THE PREDICAMENTS OF KOSHERING PREGNANT DIAGNOSIS AND
THE RISE OF A NEW RABBINIC LEADERSHIP

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The Predicaments of Koshering Prenatal Diagnosis and the Rise of a New Rabbinic Leadership

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ABSTRACT

The article explores the predicaments of navigating the complex authority structure of observant Judaism in Israel faced by an institute of rabbinic consultants in their endeavor to craft “kosher”—halachically appropriate—routes to using prenatal diagnosis of fetal anomalies. The institute creates public spaces to publicize rabbinic disagreements over prenatal diagnosis, emphasizes that dilemmas of termination should be ruled case by case, and offers its services of professional “moral pioneering”. Here is a case of biomedicine inspiring a new kind of religious leadership that transforms the structure of rabbinic authority.

Keywords: Prenatal diagnosis, post diagnostic termination of pregnancy, observant Judaism, moral pioneering, rabbinic authority, Israel.

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This article offers a glimpse into the cultural politics of observant Judaism in Israel at its intersection with reproductive medicine. It explores the discursive and organizational virtuosity of a group of Zionist rabbinic entrepreneurs who have emerged as an institute of halachic consultants for observant Jews on issues pertaining to a broad range of reproductive technologies. In a previous study I explored their project of creating halachically appropriate —“kosher”—routes for observant couples to using assisted reproductive technologies (ARTs) [Ivry 2010b, 2103]. Here I focus on their encounters with quite a different set of technologies, those aimed at prenatal diagnosis of fetal anomalies and implying the possibility of post-diagnostic abortions. I argue that rabbinic strategies to create kosher routes to using prenatal diagnosis (PND) are not merely a case of religion “making room” for, or somehow “adapting” to, biomedical developments, but more a matter of religion expanding its relevance and authoritative reach by appropriating biomedical knowledge and enlarging its authority. Notably, the new kind of religious leadership at the center of my exploration demonstrates proactive efforts to disseminate knowledge about the myriad reproductive technological options and the rabbinic debates about their meaning among the religious lay public.

To give a sense of the kind of proactive efforts I mean, let me quote rabbi, Menachem Burstein who heads PUAH, the institute under consideration. In 2007 he addressed an audience of about 20 young observant women who gathered for a study day on pregnancy and birth, organized by his rabbinic institute. A brief discussion developed soon after the rabbi presented his agenda for the day, namely a list of prenatal tests to diagnose fetal anomalies. Three women who were clearly approaching full term were eager to talk about giving birth. But the rabbi insisted:

“‘You will be pregnant more than once in your lifetimes,” and “This is a very important topic that should be discussed once and for all.” “In recent years,” said the rabbi, “I have come to think I am not threatened by prenatal tests. I think they are necessary, there is no reason not to do them; there are (fetal) problems that can be dealt with during pregnancy.”

Initially decoupling PND and post-diagnostic abortions, the rabbi instructed the women to undergo a long list of tests—offered in Israel as part of routine prenatal care furnishing indications and probabilities of fetal anomalies, and to “tell the doctor to do the whole
lot and take it from there, and then you should bring
the result to us (the rabbinic organization) and we will
tell you what to do, whether to do (further invasive
tests that yield more accurate results) or not.”

Significantly, Burstein relocated the role of the final
arbiter of medical decisions from the doctor—now
cast as a mere provider of data compilation services—
to religious scholars. He then notified the women that
“in some cases we [the rabbinic organization] recom-
mand undergoing amniocentesis” (an invasive test that
endangers the pregnancy). He asserted that “there is
a disagreement [machloket] between rabbinic decisors
(poskim) prominent ultra-orthodox authority figures to
whom ρυαη directs especially weighty halachic deci-
sions whose implications they consider far-reaching) as
to whether it is permissible to terminate the pregnancy
[following a diagnosis of fetal anomaly].” Burstein con-
tinued to review the gaping discrepancy between great
decisors on whether abortion of a fetus diagnosed with
Down’s Syndrome (DS) was permissible (I return to
his review later).

The women who had been trying to persuade the
rabbi to dedicate more time to issues of birth were by
now listening attentively.

My analysis is an ethnographically grounded exer-
cise of listening attentively to the rabbi, in order to
chart the changing topography of religious authority
and the politics of piety underlying an emergent moral
economy of medicalized reproduction.

Introduction

Israel—a state that sanctioned the religious courts to
rule on matters of personal status and family law, and
where ultraorthodox representatives play an important
role in policy making—has been a leader in advancing
reproductive technologies, including surrogacy, gamete
donation and prenatal testing, which have raised lively
ethical and theological debates in Europe, America and
elsewhere. Moreover, observant patients have emerged
as consumers of these technologies, to assist conception
but also to diagnose fetal anomalies. Few social scien-
tists have considered this a puzzle. Instead, sociologists
studying New Reproductive technologies (NRTs)—
impressed by the generous Israeli state funding of assisted
conception under liberal criteria of eligibility—explain
Israeli reproductive policies as a convergence of two
trajectories of pro-natalism: the religious imperative “to
be fruitful and multiply” and the national imperative
of collective survival in the face of existential threat
[for example Portugese 1998, Birenbaum-Carmeli
2004]. As a Jewish state surrounded by Arab countries,
and engaged in almost continuous armed conflict,
public discourse in Israel has been preoccupied with
the “demographic threat” [Sered 2000] and has tended
to translate birthrates into Israel’s chances of surviving
a military conflict. The routinization of PND and its
coupling with the legal option of selective termination
of pregnancy, however, do not fit neatly into either par-
adigm of pro-natalism. [Ivry 2010c].

While an affinity between ARTs and religious
pro-natalism might seem intuitive (for those unaware
of the long list of rabbinic concerns about the kin-
ship and purity consequences of ARTs, see Ivry 2013),
any assumption of compatibility between PND and
observant Judaism would be out of place. First, such
an assumption ignores spiritual ideals of maternal
piety and unconditional parental acceptance prevai-
ling among religious women [Ivry and Teman 2011].
Secondly, and central to my analytic focus here, such
assumption lessens the complexity of the religious
authorities’ approaches: both the diversity of the rab-
inic literary corpus on reproductive risk, responsi-
bility and termination of pregnancy, and the nuanced
hierarchies among past and present rabbinic author-
ities. It also overlooks the complexity of the relations of
patients, their rabbis, and biomedical practitioners—all
of which feed into religious patients’ decisions con-
cerning PND and its aftermath.

Rather, I suggest, the implementation of PND in
religious communities relies first on a particular mode
of medical care that I call “kosher medicine,” a scheme
of triadic relations among religiously observant patients,
their doctors and their rabbis, which involve intense
rabbi–doctor negotiations about the choice of biomed-
ical procedures and the ways they are to be practiced.
My previous writing focused on these doctor-rabbi
relations, illuminating the modes of collaboration and
antagonism that develop between them and their poss-
ibly empowering and disempowering consequences
for patients [Ivry 2010b, 2013]. I illustrate how rab-
inic demands to provide services according to hala-
chic prescriptions may challenge doctors’ professional
integrity. Here I focus on the predicaments that rab-
inic entrepreneurs face within religiously observant
communities, vis-à-vis both their consultees and other
rabbinic authority figures, in their endeavor to craft
cosher routes to using prenatal diagnosis. Since 2006
I have carried out over 80 interviews with observant

Ethnologie française, XLV, 2015, 2
patients, their doctors and the rabbis who counsel them, attempting to understand what is at stake in the kosher mode of medicine for each party. Discrete case-by-case rabbinic approval of post-diagnostic abortions dispensed behind closed doors appears in the interview data; that such cases are discussed before larger audiences—including lay men and women—indicates the structural change in religious authority to which I call attention. In this article I draw on data collected on the organization’s study days—entirely novel arenas designed for expositions of the plurality of reproductive technological options and the diversity of rabbinic opinions about them.

A central question of this article is how—through which discursive and social mechanisms—technologies directed at diagnosing and possibly eliminating fetal anomalies are being introduced by religious authority figures to members of observant communities.

**PND in Israel**

An array of technologies to diagnose fetal anomalies, identified as a new form of eugenics in European and American public debates, were introduced into routine prenatal care in Israel without significant public discussion.

In 1978 the Israeli government enacted a “program for the prevention of inborn abnormalities.” The services offered under the plan were, and still are, free of charge. Clearly, the initiators of the plan were trying to minimize the birth of children with congenital abnormalities that occur at high rates among Jews of various ethnic origin. Thus in the beginning the plan dealt with lethal diseases such as Tay Sachs. Soon however the range of diseases being screened for became perceptibly wider.

Since the initiation of “the program,” an increasing number of prenatal tests have been included in the “health basket” covered by the national health insurance, including genetic conditions that are not lethal, as well as various chromosomal conditions that are not particularly frequent in Jews such as DS (Down’s Syndrome).

Routine prenatal care in Israel currently involves attending a minimum of six prenatal care visits and emphasizes the absolute necessity of basic prenatal testing, including a second trimester anatomy scan and maternal serum screening, which are covered by the national health insurance. If these tests indicate a higher risk for fetal anomaly, state-funded amniocentesis is offered. Non-compliance with this norm is rare among women who do not define themselves as Haredi (or ultra-orthodox, I return to discuss the emic terminologies of observant Judaism below) [Remennick, 2006; Sher, Romano Zelekha, Green, & Shohat, 2003]. Most non-Haredi Jewish women (including a broad range of religiously observant women) with “low-risk” pregnancies follow a similar route of prenatal testing, including a scan at 8 weeks to confirm a heartbeat; the nuchal translucency scan and blood test at 11–12 weeks; full anatomy scans at 16 and again at 24 weeks; the triple test (or quad screen) at 17 weeks; and a scan to measure fetal weight at 32 weeks. Many will have scans at each prenatal checkup if their physician has a sonogram in the office, and most will be referred for monitor and ultrasound checkups thrice weekly when their pregnancies have passed the 40-week mark. Finally, many will have to decide about amniocentesis, especially if their pregnancies are “high-risk” (maternal age over 35 or indication of a problem evident from maternal serum screening or ultrasound).

Moreover, prenatal testing is “backed up” by the Israeli abortion law, which seems relatively liberal for a “pro-natal” state. The Israeli abortion law accommodates selective reproduction using an elaborate formulation of vague definitions. The law permits the abortion of a fetus with a “defect” [mum], without specifying the particular kind of defect or setting a maximum time limit beyond which abortion is forbidden.1 Neither of these elements was ever a matter of public or parliamentary debate, even in those rare instances when abortion debates in the Knesset fleetingly captured public attention.2 When in the mid-1980s several ultra-religious parties, which are a potent electoral force, tried to change the abortion law, they did so to eliminate the “economic article” (which permitted abortion due to financial hardships of the mother), not to prevent “the murder of fetuses.”

**The Diversity and Complexity of Rabbinic Authority**

Not surprisingly, scholarly effort has been directed to explaining Israeli reproductive policies as compatible with rabbinic texts that lend themselves to claims about fetuses’ status as non-humans [Hashiloni-Dolev 2007]. However, attitudes of rabbinic scholars and their

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1. Remennick, 2006; Sher, Romano Zelekha, Green, & Shohat, 2003.
consultees on any subject cannot be simply reduced to texts; religious women are not necessarily prepared to see their fetuses as non-humans; neither are their rabbinic consultants, who interpret the texts as they formulate their ruling. Moreover, such interpretive endeavors are pursued within a specific structure of religious authority.

Compared with the authority systems of Sunni Islam [Inhorn 2003, 2006] and of Catholicism [Roberts 2012], which have clearly stated their positions on NRTs, in contemporary Judaism the authority structure is highly fragmented. Each community “vests authority in the hands of recognized teachers” [Brody 1990: 33; see also Caplan and Stadler 2009].

The observant Jewish population of Israel includes a vast range of communities demonstrating a huge plurality of religious expressions. The Israeli emic classification system divides them into ultra-Orthodox [haredi or those who tremble before God], Zionist or national-religious [dati leumi—indicating commitment to both religion and Zionism] and traditional Jews [mesorti, indicating commitment to “tradition” rather than strictly to rabbinic law and insinuating to many Israelis a close proximity to secular—non religious [Jews]. Each of these communities vary widely in their styles of religious observance. Ultraorthodox communities are strongly divided amongst themselves in theological orientation (the mystically inclined Hassidic communities vs. the more rationally oriented Lithuanians) and ethnic origin (Middle Eastern Sephardic vs. East European Ashkenazi communities). Traditional Jews often come from a Sephardic background and the national-religious communities tend to be ethnically plural. The important distinction between the ultra-orthodox and the national-religious communities is in their political inclination. While some sects in the Haredi community renounce Zionism altogether, the national-religious sanctify the Zionist state and see it as the fulfillment of God’s promise to bring his people back to his land. National-religious Jews tend to see themselves as standing betwixt and between the haredi and the traditional/ secular Jews in their deep commitment to rabbinic law on the one hand, and their simultaneous commitment to the state of Israel and its institutions on the other.

Hence no uniform rabbinic position can be stated. Instead halachic references to NRTs are formulated as debates between different positions; rabbis who are publicly identified with different religious sects and factions have voiced different opinions on the above and other issues [Kahn 2000]. At times these opinions converge, at times deep divergences emerge. Nor does a halachic opinion constitute a ruling [psikah], which is handed down case by case. Observant Jews tend to direct specific questions to the person recognized as their community’s rabbinic authority, and they receive guidance specific to their individual circumstances. Moreover, a rabbi’s ruling on a specific case may prove quite different from the general opinion that he has voiced. In the complex intellectual exercise of formulating their opinions and rulings, rabbis draw on a broad array of authoritative Jewish texts (which nevertheless maintain complex hierarchies of authority) ranging across biblical sources, the old Mishnaic literature, Gemara, Midrash, as well as early and later rabbinic rulings and responsa [shut]. So in a process that closely resembles reaching a decision in jurisprudence, rabbis make an informed selection of sources on which to rely and from which to derive relevant definitions, juxtapose the case in hand to precedents, analogies and contrasts, and reach a practical decision.

Now virtually all factions and sects of observant Jews can be adequately described as observing halacha; but the important outcome of the above process is that this “rabbinic law”—as it is often called in English, somewhat sweepingly—is an extremely wide array of opinions and practical attitudes that draw on the same pool of literary sources to reach considerably different conclusions.

Returning to the issue of fetal diagnosis and termination, there is broad agreement among early and contemporary rabbinic authorities that termination of pregnancy is permissible when the pregnancy endangers a woman’s life, but disagreement prevails about what constitutes danger, as well as whether the fetus is a fully fledged human being. Thus rabbinic scholars’ attitudes as to the beginning of life are indeed quite distant from those of their Catholic counterparts, who sanctify all stages of human development from the moment of conception and designate termination of pregnancy at any stage and under any circumstances “murder.” But rabbinic law cannot be understood as simply “pro-choice” either.

### Rabbinic Attitudes to Pregnancy Termination

One fundamental source on termination of pregnancy that has received multiple and contradictory
interpretations is the mishnah in Ohalot 7:6: “If a woman was in hard travail, the fetus must be cut up while it is in the womb and brought out member by member, since her life has priority over his [the fetus’s] life, but once his head has appeared, it may not be touched, since the claim of one life cannot override the claim of another life.” This mishna gives an example of permissible termination of pregnancy (or fetocide) at the latest stages of active birth. Rashi, the renowned medieval scholar, the first to write an interpretation of almost the whole Hebrew Bible and the Talmud, claimed that the reason for this permissibility is the status of the fetus as “not yet a life [nefesh].” He points out that once the fetus has shown its head and is considered a nefesh (like its mother) it is forbidden to take its life. But Maimonides, the erudite medieval physician, scientist and philosopher—considered the greatest decisor of all times, argued that the reason for the permission to terminate the pregnancy is the threat to the woman’s life (not the degree of fetal humanness). He designates the fetus rodef—a pursuer, who is chasing the mother to kill her. A rodef might be fully human, but his life should not be spared.

Fast forward to contemporary rabbinic authorities: a disagreement pertains. Rabbi Moshe Feinstein was considered “the most important halachic authority for orthodox Judaism in America in the second half of the twentieth century, whose responsa became the central and authoritative texts for traditional halachic Judaism’s approach to controversial issues, both during and after his lifetime” [Pitkowsky 2011: 136]. He deemed abortion murder, and sanctioned it only where continuing the pregnancy would definitely threaten the woman’s life. Jotkowitz explains, “He forbids abortion because he views the fetus as a ‘person’” [Jotkowitz 2011: 102].

The twentieth-century Israeli authority Rabbi Eliezer Waldenberg, on the other hand, “felt strongly that the fetus is not considered a ‘person’” [Jotkowitz 2011: 102].

When asked to comment on the new challenges presented by PND in the 1970s, the opinions of these influential scholars diverged. R. Feinstein strongly opposed termination of pregnancy following the diagnosis of severe genetic disease; R. Waldenberg allowed a late (seventh month) abortion of a fetus with Tay Sachs on the grounds of “great needs of the mother,” physical and emotional. He explained that the birth of a child who would die in great pain several years later held the potential of inflicting enormous suffering on its mother, as well as ruining the family. When asked about children with DS, who manifest high life expectancies, he was less certain, but did not reject the idea of post-diagnostic abortion. Instead he suggested that the couple consult a rabbi to evaluate their capacity to cope with a special child. Note that R. Waldenberg endured criticism and even contempt in the ultra-Orthodox community for his opinions on post-diagnostic termination of pregnancy. As we shall see later, classifying and interpreting rabbinic texts to reach decisions on reproductive dilemmas is not merely an intellectual exercise, but a socially embedded enterprise that might take its toll on the decisor.

Bearing in mind the scope of diversity of rabbinic opinions, I resume my account of the rabbinic organization whose head I cited in the prologue. The mission statement of his organization is to make reproductive medicine usable for religious patients belonging to any of the full range of sects and factions of contemporary observant Judaism—a courageous undertaking indeed.

PUAH: The Mission of Navigating Diversity

PUAH (the Hebrew acronym for fertility and medicine in light of halacha [Poriut Verefua Al Pi Hahalacha]) is a Jerusalem-based, not-for-profit religious Zionist institution. It offers religiously observant couples halachic and medical consultations on a wide range of reproductive issues. PUAH’s main goal is to help couples affiliated to the full range of observant Judaism who have problems conceiving to navigate the double labyrinth of fertility treatments in biomedical institutions and rabbinic law. Enhancing the fertility of the Jewish population is thus the foundation of PUAH’s wide legitimacy within observant communities. Their daily practice, however, extends beyond assisted reproduction to include dilemmas surrounding prenatal diagnosis.

PUAH’s endeavor is twofold: to map both the rabbinical and the medical bodies of knowledge relevant to reproductive medicine. PUAH’s rabbis have no formal medical education but are attuned to all new developments in fertility medicine, and they energetically study reproductive medicine from various sources. They attend conferences on the subject regularly, and often invite fertility experts to give them lectures at the institution’s offices. Moreover, they engage in daily discussions of patients’ medical records with
their doctors; elsewhere I discuss the effects of their hands-on involvement in medical decisions on doctor-patient relations [Ivry 2010]. Here I focus on their effects on the structure of religious authority.

As noted above, observant Jews used to rely on their community rabbis for the full range of difficult life decisions; the advent of high-tech expert rabbis singles out moral dilemmas surrounding biotechnologies as unique loci of ruling that require highly specialized knowledge. This is a markedly new kind of rabbinic authority, engendering a new form of consultation.

PUAH’s idea is to constitute an information center that can offer religious couples who come for consultation the full range of rabbinic opinions, juxtaposed to the full range of medical options. If the couple are affiliated to the religious Zionist stream they can ask PUAH’s rabbis to give them a ruling appropriate to their circumstances. If they belong to another faction or sect of observant Judaism (as in the case of the many factions of ultra-orthodox Jews) PUAH can provide their rabbi with the full range of precedent rulings and medical information to help him rule for them. Most importantly, PUAH exerts enormous effort in winning endorsement of their activities by prominent rabbinic “decisors” [golei haposkim], mainly the leaders of ultra-orthodox communities. As a religious-Zionist organization, combining strict religious observance with commitment to Judaism and the Israeli state, PUAH’s rabbis are situated in a unique and not always comfortable position in the broader arena of rabbinic authorities.

So rather than unifying diversity, PUAH proactively works to create public spaces in which to publicize rabbinic discussions and disagreements. Until quite recently these were accessible mainly to (male) students and scholars of halacha; PUAH acts to make them more within reach of the lay public at large, including religious women. The study day on pregnancy mentioned at the start of this article was precisely such a venue, designed for an exposition of diversity and its practical implications.

### Expositions of Diversity

From 2006 onward, I attended more than 20 study days organized by PUAH, including annual conferences with hundreds of participants (women and men sitting separately), as well as many smaller lectures designed for all-women audiences. Small-scale lectures invite informal interactions between lecturer and audience; such was the case at the aforementioned study day. As noted, the women in the audience expressed dissatisfaction with the rabbi’s insistence on discussing PND, but none protested when he instructed them in the imperative to undergo a list of prenatal tests and to ask for rabbinic consultation about further testing (“we will tell you what to do”). The allocation of authority on medical decisions from doctor to rabbi did not meet any resistance. Rather, the rabbis’ move to the halachic domain—asking whether the women were aware of rabbinic opinions on post-diagnostic abortions of fetuses with DS—caused uneasiness. The women were saying that their rabbis were reluctant to discuss such issues.

Rabbi Burstein’s lengthy response condenses the discursive mechanism I have repeatedly seen at work in koshering PND. Let me quote his narrative at some length. He began by laying down the authoritative basis for his endeavor by voicing the opinions of a range of ultra-orthodox communities as important halachic authorities. Note that the women in the audience were of a religious Zionist background.

If something might happen to the woman, maybe she will die, God forbid… then of course abortion will be permitted. But when there is no such problem with the woman, for example, the fetus has DS, there is a debate among rabbis (poskim). R. Moshe Finestone says that the prohibition against killing a fetus is from the Torah [de'oraita], and… R. Waldenberg says that the prohibition is rabbinic [de’rabanan—from later sources, which may somewhat lessen the authority of the prohibition]. Now if the prohibition is from the Torah, there’s nothing to be done: under no circumstances can a woman undergo abortion—only if she brings a letter from a religious psychiatrist saying that she will lose her sanity if a DS baby is born… but if not, there is a huge debate among the rabbis.

On the firm basis of disagreement between great ultra-orthodox rabbinic authorities, Burstein continues to draw the practical implications for lay people of faith:

It is necessary for such a debate to exist and every person must ask himself, and state his true condition…say what one feels and not lie to the rabbi and say “Everything is okay.” If a couple cannot tolerate the idea and think that such baby will ruin the family, they must tell… the rabbi. Sometimes the rabbi will allow an abortion. And
you should know that in ultra-orthodox communities women undergo post-diagnostic abortions; people out there do not know this... Every case is considered on its own merits. This is a point you should know.

In his plea to reconsider PND despite potentially problematic moral implications, the rabbi encourages reflexivity in his consultees. He seems acutely aware of the ideal of unconditional parental acceptance and its appeal to spiritually ambitious couples (cf. Ivry and Teman 2011), but encourages incorporation of broader familial considerations into their contemplation of raising a special child. As a way to demystify the spiritual ideal of unconditional acceptance he invokes the epitome of religious commitment in the informal hierarchy of piety: women of “ultra-religious” Haredi communities. If women deemed pious to the utmost degree undergo post-diagnostic abortions, then the religious-Zionist women in the audience should not reject the option out of hand. The bottom line is this: reproductive decisions should be taken with rabbinic consultation, which is given case by case.

The rabbi illustrates the scale of the case-by-case principle with a detailed story, which I heard more than three times on different study days organized by PUah.

We… had a couple, a family blessed with many children. The wife was quite old and the ultrasound scan indicated a risk of her carrying a DS baby. She asked me whether she should undergo amniocentesis: “Why is it necessary?” I said it was important to prepare the family, the kids, to let them know it was going to be a DS baby; it would be much easier that way. First, being aware of the risk [of losing a healthy child], she didn’t want to do the test, but she listened to what I said and agreed.

Note that the rabbi depicts “the woman” not as a submissive/obedient disciple but as an independent thinker who asks for his opinion, not his ruling. The woman was not at all inclined to the idea of post-diagnostic abortion. Rather the *rabbi*, invoking a rhetoric of familial preparedness for a reproductive challenge, makes an effort to convince her to undergo an invasive test that endangers the pregnancy. Underlying his considerations is the whole familial matrix.

She underwent the test, and the child indeed had DS. Then she asked what to do. I asked her about her ability to cope with a special child; she said it was okay, they could manage, this was what God had sent them.

Here the woman invokes God well *after* she has made a decision. Interestingly, this was insufficient evidence for the rabbi. He was concerned with the possibility that the woman aspired to spiritual standards beyond her reach, and he wished to make an assessment of her practical skills and social setting.

I asked whether I could speak to the community rabbi who knew them; she said, “No problem....” He said, “Trust me, this is a family that can raise such a child no problem. Maybe not with no problem, but she’ll cope, it will be alright.” And that is exactly how it turned out. She informed the hospital that she was there to give birth to a DS child, and had done all she could to sanctify the name of the Lord. The midwives wept with emotion, because there are situations where the family abandons a child with DS at the hospital.... She is raising the child with much love...

Two weeks later, four houses away from this family, another family I have known for a long time called to ask me the very same question. Very strong [religiously committed] family, God-fearing people. I spoke to them and to the woman. She said she wouldn’t be able to cope. She thought that it [a child with DS] would ruin the family... I was shocked. I asked her whether I could speak with their rabbi; he said, “You see? This is the opposite example from the one two weeks ago. They won’t be able to cope. I know them, they are strong people; but not in this area, they’re not going to withstand this.” So we allowed them to have an abortion.

In both cases then, the women eventually received a rabbinic ruling that matched their expressed desires. Yet the rabbi pursued additional authoritative assessments of the practical and spiritual capacities; not only of the women, but of their broader social network. The rabbi illustrated his point: two women and their families who are depicted as deeply religious, living four houses apart, face post-diagnostic decisions about the same fetal anomaly, with significantly different resolutions: one of them has sanctified the name of the Lord. What about the moral/spiritual standing of the other?

## Shouldering Moral Responsibilities and its Discontents

The history of PND in Euro-American settings can be summarized as the privatization of moral reproductive responsibilities. In the late 1970s powerful
moral anxieties – about PND becoming a neo-eugenic tool for eliminating people with disabilities and for sex selection (both of which have become social realities in various parts of the world) – dominated public debates. But thereafter, the heavy burden of moral decisions has in fact rolled over onto pregnant women, to deal with in the privacy of their homes. Rayna Rapp whose seminal work explores pregnant American women’s dilemmas surrounding amniocentesis decisions, calls her informants “moral pioneers” [1999]. The genetic counseling offered them opts to transfer genetic knowledge, but avoids moral interpretations under an explicit professional commitment to “non-directive” service. Non-religious Israeli women facing PND decisions are similarly “forced to act as moral philosophers of the limit” [Rapp 199: 131].

By contrast, religious women are offered professional services in moral pioneering. Burstein’s offer to extend a helping hand in medical decision making is revealed in all its force: as an appealing opportunity for relief, at least in theory, from unbearable moral burdens.

Let me return to the rabbi’s explanation of the spiritual meaning of a post-diagnostic abortion under the auspices of rabbinic permission.

One of the things we do—we clarify that this is the responsibility of the rabbi who ruled on the abortion. Because such people [the couple] feel very bad, I tell them: Although it is you undergoing the procedure [abortion], the one who shouldn’t sleep at night is me, not you; I gave you the halachic permission. For the woman should know that she has acted according to the halachic permission. For her, it’s okay.

I heard Burstein emphasize this point again and again in different settings and in the context of quite different reproductive dilemmas. On one occasion he said, “When you reach heaven, if they ask you why did you abort the child, you should say Rabbi Burstein told me to do so.”

At the beginning of the article I pointed out that the rabbi promulgates moving responsibility for medical decision making from doctors to religious scholars, an idea many doctors regard as an unacceptable crossing of professional borders [cf. Ivry 2013]. Explicit moral judgments, however, are formally beyond the scope of medical authorities in neoliberal post-industrial societies. In assuming moral responsibilities the rabbi in fact gets hold of a hot potato, much to the relief of many doctors and patients. As a PUAH rabbi I call Elkana once said, “If [the doctor] thinks that this couple should terminate the pregnancy it will be difficult for him to convince them, so he is better off doing it through us.”

Let us bear in mind, however, that PUAH rabbis are also members of the professional community of rabbinic decision makers. They might capitalize on their moral services vis-à-vis doctors and patients, but friction may ensue with other rabbinic authority figures who frown upon the very idea of discussing rabbinic disagreements outside the closed community of halachic scholars—not to mention flexible navigation of diversity as a basis for less acceptable decisions.

Strategic opaqueness and other forms of resistance exercised by decision makers positioned high in the hierarchy of religious piety threaten to limit PUAH’s navigations of rabbinic law, as well as their project of disseminating knowledge of the diversity of rationales behind rabbinic rulings.

Robert Hefner writes:

All religions confront common challenges; their message shows the transformative impact of similar structural dilemmas. To weather the onslaught of alternative ways, religions cannot merely invoke the canonical words of the prophets. Even as they profess their unique and unchanging truth, their actions confess they have tasted the forbidden fruit of a pervasive and porous pluralism [Hefner, 1998: 100].

PUAH emerged as a response to the challenges posed by the plurality of options introduced by the burgeoning of new reproductive technologies. In previous work I demonstrated how their interventions transform reproductive medicine in Israel. Here I have shown how they transform the structure of religious authority by way of systematic engagement in its own internal plurality. The PUAH institute marks a new form of rabbinic authority that relies on expertise in disciplinary domains beyond halacha, and that is trans-sectarian in its reach. It thrives on the democratization of access to expert knowledge (both medical and halachic) as well as the privatization of reproductive responsibilities and the moral lacunas in biomedical authority. While resisted by some ultra-orthodox authorities, PUAH system of navigating halacha seems to widen the scope of religious Judaism’s public visibility and relevance in Israel.

The local moral economy that is thus promoted acknowledges the hierarchies of piety within observant communities, while criticizing spiritual drive on account of its potentially destructive effect on families.
Far from religion adapting to biomedical options, puah is a case of biomedicine inspiring a new powerful form of religious leadership: one that offers to save people (lay and professional) from the excruciating moral quandaries of (reproductive) decision making.

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Notes

1. Legal abortions in general require the permission of pregnancy termination committees. Pregnancy termination requests later than 24 weeks of gestation require permission from “high committees” [va’adot all] also called “pregnancy termination committees in case of viable fetuses.” In 2007 the Ministry of Health issued guidelines for the operation of such committees differentiating between three types of fetal anomalies: mild handicap, moderate handicap and severe handicap. The document proclaims that the more advanced gestational age is at the time of request, a more sever handicap is “required” to legitimize a committee’s permission for termination. The same document also allows committee decisions that do not accord with the designated guidelines.

2. For a discussion of abortion debates in the Knesset see Sered (2000).

References


**RéSUMÉ**

Les dilemmes du diagnostic prénatal cacher et la montée d’un nouveau leadership rabbinique

Cet article montre comment un institut de consultants rabbiniques qui se donne pour but de forger des moyens « cacher » – conformes à la halakha (loi juive) – d’utilisation de diagnostics prénataux d’anomalies foetales parvient à se frayer une voie dans la structure autoritaire complexe du judaïsme observant en Israël. L’institut crée ainsi un espace public qui révèle les désaccords rabbiniques et insiste sur le fait que les dilemmes relatifs à l’interruption de grossesse doivent être traités au cas par cas, ouvrant à une offre de services professionnels de type « pionnier moral ». Où l’on voit un cas de biomédecine inspirer un nouveau type de leadership religieux qui transforme la structure de l’autorité rabbinique.


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**ZUSAMMENFASSUNG**

Das Dilemma der koscheren « Pränataldiagnostik “ und der Aufstieg einer neuen rabbinischen Führungsrolle

Dieser Artikel zeigt auf, wie ein Institut rabbinischer Berater, das es sich zum Ziel setzt, „koschere“ Methoden – konform mit der halakha (jüdisches Gesetz) – pränataler Diagnostik fötaler Anomalien durchzusetzen, sich einen Platz in den komplexen, autoritären Strukturen des nicht-praktizierenden Judentums Israels macht. Das Institut schafft so einen öffentlichen Raum, der die rabbinischen Meinungsverschiedenheiten aufdeckt. Es besteht auf dem Standpunkt, dass das Dilemma bezüglich von Schwangerschaftsabbrüchen von Fall zu Fall behandelt werden muss und empfiehlt ein Angebot professioneller Leistungen in Form eines „moralischen Pioniers“. Man beobachtet also einen Fall von Biomedizin, der eine neue Form von religiöser Führungsrolle inspiriert, die die Struktur der rabbinischen Autorität verändert.


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**RéSUMEN**

Los dilemas del diagnóstico prenatal cácher y la subida de un nuevo liderazgo rabínico

Este artículo demuestra como un instituto de consultores rabínicos que se da por tarea de forjar medios « cácher » – conformes a la halakha (ley judía) – de utilización de diagnósticos prenatales de anomalías fetales consigue abrirse un camino en la estructura autoritaria compleja del judaísmo observante en Israel. El instituto crea así un espacio público que revela los desacuerdos rabínicos e insiste sobre el hecho de que los dilemas sobre la interrupción de parto deben ser tratados según el caso, abriendo una oferta de servicios personales de tipo « pionero moral ». Observamos, pues, un caso de biomedicina inspirando un tipo nuevo de liderazgo religioso que transforma la estructura de la autoridad rabínica.


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*Ethnologie française, XLV, 2015, 2*
The Predicaments of Koshering Prenatal Diagnosis

The predicaments of koshering prenatal diagnosis, in the context of the challenges faced by communities of religious leaders, as part of an effort to formulate acceptable methods. In this context, there are challenges between religious leaders and the community, and it is emphasized that the challenges involve psychological aspects. The experience of the rabbis in this center within the religious power structure, reflects a change in the leadership and the appointment of new rabbis who are leading the field, and the seminar at the center reflects the experience of the religious leaders. The seminar includes some of the challenges faced by the community and the new rabbis who are leading the field.

The seminar was held in Israel, and it reflects the experiences of the rabbis of the center and the community. The seminar discusses the challenges encountered in the field of religious counseling and the appointment of rabbis who are leading the field. The seminar reflects the challenges faced by the community and the new rabbis who are leading the field.

The seminar concludes with a discussion of technological challenges in the field of prenatal diagnosis, presented in a manner that is compatible with the religious community. The seminar reflects the challenges faced by the community and the new rabbis who are leading the field.

Key words: Religious counseling, technological changes, and the challenges faced by the community and the new rabbis who are leading the field.

Ethnologie française, XLV, 2015, 2