2003. Print.

⁴¹ "The Lord God said, 'It is not good for man to be alone; I will make a fitting helper for him.'" (Genesis 2:18)

⁴² May, William E. "Generating Human Life." *Catholic Bioethics and Gift of Human Life*. 2nd ed. 70. Our Sunday Visitor, 2008. Print.

Like in the Jewish tradition, Catholic teaching upholds the dual dimensions of sex within marriage. Valued as an act containing both unitive and procreative components, marital intercourse is, as Pope Pius XII proclaimed, “not a mere organic function for the transmission of the germ of life” rather, it is “a personal action, a simultaneous natural self-giving, which, in the words of Holy Writ, effects the union in ‘one flesh...[and] implies a personal cooperation [of the spouses with God in giving new human life].”⁴³ The joining together of husband and wife in the conjugal act serves as both a physical expression of the mutual self-giving and deep bond formed in marital unity as well as a procreative element in the act’s potential to produce new life.

Though independent, the unitive and procreative dimensions are inseparable, and it is through the cooperation of these two components that the marital act achieves a transcendent aspect, whereby “spouses share in the creative power and fatherhood of God...they are thereby *cooperating with the love of God the Creator* and are, in a certain sense, its interpreters.”⁴⁴ As noted in *Humana Vitae*, “this particular doctrine, expounded on numerous occasions by the magisterium, is based on the inseparable connection, established by God, which man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act.”⁴⁵ From the perspective of the Catholic Church the act of marital intercourse not only represents the complete giving of spouses to one another, but also reflects a co-agency with God in the pursuit of creating life and building a family.

Judaism

⁴³ *Ibid.*

⁴⁴ *Catechism*, 2367.

⁴⁵ Paul VI, and Marc Caligari. *Humanae Vitae: Encyclical Letter of His Holiness Pope Paul VI, on the Regulation of Births*. San Francisco: Ignatius Press, 1983. Web. <http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html> §2, 12.

Family has remained central to the survival and longevity of the Jewish tradition. As noted by Rabbi Berger, following the destruction of Solomon's Temple in 586 BCE and the subsequent exile of Jews, "the tradition mustered all of its resources-theological, legal, social, and economic-to meet the challenges" of living as a minority group scattered throughout the diaspora. "The family was, in many cases, the primary vehicle for preserving distinctiveness from the majority culture, and so the tradition used law, custom, and lore to govern its formation and maintenance."⁴⁶

The Jewish tradition's position on marital sex, similar to Catholic understanding, recognizes the conjugal act to serve two primary functions: procreation and marital companionship. This notion arises from Genesis Chapter 2, where the introduction of Eve serves as the remedy to man's loneliness: "[h]ence a man leaves his father and mother and clings to his wife, so that they may become one flesh."⁴⁷ God's observation that "it is not good for man to be alone," and His subsequent decision to create Eve further establishes humans as social beings who desire companionship.⁴⁸ The Rabbis later structured the institution of marriage to accommodate the human need for love, partnership, and intimate companionship. Sexual intercourse within marriage, thus, functions as an expression of this loving partnership, serving as a physical and emotional form of communication through which man and wife convey their love and appreciation for one another.⁴⁹ As noted by Rabbi Elliot Dorff, "God's desire, according to the Torah and the Talmud, is that people should, if at all possible, live in marital

⁴⁶ Berger, Michael. "Marriage, Sex, and Family in the Jewish Tradition: A Historical Overview." Preface. *Marriage, Sex, and Family in Judaism*. Ed. Michael J. Broyde. Lanham: Rowman & Littlefield Publishers, Inc., 2005. 1-14. Print.

⁴⁷ Gen. 2:24

⁴⁸ Gen. 2:18

⁴⁹ Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 38. Print.

partnership, regardless of their ability to procreate.”⁵⁰ Because sex fulfills God’s desire for human companionship, the Jewish tradition considers sex as something beyond a mere biological act. The book of Exodus stipulates when a man marries a woman he must fulfill specific marital obligation: “he may not withhold from this one her food, her clothing, or her conjugal rights.”⁵¹ That these obligations are discussed separately from the charge to be fruitful and multiply reinforces the notion that the commandment to procreate and the instruction to ensure conjugal satisfaction are valued separately and take on independent roles in the marriage. In situations where sex does not lead to procreation, the act of sexual intercourse between the married couple may still fulfill one of its two purposes as a mode to express love and companionship and strengthen the marital bond. As noted by Rabbi Dorff, “as much as Judaism values children...if a couple cannot reproduce the commandment to procreate no longer applies, for it makes no sense logically or legally to command people to do what they cannot do.”⁵² The couple should, however continue to engage in conjugal relations for the sake of marital companionship.

Marriage also serves to fulfill the first biblical commandment and blessing to be fruitful and multiply. After creating the first human beings, God blesses them and asserts, “[b]e fertile and increase, fill the earth and master it.”⁵³ Already, in the first chapter, the Torah establishes sexuality as a fundamental component of human nature, as Adam and Eve are commanded to comply with the exhortation to populate the universe. Based on God’s observation that the union between Adam and Eve was “very good” the Jewish tradition interprets sexual drive as a basic part of God’s creation, and when performed at the proper time and in the proper context, i.e. in

⁵⁰ *Ibid.*, p. 41.

⁵¹ Exodus 21:10

⁵² Dorff, Elliot N. "The Jewish Family in America: Contemporary Challenges and Traditional Resources." *Marriage, Sex, and Family in Judaism*. Ed. Michael J. Broyde and Michael Ausubel. Lanham: Rowman & Littlefield Publishers, Inc., 2005. 233. Print.

⁵³ Gen. 1:28

accordance with family purity laws within marriage, sex is a procreative and inherently good act that fulfills God's plan for humans to populate the world.⁵⁴ As noted by Orthodox Rabbi Maurice Lamm, marriage is part of the natural order of human society. "When a newborn child is named, the prayer is *le'huppah u'le'maasim tovim* (to the marriage canopy and a life of good deeds). Marriage is thus grounded in the primeval relationship of the sexes in order to perpetuate the species and enhance personal growth."⁵⁵

At the heart of the Jewish religion is the belief that Jews are bound together by a covenant with God whereby fertility functions as an expression of God's blessing over those who abide by the stipulations of the covenant. The Torah portrays the Jewish people as part of an extended family that traces their lineage back to the patriarch, Jacob.⁵⁶ According to Jewish ethicist Rabbi David Novak, "[t]he covenantal innovation does not supplant nature but improves it by truly socializing human sexuality in the sanctity of the covenant between God and Israel, which Jewish marriage is intended to reflect. Indeed, in Rabbinic teaching, the Song of Songs was included in the biblical canon not so much to compare God's love for Israel to that between man and a woman but to show a man and a woman how their love can be an imitation of God's love for their people and their people's love for God in the covenant."⁵⁷ A Jewish marriage is thus a microcosm of the covenant between God and the Jewish people. Therefore, the offspring of a Jewish married couple is not only a result of the intimate and elevated expression of love between spouses, but also it is part of a greater connection, bridging the Jews of the past to the future generations of the children of Israel that recalls an agreement based on mutual love

⁵⁴ Gen. 1:31

⁵⁵ Lamm, Maurice. *The Jewish Way in Love and Marriage*. 121: Jonathan David Pub, 2008.

⁵⁶Berger, Michael J. "Marriage, Sex, and Family in the Jewish Tradition: A Historical Overview." *Marriage, Sex, and Family in Judaism*. Ed. Michael J. Broyde and Michael Ausubel. Lanham: Rowman & Littlefield Publishers, Inc., 2005.3. Print.

⁵⁷Novak, David. "Jewish Marriage:Nature, Covenant, and Contract." *Marriage, Sex, and Family in Judaism*. Ed. Michael J. Broyde and Michael Ausubel. Lanham: Rowman & Littlefield Publishers, Inc., 2005.67. Print.

between God and the Jewish people. Another contemporary halakhic scholar, Rabbi Maurice Lamm notes, “[t]o have a child is a flesh-and-blood connection with the future, and the birthplace of humanity's future is the home. The future of the whole Jewish people depends upon marriage, the covenantal relationship of husband and wife. Marriage is not simply a private arrangement designed solely for mutual satisfaction; its importance rests in how the couple perceive their bond, the love they demonstrate, and the constellation of virtues they bring to the home. Every marriage covenant must partake of the original covenant.⁵⁸ The Talmudic assertion that “there are three partners in the formation of the human being: God and the father and the mother,” most accurately expresses the tradition’s awareness of God’s presence both in the sacred covenant of marriage and its fruits.

Status of the Embryo

Technology today has reached a level so advanced, biblical, talmudic, and medieval contemporaries could not have possibly fathomed modern day medical capabilities, specifically in the field of assisted reproduction. Although neither tradition can claim a deep arsenal of precedent cases dealing with cutting edge prenatal technologies, both Judaism and Catholicism rely on certain fundamental religious concepts and apply them to contemporary bioethical issues. At the core of the debate surrounding ART is the question of when life begins and how each tradition interprets the status of the embryo. While both religions adhere to the sanctity of human life and view each person as a being created in the image of God and endowed with certain fundamental human rights, halakhic Judaism and Catholicism differ over the point at which personhood begins, and therefore when such rights take effect.

⁵⁸Lamm, Maurice. *The Jewish Way in Love and Marriage*. 121: Jonathan David Pub, 2008.

The Catholic Church adamantly maintains human life begins at conception and at that same moment his rights as a person must be recognized.⁵⁹ In 1987 Pope John Paul II affirmed the Catholic Church's position on the status of the human embryo in the encyclical *Donum Vitae*, whereby he decreed, the embryo "from the first moment of its existence...demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality."⁶⁰ This fundamental belief forms the central thread that shapes all Catholic discourse on matters related to beginning of life treatment. Any attempt to terminate, manipulate, or destroy a human embryo - from performing an abortion to discarding unused embryos - violates the fetus' fundamental human right to life and is strictly forbidden by the magisterium. The belief in personhood from the moment of conception spans the corpus of the Catholic bioethical discourse and guides virtually all magisterial decisions regarding the use of assisted reproductive technology.

In Judaism, on the other hand, the status of the embryo depends on its physical maturation during the gestational period. While in many respects Jewish law parallels Catholic adherence to the sanctity of human life, halakha diverges from Catholic law in its qualitative assessment of fetal development, and thus when the legal and moral status of a human being take effect. For example, during the first forty days of the pregnancy, Jewish law considers the fetus "mere water," and therefore insufficient to warrant independent status.⁶¹ Though Jewish law recognizes various stages in physical maturation and gestational development following the initial forty days, the fetus is still legally treated as an "appendage of its mother."⁶² The basis for

⁵⁹Congregation for the Doctrine of the Faith, *Donum Vitae: Instruction on Respect for Human Life in Its Origin: and on the Dignity of Procreation: [Replies to Certain Questions of the Day]* Washington, D.C.: National Catholic Bioethics Center, 2000.

⁶⁰*Donum Vitae*, §Intro, I, 1.

⁶¹Talmud, Yevomot 69a states that prior to the 40th day a fetus is "considered to be mere water."

⁶²*ubar yerekh 'imo*, Hullin 58a

this position derives from a biblical incident found in Exodus 21, whereby a man inadvertently strikes a pregnant woman and causes her to miscarry. The Torah stipulates that the death of the fetus does not render the assailant a murderer; rather he must pay monetary compensation for the lost capital value of the fetus. If the pregnant woman were to die, however, the assailant would be liable for murder as conditioned by the ‘eye for an eye’ doctrine. Therefore many Jewish authorities consider a fetus under 40 days to be of lesser status than the mother and, unlike Catholic doctrine, which ascribes the fetus fundamental human rights from the moment of conception, only after a full-term pregnancy or survival of the premature fetus for thirty days does full human status take effect.⁶³

Sources of Guidance

The religious perspective on bioethics offers an invaluable contribution to contemporary moral debates regarding biotechnological advancements by providing insights into human nature, procreation, and family life. By inserting a moral evaluation into the scientific and technological fields, religious bioethics humanizes the face of technology and highlights notions of human dignity, human life, and love. In both Jewish and Roman Catholic ethics, reason and tradition work in tandem to establish a rubric for confronting contemporary innovations in technology as it applies to healthcare and medicine. Though both faiths stem from the foundational text of the Old Testament, Judaism and Catholicism often differ in their interpretations of sacred texts, the priority and authority given to various Holy Scriptures, and how they extrapolate and apply their understanding of these holy texts to modern technology. As

⁶³ This is no way a comprehensive reflection of traditional Jewish views on abortion. Abortion is a much more complex and nuanced issue that is beyond the scope of this paper and the torah quote noted above is intended to focus on the relative value of the fetus verses the mother.

observed by Dr. Seeman, “The discrepancy between dominant Jewish and Christian approaches derives not just from a formal normative dispute, but also from an interpretive stylistic one.”⁶⁴

Catholicism

As the world’s largest and one of the oldest Christian institutions, the Roman Catholic Church has played a significant role in shaping the development of Western civilization and continues to do so today in the social, religious, political, technological, and medical fields throughout Europe and the Americas. Perhaps the primary distinguishing factor that separates Catholicism from other Christian groups is the view of the Pope as the Vicar of Christ on earth. The Catholic Church comprises of a federation of 24 churches, headed by the Pope out of the Vatican, who is considered to be the lineal successor to St. Peter and Jesus’ representative on earth. Within the Catholic Church is a hierarchical structure whereby the Bishop of Rome, or the Pope, holds ecclesiastical jurisdiction over the worldwide Catholic Church, which is composed of the Latin Church and the Eastern Catholic Churches in full communion with the see of Rome. Catholic bishops oversee dioceses and dioceses are divided into individual communities called parishes, which are staffed by priests, deacons, or ministers.

Roman Catholic theology draws its basis from a variety of sources of moral knowledge in attempt to provide ethical guidelines for leading a moral life that are in tandem with the implications of God’s revelation. Included in the Catholic bioethical conversation as it relates to assisted reproductive technology are Scripture, including the Old and New Testaments, magisterial teachings (papal encyclicals), and normative analysis. Catholics maintain that the Holy Spirit aids the church in understanding God’s revelations, and thus the Church’s teachings derive from divine inspiration. According to the Second Vatican Council, only the Pope and

⁶⁴Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." Kin, Gene, Community: Reproductive Technologies among Jewish Israelis. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 346. Print.

clergy can authentically interpret the Scriptures, and their teachings carry the divine essence of Christ.⁶⁵ The Church adheres to a fully developed legal system called Canon Law, a divinely inspired body of laws and regulations rooted in divine natural law. However, unlike in the Jewish tradition, whereby the Jewish legal codes fuel discourse related to assisted reproductive technologies, Canon Law does not directly address issues of bioethics. Instead, when seeking understanding for bioethical dilemmas, Catholic authorities refer to documents such as the Catechism of the Catholic Church and other documents produced by the magisterium.

The magisterium serves as the centralized teaching authority of the Roman Catholic Church. Cases where Scripture is either indecisive or ambiguous, the magisterium, drawing on reason, tradition, and experience, supplement and elucidate God's revelation of moral knowledge. As stipulated in the Catechism of the Catholic Church, "[t]he task of interpreting the Word of God authentically has been entrusted solely to the magisterium of the Church, that is, to the Pope and to the bishops in communion with him."⁶⁶ This paper will rely heavily on five primary magisterial publications that illuminate the Church's official position on several assisted reproductive practices. The texts include: (1) Pope John Paul II's 1995 Encyclical *Evangelium vitae*; (2) The Congregation for the Doctrine of the Faith's 1987 *Instruction on Respect for Human Life in Its Origins and on the Dignity of Procreation (Donum Vitae)*; (3) Pope Paul VI's 1968 Encyclical *Humanae Vitae*; (4) *Catechism of the Catholic Church*; and (5) the Congregation for the Doctrine of Faith's 2008 instruction *Dignitas Personae*. These five magisterial teachings function as vital authoritative contributors to Roman Catholic moral theology, particularly with regard to the Church's position on bioethical issues related to the beginning of life, and thus will be referenced quite frequently throughout this paper. Because

⁶⁵ Padela, Aasim. "Medical Ethics in Religious Traditions: A Study of Judaism, Catholicism, and Islam." *Journal of the Islamic Medical Association of North America* 38 (2006): 106-17. Print.

⁶⁶ *Catechism* 100.

traditional Catholic teaching views scripture, tradition, reason, and magisterial documents as a cohesive unit that work together to reflect the same truth, each of these sources is properly understood in light of the others in order to illuminate and reflect Catholic moral reasoning. As noted in *Donum Vitae*, “The fundamental values connected with the techniques of artificial human procreation are two: the life of the human being called into existence and the specific nature of the transmission of human life in marriage. The moral judgment on such methods of artificial procreation must therefore be formulated in reference to these values.”⁶⁷

Tension between magisterial authority and individual conscience poses great debate among Roman Catholic theologians. Whereas some theologians promote strict obedience to magisterial teachings, arguing that the faithful “are obliged to submit to their bishops’ decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind. This loyal submission of the will and intellect must be given, in a special way, to the authentic teaching authority of the Roman Pontiff,” others argue that alternative factors, such as personal evaluation and conscience, hold merit and should be considered valid sources of moral knowledge.⁶⁸

In spite of this debate, at the core of all acceptable Roman Catholic moral theology, from magisterial teachings to personal scriptural interpretation, is *natural law*. Defined by Thomas Aquinas as “the sharing in the Eternal Law by intelligent creatures,” natural law is inherent in the very nature of man and through the exercise of reason, uphold human dignity and fundamental rights. Particularly when addressing new medical procedures and biotechnologies, the Church maintains that the dignity of the human person must be anchored by natural law as it provides guidelines and a coherent reading to the ethical questions involved. In a 2010 address to the

⁶⁷ *Donum Vitae* §Intro, 4.

⁶⁸ *Lumen Gentium*, n. 25, 379-80 qtd. in Mackler, Aaron. *Introduction to Jewish and Catholic Bioethics: A Comparative Analysis*. 1st. Washington D.C.: Georgetown University Press, 35. 2003. Print.

Pontifical Academy for Life, Pope Benedict XVI emphasized the significance of natural law in light of biotechnological advances:

“[[j]oining bioethics and natural moral law permits the best confirmation of the necessary and unavoidable reminder of the dignity that human life intrinsically possesses from its first instant to its natural end...Of course, human life has its own development and the research horizon for science and bioethics remains open, but it must be reiterated that when dealing with matters which involve human beings, scientists must never think they are dealing with inanimate and manipulable material.”

As beings created in God’s image, fundamental rights are innate to every human, and it is the inherent understanding of natural law that allows people of different backgrounds, cultures, and ethnicities to transcend their differences and unite in acknowledgement of an order impressed in nature by God that calls for universal mutual respect. Furthermore, natural moral law "belongs to the great heritage of human wisdom. Revelation, with its light, has contributed to further purifying and developing it."⁶⁹ In light of this foundational basis, the Church maintains a three-pronged criterion for moral judgment concerning the dignity of the human person: “1) respect for the human person; 2) the human being's ‘primary and fundamental right to life’; and 3) the transcendent aspects of the human person including a human soul and humanity's destiny in communion with God.”⁷⁰ As this paper proceeds to discuss the Church’s position on various ART’s, these foundational points will consistently guide Catholic policy.

Judaism

The oldest of the three Abrahamic faiths, Judaism refers to the religious system laid out by the Hebrew Scriptures of Ancient Israel and centers around the idea of a covenant between God and the ancient Israelites. The primary Jewish text known as the Torah is composed of two parts: the written law, or the Five Books of Moses, and Oral law, oral interpretation of the

⁶⁹ John Paul II, *Address to the Plenary Assembly of the Congregation of the Doctrine of the Faith*, 6 Feb. 2004.

⁷⁰ Alvare, Helen M. "Catholic Teaching and the Law Concerning the New Reproductive Technologies." *Fordham Urban Law Journal* 30.1 (2002): 108. Heinonline. Web. 28 Mar. 2013.

written text that, according to the Orthodox Jewish tradition, was handed down simultaneously from God to Moses. The Torah lays out 613 *mitzvot*, or commandments, which set forth normative practices expected to be fulfilled by members of the Jewish community so that they may lead holy and moral lives in pursuit of their commitment to God.

In traditional Judaism, halakha, or Jewish sacred law, functions as the guideline for living a morally just life. Halakha can be defined as a collective body of religious works largely based on primary Jewish texts, including the Hebrew Scriptures, the Talmud, and recorded Rabbinic commentary that serve as the corpus of Jewish sacred law, custom, and tradition. This extensive compilation of laws addresses a wide variety of issues that govern all aspects of daily life including: dietary rules, dress code, observance of Jewish holidays, and even family purity laws. Furthermore, it contains extensive discussion and responsa among rabbinic scholars that aim to provide definitions for the beginning and end of life.

As a rich religious tradition, composed of thought values, law, and customs of the past and present, Judaism does not adhere to a fixed centralized entity as the Catholic Church does to the magisterium. Rabbi Baruch Brody notes, “Jewish ethics is committed to the legitimacy of a wide variety of values, and it recognizes that which value takes precedence varies from one case to another. In this way, classical Jewish ethics is a form of pluralistic casuistry. This explains why its main texts (including the Talmud and its commentaries, the codes and their commentaries, and the responsa literature) are focused on a consideration of an ever-expanding number of cases, with no attempt made to resolve them by appeal to a few fundamental principles or to some hierarchical structure of values.”⁷¹ Because halakha relies on methods of inductive and deductive reasoning to adjudicate ethical and legal rulings on a case-by-case basis,

⁷¹Brody, Baruch A. "Jewish Reflections on Life and Death Decision Making." *Jewish and Catholic Bioethics: An Ecumenical Dialogue*. Ed. Edmund D. Pellegrino and Alan I. Faden. N.p.: Georgetown University Press, 2000. 17. Print.

Jewish ethical principles and law remain relatively dynamic and flexible. As noted by physician and ethicist Dr. Aasim Padela, “Halakhic reasoning has allowed Jewish law to be dynamic, as it addresses issues on the basis of circumstance and precedent, allowing for enduring applicability. The multiplicity of opinions within Halakha has allowed for flexibility as a questioner may choose to follow different authorities over time or with changing circumstances.”⁷² In Roman Catholic moral theology, on the other hand, “tradition conveys and complements the written Scripture” and magisterium serves as the sole centralized teaching authority charged with “the task of giving an authentic interpretation” and safeguarding “the deposit of faith.”⁷³ As stipulated by the Vatican Council II: “Sacred Tradition and Sacred Scripture...are bound closely together, and communicate one with the other. For both of them, flowing out from the same divine well-spring, come together” and “it is clear, therefore, that, in the supremely wise arrangement of God, sacred Tradition, sacred Scripture and the magisterium of the Church are so connected that one of them cannot stand without the others.”⁷⁴ Rooted in the same source, magisterial teachings, scripture, and tradition reflect a consistent, compatible, and harmonious message.

Whereas natural law serves as the foundation to Church teaching, the Jewish tradition does not adhere to a fixed natural law doctrine. Instead, as a fundamentally legal enterprise, “halakha uses broad moral principles as a means of restoring moral shape to any legal doctrine that seems to be seriously missing the moral mark as a result of its case-based orientation.”⁷⁵ As noted by Sinclair,

“moral principles do not feature either as starting points for halakhic arguments or as norms that compete with or override those derived from legal doctrine. The influence of

⁷²Padela, Aasim. "Medical Ethics in Religious Traditions: A Study of Judaism, Catholicism, and Islam." *Journal of the Islamic Medical Association of North America* 38 (2006): 108. Print.

⁷³ *Catechism*, 85.

⁷⁴ *Ibid.* 95.

⁷⁵ Sinclair, Daniel B. *Jewish Biomedical Law: Legal and Extra-Legal Dimensions*. New York: Oxford University Press, 2003. *Oxford Scholarship*. 257. Web. 10 Apr. 2013.

morality makes itself felt in an indirect and often unarticulated fashion. The relationship between the legal doctrine and the moral dimension is subtle, and often needs to be read between the lines or under the surface.”⁷⁶

Particularly in the context of new assisted reproductive technologies, the Jewish tradition typically employs a case-by-case approach when deciding on the permissibility of a particular technology. Sinclair explains that this casuistic approach,

“helps to avoid the reduction of serious moral issues such as abortion to a superficial debate between holders of competing moral positions, who do not distinguish between the circumstances of different cases. Precisely because it is able to make subtle distinctions between very similar cases, based, *inter alia*, upon the effects of a particular decision upon the parties or on society in general, the *halakhah* is able to retain its moral integrity and provide a principled basis for decision-making in a wide range of circumstances.”⁷⁷

Given that assisted reproductive technologies manipulate and alter the traditional procreative structure, consequently affecting the rudimentary biological basis of all society, the application of an adaptable moral structure within the halakhic framework guides the Jewish tradition in maintaining a balanced and rational approach toward new and unprecedented technologies.

Due to the expansive nature of the Jewish religion and the interplay of multiple values that occurs within the tradition, it is imperative to make clear how this paper interprets Judaism. In effort to provide a coherent normative understanding of Jewish bioethics as it relates to assisted reproductive technologies, this paper will focus primarily on the Modern Orthodox and Conservative interpretation of Jewish religious law. Both the Orthodox and Conservative movements consider halakha to be a divinely inspired binding code of law and emphasize revelation and tradition (as opposed to the Reform movement’s emphasis on universal reason

⁷⁶ *Ibid.*, 255-6.

⁷⁷ *Ibid.*, 256.

and human experience) as the decisive guides for Jewish ethics.⁷⁸ As noted by Orthodox Rabbi J. David Bleich, “[a] person who seeks to find answers [to bioethical problems] within the Jewish tradition can deal with such questions in only one way. He must examine them through the prism of [halakha], for it is in the corpus of Jewish law as elucidated and transmitted from generation to generation that God has made His will known to man.”⁷⁹ For Orthodox and Conservative Jews, halakha serves as a comprehensive guide to all aspects of human life and lays out the path toward the central biblical commandment to “be holy; for I the Lord your God am holy.”⁸⁰

This essay investigates the ways Jewish law and Catholic law inform the practice of specific reproductive technologies. Each community relies on biblically-rooted fundamental principles amplified through different interpretive traditions in order to cast moral judgments. While the Jewish and Catholic faiths share common origins, the prioritization and application of certain fundamental principles toward assisted reproductive technologies differ. In Judaism, three primary values guide the way. First, the commandment to be fruitful and multiply. Second, the mitzvah of loving kindness (*chesed*), and third, family integrity (which includes correct marital relations and appropriate kinship structures). In Catholicism, the core values connected with the techniques of artificial human procreation are twofold: the human dignity of the person called into existence and the appropriateness of the mode in which human life is transmitted.⁸¹

⁷⁸ Mackler, Aaron. *Introduction to Jewish and Catholic Bioethics: A Comparative Analysis*. 1st. Washington D.C.: Georgetown University Press, 2003. 46-7. Print.

⁷⁹ Bleich, J. David. “The A Priori Component of Bioethics,” in *Jewish Bioethics*, ed. Fred Rosner and J. David Bleich. Sanhedrin. New York. 1979. qtd in Mackler, 47.

⁸⁰ Leviticus, 19:2.

⁸¹ *Catechism*, 2393, 2399.

Chapter II: Assisted Reproductive Technologies and Procedures

Conception is based on a complex and intricate series of events that requires each step to work perfectly in order to achieve success. In a normal scenario, pregnancy occurs when an ovum, the egg cell which has been released by the ovary during ovulation, is fertilized by the sperm of the male as it passes through the fallopian tube. Conception takes place when a single sperm traverses the uterus, enters the fallopian tube and ultimately penetrates the ovum. The fertilized egg then undergoes a series of cell divisions and subsequently descends into the uterus and becomes implanted in the uterine wall.⁸²

Approximately 8-12% of people worldwide and 10-15% of people in the United States struggle with infertility, rendering the above mentioned process nearly impossible without the help of medical intervention.⁸³ According to the Centers for Disease Control, infertility is defined as the failure of a couple to become pregnant after having intercourse without contraception for 12 months or more. Additionally, women who are able to get pregnant but cannot carry the pregnancy to term are included in this category. The inability of a couple to conceive may be due to a variety of factors: either from a single cause in the mother or the father or a combination of factors may render a couple childless.

Over the past fifty years, several techniques, technologies, and approaches to overcoming infertility issues have emerged. Ever since 1978, when England's Louise Brown, the world's first "test-tube" baby, was born via in vitro fertilization, technology has advanced astronomically, making it possible for many otherwise infertile couples to reproduce. Before delving into the religious, social, and ethical challenges these practices raise, a brief summary of

⁸²Bleich, J. David. "Test-Tube Babies." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Hoboken: Ktav Publishing House, Inc., 2000. 99. Print.

⁸³Inhorn, Marcia C. "Global Infertility and the Globalization of New Reproductive Technologies: Illustrations from Egypt." *Social Science & Medicine* 56 (2003): 1837-51. Print.

the technologies will prove useful to the subsequent analysis of the ethical implications and moral problems they pose to the Jewish and Catholic systems of laws and ethics.

Artificial Insemination

As the least invasive and least dangerous technique available, artificial insemination is one of the first fertility treatments attempted by couples struggling to conceive.⁸⁴ Artificial insemination can be defined as the introduction of semen into the vagina or cervix of a female by any method other than sexual intercourse. The procedure is used when a male is either sterile, impotent, or has a low sperm count, or when a couple suffers from unexplained infertility.⁸⁵ This paper divides artificial insemination into two categories: homologous insemination or artificial insemination by husband (AIH) and artificial insemination by donor (AID). As indicated by their titles, AIH is a procedure whereby the sperm used for the insemination is taken from the husband. AID, on the other hand, uses sperm from a third party donor.

Of the two types of artificial insemination, homologous artificial insemination poses fewer social, ethical, and religious issues than AID as it involves only the genetic material from the child's natural parents. Though typically not as effective as AID, couples often first try AIH before turning to outside donors. According to Daniel Sinclair, "AIH accounts for a small proportion of artificial insemination cases, and is recommended in situations where the husband suffers from anatomical defects of his sexual organ or from severe psychological impotence. It is also used, although rarely, where the husband has a low sperm count. Occasionally, AIH may be recommended if the husband is scheduled to undergo medical treatment that will render him

⁸⁴Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 48. Print.

⁸⁵"Artificial Insemination." *Encyclopædia Britannica. Encyclopædia Britannica Online Academic Edition*. Encyclopædia Britannica Inc., 2013. Web. 07 Apr. 2013.
<<http://www.britannica.com/EBchecked/topic/37134/artificial-insemination>>.

infertile or is likely do so.”⁸⁶ Heterologous insemination (AID), on the other hand, raises many more legal, moral, and ethical issues, especially for the Jewish and Catholic traditions as it opens up a series of problems regarding legitimacy, parenthood, adultery, inheritance rights, etc. The following chapter will address how both religions have approached and legislated the practice and its moral, religious, legal, and social consequences.

IVF and Gestational Surrogacy

This paper will also analyze Judaism and Catholicism’s positions on in vitro fertilization and gestational surrogacy. In vitro fertilization (IVF) refers to a technique whereby sperm and eggs are fertilized outside the body in a petri dish. One or more fertilized eggs (embryos) may be transferred into the woman’s uterus, where they may implant in the uterine lining and develop. IVF is used to treat many causes of infertility, including: women with blocked, damaged, or missing fallopian tubes, endometriosis and male factor, or other unknown factors.⁸⁷ As with artificial insemination, IVF can take two forms: heterologous IVF and homologous IVF. Homologous IVF involves only the husband’s sperm and the wife’s ova while heterologous IVF uses donor material.

When a couple cannot conceive either because the wife cannot retain a pregnancy or because of unknown factors, they may seek out a third party woman to carry their child. This can be done with six different combinations of gametes: (1) husband and wife; (2) husband’s sperm and donated egg; (3) wife’s egg and donated sperm; (4) donated sperm and donated eggs from a woman other than the wife or the surrogate mother; (5) the surrogate mother’s eggs inseminated by the husband’s sperm; (6) the surrogate mother’s egg inseminated by donated

⁸⁶Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71. Print.

⁸⁷ American Society for Reproductive Medicine. "Assisted Reproductive Technologies: A Guide for Patients." *American Society for Reproductive Medicine*. N.p.: American Society for Reproductive Medicine, 2011. 1-28. Print.

sperm.⁸⁸ For purposes of analyzing surrogacy from the perspectives of Jewish and Catholic law, these six permutations will be divided into two primary categories: traditional (ovum) surrogacy and gestational surrogacy. According to the American Society for Reproductive Medicine, traditional surrogacy can be defined as an arrangement in which a woman is inseminated with the sperm of a man who is not her partner in order to conceive and carry a child to be reared by the biologic (genetic) father and his partner. Though the surrogate is genetically related to the child, she agrees to carry the child to term and thereafter relinquish all parental rights. In the United States, the biologic father and his partner usually must adopt the child after its birth.⁸⁹ Because the surrogate uses her own egg, she is considered the biological and gestational mother of the resulting child⁹⁰ (combinations five and six). The first four combinations fall into the category of gestational surrogacy, whereby the surrogate does not contribute any of her own genetic material, but rather her womb functions as an incubator for the fetus during the nine month gestational period. Gestational surrogacy is typically applied to a situation whereby the wife can produce her own eggs, but has other infertility problems such as: malformed reproductive organs, a medical condition that would become life threatening or dangerous if she were to become pregnant, or a condition that would endanger the fetus.⁹¹ Gestational surrogates thus bear a gestational relationship to the fetus, but holds no genetic connection as in traditional surrogacy cases.

⁸⁸Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 58. Print.

⁸⁹American Society for Reproductive Medicine. "Assisted Reproductive Technologies: A Guide for Patients." *American Society for Reproductive Medicine*. American Society for Reproductive Medicine, 2011. 1-28. Print.

⁹⁰Gugucheva, Magdalena. "Surrogacy in America." *Council for Responsible Genetics* (2010): 1-44. Print.

⁹¹Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 59. Print.

Chapter III: Artificial Insemination

Of the numerous assisted reproductive technologies that exist today, artificial insemination is typically one of the first methods used by couples in their efforts to overcome fertility problems. To consider how a modern day Solomon might approach a scenario involving artificial insemination, let us expand upon the biblical scenario concerning Solomon and the two potential mothers. Suppose these two women decide to conceive children using sperm from the same donor. The first woman is the legal wife of the sperm donor, but due to anatomical defects of the husband's sex organ, the couple cannot conceive naturally and therefore decide to partake in homologous artificial insemination. The second woman, desperately wanting children but married to an impotent man, agrees with her husband to seek out donor sperm from a fertility clinic.

How might a Roman Catholic King Solomon, adhering to the doctrines and pronouncements adjudicated by the magisterium rule on the first couple's decision to undergo AIH? What about the second couple's decision to seek out donor sperm? Would Solomon allow it? Furthermore, how might the legal judgment of halakhically-inspired King Solomon differ from Catholic ruling? What is the legal status of the offsprings of these two couples according to halakha? Would the paternal rights of the biological and social father of couple 1 differ from the rights and status of the father from couple 2?

To address these questions, this chapter will begin with an analysis of Catholic doctrine and its rulings regarding artificial insemination. As we will later see, because Catholic law forbids mechanical methods that either replace or disrupt the natural act of intercourse and procreation between spouses, differentiating between homologous and heterologous insemination is not extraordinarily crucial, as both are forbidden by the Catholic Church. The

paper will then turn to Jewish law's approach to artificial insemination, whereby the distinction between a homologous donor and heterologous donor significantly impacts the halakhic debate. Finally, the chapter will conclude with final remarks hypothesizing how a modern day magisterium-inspired King Solomon might rule in comparison to a halakhically driven judgment.

Catholic Perspective

The Catholic Church has consistently and emphatically expressed its opposition to technology that work as a substitute for the natural course of human reproduction. Beginning with the September 29, 1949 address to the *Fourth International Congress of Catholic Doctors*, at which Pope Pius XII condemned artificial insemination as an immoral act, the Catholic Church has issued a series of doctrines censuring all technological interventions that disrupt or separate the natural partnership between the unitive and procreative components of sexual intercourse within the marital union.⁹² The inherent connection between the unitive and procreative dimensions of marriage guides the Church's approach to dealing with technologies that interrupt the Christian ideal of family life. ARTs such as artificial insemination violate God's design for marriage and the fruits that derive therefrom in that they detract from sanctity of the marital union as understood in the context of natural and divine law, and as a consequence, deny full human dignity to the child conceived.

Central to the Church's firm opposition to unlawful dominion of technology in the reproductive process is that it deprives the child's natural human rights of being brought into the world through the loving union between man and wife. Conception of a child outside of the conjugal union violates the Church's instruction that every child deserves to be conceived through the reciprocal act of self-giving that is intrinsic to marital intercourse. A procession of

⁹² Pope Pius XII teaching (see May, p.g. 65); *Donum Vitae*; *Humanae Vitae*; address by Pope John Paul II: "To my brother bishops from North and Central America and the Carribean assembled in Dallas Texas," (William May, 67)

teachings put forth primarily by Pope Pius XII and Pope John Paul II, and later crystallized in the Church document, *Dignitas Personae*, argue that procedures such as artificial insemination directly detract from the fundamental right to human dignity by denying the child from entering the world as the natural fruit of a loving marital union. According to the Church teaching, a reproductive technology, “cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act but serves to facilitate and help so that the act attains its natural purpose.”⁹³ Only technologies that *assist* or *supplement* the natural process of creating a human life are considered morally acceptable by the Church.⁹⁴ All other reproductive interventions that seek to eliminate or replace the marital act are categorically condemned and absolutely forbidden⁹⁵

Because the Church understands human life to begin at the moment of conception, the process leading up to the point of creation must accord to the natural procreative process. For the child to be considered the “fruit” of the union between man and wife, as stipulated in *Donum Vitae*, there must be a direct, uninterrupted, and causal relationship between the marital act and the beginning of the new human life. As explained by Catholic theologian William E. May, “the marital act...must be the “principal” cause of the conception of the child. It is so because the marital act not only unites husband and wife in an intimate “one-flesh” unity but also directly and personally introduces into the wife’s body the sperm of her husband which then actively seek an ovum in order to fertilize it and cause the conception of the child.”⁹⁶ The Church understands procreation not simply as a function of biology, but rather as the “cooperation of

⁹³ *Donum Vitae* §II, B, no. 6

⁹⁴ *Donum Vitae*, § II, B, 4, no. 7 “whatever legitimate therapies may be available to remedy their infertility,”

⁹⁵ Pope John Paul II, “To my brother bishops from North and Central America and the Caribbean assembled in Dallas, Texas,” in *Reproductive Technologies, Marriage and the Church*. Braintree, MA. The Pope John Center, p. xv.1988.

⁹⁶ May, William E. "New Reproductive Technologies and Catholic Teaching." *Medicine, Health Care, & Ethics: Catholic Voices*. Ed. John F. Morris. Washington D.C.: The Catholic University of America Press, 2007. 79. Print.

man and woman with God through their sexuality and the reception of the gift that God bestows upon them through their sexuality.” The human dignity allotted the child is inextricably linked to and follows directly from the indissoluble and inseparable qualities proper to the marital act.⁹⁷

From the point of view of the Catholic Church, both AIH and AID are intrinsically immoral, regardless of the identity of the sperm donor. Unlike in many lines of Jewish thought, whereby social and legal implications regarding the morality of the procedure and the status of the child depend on the identity of the sperm donor, Catholic law fundamentally rejects the procedure on the grounds that it dissociates the sexual act from the procreative act. Emphasizing this principle of inseparability in a document entitled *In the Allocution to the Second World Congress on Fertility and Human Sterility*, Pope Pius XII, vehemently renounced the practice of artificial insemination, proclaiming that the Church:

“has...rejected the...attitude which pretended to separate in procreation the biological activity from the personal relations of husband and wife. The child is the fruit of the marriage union, when it finds full expression by the placing in action of the functional organs, of the sensible emotions thereto related, and of the spiritual and disinterested love which animates such a union; it is in the unity of this human act that there must be considered the biological condition of procreation. Never is it permitted to separate these different aspects to the point of excluding positively either the intention of procreation or the conjugal relation.”⁹⁸

Both heterologous and homologous insemination violate this fundamental principle as the very nature of the procedure allows technology to substitute for the conjugal act, thereby denying the fundamental right of the offspring to be brought into the world as the fruit of the marital union.

Even more offensive to the delicate bond between man and wife is heterologous artificial insemination as the introduction of third party semen corrupts “the moral relevance of the link

⁹⁷ Asci, Donald P. *The Conjugal Act as a Personal Act: A Study of the Catholic Concept of the Conjugal Act in the Light of Christian Anthropology*. San Francisco: Ignatius Press, 2002. Print.

⁹⁸ *Allocution to the Second World Congress on Fertility and Human Sterility*, Pope Pius XII qtd. in May, William E. "New Reproductive Technologies and Catholic Teaching." *Medicine, Health Care, & Ethics: Catholic Voices*. Ed. John F. Morris. Washington D.C.: The Catholic University of America Press, 2007. 485. Print..

between the meanings of the conjugal act and between the goods of marriage, as well as the unity of the human being and the dignity of his origin, demand that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses.”⁹⁹ In effect, the introduction of donor semen implements a kind of mechanical adultery, whereby it not only separates the unitive and procreative dimensions, but also ruptures the sacred and personal bond between man and wife as intended by God. Introduction of donor sperm corrupts the deeply personal marital commitment in which husband and wife mutually confer exclusive fidelity to one another, which includes procreative powers.

Jewish Perspective

Due to the variety of halakhic interpretations, Judaism offers a much more complex and involved approach toward the permissibility of artificial insemination. Unlike Catholic law, which rejects all forms of the practice on the grounds that it defies foundational principles of human dignity and the inseparability principle of procreation, many voices within the Jewish tradition adopt a more permissive attitude toward using aggressive approaches to fulfill the commandment to be fruitful and multiply.

Because there is a vast and diverse range of rabbinic literature that contributes to the complex debate surrounding the permissibility of artificial insemination, it may be useful to first look at a few sources in the tradition that serve as a foundational basis for some of the halakhic arguments. Remarkably, these sources, written and compiled by scholars as early as the second century CE into the medieval period, a time well before the advent of advanced reproductive technologies, include discussions that address the possibility of conception without the act of sexual intercourse, or conception *sine concubito*. Just as the biblical King Solomon was limited by the medical and social resources of his time, so too were Rabbinic and medieval thinkers

⁹⁹ *Donum Vitae*, § II, B, 4, no. 45.

unaware of the technologies used today in fertility labs and clinics. However, the profound wisdom and intelligent modes of reasonings contributed by these scholars are often invoked in contemporary conversations regarding Jewish arbitration over artificial insemination and other assisted reproductive methods.

The first source that contemplates the possibility of conception *sine concubito* is found in the Talmud. To understand the dilemma being discussed, it must first be noted that the book of Leviticus clearly stipulates that a high priest may only marry a virgin. This 5th century CE Talmudic passage addresses the question whether a high priest may marry a woman who claims to be a virgin despite her pregnant condition:

Ben Zoma was [further] asked: May a high priest marry a maiden who has become pregnant? Do we [in such a case] take into consideration Samuel's statement, for Samuel said, I can have repeated sexual connections without [causing] bleeding; or is perhaps the case of Samuel rare? He replied: the case of Samuel is rare, but we do consider [the possibility] that she may have conceived in a bath [into which a male has discharged semen], and therefore she may marry a high priest...¹⁰⁰.

Here, the Talmud raises the fundamental question of ‘when does a woman cease to be a virgin?’ by framing it in the context of marriage to a high priest. Given that a high priest may only marry a virgin, Talmudic thinkers contemplate whether intercourse with a man is necessary to rid a woman of virgin status or if the very fact that the woman is pregnant, despite having never engaged in sexual intercourse, makes her unfit to marry a priest. Because Ben Zoma found the marriage to the pregnant woman acceptable, many contemporary scholars have extrapolated legal implications from this scenario to justify the use of artificial insemination. Most notably,

¹⁰⁰ Babylonian Talmud Hagigah 14b qtd in Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 127. Print.

they reason Ben Zoma's allowance of the marital union implies that the woman who is carrying the child of an unknown sperm source is not impure or unfit to marry the priest. Virginity, therefore, is contingent upon sexual intercourse, not conception; and adultery is based on forbidden sexual relations, and not the biological act between sperm and egg. Twentieth century Jewish thinkers, such as Rabbi Moshe Feinstein, have referred to Ben Zoma's ruling to support their argument that artificial insemination using donor sperm neither invokes halakhic prohibitions nor leads to the illegitimacy connected with adultery or incest.¹⁰¹

A second source that appears in virtually all rabbinic responsa dealing with artificial insemination is a midrash¹⁰², that discusses the unique conception of 2nd century BCE scribe Joshua Ben Sira.¹⁰³ First cited in Rabbi Jacob Moellin Segal's work *Likutei Maharil*, the Midrashic legend claims that Ben Sira was conceived *sine concubito* by the prophet Jeremiah and his daughter. According to the source, Jeremiah was coerced by his enemies to deposit his semen into a bath, after which the prophet's daughter bathed therein, became impregnated, and subsequently gave birth to Ben Sira. Though dispute regarding the legitimacy of Ben Sira's unusual birth continues to exist among rabbinic scholars, the story, according to Rabbi Dorff, supports three contentions. First, it verifies that conception without sexual intercourse is possible. Second, it provides that, unlike in the case of sexual intercourse, this removed form of conception does not make a child conceived by a father and daughter a *mamzer*, or illegitimate in the eyes of Jewish law. Third, because Ben Sira is considered the son of the Prophet Jeremiah, it follows that the sperm donor is to be considered the legal, as well as the biological, father of the

¹⁰¹Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 48. Print.

¹⁰² Midrash is a Rabbinic story used to explain or interpret ethics and values expressed in biblical texts.

¹⁰³Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 128. Print.

offspring.¹⁰⁴ It must be noted that other halakhic scholars, such as Rabbi David Gans, refute Ben Sira's alleged *sine concubito* conception on the grounds of a lack of evidence, and therefore does not abide by the same legal implications.¹⁰⁵

Another medieval source that discusses artificial insemination is Rabbi Perez ben Elijah of Corbeil. In his work entitled *Haggahot Semak*, the 13th century Rabbi states:

“...a woman may lie on her husband's sheets but should be careful not to lie on sheets upon which another man slept lest she become impregnated from his sperm. Why are we not afraid that she become pregnant from her husband's sperm and the child will be conceived of a niddah (menstruating female)? The answer is that since there is no forbidden intercourse, the child is completely legitimate (literally: kosher) even from the sperm of another just as Ben Sira was legitimate. However, we are concerned about the sperm of another man because the child may eventually marry his [own half] sister.”¹⁰⁶

Despite the dubious nature of this scenario, the Jewish tradition offers yet another source that contemplates the possibility and its implications of insemination without intercourse. Rabbi Perez assumes that the child so conceived is legitimate, even though the sexual union of the biological parents would have violated a family purity law, which forbids any physical contact between a menstruating woman and her husband.¹⁰⁷ Additionally, the source makes no mention of any penalty or prohibition regarding the cohabitation of the woman with her husband after becoming pregnant, even if her husband is not the biological father of the child. In fact, the primary cause of concern has less to do with how the child was conceived, and more on the

¹⁰⁴Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 48-9. Print.

¹⁰⁵Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 128. Print.

¹⁰⁶*Ibid.* p. 127.

¹⁰⁷ *Ibid*

potential for the offspring to later marry and have intercourse with a half-sibling, an act classified as incest and explicitly prohibited in the Bible and Talmud.¹⁰⁸ Notably, Perez makes no indication that, in the absence of sexual intercourse, impregnation from a stranger's semen is considered an act of adultery. As will be presented in the following pages, R. Perez's ruling is cited by many major commentators of the *Shulhan Aruch* and serves as the main supporting source for Rabbinic authorities who maintain that in the absence of sexual intercourse, donor insemination does not render the woman an adulteress.¹⁰⁹

Though these three ancient Jewish sources serve as a starting point for Rabbinic debate surrounding artificial insemination, none of these scenarios leads to a definitive Jewish position regarding permissible practices of insemination. Many scholars who reject these early sources as valid support either for or against heterologous artificial insemination find that they are not applicable to contemporary practice due to the matter of intent. Whereas in the cases described by Rabbis Perez, Segal, and Ben Zoma, the women accidentally and unintentionally became impregnated by the sperm of a third party source, the majority of artificial insemination cases today are a function of a woman or couple purposefully seeking out a physician and donor in an active attempt to become pregnant, and thus the conclusions drawn by these early scholars do not apply. Second, because medical technologies have become so advanced, further blurring the lines of kinship relations, the use of assisted reproductive technologies require a renewed consideration that could not have been fully addressed by Talmudic and medieval Jewish scholars.

Homologous Artificial Insemination (AIH)

¹⁰⁸ *Yevamot* 37b

¹⁰⁹ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 81. Print. For additional sources see footnote 34.

Of the two types of artificial insemination practiced today, homologous artificial insemination poses fewer legal and moral issues for the Jewish tradition. While difference of opinion on the permissibility of artificial insemination does exist in the responsa literature, most *halakhists* permit AIH.¹¹⁰ Unlike Catholic law, which adamantly rejects AIH on the grounds that it artificially separates the unitive and procreative dimensions of the marital union, most Rabbinic authorities in the Jewish tradition generally do not reject the application of aggressive reproductive medical techniques simply because they deviate from the natural order. Instead, because medicine is widely considered and appreciated as a divine aid to God, most Rabbis do not oppose aggressive medical interventions, especially when they do not directly conflict with Jewish law and are used to create or preserve life.¹¹¹ Further, because the ultimate goal of artificial insemination is to bring a new life into the world, AIH is considered by many a tool that aids in God's blessing of fertility. Finally, the practice of AIH avoids legal issues of adultery, legitimacy, inheritance, and licentiousness because the sperm carries the biological material of the husband. As will be all demonstrated later in this chapter, artificial insemination involving donor material poses many more challenges and legal consequences.

Among those who do permit AIH, debate arises over matters of the male's obligation to fulfill the mitzvah *peru orevu*, or the commandment to "be fruitful and multiply." Some Jewish scholars maintain that because sexual intercourse is an integral component to carrying out the commandment, conceiving a child through AIH does not fulfill the obligation.¹¹² The competing view takes the position that despite the absence of sexual intercourse, the conception of a child through the means of AIH does fulfill the biblical injunction of 'be fruitful and multiply.' According to this view, the essence of the obligation stems from the production of offspring, not

¹¹⁰ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71. Print.

¹¹¹ *Rabbinic Assembly*. Aviv Press, n.d. Web. 7 Mar. 2013. <<http://www.rabbinicalassembly.org/>>.

¹¹² Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71. Print.

the method by which it occurs, and therefore the biblical commandment to procreate is, indeed, fulfilled by a husband who partakes in artificial insemination.¹¹³ A middle ground position offered by R. Shlomo Zalman Auerbach states AIH does not fully fulfill the biblical commandment to be fruitful and multiply, but it does achieve the rabbinic obligation to populate the earth. According to Jewish bioethicist Rabbi Daniel Sinclair, “By downgrading the commandment to the rabbinic level, R. Auerbach ensures that AIH is still endowed with religious significance, even though it is not invested with the full normative force of a biblical precept. Thus, according to the majority of *halakhists*, not only is AIH permitted, but also it constitutes the fulfillment of at least one mitzvah.”¹¹⁴

Those in the minority position who oppose AIH claim that the process of artificial insemination violates specific tenets of Jewish law. The biggest issue raised by those in opposition centers around the procurement of semen for insemination without violating the halakhic prohibition on seed destruction.¹¹⁵ Just as the Catholic Church teaches that "Masturbation constitutes a grave moral disorder" and that "both the magisterium of the Church—in the course of a constant tradition—and the moral sense of the faithful have declared without hesitation that masturbation is an intrinsically and seriously disordered act," so too does Judaism forbid the extraction of semen in vain.¹¹⁶ Despite the husband's intent to use the seed for purposes of procreation, those who oppose AIH maintain that any sexual act whereby sperm emission does not travel directly into the female's reproductive tract is considered *hashchatat*

¹¹³ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 73. Print. (RESPONSA MINHAT YITZHAK 1 no. 50; RESPONSA YABIA OMER 2, EVEN HAEZER no. 1; RESPONSA ZIZ ELIEZER 3 no. 27)

¹¹⁴ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71-106. Print.

¹¹⁵ *Ibid*

¹¹⁶ Persona Humana. 29 Dec. 1975. Declaration on Certain Questions Concerning Sexual Ethics Congregation for the Doctrine of the Faith. Vatican web site. The Holy See. 12 May 2005.

<http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc19751229_persona-humana_en.html>.

zera, or seed destruction, and must be avoided.¹¹⁷ In response to this objection, Rabbi Feinstein claims the use of condoms and *coitus interruptus* serve as acceptable methods to collect semen from the husband for the purpose of impregnating his wife. According to Feinstein, both of these methods involve the natural sex act, and therefore do not violate Jewish law. Furthermore, those who permit AIH argue that if the goal of the procedure is to reproduce, it is halakhically irrelevant if there is a break between semen emission and entrance into the female reproductive tract.¹¹⁸

Another argument raised by those in opposition to AIH is the fear that the physician may add foreign semen to that of the husband's in order to increase the likelihood of conception. Not only would this jeopardize the legal status of the child, but also it would open up a new series of issues associated with heterologous insemination, which will be discussed later in this chapter. In response to this objection, general halakhic principle maintains that the fear of such a scenario does not serve as sufficient grounds to outlaw an otherwise halakhically permissible procedure. In efforts to avoid such a situation, observant Jews will attend clinics whereby trusted and trained supervisors oversee the entire procedure to ensure only the husband's semen is used.¹¹⁹

Other issues concerning AIH that are widely debated in the tradition include the insemination of women while she is ritually unclean (*niddah*) and the amount of time necessary for the couple to attempt to conceive naturally before resorting to insemination. Regarding the first issue, the tradition remains fairly split. Whereas Rabbis Feinstein, Yosef, Wolkin, and Auerbach, among others, permit AIH during the wife's period of ritual impurity, many others,

¹¹⁷ Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 125-37. Print.

For more information regarding sex laws and customs according to the Jewish tradition, please see L.M. Epstein, "Wasting Nature," *Sex Laws and Customs in Judaism* (New York, Ktav, 1967) pp. 144-47

¹¹⁸ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 72. Print.

¹¹⁹ *Ibid.*, p. 71.

such as Rabbis Waldenberg, Hadaya, Schwadron, and Tanenbaum strictly forbid it.¹²⁰

Concerning the amount of time the couple must attempt to conceive naturally, the tradition varies, with different Rabbis calling for a waiting period of two, five or ten years or absolute medical proof of infertility.¹²¹

Heterologous Artificial Insemination (AID)

While the majority of rabbinical authorities find no halakchic violations of the practice of artificial insemination when the husband's sperm is used, assuming proper conditions are met, artificial insemination using donor sperm remains much more controversial. Despite commentary by early Rabbinic authorities that non sexual insemination from a third party donor does not render a married woman an adulteress, it is clear that talmudic and medieval understanding of artificial insemination differs from the practice today. Unlike the scenarios described by Rabbis such as Ben Zoma and Perez, artificial insemination in modern times is premeditated, mechanical, and planned. Thus, once artificial insemination became a viable solution to infertility issues during the 20th century, new debate among contemporary rabbinic scholars surrounding AID reemerged.

Perhaps the most significant legal issue brought about by AID is whether or not implantation of sperm from a third party donor constitutes adultery. To address this issue, rabbinic scholars first turn to Hagigah 14b in the Babylonian Talmud, whereby Rabbi Ben Zoma contemplates the permissibility of marriage between a high priest and a pregnant virgin (discussed at the beginning of this chapter). Following the Talmud's logic, which permits the priest to marry the pregnant virgin, many halakchic authorities understand the underlying message to mean the physical act of intercourse, rather than the biological combination of sperm and egg,

¹²⁰Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 133. Print.

¹²¹*Ibid.*, p. 136.

invalidates the woman as a suitable wife for the high priest. Thus, those who permit heterologous insemination turn to Ben Zoma's case as support for their claim that sexual intercourse alone, not impregnation, serves as the determinant in sexual offenses such as adultery and incest. Similarly, the warning to a woman to not lie on the sheet of another man, as discussed by Rabbi Perez Ben Elijah, reiterates that a woman who accidentally becomes pregnant from lying on the sheet of another man is not considered an adulteress because she did not engage in sexual relations with another man. Thus, according to halakhic scholars who allow AID, a couple seeking to undergo AID in a fertility clinic does not violate halakha because the woman is not participating in an illicit sexual act. Many of the commentators on the *Shulhan Aruch*, the Code of Jewish Law, use both Ben Zoma and R. Perez's rulings to justify the position that as long as sexual intercourse does not occur, the insemination of a married woman with sperm from a third party donor does not constitute adultery.

Two prominent 20th century authorities who support AID are Rabbi Ben Zion Uziel and Rabbi Moses Feinstein. Using R. Perez's line of reasoning as a foundation to allow artificial insemination, both authorities found that without an act of sexual intercourse, a married woman who has been inseminated with another man's semen is not considered an adulteress. In a 1959 responsum entitled *Concerning the law where a woman has been inseminated as practiced nowadays by the doctors*, Rabbi Feinstein declared his support for an infertile couple to undergo AID, arguing that it is the physical illicit act of sexual intercourse between a married woman and a man who is not her husband that constitutes adultery, not the biological act of the sperm and egg that are thereby joined in conception.¹²² Other authorities take a similar position to

¹²² Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 87. Print. See footnote 37

Feinstein, permitting heterologous artificial insemination with the condition that no sexual contact occurs between the woman and the sperm donor.¹²³

On the other side of the debate, perhaps the most vocal protagonist of the 20th century Rabbis was Rabbi Joel Teitelbaum, also known as Divrei Yoel. Though both Feinstein and Teitelbaum agree paternity is established by the genetic lineage, Teitelbaum contends heterologous artificial insemination does constitute adultery. To support his claim, the Divrei Yoel cites Rabbi Moses ben Nachman (Nachmanides), a 13th century commentator on the Torah and the Talmud. In his interpretation of the biblical verse, “[o]ne may not have intercourse with one’s neighbor’s wife for seed [or sperm]”, Nachmanides questions the redundancy of the final two words.¹²⁴ Ultimately he reasons that the inclusion of the last two words “for sperm” serves to highlight one reason for the prohibition of adultery - that society will not know from whom the child is descended, thereby raising the issue of lineage uncertainty.¹²⁵ Using Nachmanides’ commentary as a foundation, Teitelbaum reasons that because lineage confusion is an inherent offense of adultery, donor insemination, too, is biblically forbidden as the identity of the biological father is typically unknown.¹²⁶ Even in the absence of sexual intercourse, AID is prohibited because the genetic combination of two people who are forbidden to marry yields illegitimacy and categorized as an act of adultery.¹²⁷ Teitelbaum dismisses Rabbi Feinstein’s argument derived from the reasoning of Rabbi Perez ben Elijah, arguing that in the case of the woman becoming impregnated by lying on the sheets, the pregnancy was unintended and accidental, whereas artificial insemination is an intentional action involving the woman, the

¹²³Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 129-30. Print.

¹²⁴ Leviticus 18:20.

¹²⁵Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 50. Print.

¹²⁶*Ibid.*

¹²⁷Broyde, Michael J. *Pre-Implantation Genetic Diagnosis, Stem Cells and Jewish Law*, 38(1) *Tradition: A Journal of Jewish Thought*. 50. 2004.

donor, and the physician, and therefore is considered a prohibited act.¹²⁸ Similarly, Rabbi Waldenberg, another 20th century Rabbinic authority on Jewish medical ethics, uses Nachmanides' commentary as grounds to argue the very act of injecting a donor's semen into a married woman's womb is the legal equivalent to intercourse, and therefore is considered a "great abomination" and constitutes adultery.¹²⁹ Further, those who consider AID a prohibited act, such as Rabbis Judah Leib Zirelson, Abraham Lurie, and Ovadiah Hadaya argue that because AID is either adultery or akin to adultery, it may constitute legitimate grounds for a husband to divorce his impregnated wife.¹³⁰

A second major issue that arises in the halakhic debate surrounding AID concerns the status of the offspring. The tradition remains fairly divided over whether or not the product of heterologous insemination is considered a *mamzer*, or illegitimate from the perspective of Jewish law. Those who consider AID as adultery or akin to adultery undoubtedly regard an AID offspring to be a *mamzer* as he or she would be the product of a forbidden union. Others, such as Rabbi Waldenberg, designate a partial illegitimate status, deeming the offspring a *safek mamzer*, or questionable/possible *mamzer*. Finally, another group of halakhic scholars, including Rabbi Feinstein, find no issue of *mamzerut* in AID. As a precautionary rule to safeguard against the potential for incest between half siblings, which forms the basis for R. Perez's strict warning for a woman to not lie on the sheets of another man, many Rabbis will only permit heterologous insemination from non-Jewish donors. Because Jewish law does not recognize family lineage of non-Jews through the patrilineal line, Feinstein reasoned that AID using sperm from a non-

¹²⁸Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 130. Print.

¹²⁹For more discussion on this topic, see Broyde, footnote 37; Dorff, 50, footnote 40; Sinclair, 92 footnote 81.

¹³⁰Rosner, Fred. "Artificial Insemination in Jewish Law." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Augmented ed. Hoboken: Ktav Publishing House, Inc., 2000. 130. Print.

Jewish donor eliminates the potential for incest.¹³¹ As explained by Sinclair, “Jewish children fathered by a non-Jew share no legally significant relationship with each other on the paternal side, and are free to marry each other without any fear of transgressing the prohibition on incest.”¹³²

Even though many rabbinic authorities agree with R. Feinstein’s reasoning that AID does not directly violate technical stipulations of *halakha*, many take issue with the practice of heterologous insemination on moral grounds.¹³³ Rabbi Mordecai Jacob Breisch, for example, assumes the position that AID does not constitute an act of adultery nor does it technically violate biblical laws. However, Breisch asserts, “from the point of view of our religion these ugly and disgusting things should not be done, for they are similar to the deeds of the land of Canaan and its abominations.”¹³⁴ Whereas Feinstein appeals to legal and technical rationale, marshaling objections which have been set forth with regard to artificial insemination and proving they do not apply to situations in which the donor is a non-Jew, Breisch departs from a purely legalistic approach and instead appeals to a moral standard that, arguably, transcends legal technicalities. Breisch fears that allowing for heterologous insemination will pave the way for a slippery slope of immoral procedures and treatments.

A third position, evinced by Rabbi Immanuel Jakobovits, engenders a naturalist mode of thinking that resembles the Catholic Church’s inseparability doctrine, which affirms the inseparable connection between the unitive and procreative dimensions that form the conjugal act. Jakobovits argues that although artificial insemination does not technically violate *halakha*,

¹³¹Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 82. Print., For more sources, see footnote 38.

¹³² *Ibid.*

¹³³ *Ibid.*, p. 91. See footnote 74.

¹³⁴Broyde, Michael J. *Pre-Implantation Genetic Diagnosis, Stem Cells and Jewish Law*, 38(1) *Tradition: A Journal of Jewish Thought*, 56 .2004. See footnote 21.

it should be prohibited on moral grounds. As reported by Sinclair, “according to R. Jakobovits, this moral opposition may be explained by the fact that the use of artificial reproductive techniques turns childbearing into a ‘mechanical’ act, bereft of ‘those mystical and intimately human qualities that make man a partner with God in the creative propagation of the race.’”¹³⁵ Just as the Catholic Church rejects invasive assisted reproductive approaches because the child is “not an object to which one has a right, nor can he be considered as an object of ownership: rather, a child is a gift, ‘the supreme gift’ and the most gratuitous gift of marriage,” so too do Jakobovits and other Rabbinic authorities express moral and ideological opposition to the procedure.¹³⁶ Voicing his objections to AID and its potential for dire social, familial, and moral consequences Jakobovits asserts, “altogether, the generation of children would become arbitrary and mechanical, robbed of those mystic and intimately human qualities which make man a partner with God in the creative propagation of the race.”¹³⁷ According to Jakobovits and other halakhists who share his opinion, not only does AID threaten the foundational structure of the family unit, but also may corrupt the holy and special nature of procreation.

Conclusion

The doctrines, commentary, and scholarly analysis used in this chapter represent only a small survey of the multitudes of Catholic and Jewish sources that have contributed to the conversation regarding the moral, ethical, legal, social, and religious implications brought about by the use of artificial insemination. However, from these few authoritative sources, several general observations about each faith’s stance on the practice can be derived. Jewish and Catholic understandings of fundamental value concepts of human dignity, the purpose of the

¹³⁵ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 76. Print. See footnote 20, Immanuel Jakobovits, *Jewish Medical Ethics* 248-49 (1975).

¹³⁶ *Donum Vitae*, § II, B, 8, no. 57-8.

¹³⁷ Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 81. Print. See *Jakobovits*, footnote 35.

marital union and family structure, and human stewardship mold and shape the different ways each religion approaches artificial insemination, and as a result illuminate why a theoretical modern day Solomon may or may not permit the practice.

King Solomon ruling strictly from the perspective of the Roman Catholic Church would prohibit both couples from seeking out artificial insemination. Any technology that attempts to replace or substitute for the sacred marital act of human procreation clashes with Catholic understanding of human dignity and the sanctity of marriage, which are rooted in natural and divine law. More than likely, King Solomon would turn to *Donum Vitae*, which expresses the seminal values that underly Magisterial ruling on ART:

“The human person must be accepted in his parents’ act of union and love; the generation of a child must therefore be the fruit of that mutual giving which is realized in the conjugal act wherein the spouses cooperate as servants and not as masters in the work of the Creator who is love.”¹³⁸

As an invasive procedure that separates the unitive from the procreative dimension of the marital union, artificial insemination, therefore, strikes at the moral, ideological, ethical, and religious tenets of Catholic teaching.

Based on the teachings of the magisterium, King Solomon’s judgments toward both couples would be nearly equivalent. Unlike in the Jewish legal tradition, whereby the distinction between AIH and AID often impact whether or not artificial insemination is permitted, the Catholic faith maintains strict opposition to all forms of artificial fertilization as they defy the inseparability principle and deprive the child from being brought into the world as a result of the natural process of procreation. According to *Donum Vitae*, heterologous artificial insemination violates the unity of marriage, the dignity of the spouses, and the right of the offspring to be brought into the world as a gift resulting from the loving marital act, and thus is strictly

¹³⁸ *Donum Vitae*, § II, B,4, no. 7, qtd. in May, p.g. 79.

prohibited. Similarly, homologous artificial insemination severs the bond between the unitive and procreative dimensions of the marital union, thereby violating the inseparability doctrine: “artificial fertilization, in seeking a procreation which is not the fruit of a specific act of conjugal union, objectively effects...a separation between the goods and the meanings of marriage.”¹³⁹

A ruling put forth by a halakhically rooted Solomon would certainly entail a much longer and complex statement due to the multidimensional nature of the Jewish interpretive tradition. Unlike his Roman Catholic counterpart, who would definitively rule in opposition to both couple’s efforts to undergo artificial insemination, a halakhically inspired Solomon may not reach such a conclusive decision. Instead, King Solomon the *posek* could potentially choose from a multitude of arguments and opinions that would lead to a variety of different outcomes despite all being in accordance with the tradition.

General trends and principles regarding the Jewish tradition’s approach to ARTs can be derived from halakhic debate; however, a more accurate and acceptable position depends on the specific nature of the case as well as the background and ideology of the particular ruling authority. Embedded in the opinions of all authorities mentioned in this chapter is an appreciation of the moral and ethical implications that result from the fertility treatment. Inherent in the permissive positions is the understanding that the accepted procedures do not deprive the offspring of moral or spiritual merit. Instead, the main thrust driving pro-artificial insemination opinions stems from the ultimate goal of making it possible for the father fulfill the obligation(s) to be fruitful and multiply, or at the very least, to populate the earth and continue the line of the Jewish people. As emphasized by Sinclair, “the halakhic responses to moral issues occur in the interstices of the legal discussion,” and the direct result of a successful

¹³⁹ *Donum Vitae*, § II, B, 4, no. 40.

treatment leads to the possibility of building a family.¹⁴⁰ While the arguments and opinions by wise Talmudic, medieval, and contemporary scholars would certainly guide a modern day King Solomon's decisions, ultimately his rulings on issues pertaining artificial insemination would vary on a case-by-case basis. Because artificial insemination is neither categorically accepted nor prohibited according to halakha, each individual scenario warrants legal review and moral analysis.

Regarding the first couple's plea to partake in homologous insemination, a King Solomon who sides with the majority of halakhic opinion would most likely allow the couple to proceed with the homologous insemination process. As explained above, especially if all other permissible methods for conception have been exhausted and it has been deemed medically impossible to conceive any other way, artificial insemination using the husband's sperm would, by the majority of halakhic authorities, be allowed. Because opinion among those in the majority camp varies in degree of leniency regarding specifics such as: the amount of time necessary a couple must attempt to become pregnant before resorting to AIH, when during her cycle may the woman be inseminated, the way in which sperm is procured, and the proper amount of supervision over the procedure by the physician, Solomon would be left to his own discretion and wisdom to put forth an informed decision.

Furthermore, assuming King Solomon permits the first couple to proceed with insemination process and the procedure leads to the birth of a healthy child, he would then be faced with producing ancillary legal decisions, including: the legal status of the child and the extent of the child's relationship to his father. He may also be faced with the question of whether or not the father has fulfilled the obligation of *p'ru v'revu*.

¹⁴⁰Sinclair, Daniel B. *Jewish Biomedical Law: Legal and Extra-Legal Dimensions*. New York: Oxford University Press, 2003. *Oxford Scholarship*. 69. 10 Apr. 2013. Web.

However, should Solomon decide to side with a minority view, perhaps following the line of thought by many Jewish mystic thinkers, such as R. Ovadyah Hadaya, he would reject the first couple's request to proceed with homologous artificial insemination on the grounds that it would breach the halakhic prohibition on seed destruction.¹⁴¹ Additionally, he may forbid the practice out of fear that the husband's sperm might be replaced or mixed with the sperm of another, thereby opening up the possibility for a series of dire consequences that are associated with donor insemination.

In addressing the second couple who wish to use the sperm from a third party donor, Solomon faces a new set of challenges and concerns regarding adultery, illegitimacy, and potential incest. Should he follow a strict approach, he would prohibit heterologous insemination altogether. Adopting the positions of either the Divrei Yoel or Rabbi Waldenberg, Solomon would vehemently reject AID, equating the procedure to adultery and labeling the resulting offspring illegitimate. Like Waldenberg, he may argue: "The very essence of this matter-namely, placing in the womb of a married woman the seed of another man-is a great abomination of the tent of Jacob, and there is no greater profanation of the family than this in the dwelling place of Israel. This destroys all the sublime concepts of purity and holiness of Jewish family life, for which our people has been so noted since it became a nation."¹⁴² Not only would engaging in AID be considered an act of adultery, but also it would render the offspring illegitimate and mar the integrity of the Jewish family.

At the same time, he may decide to adopt Rabbi Breish's opinion, claiming that although heterologous artificial insemination may not directly violate halakha, permitting these morally questionable procedures may set a dangerous precedent for future immoral procedures.

¹⁴¹ Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71. Print.

¹⁴² Dorff, Elliot N. *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*. Philadelphia: Jewish Publication Society, 2003. 67-8. Print. See footnote 5.

Furthermore, he may reject the couple's request for donor insemination following a position similar to the natural law based rulings by his Christian counterparts. Once again, Jewish thinkers like Rabbi Immanuel Jakobovits agree that artificial insemination technically does not violate halakha, but still reject both forms of the practice on the grounds that the process is too mechanical, thereby commodifying the child and devaluing the sanctity of the marital union.

On the other hand, King Solomon may side with great Rabbinic authorities such as Rabbi David Halevi, Maimonides, and contemporary bioethics scholar, Rabbi Dorff, and find no marital or halakic violation with heterologous insemination. From a purely legal standpoint, the Talmud, Maimonides, and the majority of contemporary Rabbinic authorities categorize adultery as those acts whereby the penis of the man enters the vaginal cavity of the woman.¹⁴³ Based on this definition, AID does not legally constitute adultery and the child produced therefrom is not considered the result of an illicit union, and therefore will not be classified as a *mamzer*. In fact, according to Rabbi Dorff, "Adultery is repugnant primarily because it violates the trust between husband and wife that must be the foundation of their relationship....In standard cases of artificial insemination by a donor, however, the husband not only knows about the insemination but deeply wants it so that he and his wife can have children. Contrary to Rabbi Waldenberg, then, thinkers like Dorff view artificial insemination by a donor not as an 'abomination' or 'profanation' that destroys all Jewish concepts of holiness and purity but rather as a morally sound tool to have children, "an undisputed good in marital relationships for the Jewish tradition- in a context of mutual openness and trust."¹⁴⁴ Furthermore, among those who allow AID, most err on the cautious side and allow only non-Jewish sperm donors in order to avoid any possibility of second generation incest. Should King Solomon allow AID, he would most likely appreciate

¹⁴³*Ibid.*, 68. See footnote 9.

¹⁴⁴*Ibid.*, 68.

the couple's courageous efforts to bring new life into the world and allow the couple to proceed with artificial insemination from a non-Jewish donor.

Chapter IV: In Vitro Fertilization

Another reproductive technology that gives rise to a host of ethical, social, theological, and moral issues is in vitro fertilization. Unlike artificial insemination, whereby conception occurs inside the woman's reproductive organs, IVF shifts the conception process completely outside of the womb. This highly aggressive procedure encompasses human intervention throughout all stages of gestation: from the indirect fertilization of the embryo in a test tube to the transfer of the embryo into the womb to the growth and development of the offspring.

The introduction of IVF to the corpus of ART has turned nearly unimaginable goals of fertility and procreation into reality: women with viable eggs who suffer from a wide range of anatomical or ovulatory issues and men with low sperm count can now reproduce. With the advent of IVF, no longer do fertility-challenged couples laugh in disbelief as did the matriarch Sarah upon learning they will become parents to their genetically related offspring. Instead, these women may choose in vitro fertilization, whereby sperm of their husband or a donor is combined with her genetic material and fertilized in a petri dish. For the woman who is capable of carrying a child to term, the fertilized embryo will then be transferred back into her uterus. For those women who cannot carry a child, they may opt for gestational surrogacy, whereby the egg of the intended mother is fertilized in vitro with the sperm of the intended father and then implanted into the uterus of a surrogate. In this arrangement the surrogate mother bears no genetic relation to the offspring. Instead, her womb acts as a temporary host for the fetus to grow and develop until birth.

Though techniques such as IVF opens many doors for infertile couples, both the Jewish and Catholic traditions refuse to sit idly by as these new technologies challenge and reshape traditional family roles, kinship relations, and ultimately societal and religious structures. As

described by anthropologist Carol Delaney, “the meaning of father and mother, paternity and maternity emerge relative to a theory of procreation. In this theory, the male role is construed as the creative one: he is the one who ‘begets’ and by means of his ‘seed’ imparts the life-giving essence that defines a child. The female role is to nurture the seed-child implanted in her and to give birth.”¹⁴⁵ Not only do technologies such as artificial insemination, IVF, and gestational surrogacy redefine foundational understanding of gender roles and kinship relations within the family unit, but on a broader level, they represent a departure from what Delaney calls a “monogenetic theory,” or the principle that creation comes from only one source. These new definitions of parenthood challenge the moral and ethical tenets of Judaism, Catholicism, and arguably every other religion because they contemplate relationships that did not exist until recently.

This chapter will thus begin with a brief discussion of IVF and provide a general survey of some of the accepting and opposing perspectives from both the Catholic and Jewish religions. It will then attempt to evaluate how authorities within each faith struggle with the practice of IVF, specifically as it applies to gestational surrogacy. Discussion of how theologians and scholars of each tradition treat scenarios involving IVF applications will spawn a deeper appreciation of the different ways Judaism and Catholicism understand values of human dignity, the sacredness of the marital union, the role of the family unit, and human stewardship. Furthermore, it will shed light on the analytical discrepancies between “an open-ended narrative analysis favored by many Christian ethical writers” and the Jewish tradition’s legalistic focus on “discrete and bounded legal prohibitions that constitute a negative limit for human behavior.”¹⁴⁶

¹⁴⁵Delaney, Carol L. *Abraham on Trial*. Princeton: Princeton University Press, 2000.18. Print.

¹⁴⁶Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 349. Print.

Catholic Perspective

To begin the analysis of the Church's position on IVF, it deserves repeating that the magisterium emphatically maintains "[h]uman life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person - among which is the inviolable right of every innocent being to life."¹⁴⁷ This fundamental principle forms the backbone to any Roman Catholic-based discussion concerning ART, and shepherds the Church's stance on IVF and many of the ethical and moral implications, including the practice of cryopreservation, the status of non-transferred embryos, masturbation for the procurement of sperm, embryo experimentation, and gestational surrogacy.¹⁴⁸ While it has already been established that the magisterium firmly opposes any technology that detracts from human dignity and violates the inseparability principle of marriage, specifically in its rejection of artificial insemination, the Church treats IVF and IVF-related procedures as exceptionally offensive as it corrupts the natural procreative structure and unequivocally immoral due to the treatment and blatant disrespect toward the dignity of the unused embryos.

As has already been suggested, the Catholic Church identifies several fundamental problems with IVF. The primary doctrine that addresses the Church's position on in vitro fertilization is *Donum Vitae*. Repeatedly emphasized in this document is the message that offspring should be considered a gift that results from the marital union; not a right or necessity afforded to the couple at the expense of the child's dignity. According to *Donum Vitae*, "[t]he one conceived must be the fruit of his parents' love. He cannot be desired or conceived as the

¹⁴⁷ *Catechism* 2270.

¹⁴⁸ Cryopreservation is the preservation of cells, tissues, organs, or embryos by freezing. Bundren, Mary Rodgers. "Influence of Catholicism, Islam and Judaism on the Assisted Reproductive Technologies (ART) Bioethical and Legal Debate: A Comparative Survey of ART in Italy, Egypt and Israel." *University of Detroit Mercy Law Review* 84.5. 724. 2007. Web.

product of an intervention of medical and biological techniques; that would be equivalent to reducing him to an object of scientific technology.” This artificial and technical nature of the in vitro process severs the filial connection between child and parent. As observed by Dr. Seeman, “‘rupture’ is the fundamental theme around which this whole Catholic critique is organized: rupture between the child and its embodied connection to its heritage, and rupture between the body and personhood.”¹⁴⁹ Any technology that deprives a child of his fundamental right to be brought into the world as the result of mutual self-giving between man and wife denies him full human dignity, and thus must be principally prohibited by the Catholic Church.

Additionally, the Church condemns IVF as an improper encroachment upon God’s procreative dominion and a breach of the sacredness of human sexuality and the sanctity of the marital union. Drawing from the biblical motifs of God’s omnipotence, omniscience, and sovereignty introduced in the creation story, the Catholic tradition vehemently opposes interventions that aim to encroach upon or threaten the divine plan. According to Elio Sgreccia, president emeritus of the Pontifical Academy for Life, IVF represents the attempt to “dominate the procedures of human procreation...Artificial procreation presents itself as a severing of the link of obedience between procreators and creator; it implies the refusal of God’s transcendent design” and represents “man’s domination over man, which is contrary to respect for life as God’s gift and a transcendent value...Only if conception is the fruit of human love and not of deterministic technique, will the human being enter history supported by love and free from biotechnological influence.” Here, Sgreccia reflects the magisterium’s rejection of IVF as wrongful human interjection into God’s domain. According to the Church, by facilitating insemination, IVF, and other techniques not only are scientists and physicians altering the natural

¹⁴⁹Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 347. Print.

course of procreation, but also they are claiming power to choose which embryos will go on to be implanted and which ones will be left to freeze, be discarded, or endure further scientific experimentation. As explained by *Donum Vitae*, when in vitro embryos are selected for implantation, “the researcher usurps the place of God; and, even though he may be unaware of this, he sets himself as the master of the destiny of others inasmuch as he arbitrarily chooses whom he will allow to live and whom he will send to death.”¹⁵⁰

An additional major offense committed by practitioners of IVF is mistreatment of the unused fertilized eggs. As mentioned above, to increase the likelihood of a successful pregnancy, physicians will extract and fertilize multiple eggs during the preliminary stage, invariably causing the formation of several embryos. Physicians will then identify the embryos that show the greatest promise of growing to term and implant those select few into the womb. The others are simply discarded or used for experiments, thereby violating the Church’s firm opposition to “the voluntary exposure to death of embryos.” The belief that embryos created from in vitro fertilization deserve the same right to life as newborns and adults reinforce the Church’s absolute opposition toward IVF. As noted by Sgreccia, “[w]e must make it very clear that the discrimination between implanted embryos and embryos prior to implantation is a theory without any grounds, without any justification.” Finding no distinction in value between a fertilized egg outside the womb and a fertilized egg in vivo, the Church considers the destruction of embryos in vitro analogous to abortion. Furthermore, *Donum Vitae* clearly stipulates that the alternative solution of freezing the embryos (cryopreservation) is “incompatible with the respect owed to human embryos; it presupposes their production in vitro; it exposes them to the serious risk of death or physical harm, since a high percentage does not survive the process of freezing and thawing; it deprives them at least temporarily of maternal gestation; it places them in a

¹⁵⁰ *Donum Vitae* §I, 5.

situation in which they are susceptible to further offense and manipulation. The majority of embryos that are not used remain ‘orphans.’”¹⁵¹ Not only does the Church take issue with the inhumane destruction of the superfluous embryos, but also it finds efforts to preserve the unwanted eggs, such as cryopreservation, to be an inadequate effort completely lacking respect toward the dignity of the living embryo.

Just as the Church does not distinguish between homologous and heterologous artificial insemination because they both violate core Catholic values, so too does the Church prohibit all forms of IVF. Alluding to *Donum Vitae*, the 2009 Revision of the *Ethical and Religious Directives for Catholic Health Care Services* put forth by the National Conference of Catholic Bishops reaffirms the Church’s objection to both homologous and heterologous cases:

“Heterologous fertilization (that is, any technique used to achieve conception by the use of gametes coming from at least one donor other than the spouses) is prohibited because it is contrary to the covenant of marriage, the unity of the spouses, and the dignity proper to parents and the child.” Similarly, “[h]omologous artificial fertilization (that is, any technique used to achieve conception using the gametes of the two spouses joined in marriage) is prohibited when it separates procreation from the marital act in its unitive significance (e.g., any technique used to achieve extracorporeal conception).”¹⁵² According to the traditional Catholic line of thinking, IVF is intrinsically wrong as it produces a catastrophic domino effect on society, first corrupting and distorting the kinship bonds within individual nuclear families, and ultimately threatening the makeup and structure of the community at large. According to *Donum Vitae*, “Such damage to the personal relationships within the family has repercussions on civil society: what threatens the unity and stability of the family is a cause of dissension, disorder and injustice in the whole

¹⁵¹ *Dignitas Personae* II, no.18.

¹⁵² *Ethical and Religious Directives for Catholic Hospitals*. Catholic Hospital Association, St.Louis, foreword, page iv. 1949.

of society.”¹⁵³ This fear of the potential slippery slope into reproductive chaos is further reinforced by Cardinal Joseph Bernadin: “reproductive technology may be tampering with something so fundamentally human that we are endangering the quality of future life.” The practice of IVF could lead to dangerous future and “make possible an attitude which would encourage a couple genetically planning a ‘perfect’ child to resist or reject anything less than their ideal.”¹⁵⁴ Beyond the Church’s moral and ideological objections to the immediate offenses associated with IVF, Catholic discourse also expresses a greater fear of a disastrous and corrupt future whereby human dignity is replaced with gene discrimination, designer babies, and ultimately a super race.

Despite the Church’s adamant opposition to IVF, in recent years a small number of moderate Catholic theologians have begun to express varying degrees of support for in vitro fertilization. Theologians of this camp find the case of homologous in vitro insemination/fertilization particularly appealing as they consider the process to be an *extension* rather than a *substitution* for marital intercourse. Richard A. McCormick, a Catholic moral theologian, espouses this pro homologous artificial fertilization view in an article entitled *Reproductive Technologies: Where are We Headed*, whereby he argues that *Donum Vitae* establishes a false opposition in its attitude toward medical intervention. He asserts, “being a product of a medical intervention is not opposed to ‘being the fruit of his parents’ love.’ If experience is our guide-and which it is not in the *Donum Vitae* document - medical interventions to overcome sterility between husband and wife are precisely concrete manifestations of their love.”¹⁵⁵ According to McCormick, IVF can in fact contribute to the unitive component of

¹⁵³ *Donum Vitae* §II, A, no. 37.

¹⁵⁴ Bernadin, Joseph. “Science and the Creation of Life,” *Origins* 17 (1987): 24-25, qtd in Mackler 162.

¹⁵⁵ McCormick, *Reproductive Technologies: Where are We Headed?*, *Loyola Law Review*, Vol. 45, Issue 2. p. 284. 1999.

marriage by aiding the couple's marital love to develop into cherished offspring. Furthermore, John Mahoney, another Catholic theologian who supports the practice of homologous IVF, argues that IVF can be a couple's "expression of deep mutual love and of a shared longing to give each other a child as the fruit of their married life and love...And if science can now bring to birth this living expression of the love between husband and wife which would otherwise simply not exist, this too, it would appear, must be seen as part of the Creator's loving plan for all his children."¹⁵⁶ While theologians such as McCormick and Mahoney agree with the Church's conviction regarding the inseparable nature of the unitive and procreative aspects of the conjugal union, they find the magisterium's stringent interpretation of the inseparability principle unfairly excludes well-intentioned deserving couples from reproducing simply because technology is involved. According to these moderate Catholic thinkers, the use of IVF and other similar technologies should be reconsidered as an aid, not an inhibitor, toward achieving the fruits of a firmly rooted marital love.

Jewish Perspective

Just as the Jewish tradition expresses a range of opinion regarding the permissibility of artificial insemination, so too do opinions concerning IVF span a broad and diverse spectrum. The majority of Jewish authorities approve the use of certain IVF techniques on the condition that proper and halakhically consistent qualifications are met.¹⁵⁷ A minority group within the tradition adopt a similar position to the Catholic Church and reject IVF altogether. What will be made clear is that the Jewish scholars who prohibit IVF typically renounce such technologies for reasons different than those of the Catholic Church. As delineated by Bleich,

¹⁵⁶ Mahoney, John. *Bioethics and Belief: Religion and Medicine in Dialogue*. Sheed and Ward. London. 1984. 15-17. qtd in Macker, 166.

¹⁵⁷ Breitowitz, Yitzchok. "The Preembryo in Halakha." *Jewish Law Articles. Jewish Law Blog*. Web. 2 Feb. 2013. <<http://www.jlaw.com/Articles/preemb.html>>. see footnote 8.

“in vitro fertilization has been condemned by some Catholic theologians on the grounds that such interference is not morally acceptable because it is a violation of natural law. This is precisely the same consideration which forms the basis of the Church’s opposition to contraception and artificial insemination. This argument is, however, alien to Judaism.”¹⁵⁸

Halakhic prohibitionists oppose IVF not necessarily because the process strays from the natural act of procreation, but rather because, in their opinions, some aspect of the procedure violates Jewish law.

IVF raises several of the same halakhic problems and concerns that have already been addressed in the chapter on artificial insemination. As has already been established, the Jewish tradition adamantly forbids the use of sperm from a Jewish donor due to concerns of adultery and second generation incest. However, the tradition remains divided over the use of donor sperm from a gentile. Because reasons for general opposition to third party sperm donors have already been discussed in the context of artificial insemination, the remainder of this chapter will refer only to IVF using the husband’s sperm.

The first major issue requires the tradition to answer whether or not semen procurement designed to promote procreation though the use of IVF is considered destruction of the seed.¹⁵⁹ As previously mentioned in Chapter 3, halakhic scholars differ over permissible ways to extract and collect semen. In summarizing the breadth of responses put forth, Bleich asserts, “removal of semen from the vagina tract following normal coitus for in vitro fertilization would appear to be regarded by most authorities as the optimal method. Although some authorities forbid emission of semen for subsequent insemination other than in the course of coitus, others sanction this practice but disagree with regard to the means of procurement. Some authorities advise that semen be obtained by means of coitus interruptus...The permissibility of masturbation for this

¹⁵⁸Bleich, J. David. "Test-Tube Babies." *Jewish Bioethics*. Ed. Fred Rosner and J. David Bleich. Hoboken: Ktav Publishing House, Inc., 2000. 100. Print.

¹⁵⁹*Ibid.*, p. 102.

purpose is a matter of dispute.”¹⁶⁰ Though the location of fertilization differs in IVF and artificial insemination, occurring in vitro for the former and in vivo for the latter, the practice of both types of ART raise the same halakhic issues regarding the father’s relationship to the IVF-offspring, the husband’s fulfillment of his obligation to procreate, and the child’s inheritance rights. Because these issues have already been addressed in Chapter 3, they will not be repeated here.

Another major issue raised by IVF involves the status and subsequent treatment of superfluous ova. Just as the destruction of unwanted fertilized eggs significantly offend Catholic values pertaining to life and human dignity, so too does this aspect present a serious ethical problem to Jewish scholars, doctors, and ethicists. Once again, this issue returns to the question of when life begins. Whereas the Catholic Church maintains life begins at conception, and therefore considers the destruction of fertilized ova as murder, the Jewish tradition remains divided. As reported by Bleich, “Many halakhic authorities have ruled that the prohibition against feticide is operative immediately following conception, while others maintain that no prohibition exists within the first forty days of gestation”¹⁶¹ Extensive debate regarding the status, treatment, and legal ramifications for destroying the embryo significantly influences the halakhic position toward IVF. While the full extent of the debate cannot be addressed in this paper, it must be noted that the majority of contemporary authorities such as Ovadiah Yosef, Avigdor Nebenzal, Sholomo Goren agree that a preembryo does not deserve more halakhic protection than a pre-40 day implanted embryo.¹⁶² Furthermore, as explained by Rabbi Breitowitz, “if genetic testing uncovers a defect which would justify abortion of a pre-40 day

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*, p. 103.

¹⁶² This topic is predominantly argued in the context of when it is permissible to break shabbat. See Breitowitz, Yitzchok. "The Preembryo in Halakha." *Jewish Law Articles. Jewish Law Blog*. Web. 2 Feb. 2013. <<http://www.jlaw.com/Articles/preemb.html>>.

embryo, destruction of the preembryo may be similarly permitted. A number of contemporary poskim have gone further and have allowed the virtual indiscriminate discard of "surplus" embryos even where actual abortion of a transplanted "less than 40 day" embryo would not be justified."¹⁶³ Based on this reasoning, Jewish authorities who permit IVF establish a distinction between the legal status of a fertilized egg in a test tube and a fertilized egg in a uterus.

According to Rosner, "[t]he question of the possible independent existence of a zygote has legal import. Jewish law requires the desecration of the Sabbath to preserve the existence of an embryo in the mother's womb even less than forty days old. If there is no human fetal life outside the uterus, a superfluous fertilized ovum could be disposed of by any means, such as flushing down the drain...[or] to refrain from supplying nutrients to the ovum, thereby allowing it to perish."¹⁶⁴ Those who permit the destruction of superfluous ova have thus concluded that fertilized eggs outside of the womb will never attain viability, does not have "humanhood," and therefore may be discarded without punishment or consequence.¹⁶⁵ Others, such as Rabbi Bleich, oppose the destruction of superfluous embryos but permit the practice of IVF. Such thinkers propose that the number of eggs fertilized should correspond exactly with the number implanted. Though this would lessen the probability of success, it would circumvent the problems surrounding disposal of the unused embryos.

Despite the Jewish tradition's predominantly permissible attitude toward homologous IVF, it is important to mention the opinion of Rabbi Yehuda Waldenberg and the reasoning behind his opposition. Though Rabbi Waldenberg accepts homologous artificial insemination in exceptional circumstances, he absolutely rejects all forms of IVF. As outlined by Rabbi

¹⁶³ *Ibid.* see footnote 27

¹⁶⁴ Rosner, Fred. "In Vitro Fertilization, Surrogate Motherhood, and Sex Organ Transplants." *Creighton Law Review* 25.5 (1992): 1680. Print.

¹⁶⁵ McCormick, Richard A. "Surrogacy: A Catholic Perspective." *Creighton Law Review* 25.5 (1992):1681. Print. See footnote 34.

Breitowitz, Waldenberg argues that IVF is more problematic than AIH for three primary reasons: first, “unlike AIH where all sperm is deposited into the vagina or uterus, IVF only transfers the fertilized ova with the rest of the sperm discarded, thus violating the edict against *hashchatat zera* [seed destruction]. [Second] one does not fulfill the mitzva of procreation where fertilization occurs outside of the womb. This independently creates a violation of *hashchatat zera*. [Third], there is neither a paternal or maternal relationship with an IVF-offspring.”¹⁶⁶ Ultimately, Waldenberg’s opposition to IVF returns to the legal issues of kinship and seed destruction. Based on Waldenberg’s claim that IVF-offspring lack parental relationships, he considers the husband’s procurement of sperm to be an act of *hashchatat zera* because the conception of a resulting offspring does not, in his opinion, constitute the fulfillment of the obligation to reproduce, and therefore the husband may not destroy his seed in order to facilitate IVF.

Waldenberg’s position, however, represents only a small minority within the tradition. In fact, most halakhists apply the same rulings and limitations concerning AIH to IVF treatment.¹⁶⁷ Just as in the case of homologous artificial insemination, the majority of halakhic authorities maintain that as long as the procedure is undertaken for the purpose of procreation by an otherwise infertile couple, IVF does not violate the prohibitions against seed destruction, and is therefore halakically permissible.¹⁶⁸ While some recognize the use of the husband’s sperm to completely fulfill his obligation to be fruitful and multiply, others allege that he fulfills a lesser commandment to fill the earth. For example, authorities such as Rabbi Gershuni, agree with

¹⁶⁶ Breitowitz, Yitzchok. "The Preembryo in Halakha." *Jewish Law Articles. Jewish Law Blog*. Web. 2 Feb. 2013. <<http://www.jlaw.com/Articles/preemb.html>>.

¹⁶⁷ *Ibid.* Footnote 8: See Rabbi Ovadiah Yosef, I *Techumim* at 287; R. Avigdor Nebenzal, 34 *Assia* (Tishrei 5743); R. Shmuel Wozner, *Shevet Levi* V, no. 47 (although one may not desecrate shabbat to save the preembryo because of the low probability of its ever coming to term).

¹⁶⁸ As noted by Rosner, “It is permitted by most Rabbis to obtain sperm from the husband both for analysis and insemination...but masturbation should be avoided if at all possible, and coitus interruptus, retrieval of sperm from the vagina, or the use of a condom seem to be the preferred methods”
Rosner, Fred. “In Vitro Fertilization, Surrogate Motherhood, and Sex Organ Transplants.” *Creighton L. Rev.* 25. (1992): 1679. Heinonline. Web. 27 Mar. 2013.

Rabbi Waldenberg “that there is no paternal bond between a sperm donor and an externalized embryo even if later brought to term but he nonetheless permits the procedure,” but maintain that “since IVF does in fact result in the creation of a physical human being albeit one that is not halakhically related to the genetic parents, it is a fulfillment of the prophetic statement, “[h]e did not create the world to be void but he formed it so that it would be settled” [lashevet yatzara] (Isaiah 45:18). R. Gershuni argues that even the mere fulfillment of lashevet is enough to prevent the emission of the seed from being levatala.”¹⁶⁹ Nearly all Rabbinic authorities agree the sperm of the husband should be used exclusively. Mixing donor sperm with that of the husband or using only donor sperm would raise even more issues pertaining to heterologous artificial insemination.

Conclusion

The Jewish and Catholic traditions agree that marriage is supported by the values of loving companionship and procreation. Similarly, both faiths understand procreation to normatively occur within marriage and conception arises as a direct result of the conjugal union. However, an assessment of the procedures deemed permissible by each faith and the extent to which man and his test tube can intervene in God’s dominion of creation reveals a wide divergence between the Catholic Church and majority of halakhic thinkers. Whereas the Catholic Church has derived a strict oppositional attitude toward IVF from principles of natural law and family paradigms that stem from the biblical narrative, a majority of halakhic scholars within the Jewish tradition find specific application of IVF free of halakic violation and thus have welcomed it to the corpus of permissible reproductive technologies.

¹⁶⁹ Breitowitz, Yitzchok. "The Preembryo in Halakha." *Jewish Law Articles* (n.d.): n. pag. *Jewish Law Blog*. Web. 2 Feb. 2013. <<http://www.jlaw.com/Articles/preemb.html>>.

As the defender of human life and promoter of the dignity of the human person, the magisterium strictly opposes all uses and application of in vitro fertilization. A statement put forth by the US Conference of Catholic Bishops best recapitulates the reasoning behind the Church's fundamental and conceptual opposition to IVF:

“The child conceived in human procreation is a human person, equal in dignity with the parents. Therefore he or she deserves to be brought into being through an act of total and committed marital love between husband and wife. Technologies that assist the couple's marital union in giving rise to a child respect this special dignity of the human person; technologies that replace it with a procedure by a technician in a laboratory do not. The moral problem is aggravated by efforts to introduce gametes (sperm or egg) from people outside the marriage, to make use of another woman's womb to gestate the child, or to exercise “quality control” over the child as though he or she were a product. IVF as practiced today also involves a very high death rate for the embryos involved, and opens the door to further abuses such as embryo cryopreservation (freezing) and destructive experimentation.”¹⁷⁰

In and of itself, the practice of IVF commits the same offenses to Catholic values as artificial insemination, including: violation of the inseparability principle within the conjugal union, denial of the offspring's fundamental right to be brought into the world as the direct result of marital love, commodification of the child, illicit procurement of semen, and inappropriate encroachment on God's dominion. Moreover, IVF poses an additional transgression in that its application has led to innumerable fertilizations and destructions of human embryos. Because human dignity and the inseparable connection between the unitive and procreative components of the marital union constitute core values promoted and advocated by the Catholic Church, the magisterium firmly rejects IVF and all other technologies that violate these central tenets.

The Jewish tradition employs an entirely different approach. While the minority opinion espoused by Jewish thinkers such as Rabbi Waldenberg oppose all forms of IVF, the majority of halakhic authorities within the Jewish tradition tend to express a more permissive attitude toward

¹⁷⁰ Paulson, Michael P. "Vatican Cautions against IVF, Surrogacy." *Articles of Faith*. Boston.com, 12 Dec. 2008. Web. 25 Mar. 2013.

IVF. Whereas the Church adamantly upholds the inseparability doctrine as a means to reject all forms of IVF, the Jewish tradition, adhering to its pro-natal and positivist legal approach, considers IVF and other similar technologies as a form of human intervention working in partnership with God. Like the Church, Judaism maintains that the ideal conception of a child includes both the unitive and procreative components. However, unlike the Church, most contemporary halakhic scholars do not absolutely reject a technology simply because it departs from the natural course of procreation. As noted by Mackler, “[t]he Jewish ideal, when it is possible, is for children to be conceived through marital intercourse.” In the case of an infertile couple, however, this is not possible. Medical interventions to assist the natural process of reproduction can enable the couple to have a child. The use of IVF in such situations accords with our responsibility to be both reverent and active in our partnership with God.”¹⁷¹

Furthermore, because Jewish thinkers view the ‘personhood’ of a fetus on a spectrum, many argue that cryopreservation, refraining from supplying nutrients, or even discarding the embryo are halakhically acceptable. For those who take moral issue with such treatment of the embryos, many still allow IVF but under the condition that the number of eggs fertilized should correspond exactly with the number implanted. The Church, on the other hand, understands life to begin at the moment of conception, and thus the risk entailed to the embryos by IVF procedures violates their human dignity and thus must be prohibited.

¹⁷¹ Mackler, Aaron L. "In Vitro Fertilization." *Committee on Jewish Law and Standards of the Rabbinical Assembly* 1.3 (1995): 510-25. Print.

Chapter V: Gestational Surrogacy

The book of Genesis is flooded with instances of infertility and surrogacy inherent to the human condition. The story of Sarah and Abraham begins with the tragic fertility woes of the progenitors of the three monotheistic faiths. After many years of failing to conceive, the aging Sarah urges Abraham to procreate with her handmaid, Hagar, so that he could continue his bloodline and serve as the father to a great nation as promised by God. As the narrative unfolds, Hagar becomes pregnant and ultimately gives birth to Ishmael, who is considered by Muslims to be the ancestor of the Prophet Muhammad. Shortly thereafter, Sarah learns that she too, will give birth. Astounded and in disbelief, Sarah laughs, exclaiming, "God hath made me to laugh. Every one that heareth will laugh with me."¹⁷² However, with the help of God's blessings, a 91 year old Sarah gives birth to a son, Isaac, and ultimately the Jewish people.

The implications of Abraham and Sarah's struggle with fertility are quite profound. That the matriarch and patriarch of the Judeo-Christian faiths found themselves without any other option but to resort to surrogacy in a desperate attempt to continue Abraham's bloodline establishes a symbolic precedent for an appreciation of family, parenthood, and the delicate and miraculous nature of fertility that forms the core of both the Jewish and Christian traditions. As noted by Dr. Seeman, "Every one of the matriarchs in Genesis struggles with barrenness, which comes to define the very architecture of biblical narrative. Women's movement across the thresholds of tents comes to signify a literary enactment of the problematic quest for motherhood and contributes to a uniquely biblical idiom of the relationship between gender, fecundity, and national identity."¹⁷³

¹⁷² Genesis 21:6-7.

¹⁷³Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 343. Print.

Returning to the hypothetical dilemmas put forth before Solomon, let us now incorporate artificial insemination, IVF, and surrogacy into the scenario and consider how Solomon may rule in a case of gestational surrogacy:

Suppose the first woman and her husband plan to start a family. For unknown reasons, they cannot conceive a child on their own. All other techniques and attempts to become pregnant have failed and they now plan to seek out the service of a surrogate. The second woman agrees to serve as the couple's gestational surrogate and the three participants proceed with the arrangement with an agreed understanding that the surrogate will voluntarily terminate her parental rights upon the child's birth. The fertility clinic extracts the egg from the wife and fertilizes it with her husband's sperm in vitro. The surrogate is then implanted with the zygote and carries the child to term.

Now after carrying the child for nine months and giving birth, the surrogate mother no longer wants to give up the baby. Despite a previously established arrangement, the surrogate mother refuses to part with the baby, arguing that she carried and gave birth to the child, developed a gestational bond, and therefore deserves status as the child's mother. Angered and betrayed by the surrogate, the first woman vehemently disagrees, arguing that the child shares her genetic material, and therefore she is the mother.

Just as in the biblical case, Solomon once again is charged with the impossible task of deciphering which of the two women is the child's rightful mother. However this time, the scenario is layered with varying complexities, forcing Solomon not only to identify the rightful parents, but also requiring him to reevaluate traditional Jewish and Catholic notions of the family unit, parenting, and relatedness that logically follow legal and theological tenets.

Realizing that both woman deeply care for the child and recognizing both women's maternal connection - one gestational and one genetic - Solomon must now look beyond the wisdom and cleverness that guided his decision during the biblical period and draw from a variety of doctrine, ethics, values, etc. to make the most informed decision. Among the questions our fictional Solomon will consider include: Is gestational surrogacy even allowed in Catholicism? Judaism? If so, under what conditions? Further, how does each religion interpret parenthood? What does each tradition say about monetary reimbursement for the surrogate? Does the quest to create new life outweigh the physical and emotional risk placed on the surrogate and the intended parents? Is it fair to burden the child with genealogical confusion?

As has already been made clear from this paper's discussion of artificial insemination and IVF, a Solomon following the interpretations and teachings of the Roman Catholic Church might, in several scenarios, arrive at drastically different conclusion than a Solomon following the reasoning of many of the great halakhic scholars. The remainder of this chapter will thus incorporate previous discussion on AIH, AID, and IVF in order to hypothesize how a modern day Solomon might rule from a Roman Catholic and halakhic perspective.

Catholic Perspective

The Catholic Church is quite forthcoming in its rejection of surrogacy. Just as it opposes artificial insemination and IVF on the grounds that such technologies violate the inseparability doctrine of the conjugal union and the dignity of the human person created therefrom, so too does gestational surrogacy breach these foundational principles. Because the family is seen as "the first natural community," and the microcosm of the greater society, technologies that disrupt the stable and structured dimensions of the family unit corrupt the essential building blocks of the greater society. As warned by Pope Benedict XVI, a society lacking traditional values of

respect for life and a “modernity that is not rooted in authentic human values is destined to be dominated by the tyranny of instability.”¹⁷⁴

Perhaps the biggest consequence of any ART involving third party donation/participation in general and specifically gestational surrogacy is the separation of genetic and social parenthood. Even though homologous gestational surrogacy includes only genetic material from the intended mother and father, the participation of a third party member who carries and gives birth to the child presents critical and fundamental issues for the Catholic Church. As stated in the *Catechism of the Catholic Church*, “[t]echniques that entail the dissociation of husband and wife, by the intrusion of a person other than the couple (donation of sperm or ovum, surrogate uterus), are gravely immoral. These techniques...infringe the child's right to be born of a father and mother known to him and bound to each other by marriage. They betray the spouses' "right to become a father and a mother only through each other.”¹⁷⁵ Of all the assisted reproductive technologies, gestational surrogacy is perhaps one of the most destabilizing practices to the marriage and rearing process because it requires the third party to actively participate in the pregnancy throughout its entire duration.

As has been observed by Cyrene Grothaus-Day, Fellow of the American College of Legal Medicine and a Board Certified Anesthesiologist, a child born through a surrogacy arrangement could theoretically have up to six different parents: the genetic mother and father, the social rearing mother and father; and the birth mother (surrogate) and, if she is married, her husband could be considered a father.¹⁷⁶ From the perspective of the Catholic Church, the genealogical

¹⁷⁴ Pope Benedict XVI. Speech. Vatican City. 23 June 2006. *Milites Veritatis*. zenit.org, n.d. Web. 25 Mar. 2013. <<http://militesveritatis.blogspot.com/2006/06/society-faces-tyranny-of-instability.html>>.

¹⁷⁵ *Catechism* 2376.

¹⁷⁶ Bundren, Mary Rodgers. "Influence of Catholicism, Islam and Judaism on the Assisted Reproductive Technologies (ART) Bioethical and Legal Debate: A Comparative Survey of ART in Italy, Egypt and Israel." *University of Detroit Mercy Law Review* 84.5 (2007): 723. Print. See footnote 44.

confusion produced as a result of IVF surrogacy not only unfairly confuses the offspring, but also significantly distorts the family structure, and consequently creates a state of disorder that threatens the good of civil society. As surmised by the United States Conference of Catholic Bishops: “[s]urrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological, and moral elements which constitute those families.”¹⁷⁷ Furthermore, the Church maintains that it is only “through the secure and recognized relationship to his own parents that the child can discover his own identity and achieve his own proper human development.” Cases involving gestational surrogacy whereby the relationship has been consciously severed significantly hinder and corrupt the “maturing of [the child's] personal identity.”¹⁷⁸

Because gestational surrogacy requires the physical presence of a third party throughout the entire duration of the pregnancy, and the residual emotional bond and physical effects, the practice raises a myriad of ethical issues pertaining to the commercialized nature of surrogacy which often involves monetary compensation for the surrogate’s ‘service’. Both the Jewish and Catholic traditions have expressed caution, and in many cases vehement opposition, to the notion of womb ‘renting’ and the commodification of the reproductive process. A document issued by the United States Conference of Catholic Bishops states, “Fertility clinics show disrespect for young men and women when they treat them as commodities, by offering large sums of money for sperm or egg donors with specific intellectual, physical, or personality traits. The cash

¹⁷⁷ United States Conference of Catholic Bishops. "Interventions Upon Human Procreation." *United States Conference of Catholic Bishops*. Web. 26 Mar. 2013. <<http://old.usccb.org/prolife/tdocs/part2.shtml>

¹⁷⁸ Alvare, Helen M. "Catholic Teaching and the Law Concerning the New Reproductive Technologies." *Fordham Urban Law Journal* 30.1 (2002): 107-34. Heinonline. Web. 28 Mar. 2013. quoting *Donum Vitae*, *supra* note 2, at 23 (citing *Gaudium et spes*, *supra* note 7, at 953).

incentives persuade these men and women to mistreat the gift of their own fertility, and—for women—even to jeopardize their own health in the egg extraction process, in the effort to help others obtain a child outside the context of their own marital relationship.”¹⁷⁹ Similarly, Rabbi Immanuel Jakobovits considers surrogacy to be a disgrace to the dignity of the surrogate. He maintains, “to use another person as an ‘incubator’ and then take from her the child she carried and delivered for a fee is a revolting degradation of maternity and an affront to human dignity.”¹⁸⁰ Roman Catholic ethicist Paul Lauritzen advances Jakobovits’ argument one step further in his assertion that “[t]he problem with commercial surrogacy is thus not simply that it requires a woman to treat her bodily integrity as owned property available for sale to a buyer, but also that it places human relationships, indeed, one of the most intimate human relationships, in the marketplace. And that problem with commercializing relationships is that truly committed, caring relationships are not something we can simply buy and sell.”¹⁸¹ By depersonalizing and even exploiting arguably the most pure and intimate bond known to man, the practice of surrogacy remains highly controversial and equally disturbing both for Catholic and Jewish thinkers alike. That a woman essentially rents her womb and then voluntarily gives up the child she has fed, nurtured, and bonded with during the pregnancy strikes at the heart of fundamental biblical concepts of family, procreation, and human dignity that transcend religious and denominational affiliations. In assessing the magnitude of this offense, Rabbi Tendler states, “commodification of the human organism and risk assumption for others in return for financial remuneration would appear to violate fundamental biblical ethics. Biblical ethics considers surrogacy as a violation of the admonition not to subjugate man. Exploitation of a woman so

¹⁷⁹ United States Conference of Catholic Bishops. "Life-Giving Love in an Age of Technology." 17 Nov. 2009. Web. 26 Mar. 2013. <<http://old.usccb.org/lifegivinglovedocument.pdf>>

¹⁸⁰ McCormick, Richard A. "Surrogacy: A Catholic Perspective." *Creighton Law Review* 25.5 (1992):1683. Print.

¹⁸¹ Lauritzen, Paul. *Pursuing Parenthood: Ethical Issues in Assisted Reproduction*. Bloomington: Indiana UP, 1993. Print.

that she will “rent” her uterus for nine months and assume the stresses of pregnancy and parturition must be seen at least as nibbling on the ‘forbidden fruit’ of the Tree of Knowledge of Good and Evil.”¹⁸²

Jewish law

Until recently, the idea that a reproduction could take place outside the body of a particular man and woman was purely fictional. One instance in the Jewish tradition that entertains the possibility of a scenario involving the birth of non-genetically related offspring involves an Aggadic commentary on the origins of Dinah, daughter of Jacob and Leah.¹⁸³ In citing the background to legend, Rabbi Spitz reports, “Targum Yonaton says that Dinah was conceived by Rachel and transferred to the womb of Leah, and Joseph was conceived by Leah and transferred to the womb of Rachel.” According to Berakhot 60a, “knowing that Jacob would become the father of a total of twelve sons and not wishing her sister Rachel to bear fewer sons than the maidservants, Bilhah and Zilpah, Leah prayed that her already conceived fetus be born a female. In Berakhot, her prayer is answered by a sex-change. However, Targum Yonaton, on Gen. 30:2, suggests that an embryo transfer occurred to solve the problem.”¹⁸⁴ Because Rachel is considered the mother of Yosef and Leah the mother of Dinah, this particular scenario implies the host mother is considered the child’s mother. This aggadata, though indicative of the exceptional imagination and wisdom of early Rabbinic scholars, however, does not provide firm

¹⁸² Tendler, Moshe. "On the Interface of Religion and Medical Science: The Judeo-Biblical Perspective." *Jewish and Catholic Bioethics*. Ed. Edmund D. Pellegrino and Alan I. Faden. Washington D.C.: Georgetown University Press, 1999. 109. Print.

¹⁸³ As defined by Daniel Sinclair, “*Aggadah* is material specifically related to the biblical narratives, moral teachings, and the rational, ideological, and mystical underpinnings of Jewish texts and halakhic norms. In common with the *halakhah* it has been the subject of interpretation, literary exposition, commentary, and development for thousands of years. Unlike the *halakhah*, however, it is not considered binding, and it lacks any mechanism for deciding on definitive outcomes to its discussions.” For more information, see Sinclair, Daniel B. *Jewish Biomedical Law: Legal and Extra-Legal Dimensions*. New York: Oxford University Press, 2003. *Oxford Scholarship*. Web. 10 Apr. 2013.

¹⁸⁴ Spitz, Elie Kaplan. "On the Use of Surrogates." *Committee on Jewish Law and Standards of the Rabbinical Assembly* 1.3 (1997): 535. *rabbinical assembly*. Web. 2 Apr. 2013.
<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/spitz_surrogate.pdf>.

halakhic support or permission for contemporary practices of surrogacy. Instead, as noted by Rabbi Spitz, because there is not direct legal precedent for surrogacy in Jewish law, an evaluation of the permissibility of surrogacy in accordance with halakha “should come down to a balancing test which includes moral, financial, communal, and personal costs.”¹⁸⁵

As previously mentioned, like the Catholic Church, the Jewish tradition takes issues with the exploitative nature of surrogacy. However, surrogacy - and gestational surrogacy in particular- poses a particularly problematic legal issue. Jewish law derives religious status from the religion of the birth mother at the time of birth.¹⁸⁶ Contemporary Jewish thinkers struggle to reconcile gestational surrogacy with the principle of matrilineal descent as the answer to this weighty question produces many implications. Not only does it determine the offspring’s identity, but also affects other areas within Jewish law, including consanguinity, inheritance, laws of mourning, etc.¹⁸⁷ In deciphering whether the status of the child is based on the egg donor’s heritage, the woman carrying the child, or both, authorities within the Jewish tradition have generally divided into four primary viewpoints: the surrogate child has no mother, the child has two mothers, the child’s mother is the gestational carrier, or the genetic mother is the child’s natural mother.

Perhaps the most widely accepted position claims the gestational mother should be halakhically categorized as the child’s mother. Drawing upon the commentaries by Rabbis Ezra Bick and Rabbi Bleich, Rabbi Brody proposes three guidelines for distinguishing motherhood in the context of ART: [first], “if conception occurs within a woman's body, removal of the fetus

¹⁸⁵ Spitz, Elie. "Through Her I Too Shall Bear a Child': Birth Surrogates in Jewish Law." *The Journal of Religious Ethics* 24.1 (1996):72. Print.

¹⁸⁶ Kiddushin3:12, 70a, 75b; Yevamot Issurei Biah15:3 quoted in Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 71. Print.

¹⁸⁷ Bleich, J. David "In Vitro Fertilization: Questions of Maternal Identity and Conversion." *Jewish Law and the New Reproductive Technologies*. By Emanuel Feldman and Joel B. Wolowelsky. Hoboken, NJ: KTAV Pub. House, 1997. Print.

after implantation (and, according to most authorities, after 40 days) does not change the identity of the mother according to Jewish law. The mother would be established at the time of removal from the womb and would be the woman in whom conception occurred. [Second], children conceived in a test tube and implanted in a host carrier are the legal children of the woman who gave birth to them since parturition and birth occurred in that woman, and conception is not legally significant since it occurred in no woman's body. [Third], children conceived in a woman who had an ovarian transplant are the legal children of the woman who bore them.”¹⁸⁸ Based on the second rule, halakha would recognize the gestational mother as the legal mother. Though the gestational mother does not share any genetic relation with the offspring, Jewish law, at least as understood by Rabbi Broyde and the majority of contemporary halakhic scholars, places more emphasis on parturition, rather than genetic donation, when determining motherhood. A child born to a non-Jewish gestational surrogate would therefore require conversion in order to be considered halakhically Jewish.

Another position offered by members of the Jewish tradition maintains a child born to a surrogate mother may in fact have two mothers. Thinkers such as the late Rabbi Shlomo Zalman Auerbach and Rabbi Bleich argue that in the case of surrogacy, it may be halakhically possible for both the egg donor and gestational carrier to be considered the mother.¹⁸⁹ According to Bleich, “Although there is a minority view that regards the donor mother as the sole mother of a child born of in vitro fertilization, the consensus of rabbinic opinion is that a maternal-filial relationship is generated between the gestational mother and the child, despite the absence of any genetic relationship, by virtue of parturition alone...The question of whether the baby may, in

¹⁸⁸Broyde, Michael J. "Modern Reproduction and Jewish Law." *Marriage, Sex, and Family in Judaism*. Ed. Michael J. Broyde and Michael Ausubel. Lanham: Rowman & Littlefield Publishers, Inc., 2005. 299. Print.

¹⁸⁹*Ibid.*

effect, have two halakhic mothers must be regarded as yet open.”¹⁹⁰ Due to a lack of legal precedent on gestational surrogacy, the Jewish legal tradition remains open to the nontraditional notion of a child claiming more than two parents.

At the other end of the spectrum, some authorities would argue the child has no mother. According to authorities like Rabbi Waldenberg, a child conceived in a test tube is without lineage, and is considered to have neither a mother nor a father according to Jewish law.¹⁹¹ Finally, a fourth opinion argues that the genetic donor deserves status as the mother. Many of the authorities who espouse this view base their opinion on the principle that prohibition against feticide is applicable from the moment of conception. These authorities deem the fetus to be a human being with identity and parentage from the earliest stages of gestation. Another argument used to support the genetic donor as the child’s mother proposes that the newborn should be considered an extension of the intended genetic mother. Rabbi Spitz asserts, “I propose that Jewish law should deal with gestational surrogacy as a unique class of pregnancy in which the newborn is viewed as an extension of the Jewish genetic intended mother and should thereby define the newborn as a Jew. To do so is to affirm that the woman who initiated the pregnancy, gave her genetic material, and intends to serve as the sole and soul mother is fully the "mother" of the newborn.”¹⁹²

Conclusion

Clearly, the dilemma placed before Solomon is not a simple one. Deep thought and consideration are required to issue a decision that would simultaneously award one woman the

¹⁹⁰Bleich, J. David. "In Vitro Fertilization: Questions of Maternal Identity and Conversion." *Jewish Law and the New Reproductive Technologies*. By Emanuel Feldman and Joel B. Wolowelsky. Hoboken, NJ: KTAV Pub. House, 1997. Print.

¹⁹¹Sinclair, Daniel B. "Assisted Reproduction in Jewish Law." *Fordham Urban Law Journal* 30.1 (2002): 94-5. Print.

¹⁹²Spitz, Elie. "Through Her I Too Shall Bear a Child': Birth Surrogates in Jewish Law." *The Journal of Religious Ethics* 24.1 (1996):91. Print.

right to motherhood and deny the very same gift to another. Though the concept of surrogacy is certainly not new to humanity, partial surrogacy involving advanced technologies remains uncharted territory. The Catholic Church opts to avoid such practices altogether and adamantly forbids gestational surrogacy, thereby avoiding the plethora of ethical and social consequences. Moreover, the Jewish tradition offers a variety of responses in attempt to encourage the commandment to procreate while upholding the stipulations of a positivist legal tradition.

A Solomon following the strict interpretation of the Catholic Church would have forbidden the practice of IVF and gestational surrogacy in the first place and the case would be moot. However, because this hypothetical couple did go through with the procedure, Solomon must now turn to the ethical, moral, and theological guidelines of the Catholic faith to make the most informed decision possible. As mentioned in the chapter on IVF, some moderate Catholic theologians, such as Lisa Sowell Cahill, Sidney Callahan, and Richard McCormick, are beginning to accept certain forms of human intervention in very specific homologous situations in an appeal to a criterion of “the human person integrally and adequately considered.” Though a strict Roman Catholic Solomon may not approve of the gestational surrogacy scenario, the couple’s determination and willingness to break from their faith to reproduce may at least ignite discussion among Catholic authorities regarding the suffering caused by infertility and the lengths infertile couples will go to in order to in order to have children of their ‘own.’

As in the cases of artificial insemination and in vitro fertilization, the Jewish tradition offers multiple conclusions, answers, and lines of reasoning to surrogacy. A Solomon following the strict approach of thinkers like R. Waldenberg would, like the Catholic Church, forbid the initial practice of IVF and surrogacy, arguing that the process violates Jewish law pertaining to

the wasting of seed and denying the child a right to lineage, and consequently denying the offspring Jewish legal status. Furthermore, Solomon may propose a decision reflective of the current majority halakhic opinion and side with the gestational mother on the grounds that the pregnancy and parturition determine motherhood. On the other hand, he may conform to the reasoning proposed by scholars such as Rabbi Spitz and grant the genetic mother legal right to the child. Here, he may apply the rule against feticide, which takes effect at the moment of conception, to justify his decision that ultimately the offspring's being begins from its genetic roots. He may also reason the newborn is simply an extension of the intended genetic mother.

Finally, a Solomon adopting teachings of R. Bleich or Rabbi Shlomo Zalman Auerbach may permit both women status as the offspring's mother. Though this defies traditional understanding of family ties and kinship bonds, it may ultimately lead to the creation of a new life who will be loved by three parents. Assuming the processes of IVF and gestational surrogacy are practiced in an ethical, moral, and proper way in accordance with the guidelines of halakha, and a clear contractual agreement pertaining to how the child will be raised by the parties involved, Solomon may in good conscious break normative family barriers to accommodate this particular situation.

Conclusion

As the advancement of biotechnology continues to challenge social, ethical, legal, political, and religious norms, human reproduction has begun to stray further from what was for millions of years its only locus: sexual intercourse between man and woman.¹⁹³ Though assisted reproductive technologies provide incredible opportunities for individuals and couples who otherwise may never have been able to procreate, they simultaneously separate the genetic, gestational, and social components of parentage, arguably rupturing the chord connecting biological relation to childrearing.

The case of surrogacy in the story of Abraham, Sarah, and Hagar reveals that a proclivity to finding alternative ways to procreate is certainly not new to man. However, unlike in the biblical scenario, where there was no doubt that Ishmael was the genetic product of Abraham and Hagar, the current rapidly evolving landscape of assisted reproductive technologies has turned what were fairly straightforward biological notions of mother, father, and family into abstract concepts. For the Jewish and Catholic traditions, this departure from the traditional family structure and normative procreative behavior creates profound moral and social repercussions, both for modern day practice as well as for the wellbeing and stability of future generations. As observed by George Annas,

“[d]ependable birth control made sex without reproduction possible...Now medicine is closing the circle...by offering methods of reproduction without sex; including artificial insemination by donor (AID), in vitro fertilization (IVF), and surrogate embryo transfer (SET). As with birth control, artificial reproduction is defended as life affirming and loving by its proponents, and denounced as unnatural by its detractors.”¹⁹⁴

¹⁹³ Bundren, Mary Rodgers. "Influence of Catholicism, Islam and Judaism on the Assisted Reproductive Technologies (ART) Bioethical and Legal Debate: A Comparative Survey of ART in Italy, Egypt and Israel." *University of Detroit Mercy Law Review* 84.5 (2007): 726. Print.

¹⁹⁴ Annas, George J. "Redefining Parenthood and Protecting Embryos," in *Judging Medicine*. Clifton, Humana Press, 59. 1988. Reprinted from the *Hastings Center Report* 14, no. 5 (1984). qtd in *Artificial Means of Reproduction and Our Understanding of the Family* by Ruth Macklin, p.g. 5

A modern day Solomon ruling on behalf of either the Catholic or Jewish traditions would struggle greatly to reconcile social and scientific factors of reproductive technology with the sacred principles fundamental to both religions. As two faiths grounded by biblical values of human dignity, the unitive and procreative dimensions of marriage, and appreciation of man as created in the divine image, Judaism and Catholicism agree that any form of human intervention in the reproductive process necessitates responsible and conscious treatment that is consistent with moral and ethical tenets rooted in the biblical narrative.

However, as demonstrated by diverging positions toward the use of current reproductive technologies, it is clear that the ways each tradition interprets, balances, and understands core biblical values in accordance with ARTs vary greatly. As noted by Dr. Seeman, the Jewish legal grounding for claims about permitted and forbidden reproductive practices “focus on rules of consanguinity and rules of purity constitutes the main corpus of biblical kinship norms that underlie Jewish family law. This simple fact is one of the reasons that Jewish law experts have tended to be so much more favorably inclined towards artificial reproductive technologies than many of their Christian counterparts.”¹⁹⁵ The magisterium, on the other hand, strictly upholds its responsibility involving “the protection of human life and the promotion of human dignity” and thus applies a close interpretation of biblical norms regarding family and human behavior to ensure the respect for life, for human dignity, family, and the sacred marital union are at the forefront.¹⁹⁶

¹⁹⁵ Seeman, Don. "Ethnography, Exegesis, and Jewish Ethical Reflection: The New Reproductive Technologies in Israel." *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*. Ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli. Vol. 19. New York: Berghahn Books, 2010. 346. Print.

¹⁹⁶ Priests for Life. "Abortion: The Primary Issue According to Statements from the Pope and Bishops." Ed. Frank Pavone. Priests for Life, Web. 2 Apr. 2013. <<http://www.priestsforlife.org/magisterium/bishops/abone.htm>>. 998. quoting the US Bishops *Living the Gospel of Life: A Challenge to American Catholics*. Paragraphs 21-23.

That is not to say, however, that the Catholic tradition absolutely rejects all forms of invasive fertility treatment nor does the Jewish tradition base their rulings strictly on legal principle. The Catholic Church, sympathetic to the struggles faced by infertile couples, fully supports “assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself.”¹⁹⁷ As noted in the *Ethical and Religious Directives for Catholic Health Care Services* by the United States Conference of Catholic Bishops,

“Those techniques of assisted conception that respect the unitive and procreative meanings of sexual intercourse and do not involve the destruction of human embryos, or their deliberate generation in such numbers that it is clearly envisaged that all cannot implant and some are simply being used to maximize the chances of others implanting, may be used as therapies for infertility.”¹⁹⁸

Moreover, two reproductive procedures that are not explicitly opposed by the Catholic Church include Gamete Intrafallopian Transfer (GIFT), a variant of IVF where the mother’s ova are placed in the fallopian tube with the sperm from the husband; and intrauterine insemination, where the husband’s sperm is collected in a condom and injected into the uterus. As noted by the Medical-Moral Commission of the Archdiocese of Dubuque,

“The *Instruction on Respect for Human Life in its Origin and On the Dignity of Procreation* from the Vatican Congregation for the Doctrine of the Faith (1987) did not explicitly pass judgment on the GIFT procedure. Cardinal Joseph Ratzinger, prefect of the Congregation for the Doctrine of the Faith at the time the *Instruction* was issued, gave the following instructions on techniques whose use had been left open: ‘When the discussion is still open and there is not yet a decision by magisterium, the doctor is required to stay informed, according to classic theological principles and concrete circumstances’ and to ‘make a decision based on his informed conscience.’”¹⁹⁹

¹⁹⁷ United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. Washington D.C. USCCB, 2009.

¹⁹⁸ *Ibid.*

¹⁹⁹ Medical-Moral Commission: Archdiocese of Dubuque. *Gamete Intrafallopian Transfer (GIFT)*. Dubuque: The Archdiocese of Dubuque. *Archdiocese of Dubuque*. Web. 9 Apr. 2013. <<http://www.arch.pvt.k12.ia.us/Respectlife/documents/GIFT.pdf>>.

Further, provided that “the retrieval of ova and sperm follow[s] a natural act of sexual intercourse; sperm [is] collected from that act of intercourse by morally acceptable means; the procedure [is] carried out in such a way as to avoid the possibility of extracorporeal conception; [and] any ova collected but not transferred back into the woman’s body [is] *not* fertilized in vitro, with the resulting embryos frozen for later implantation,” the use of GIFT is not explicitly prohibited by the Church. That the Church remains open to the possibility of reproductive technologies such as GIFT and intrauterine insemination reaffirms her empathy and encouragement for the suffering infertile couple to seek out fertility treatments that adhere to the moral, technical, and ethical standards put forth by the magisterium.

Similarly, embedded in the halakhic tradition’s approaches to assisted reproductive technologies are appeals to universal moral principles. Specifically in the context of contemporary bioethics and the developments of technologies that directly manipulate the formation of life, the divine image motif and universal principles of morality that derive therefrom influence the Jewish legal tradition. Modern halakhic authorities face the tremendous task of weighing and balancing legal stipulations with moral foundations to produce responses that adhere to Jewish law and respect the dignity of all persons involve. Furthermore, the casuistic nature of the tradition often forces legal authorities to personalize each ruling on a case-by-case basis. Thus, as the landscape of reproductive technologies rapidly advances, the interaction between morality and strict halakha has never been more crucial. Sinclair writes that this relationship “is vitally necessary for the continued development of contemporary biomedical *halakhah*. It would be a mistake if the distinction between morality and law was abandoned, and biomedical *halakhah* was presented in purely legal terms.”²⁰⁰

²⁰⁰ Sinclair, Daniel B. *Jewish Biomedical Law: Legal and Extra-Legal Dimensions*. New York: Oxford University Press, 2003. *Oxford Scholarship*. 263. Web. 10 Apr. 2013.

As the scope of assisted reproductive and procreative practices broaden to include cloning, pre-implantation genetic diagnosis, and genetic engineering, the line distinguishing between technologies that aim to contribute to the greater human good and those that ultimately destroy it is becoming much more blurry and difficult to define. Even the most theologically learned Solomon adhering to current laws and doctrines of either Judaism or Roman Catholicism would be unable to provide a fair and comprehensive judgment without an appeal to his innate sense of human behavior and wisdom to supplement his knowledge of consanguinity, marital values, and human dignity as understood by each faith. As the landscape of biotechnology transitions to uncharted territories, the ruling and reasoning arbitrated by Solomon would not only settle current disputes, but more importantly, establish a precedent for the ways each faith responds to more involved and complex technologies and the social, ethical, and religious implications that come with them.

This paper will conclude with an appeal to the reader to seek out additional sources to gain a more comprehensive understanding of this expanding topic. While this paper has focused primarily on the rulings of the magisterium to reflect Catholic law and several leading majority halakhic opinions within the Jewish tradition, it must be stated that many diverging and converging perspectives within the traditions must also be considered to fully appreciate the complexity and wide scope of contributions pertinent to the discussion surrounding assisted reproductive technologies. As noted by Mackler, “[m]oral deliberation in response to new biotechnological challenges is often a matter of judgment, entailing practical reason to balance competing considerations and concretize the demands of general principles such as love of neighbor. Theologians within each tradition have come to differing judgments on the most appropriate balances and concretizations, yielding in each a spectrum of responses. Because

these judgments are based on many of the same values and concerns, the spectra overlap to a significant degree.”²⁰¹

²⁰¹ Mackler, Aaron. *Introduction to Jewish and Catholic Bioethics: A Comparative Analysis*. 1st. Washington D.C.: Georgetown University Press, 2003. 212-13. Print.

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