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**The Use of Gametes from Cadavers for  
Posthumous Reproduction:  
A Feminist Perspective**

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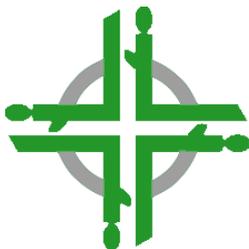
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The use of gametes (reproductive cells) from cadavers for reproduction serves as a basis for examining essential socioethical issues dealing with the way in which we define fundamental concepts in our lives. Social roles such as parenthood, social systems such as the family, and social practices such as coping with death and bereavement are an inseparable part of the social interrelations and power structures among individuals in society. The relationship between our living and our dead is also a derivative of those interrelations and structures, which (continuously and dynamically) shape the society in which we act. In light of this, the social aspects of the accepted practices and perceptions in everything related to fertility, reproduction, and autonomy raise fundamental questions in feminist thinking, and have been the focus of much research and discussion in this context. The possibility of using gametes from cadavers for reproduction challenges the current feminist discourse and calls attention to questions regarding the body and posthumous parenthood.

The starting point for this discussion is circumspection and the asking of questions as distinct from a text presenting unequivocal decisions. When dealing with the boundaries of the new, expanded discussion generated by the encounter between advanced medical technology and the social space in which we live and act, we attempt to stretch these boundaries to include the presentation of topics that have become latent or marginalized. Here also, in those new areas of focus and expression, we wish to ask questions based on feminist thinking, and ponder the gender-related aspects of the reality under discussion; what is the social framework that we wish to impose on ourselves and on others within it? Which social and health-related "costs" should be considered when legally authorizing various scientific and medical acts and at whose expense are they paid? What are the unique characteristics, motives, and structures for women at the new intersections of science, medicine, and technology?

There are two cases when gametes from a male or female cadaver can be used for posthumous reproduction. The first is when sperm or oocytes were frozen by the deceased while still alive, and the second is when the spouse or other family members of the deceased request sperm or oocyte retrieval for this purpose. The sperm extraction procedure is simpler than the procedure for oocyte extraction, but technological difficulties aside, the same social questions are relevant in both cases. The public discourse, although limited, focuses mainly on utilizing sperm from a cadaver.

Moreover, the overwhelming majority of applications by family members to use gametes from the deceased have requested the use of sperm. The following discussion refers to the use of sperm and oocytes and applies the social feminist discourse to both, alongside cases in which the use of sperm exclusively is discussed.

### **Policy regarding posthumous sperm retrieval in Israel**

In 2003, the Attorney General published directives (Directives 1.2202),<sup>1</sup> which included limiting the use of sperm for posthumous reproduction to the spouse alone. The directives are based on "presumed wishes," namely that, if not otherwise indicated, it can be presumed that the deceased would have wished his spouse to give birth to his children after his death. This was validated also in the recommendations of the Mor-Yosef Report in 2012.<sup>2</sup> This notwithstanding, in certain cases in recent years, the Israeli courts have ruled that the parents of the deceased can make use of their son's sperm for reproduction, in an agreement with a woman other than his spouse, who wishes to be a mother (Triger, 2017). The subject is not anchored in legislation. About a year and a half ago, the Ministry of Health published a memorandum pertaining to sperm banks (2016), seeking to regulate the issue of posthumous use of sperm. The legal memorandum preserves the spirit of the Attorney General's directives. In addition is Knesset Member Revital Swid's Law of Continuity,<sup>3</sup> which states that the parents of a soldier, who died childless during his military service, are entitled to use his sperm for reproduction.

These processes, which occur between experts and policy makers and the law courts that discuss individual cases of families who applied for permission to use the sperm of their loved ones, illustrate the existence of a variety of different cases and wishes. Furthermore, these processes reveal not only the gap between the policy and the public, but also the absence of an in-depth discussion with the participation of different authorities to examine fundamental questions in society. In our case, the latter include inter alia the possible implications of regulation or social permission for the use of gametes from a cadaver for posthumous reproduction.

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<sup>1</sup> The Attorney General's Directives to the Government (Directives 1.2202) Posthumous Sperm Retrieval and Use 27.10.2003.

<sup>2</sup> Recommendations of the Public Committee for Examining Legislative Regulation of Fertility and Childbirth in Israel (2012) Jerusalem: Ministry of Health.

<sup>3</sup> Bill for Families and Casualties (Compensation and Rehabilitation) Law. (Amendment - Use of Sperm of Deceased Soldiers), 2017.

## **Parenthood and the use of gametes from cadavers**

In a Knesset Science and Technology Committee discussion on the use of sperm from cadavers, Asa Kasher made the following statement:

My point of departure is dignity. I cannot imagine a better way to preserve a person's dignity than by raising up his seed in his life and after his death. If we are talking about a man's child and the child's attitude toward the father after the father's death—in this case, only the father is relevant, but would apply to the mother as well—the father will certainly live on in the child's heart and will have a place in the child's life—the child will think about him, will respect his wishes, will fulfill his legacy, will carry his genes, and will live according to his attributes and values. I cannot think of a more meaningful, richer, or more complete way of upholding a person's dignity posthumously than raising up his seed when this can be done.<sup>4</sup>

This perception, presented by Kasher, sees children as a representation of their parents. In his view, children are the means of achieving a person's wishes, of actualizing his/her image, which, according to this doctrine, is possible even by using the genes of the deceased parent, who will take no part in raising the child. In other words, the apparent connection between Kasher's statement and dignity and the right to genetic continuity undermines the social significance and status of parenthood, which views those who actually raise the child as the parents and as the significant figures in the child's life. As a society, we aspire to view individuals as independent entities whose identity is shaped through their life experience, their environment, and their home, when the family is one important element in the overall picture. We do not wish to see either grown children or ourselves as "handcuffed" to our parents' image, but as free beings and equal members of society. Parents are responsible for raising their children, not in their own image, as copies, but in a way that facilitates their independence and freedom, according to their individual inclinations. Such a definition of parental responsibility allows our children to have their own existence rather than perceiving them as a continuation of our existence.

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<sup>4</sup> Protocol 97 of the Science and Technology Committee meeting, 30.9.2002.

Some people claim that continuity, leaving progeny, is the essence of parenthood, whereas others claim that its meaning lies in the practical experience of parenting, raising children (Sperling, 2015; Hashiloni-Dolev & Triger, 2016). Carmel Shalev (2002) asks whether the right to parenthood is the right to raise children or the right to create progeny. Our intention here is not to determine either the right or the essence, but to discuss the decision about parenthood itself. The choice itself is a primary and central component, reflecting the decision to realize parenthood. In the parenthood context, one can define "presumed" wishes, which do not necessarily constitute testimony to the wish for immediate, practical fulfillment. This might be due to various reasons, such as unripe conditions, dissolved dreams, etc. When discussing parenthood, presumed wishes are not enough; parenthood is the realization of a practical choice. In the case of a man or a woman who died without leaving frozen gametes, it is actually impossible to talk about the concept of choice. The situation resembles future plans—dreams and fantasies, only some of which come to fruition. Therefore, "presumed wishes" do not constitute the choice of parenthood, since choice is a situation in which we realize our wishes in the context of time, place, and a specific family unit.

The choice to become a parent or to create a family unit through posthumous gamete retrieval is, in fact, the wish of the living, and not the realization of parenthood for the dead. Nevertheless, in such a situation, it is imperative to consider the responsibility of the various partners in the parenthood project. This begs the question of who takes this responsibility. What is its significance? Are bereaved parents, for example, able to make such a decision on behalf of their deceased son or daughter? Would the latter necessarily wish to raise their children in the way that they were raised, and by the same parents? Or are these questions, in fact, irrelevant since the deceased are not the parents at all and the perpetuation of their biological offspring is their parents' parenthood project, and not their own? One key question is how to realize the children's existence in itself and not as an entity whose goal is memorialization. This point constitutes one of the essential differences between sperm or oocyte donation and the use of gametes from cadavers. In both cases, the offspring will be curious regarding the personality or the image of the absent biological parent. However, only in the latter case is the perpetuation and memory motif surrounding the offspring present among members of the family. In other words, the existence of the offspring is subject to an

ongoing perception of continuity, resemblance to the deceased, and potential realization of expectations. The genetic parental figure does not exist and is not involved in the child's life. The image of the father or mother as a memory (created through photographs, stories, etc.) is shaped by the way in which it is treasured in the memories of the surviving family members and not as the genetic offspring would have known him or her.

### **On the perception of bereavement in Israel and the use of gametes for posthumous reproduction**

The death of a son or daughter causes deep sorrow and each individual finds a different way of coping. The end of a life, especially when the person did not reach old age, leaves us hurting and inconsolable. What is the role of the society or the collective vis-à-vis individuals who are coping with the death of a loved one? This question has no single, decisive answer. The dead are part of a particular social fabric within a society that has cultural and political contexts regarding life and death, and a specific attitude to death according to the timing of the death on the life cycle continuum. This fabric anchors the space of the discussion to define society's role and responsibility, and hence to formulate the rules for preserving the dignity of the deceased. In addition, we are not talking about one social attitude but social attitudes, in general, which are varied and related to the reasons for or the causes of death. Death in old age, for example, is perceived as the inevitable conclusion to the life cycle, when the society's role is to comfort the family and close friends in their grief. The source of joint comfort is the natural end to life. However, when death is the result of an illness, an accident, or a war, the overwhelming sense of frustration and lack of fulfillment add to the difficulty of finding consolation. The distinction here does not concern the degree of pain, which is immeasurable and not subject to comparison. The loss of loved ones is always hard and this distinction is intended to emphasize our potential ability to find comfort or peace of mind, in accordance with social norms.

In cases of untimely death, as a society, we wish to see ourselves as committed not only to comforting the bereaved, but also as responsible for taking action to prevent similar occurrences. For instance, the promotion of health and of medical and scientific development is defined as a public social project designed to prevent death and to improve quality of life. Hence the legitimization of the use of humans for medical research. In cases of war-related deaths, of civilians and of soldiers, it is our

responsibility to do all in our power to avoid war and the resulting sacrifice of members of the community. The failure to prevent war, to a large extent, turns into responsibility for the pain of those who have lost their loved ones. In Israel, one cannot escape the fact that the distinction between the "types" of deceased and the collective sense of loss are closely linked to religious and cultural belonging. In the contemporary Israeli-Jewish discourse on death, it is clear whose lives are considered more worthy, and the pain of whose death is most sorely felt. This discourse places the loss of soldiers at the center of the national being, reflected in society's attitude to the bereaved families. Hannah Naveh (2001) describes the language of mourning and memory in the context of military cemeteries, the way in which the cemeteries and commemoration shape modes of bereavement, as well as the private and the public space, as follows:

It [the community of the dead, H.E.] requires never-ending maintenance by the public, which perseveres to preserve "its" interests, which turn out to be public interests. (The members of this community no longer have any interests besides those imposed on them by others.) Thus, the public takes possession of the martyrs, fills their interred bodies and their presumed and invented spirits, organizing them into one homogeneous, abstract, solid brigade, thereby turning their individual selves into a public. (Naveh, 2001; 310–311)

In other words, dubbing and transcribing the dead has a great impact on life and on the public and is ingrained in ideological relationships and collective representations. The living carry the voices of their deceased and wish to instill within them continuity, memory.

In a Knesset Science and Technology Committee discussion on posthumous sperm donation, a bereaved mother described the pain of losing a son and the reality of bereaved parents' lives:

When Shmuel was killed, his independent existence ceased. His parents continue to take him everywhere with them. They ask which songs he liked, which songs he would wish to be played on his remembrance evening, who his friends are. They do everything instead of him; they attend his friends' weddings and participate in every other activity that he would have done. He is always

with them. Parents try to make time stand still from the moment that the son was killed so that nothing will change. For years on end, they might leave his room untouched, wear his clothes, listen to the same songs, try to do whatever they can to stop time from moving on so as not to part, so that death will not be. You will sometimes find that parents have not laundered the sheets in which their son used to sleep, even many years later. What they want is to keep, not to let go, not to leave. Among the reasons for the terrible sadness are all the things that the son will never do; the romantic relationships that he will never have, the landscapes that he will never see, the songs that he will never hear, and that he will never marry and never have children.<sup>5</sup>

Coping with the pain of the loss is through "substituting" the deceased in social relationships and thus trying to cast aside the existence of death. Concepts such as commemoration and continuity have become an inseparable part of the attempt to cope with bereavement and to give meaning to death (Lomsky-Feder, 2003), alongside the fact that the death of young people leads, not infrequently, to a search for a remnant that death did not kill (Katz, 2012; 73).

Rivka, a bereaved mother, describes the rationale behind the posthumous use of sperm for reproduction following the loss of a son (Katz, 2012; 71):

Wait, they took my child. They killed him. I took his sperm. I want to bring a child into the world; so that this child will grow up, will be one of the population of the State of Israel, and will be a soldier [male or female] to serve the country. And his father was killed. Then what is the argument about? I cannot take it in. A soldier was killed for his country. I want to create a root from him, and people are against this? You would expect, like with Gilad Shalit, they brought him home, right? What's the issue? Why are you letting a bereaved family fight with you? Why do I need to fight with you at all?

Rivka places a mirror before the society—his death was not a decree of fate but the result of a social reality: "They killed my son." She asks for him to be returned to her, if not her son, himself (as with the return of a prisoner of war), then through what she refers to as his "root." She asks that the society authorize the birth of a child, to allow

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<sup>5</sup> Protocol of the Science and Technology Committee meeting, 30.9.2002.

her to perpetuate the existing order; to raise a child, who will be part of the society, and on reaching maturity, will become a soldier in turn. In other words, her world, and hence the social order, have both been undermined. To restore the order, the workings of the world must continue, through the birth of a child, who will eventually serve in the army. This might be a way of reestablishing order in her own life. Throughout the years, bereaved families have launched various campaigns against the State *inter alia* on the location of cemeteries or regarding headstone inscriptions (Naveh, 2001; Rosenthal, 2001). These campaigns indicate individual coping strategies as well as the tension between the shaping of national mourning and coping with private mourning. The bereaved families' resistance to the dogmatic shaping of national mourning is an expression of emotions such as anger, frustration, and pain. In addition, these campaigns might be an inseparable part of coping with the pain of bereavement, *i.e.*, they are not only the principled struggle regarding the symbolism of shaping the bereavement, but the act of resistance itself also becomes an inseparable part of the coping. Rivka takes a different stance toward the State; she demands that the State, which took her son, return him. This bereaved mother demands no compensation, no recognition, not even memorialization. She wants the State to return what it took from her. As soon as the personal demand is fulfilled, the next obvious demand—to change the social order—would be expected to disappear as well. In this case, however, quite the opposite is true. In this mother's view, what has been returned must, eventually, enlist as a soldier in the service of the State, with the clear recognition that he might, in the end, be taken again; and will be returned.

What, then, is our social role in coping with bereavement? What social support system must we provide people in their sorrow? Where do we locate the mourning ceremonies *vis-à-vis* other social principles and how much space do we leave for grieving parents to demand that the State preserve the memory of their children in a way that they consider fitting? The saying "let the dead rest in peace" can be interpreted as directed toward the bereaved parents, but can also be read differently as directed toward the society, defining the boundaries of collective responsibility for the living and for the dead. An utterance that expresses the boundaries of the act of commemoration, which tells, reminds, and perpetuates what and who the person was while equally indicating the boundary of what will never be again; without continuity and without a replacement.

## **Preventing exploitation**

The availability of reproductive technology has introduced a division between social and genetic parental figures, sometimes extending parenthood by turning it into a project shared by three or more people (the prospective parent/s, the oocyte owner, the sperm owner, and the surrogate mother). Technology redefines our attitude to the use of a person's body when this use is not necessarily intended for that person's benefit. In such cases, the questions to be asked are as follows: Is it legitimate to make use of the fertile body of either a man or a woman for someone else's needs in exchange for a fee? Does payment for the use of either gametes or fertility organs sever the link between the surrogate mother/oocyte owner/sperm owner and the future offspring and cancel their parental responsibility? On what basis should the relationship between the gamete owners, the surrogate mothers, and the prospective parents be established? Assuming that we agree that giving birth to children differs, in essence, from all other human acts, including physical work, organ donation, etc., the question of how to insure the status of the oocyte or sperm owners and surrogate mothers in the parenthood project must be addressed.

Since the scientific and technological resources for reproduction are a shared social project, made possible by social and legal arrangements, they are not necessarily detached from social responsibility. The use of reproductive technology takes place in the area of tension between the personal and social spaces. It is the society's responsibility to prevent abuse of the technology and the violation of the liberty of individuals and of social and gender groups. This includes advance identification of any potential harm to women, who might participate in the process as a result of social or financial pressure, or who might compromise their health when, at the end of the day, the process is not intended to meet their needs or to benefit their health. Accessibility to advanced medical technology does not automatically authorize or legitimize its use, mainly when it involves a potential health hazard. In this context, another question must be asked as to whether the concept of exploitation applies only to living men and women. Or in certain cases, are we to consider the use of a cadaver for reproduction or organ donation as exploitation as well?

## **In conclusion**

In the case of the use of gametes from cadavers, technologies designed to solve fertility problems have turned into a potential response to the pain of bereavement. In our view, this expansion has occurred without prior thought about the significances and repercussions created by the technology. In addition, the existence and publication of the technology and the possibility of gamete retrieval from cadavers, in themselves create social pressure to realize this possibility as part of the customs of mourning and of coping with the loss of a son or daughter. In such cases, out of society's wish to help the bereaved in their grief, one of the concerns is that essential questions about the loss of life in accidents, wars, etc. will be shunted to the sidelines in favor of the proposal or the prominence of "the reproduction solution" as a means of comforting the bereaved or of "paying off the social debt." Since this reality is part of the contemporary Israeli society life fabric, we must confront it directly and regulate the conditions for its realization. The ethics committee of Ayalla has addressed this issue and has proposed potential solutions for regulation, according to the medical and ethical conditions under which the sperm will be used.<sup>6</sup> These solutions introduce an additional perspective to the discussion, but it is important to emphasize that its essence is not to lay down conditions or limits for use. Neither does the feminist discussion deny the possibility of using gametes from cadavers or of the resulting family model, but aspires to raise awareness and to place on the public agenda the significance of the use of the technology. In the case of the use of gametes, the choice of technology might narrow the social possibilities of coping with pain and loss, while concentrating the potential sources of comfort in the birth of a new son or daughter.

Even though the posthumous gamete harvesting technology offers a solution through reproduction, it relates neither to its implications for the future nor to whether this act indeed brings solace to bereaved parents. What will be the fate of the children who are born? Have we done enough to prevent similar cases of death to those that led to the need for gamete harvesting? The social significance of the perception of the sanctity of life is changing before our eyes, without us having expressed an opinion. This case study illustrates how, as a society, we tend to make of use of medical technology as a tool that is designed to blur coping with life itself, or in this case, with

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<sup>6</sup> Position Paper on Posthumous use of Sperm: Recommendations and Conclusions of the Ayalla Ethics Committee, November 2017. <https://www.ima.org.il/userfiles/image/semenDeadFull.pdf>

death, vis-à-vis the possibility of creating an alternative life. Without a discussion such as this, a situation in which contemporary Israeli society sanctifies fertility rather than the children who are born will continue to become established. A clear example of this social status in formation is the Law of Continuity memorandum, which draws a parallel between the death of soldiers and our obligation to provide offspring for the dead.

Human beings and life itself are irreplaceable. The living child, even if born from the sperm of the deceased, is neither his reflection nor a living headstone. Similar to the ethics of care perception, we must uphold and encourage human relationships, between women and men. Our care and compassion toward life as individuals and as a society, the ability to realize love, solidarity, care, and compassion toward others are what are supposed to guide our daily lives and be the basis for formulating the different models of families in the changing society. Establishing these principles about life will lead to insights into the use of cadavers, and hence, in a circular and reflective manner, we will be able to examine and to ratify the fairness and integrity of the way in which we relate to others living among us.

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