INFERTILITY IN THE JEWISH COMMUNITY:
JEWISH ETHICAL STANDARDS OF PRIORITY SETTING IN IVF GRANT CRITERIA

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ABSTRACT

This thesis examines how Jewish texts can be used to inform priorities for the ethical distribution of scarce financial resources to couples experiencing infertility. After in depth research into Jewish texts on the setting of priorities to determine ethical distribution of scarce resources and seven sets of eligibility criteria for IVF grants from seven Jewish organizations, grants, and loans, this thesis aims to evaluate the criteria of each organization, looking for trends among the different organizations, and elements that are unique to each. The thesis analyzes the ethical nature of those eligibility criteria with the aid of the Jewish sources, consisting of Mishnaic and Talmudic texts as well as rabbinic commentaries, from the first chapter. It establishes both the criteria and ethical dilemmas raised by those criteria in chapter two. Chapter three consists of an evaluation of those criteria based upon the Jewish texts. Finally, the conclusion seeks to provide suggestions regarding the eligibility criteria for IVF grant applications.

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INTRODUCTION

This thesis examines how Jewish texts can be used to inform priorities for the ethical distribution of scarce financial resources to couples experiencing infertility.

When I started thinking about subject matter for my thesis I knew I was interested in biomedical ethics. I loved my Talmud studies with Dr. Mark Washofsky over the course of my time at HUC-JIR, and I wanted to explore Jewish sources that would inform my perspective on a topic in the field of biomedical ethics. I spoke about it with Rabbi Julie Schwartz in one of my first meetings. She asked what I thought of the topic of infertility in the Jewish community. At the time I did not know much about the depth of the plight of fertility struggles within the Jewish community, but soon I began gathering resources which shared a bleak picture. Infertility impacts one in eight women in the United States.[1] The rate of infertility within the Jewish community climbs higher; it impacts one in six Jewish women.[2] During my research I found an ELI Talk, similar to a TED Talk but all based on Jewish experiences, from Jewish musician and educator Naomi Less. She speaks about her experiences with infertility, the biblical model for Jewish women struggling with infertility, and how the Jewish community could support its Jewish members experiencing infertility better. Ms. Less poignantly describes Channah's emotions and actions:

> You can't see her pain because she hides it behind her positive hardworking persona in the community. She hides it behind her loving care of her siblings, of her relatives, of her friends. She weathers it well, but today she breaks. It overtakes her. The years of consultations and trials and almosts until all she can do is fall on the ground on her knees, choked up, mouth moving inaudibly as she begs and pleads…public pleas tapping every resource she has, depleting her savings until all at once, on her knees weeping and whispering,

[1] "Infertility," www.cdc.gov (Centers for Disease Control and Prevention, 2019), https://www.cdc.gov/reproductivehealth/infertility/index.htm.

[2] "About Us," Jewish Fertility Foundation, accessed January 4, 2021, https://jewishfertilityfoundation.org/about-us.

> heartbroken open, she prays. 'Yah, Source of everything, if only, if only, she could be blessed with a child.'

I felt the desperation in the picture she paints. Ms. Less describes her fertility struggles beginning with her marriage at 35 years old and trying to conceive at 38 years old. She depicts walking into the waiting room for her first appointment with a fertility specialist; she stood shocked to know about half of the people there, all of whom were Jewish. Then she questions why this was the first she knew of the issue within the Jewish community. After witnessing that waiting room she recognizes that infertility is a "pervasive problem," for Jewish people, so how has she not heard about it before? As Less publicly tells her story of struggling to get pregnant on social media and at conferences people came out of the woodworks to share theirs, as well. It heartened them to know they were not alone as they often felt in their own communities. That happened to me, as well. Over the past year when people ask what I am writing about for my thesis, the moment I mention infertility in the Jewish community, their stories come tumbling out. Some share first-hand experiences, and others describe witnessing the anguish of family and other loved ones.

Unfortunately, as Less shares, "For way too many people in the Jewish community [infertility] is a silent, secret, and sometimes shameful struggle." She continues by recounting the stories of Sarah and Channah in the Torah and *Nevi'im*, the Prophets. She reveals a pattern of the infertile woman praying to God, bargaining, and receiving a child by the mercy of God. At the end of her ELI Talk, Less challenges the Jewish community. In the stories of Sarah and Channah, others witness the struggles and provide support. A priest sees Channah weeping, and an angel and messenger hear Sarah and tell her she will bear a child. Less tasks the audience to be that priest, angel, or messenger. She gives the Jewish community the

privilege and responsibility to be with people experiencing infertility and help them find a way to have children.

My research continued, and I found seven Jewish organizations, grants, and loan programs who do just that. The provide financial assistance for Jewish couples to undergo IVF treatment in the hopes of having a baby. Given the enormity of the costs associated with IVF treatment, I decided to study Jewish texts that discuss the setting of priorities to ensure ethical distribution of scarce resources. I spent the summer translating and analyzing texts that spoke about the broad issues of the *mitzvah*, commandment, to practice medicine, *pikuach nefesh*, saving of life, and issues in prioritization for *pikuach nefesh* and *tzedakah*, obligated giving. After that, I spent time researching the grant eligibility criteria for each of the seven Jewish entities providing financial assistance for IVF treatment. Then, I analyzed the criteria looking for positive examples and ethical dilemmas which could be supported by the texts I had studied.

Chapter one of this thesis contains summaries of the texts on the setting of priorities to ensure ethical distribution of scarce resources. Chapter two focuses on the explanation of the IVF grant eligibility criteria from the seven entities and establishes a set of ethical dilemmas with a number of those criteria. Chapter three details the application of the texts outlined in chapter one to the positive criteria and ethical dilemmas presented in chapter two. Finally, the conclusion provides suggestions for the organizations based upon my ethical assessment of their criteria.

CHAPTER 1: AN ETHICAL STUDY OF PRIORITY SETTING

The texts studied address how to allocate limited resources. In the Jewish legal tradition, the texts which describe priorities revolve around *pikuach nefesh*, saving of life, and *tzedakah*, the obligation to give to those in need. The first set of texts explain the *mitzvah*, religious obligation, to practice medicine as well as the duty to rescue.

THE MITZVAH OF MEDICINE AND THE DUTY TO RESCUE

In his work *Torat Ha'adam*, Nachmanides laid out an understanding of the mitzvah of medicine and its practice based upon his reading of the halakhic literature concerning medicine. The first text studied, on the issue of *sakanah*, danger, from the chapter on *m'yuchush*, worry, he summarized the arguments laid out in a midrash in Baba Kama 85b. First, Rabbi Yishmael used the phrase "*v'rapo yirapeh*" from Exodus 19:21 as a proof text that doctors are given *reshut*, permission, to heal. The verb used in that phrase means to heal, and its repetition gave legitimacy to the practice of medicine. Then, the conversation moved onto why it might be necessary to grant doctors permission. The commentary explained further that it was necessary to alleviate doctors' concerns about making mistakes that could lead to the death of the patient that might put them off of practicing medicine in the first place. It served as protection against liability. Additionally, this *reshut* took the pressure off of doctors so that the argument could not be made that the doctors were circumventing a person's divine punishment. The argument is that while medicine is not the "natural way of healing," i.e. God's way, it is the way of the world. The example used was King Azza in Chronicles II 16:12, when King Azza turns to physicians to heal him rather than God. While Nachmanides believes that this text proves that human beings should not engage in the

practice of medicine, since they have resorted to it, the physician is granted the license to heal.

Then Nachmanides moves the conversation to say that not only is the practice of medicine permitted, but it is also a *mitzvah*. It is given the weight of a *mitzvat aseh*, a positive commandment, in the category of *pikuach nefesh*, saving a life. Nachmanides cites Yoma 83b in which experts are required to treat a patient with *bulemos*, a type of eating disorder, on Yom Kippur, proving that medicine is *pikuach nefesh*, which overrides almost all other *mitzvot*. What would cure one patient of *bulemos* would kill another, and doctors understand the difference. One who does not have a fever should be given sweets, but if one with a fever is given sweets, it will kill them. People who are not doctors, and therefore not experts in the field of medicine, do not understand these types of distinctions and cannot treat a patient with *bulemos* because they could inadvertently kill the patient. This example is used to show that broadly, medicine should be practiced by those who are experts, doctors, because their knowledge will save people's lives much more consistently than those who have not trained in the field of medicine.

After this, Nachmanides cites Kiddushin 82a saying, "The best of doctors should go to hell." While the basic understanding of the text condemns all physicians, Nachmanides interprets this Mishnah not to say that there is any type of *isur*, prohibition, on the practice of medicine rather that there are physicians who act poorly. It is used here to shame neglectful doctors who sin knowingly. Moral doctors who act in the best interest of their patients are deserving of praise. Another familiar saying involves butchers: "the best of butchers is a partner of Amalek." Nachmanides interprets that this phrase is not to deter people from pursuing the profession of butcher; it is to deter them from cheating people.

The last point of this text deals with a patient who vows not to benefit from the doctor who is treating him.[1] The doctor is permitted to heal the patient because it is a mitzvah imposed upon him by Torah, but he must stand rather than sit. Doctors cannot be paid for their work because the practice of medicine is a *mitzvah*, so they are paid for their idle time when they sit. In this way, the doctor allows the patient to keep his vow and still performs the *mitzvah* required of himself. Because medicine is *pikuach nefesh* the vows must be ignored, set aside, or reinterpreted so that they do not interfere with the *mitzvah*.

The duty to rescue is derived from the second text studied, Sanhedrin 73a in the Babylonian Talmud (Bavli). First, the text recounts a *Baraita* which says that a person is allowed to kill another person to stop them from three things: killing someone, raping or sodomizing someone, or raping a married person. Since these three crimes are punishable by death, the potential victim or someone witnessing is permitted to kill the aggressor before they commit the crime because the aggressor would have forfeited their life afterwards anyway. This *Mishnah* is used to talk about the person who is saved as a result of these actions. The *Gemara* narrows the discussion, focusing on the instance in which a person is allowed to kill an aggressor who would kill them, thus saving their own life or somebody else's. It presents a *Baraita* in which the Sages ask from where the law is derived. A Toraitic proof is given: Leviticus 19:16, "*Lo ta'amod al dam rei'echa,*" "You shall not stand idly by the blood of another." The *Gemara* is not convinced. It asks if this is really how that proof text should be used. It points out that the Leviticus verse better suits how to understand the more general duty to rescue. It is used as the proof text for a different *Baraita* concerning the

[1] B. Nedarim 38b

duty to rescue someone who is drowning in a river, being dragged away by a wild animal, or being attacked by bandits.

In a different section of the *daf*, page, of Talmud the *Gemara* questions if Leviticus 19:16 is actually the proof text for the duty to rescue, suggesting that another verse, Deuteronomy 22:2, "*vahasheivoto lo*" "And you shall restore it to him" should be used instead. It explains in another *Baraita* that Torah teaches that one must return lost property to its rightful owner. The Sages in the *Baraita* then ask what the proof text is for the law that a person must help another who might lose his body. *Vahasheivoto lo* uses the masculine ending for its verb and adds "to him." It can also be translated as "and you shall restore him to him," meaning you shall restore his body and health to him. The *Gemara* concludes by explaining that both verses are needed as proof text for the duty to rescue. Deuteronomy 22:2 is not sufficient because if it was used alone, a person might think that only they are obligated to save the person rather than extending themselves further by hiring people to help. The second verse, Leviticus 19:16, "Do not stand idly by the blood of another" widens the person's responsibility to include hiring people to help, because if he does not, he would be transgressing a Toraitic prohibition.

Maimonides interprets the commandment slightly differently in his commentary on the Mishnah, *Mishnah Torah*. He writes, "Anyone who *can* save and does not save transgresses the *isur*, prohibition, "Do not stand idly by the blood of another."[2] Then he reiterates the three examples of when one is required to save someone, adding that if they are able to save the person and they do not, they have transgressed the prohibition. After this he gives more examples. A person who hears non-Jews or Jewish betrayers planning another

[2] Mishnah Torah, Nezikim, Hilchot Rotzei'ach uShmirat Hanefesh 1:14

person's harm and does not tell that person has transgressed. If that person knows that a non-Jew or a violent thug are approaching another person and could placate them and convince them not to harm the other and does not, she has transgressed, as well. This teaches us that when someone is in direct danger of losing their life we are obligated to save them.

THE TWO TRAVELERS

The next selection of texts confronts how to prioritize when saving a life. While the material covers an emotionally and ethically laden decision, the scenario itself is the simplest of those on setting priorities. It describes whether to save one person over another.

The first text from the Bavli, Baba Metziah 62a, provides the original example of how to prioritize who receives a scarce resource. In it, two people walk in a desert; one of them has a canteen that has enough water for him to survive to the next town, but if he drinks it all, the other will die. The Sages present arguments of how to resolve the moral dilemma of who should drink the water. The Sage Ben Petura recommends that they split the water. This way both of them will die, and the man who possesses the canteen will not have to watch his fellow die. Ben Petura implies that if the man does not share his water, then he has some responsibility in the other person's death. Later, Rabbi Akivah uses the proof text, Leviticus 25:36, "*v'chei achichah imach*," "Your kinsman shall live with you" to explain his position— that the life of the man in possession of the canteen comes before that of his fellow traveler.

This is expanded in the next text, Leviticus 25:35-6. Ploni Almoni pays off his relative's debt to a creditor, so that relative is now Ploni's indentured servant. He must work off his debt. There are some restrictions to how Ploni must treat him. He must make it

possible for his relative to live with him. The man is already in debt, so Ploni should not make it more difficult for him. Rabbi Akivah turns the verse to apply to the two travelers. In order for Ploni's relative to survive, work off his debt, and rejoin society, Ploni needs to be stable, first. He needs to provide for himself so that he can help out his relative. This is similar to the instructions given in an airplane. The parent must put their mask on first in order to help their child.

Sifra Bhar 5:6 is almost an exact copy of the story in Baba Metziah 62a with one important difference. Ben Petura gives his explanation that the two should split the canteen of water based off of the same proof text that Rabbi Akivah cited for his explanation that the man who had the canteen should drink it all. Using the verse from Torah elevates Ben Petura's argument. Rabbi Akivah argues that in that verse "*You* must live with your kinsman," showing that "you" must come first, while Ben Petura focuses on a different piece of that verse "You must live *with* your kinsman" meaning that "you" and "your kinsman" are of equal value.

In the studied section of *Chidushei HaGra'Ch,* a commentary on the Talmudic text addressed above, Rabbi Chaim Soloveitchik explains that in order to explain Ben Petura's argument another layer must be added to the original sketch. This time two people walk in the desert with no water, and a third party approaches who is not thirsty and has a canteen of water. Of two options, the obvious solution, without needing scriptural support, is that he should give it to one of the travelers so that one will live, rather than split it between them and see them both die. This solution should be obvious to Ben Petura, too. Why, then, does he not come to this conclusion in the original case with two travelers? Rabbi Soloveitchik posits that his reasoning is within the matter of *chayei sha'ah*, when a person has a limited

amount of life to live. Ben Petura believes that *chayei olam*, a person's full life, and *chayei sha'ah* are worth equal value. Life, whether it is a full life or a limited amount of time, is life, and there is no halakhic difference between the two categories. Therefore, the two must split the water. This way, both travelers may live rather than one traveler living. Following this logic, Ben Petura would say that the third party must split the water between the two travelers. However, in Rabbi Akivah's argument, "Your life comes first," he means that the person's *chayei olam* should come first. Rather than accepting *chayei sha'ah*, the traveler with the canteen should work to achieve *chayei olam* because it is worth more than *chayei sha'ah*. Following this logic, the third party would be obligated to choose one traveler to receive *chayei olam*.

Avodah Zara 27a and b from the Bavli require background context. During the time that the *Mishnah* was compiled by Rabbi Yehudah HaNasi, the rabbis had not encountered monotheistic non-Jews who possessed any sort of moral code. The source begins with a *Mishnah* that commands that Jews not seek out non-Jews for medical treatment. This is due to a fear that non-Jews might kill Jews in that vulnerable state. One sage creates a distinction. If there is potential for the Jew to die, but death is not certain, the Jew may not seek non-Jewish treatment, however, if they are in mortal danger, meaning if they do not get medical help immediately they will die, then they may be treated by a non-Jew. The *Gemara* objects, suggesting that the opposite should be done. Even though the person will certainly die without treatment, it is better that they live out their *chayei sha'ah*, limited lifespan, rather than risk having a non-Jew shorten that time. However, if there is a possibility that the Jewish person will recover fully, then they should seek out non-Jewish treatment because the risk is worth it.

The *Chavrutah* is a multiple volume step by step Hebrew commentary to the Talmud. It guides the reader through each Talmudic passage and explains the commentators' positions on it. The section studied refers to Baba Metziah 62a and the commentary of the Chazon Ish, a formidable twentieth century Talmudic scholar. First, the Chazon Ish summarizes Ben Petura's position that limited lifespan is equal to a full life, so the two travelers must split the water. The Chazon Ish then raises a dilemma with that explanation. In Avodah Zara 27b, it is preferrable to endanger someone who is not going to live that long (has a limited lifespan) on behalf of someone who can live a regular lifespan. The Chazon Ish ponders why, if this principle that a full lifespan takes precedence over a limited lifespan appears in Avodah Zara 27b, it does not also appear in Ben Petura's ruling in Baba Metziah 62a. He answers that the two instances are not similar. There, in Avodah Zara 27b it talks about two people whose life statuses are different. One can live a regular life, and one can live only a limited lifespan. In that situation c*hayei olam* is worth more than *chayei sha'ah*. In Baba Metziah 62a, both travelers have the same opportunity to survive if they drink all of the water. One might think that ownership of the canteen of water factors in, but for Ben Petura, this is not enough of a reason to place the owner's life above the life of the other traveler.

In 1955 Rabbi Isser Yehudah Unterman wrote his major halakhic work, *Shevet M'Yehudah*, which is a treatise on pikuach nefesh and halakha. In the segment studied, Rabbi Unterman addresses the issue of whether one has the duty to rescue another person if it endangers or possibly endangers the rescuer. Unterman raises several questions of Ben Petura and Rabbi Akivah's positions in Baba Metziah 62a, while also noting that the halakha follow's Rabbi Akivah's position. While the structure of the text is to list all of the

uncertainties before resolving them, for the sake of clarity, here, each uncertainty will be followed by its resolution.

First, Rabbi Unterman determines the legal principle guiding Ben Petura's ruling that both travelers must drink the water. If the principle of the text is "that one should not look at the death of his fellow," is it a legal principle or an explanation? It cannot be a legal principle because there is no *isur*, prohibition, or *halakha*, law that one violates if one sees the death of his fellow. Maybe, then, it serves as an explanation for what the situation looks like from the point of view of the traveler in possession of the canteen of water. Maybe that traveler says to the other, "I do not want to keep my water from you. We will split it." After showing that this is an explanation rather than a legal principle, Unterman turns to *chayei sha'ah*, limited lifespan, as the plausible legal principle for Ben Petura's reasoning. Both of the travelers are in mortal danger at this point. If they do not drink the water they will die. The time they have left, their limited lifespan, while short, is still life. This is Ben Petura's argument. Additionally, Ben Petura does not have access to the only reason for keeping the water—Rabbi Akivah's midrash which says that one's life comes before that of his fellow. All this is to say that one is obligated to guard the limited lifespan of his fellow, meaning that the two travelers must share the water and die. Unterman notes the vast chasm between Ben Petura and Rabbi Akivah's arguments. He signals that this is not theoretical Talmud study. It has implications for the practical decisions people make in legal and ethical realms.

Based on Ben Petura's ruling in the scenario with two travelers Rabbi Unterman wonders how he would rule in the following scenario: there are two people drowning in the sea, and one person finds a life preserver fit for one. If both people grab the life preserver, they will drown, but if one person grabs it, he will live. Would Ben Petura rule as he did in

the scenario with two travelers, that both should grab the life preserver so that one does not see the other die, or would he concede that whoever is holding the life preserver should keep it for himself because he has no possibility to save the other person even for a limited lifespan? He concludes that Ben Petura would favor the second option because the root of his argument is the duty to rescue, meaning saving life, and saving life applies to more than just complete healing. The traveler has a duty to rescue his fellow even for *chayei sha'ah* because it means his duty is to lengthen his fellow's life as much as possible. In the case of the life preserver, since there is no possibility the second person can be saved even for *chayei sha'ah*, the person with the preserver must use it for himself.

A second uncertainty is raised, as in the last text, about how the third party should distribute water to the two travelers. First, Rabbi Unterman explains Ben Petura's position in the basic scenario. He believes that Ben Petura's reasoning is the proof text "and your fellow shall live with you." While he does not use this proof text to explain why both travelers should drink the water in the Baba Metziah 62a material, it is used in Sifra B'har 5:6, and according to Rabbi Unterman, Ben Petura means that if the traveler with the canteen drinks all of the water, he is cancelling out the Toraitic commandment that "your fellow shall live with you." He agrees with Rabbi Akivah that this verse is the source that governs the decision in this scenario, but he disagrees with Rabbi Akivah's conclusion that "your life comes first." Ben Petura believes the traveler with the canteen has the duty to rescue his fellow traveler in addition to rescuing himself. Then Rabbi Unterman introduces the third party. He suggests that in this updated scenario Ben Petura would rule that the third party must choose a traveler to save for complete healing. While this answer seems reasonable in and of itself, it does not seem to fit Ben Petura's logic that "your fellow shall live with you."

One would think Ben Petura would argue that the third party has an obligation to rescue both travelers.

Rabbi Unterman finds many uncertainties in Rabbi Akivah's ruling, as well. He presents two ways the phrase "Your life comes first" could be interpreted. One way is as a *heter*, permission, to drink all of the water, meaning the person could choose to give some to the other traveler. The other interpretation is as a *chiyuv*, law, that he put his life first rather than concede full healing to give limited lifespan to his fellow traveler. Here, Rabbi Unterman finds the latter more convincing.

Rabbi Unterman points out the same uncertainty regarding the third party in the travelers scenario. Since the third party has no need of the water, would Rabbi Akivah rule that "Your life comes first" does not apply, so he cannot prefer one traveler over the other and they must split the water? Or would he rule that just as one is permitted to choose to save himself when danger threatens him, one also has the power to choose whom to save. In fact, the third party is obligated to choose because he is responsible for someone's life, "*v'chei achichah imach*" "and he shall live with you." If he splits the water he fails to fulfill that commandment. He has not saved anyone's life.

MORE PRIORITIES

The third category of texts explored different ways to prioritize including frequency, gender, relationship, social status, and purity of lineage. These texts involve more complex situations in which there are more than two people vying for a resource.

Horayot 3:6, in the Mishnah, addresses how to prioritize which *mitzvot* to do first when a person has more than one to perform. The *mitzvah* that person performs more

frequently comes before the other. Similarly, anything or anyone that is considered more holy comes before the other. Tractate Horayot discusses sacrifices that have to be brought when sin offerings are made, so the example used to define which is more holy is when multiple guilt offerings are brought to the Temple. The *Kohen Gadol*, the High Priest and leader of the community, and the people of the community have inadvertently sinned. In this situation, the offering of the *Kohen Gadol* precedes the offering of the community.

Now that the scale of prioritization has been established, it is important to understand why it exists in this manner. This text is a summary of the Talmud's understanding of the *Mishnah* from Horayot 3 written by Rabbi Ovadia mi'Bartenura. He shares the Talmud's proof text for why a more frequent *mitzvah* takes precedence. It comes from Numbers 28:23, the *musaf* offering for Shabbat, the weekly sacrifice offered on Shabbat at the Temple comes "*nilvad olat haboker asher l'olat hatamid ta'asu et eileh,*" "You shall present these in addition to the morning portion of the regular burnt offering." The *Gemara* questions why the phrase "which is the everyday burnt offering" is necessary as the verse already stated, "the morning offering." It is to teach the concept from the text above that a more frequent *mitzvah* takes precedence over a less frequent *mitzvah*. Then Rabbi Ovadia mi'Bartenura provides the Talmud's proof text for why a more holy person or object precedes a less holy one. It comes from Leviticus 21:8 "*v'kidashto*," "You shall sanctify him." This text describes the community's obligation to sanctify the *Kohen*. The *Kohen* is the first to speak in any discussion, leads *Birkat Hamazon*, the blessing after the meal, and is granted the right of first refusal for the nicest portion of food. The *Kohen* enjoys many honors within his community. After this, Rabbi Ovadia mi'Bartenura examines why in the specific example of two guilt offerings, the *Kohen Gadol*'s sacrifice happens first. The reasoning states that the *Kohen*

Gadol makes atonement for the community on Yom Kippur while the community is granted atonement. It is logical that the person making atonement should precede the group being granted atonement. Leviticus 16:6 He makes atonement for himself, his household, the rest of the *Kohanim,* then for everyone else.

Horayot 3:7 shares another method of prioritization. Men take precedence over women when saving a life or restoring property. This means that if someone sees both a man and a woman drowning, their obligation is to save the man before saving the woman. Similarly, if someone is in possession of lost objects from a man and a woman, they must return them in that order. However, in matters of clothing or captivity, women take precedence over men. Regarding captivity, the assumption is that both men and women are not in mortal danger because the captors need them alive to pursue their demands. The women would be in more danger of being raped while in captivity, so they come before men. However, when both of them are subject to sexual violation, men take precedence over women.

The Bavli's Horayot 13a elucidates the example that a person, his father, and his teacher are held captive. The person has enough money to free them. The order in which they should be ransomed is the person, his teacher, and finally his father. He comes first as evidenced by Rabbi Akivah's argument that "your life comes before that of your fellow." Once he has saved himself, his rabbi and his father are still in captivity. He is obligated to each of them under separate *mitzvot* of *kavod*, honor owed to them. The order is determined from a text in Baba Metziah 2, towards the end of the chapter regarding lost objects. One restores the lost object of their teacher first before that of their father because while their father brought them into the physical world, their teacher will bring them into the world to

come. Then the text explains that one's mother takes precedence over everyone, including oneself. Rashi, a renowned medieval French commentator on Talmud and Torah, links this back to the understanding that a woman precedes a man in captivity.

Next, a scholar precedes the king of Israel because if a scholar should die there is no one like him to replace him, while if the king of Israel should die, there are any number of candidates for kingship. The king of Israel takes precedence over the *Kohen Gadol* based on a proof text from I Kings 1:33, "The king said to [the Priests] 'Take with you the servants of your master.'" Here he refers to himself as "your master" which indicates that he outranks the Priests. The *Kohen Gadol* outranks a prophet in the next verse which relates that Tzadok, the *Kohen Gadol*, and Natan, the prophet, anoint King Solomon. The verse mentions the *Kohen Gadol* first, so the Talmud concludes that he must rank higher than the prophet. Another proof text used to prove this order is Zechariah 3:8, "Hear now, Joshua, you high priest, you and your friends." The Talmud questions what type of people Joshua's friends are. It reads the next phrase of verse 8, "*anshei mofet,*" and concludes that when the word *mofet* is used, it really means a *navi*, a prophet. This conclusion is backed by the text in Deuteronomy 13:2 which explains how a false prophet can claim to be a prophet. The false prophet will "*v'natan eilecha ot oh mofet*," "give you a sign or a wonder." The Talmud describes Joshua's friends, who are *anshei mofet,* as prophets and asserts once more that the *Kohen Gadol* precedes the prophet. Rabbi Ovadia mi'Bartenura's summary continues with further gradations of *Kohanim*, priests.

The purpose of this text is to outline and give rationale for the hierarchy of positions of honor and respect within biblical society as perceived by the rabbis. It shows that these

positions matter beyond honorific titles. If a person has the opportunity to save others, that person needs to save them according to the hierarchy above.

Mishnah 7 prioritizes based upon gender, and Mishnah 8 focuses on societal status. Similar to the Bavli's rationale presented above in Horayot 13a, this list is more extensive. The *Kohen* outranks the Levite who precedes a regular member of the Jewish community, who comes before the *mamzer*, Jewish person born of a forbidden sexual relationship, who in turn outranks the Gibeonite, a group that threw its lot in with the Israelites long ago and no longer exists today, who takes precedence over the convert, who, finally, takes precedence over a freed slave who converted to Judaism.

The Mishnah goes on to say that this hierarchy applies when the people are equal. By this, they mean equal scholars in Torah. However, when a *mamzer* is a Torah scholar and a *Kohen* is an awful person, then that *mamzer* outranks that *Kohen*. A commentary that illuminates this example comes from the Maharal of Prague, a 16th century Talmudist and philosopher. He clarifies that even though the *Kohen Gadol* enjoys great status, his position is not granted on the basis of his intellect, rather inheritance or election. The *mamzer*, on the other hand, is, by rabbinic standards, blemished, but this refers only to his corporeal being. His great intellect is separate from his blemished body. His explanation elevates the text to a philosophical level, widening what was a specific approach to Talmudic wisdom into a more universal understanding.

Further down the page of Horayot 13a, it explains Mishnah 8. First it examines why *Kohen* comes before *Levi,* the second category. Its proof text is I Chronicles 23:13, "*B'nei Amram, Aharon, u'Moshe vayibadeil Aharon l'hakdisho kodesh kodashim*." "The sons of Amram: Aaron and Moses. Aaron was set apart to be sanctify him for the holy of holies on

Yom Kippur." Aaron is a *Kohen* and Moses is a *Levite*, the ordering of Aaron before Moses shows that the *Kohen* precedes the *Levi.* Then it provides a proof text in Deuteronomy 10:8 to explain that the *Levi* ranks higher than the ordinary Jew. "*Ba'eit hahi hivdil Adonai et sheivet haLevi*," "At that time the Lord set apart the tribe of Levi," God distinguishes the Levites from the rest of the Jewish people because they remained loyal while the rest of Israel bowed to the golden calf in its fear that Moses would not return. At this point in the text, the rabbis shift from explaining each gradation via proof text to explaining them using the concept of *yichus*, unblemished lineage. The ordinary Jew comes before the Jew born of a forbidden sexual relationship because his lineage is pure. It can be traced from himself to his father and back through the generations. For the *mamzer*, it is considered an insult to the parentage to name the child Ploni ben Almoni, so he is called Ploni Hamamzer, Ploni the *mamzer*. The *mamzer* cannot trace his lineage, and as a result comes after the ordinary Jew whose *yichus* is intact. The *mamzer* precedes the *natin* because both of his parents are Jewish. The *natin*, whose lineage is traced back to the Gibeonites, has at least one parent outside of the Jewish community. He precedes the *ger,* convert, who grew up entirely outside of the Jewish community. At the time of the rabbis, they did not know any ethical, monotheistic non-Jews, so coming from outside of the Jewish community meant coming from idol worshippers. Finally, the convert outranks the *eved m'shuchrar,* freed slave because the freed slave exists as a result of God's curses against various nations that they will be turned into slaves.

PRIORITIES FOR TZEDAKAH

These texts express values about how we set priorities for *tzedakah*. Based on them the communities and individuals possess a more nuanced ability to determine how they will give *tzedakah*. The choices are not limited to picking one cause over all others or giving equally to all causes. They are allowed to make certain decisions on the basis of what is more important than something else when necessary.

The Shulchan Aruch is a set of halakhic codes written by Rabbi Joseph Caro in the sixteenth century. Its section in Yoreh De'ah on Hilchot Tzedakah 251 details which types of people are given tzedakah and how those people are prioritized.

Segment one states that the Jewish community is not obligated to a Jewish person who has knowingly violated any *mitzvah* and has not repented. This person works diligently to sin and refuses to listen to communal urging to turn from their ways. There is no obligation to save this person's life or to lend him money. The Jewish community does support poverty stricken non-Jews as well as Jews in order to keep the peace. During the rabbinic period at the time the Mishnah was written the Romans ruled, and the Jewish people lived in an environment with a lot of non-Jewish people surrounding them. It was necessary to safeguard themselves in this way.

Next, the text shifts from discussing sinners in general to describing specific styles of sinning. Segment two describes two types of sinners and whether or not they may be saved from captivity. An *aviryan l'hachis* is someone who sins to anger others. He does not enjoy the act he commits, rather he enjoys the anger and sadness of those who see him carry it out. It is forbidden to save him from captivity. The *aviryan l'hachis* places himself beyond the bounds of the community by flouting the covenantal agreement to obey the commandments.

The second type of sinner, an *aviryan l'tei'avon*, sins because he must give into his appetite constantly. There is an understanding that this person is gripped by their human desires and should be given a bit of leeway. At the same time, it is a constant habit that leaves the community wondering if the person is making an effort to retrain themselves to behave in accordance with the *mitzvot*. There is no prohibition against saving the *aviryan l'tei'avon* from captivity, however one is not obligated to do so.

Segment three prioritizes *tzedakah* by relationship. Those closest to the giver receive the highest priority. It describes parents and children who, for good reasons, support one another even when they are not obligated to do so. A parent might support their adult children so they can continue to study and prepare for the responsibilities of adult life. Similarly, an adult child who has the means might support their parents when they are in need. The code classifies this type of giving to one's closest relatives as *tzedakah,* which means it is mandatory. Further, it becomes a person's first priority on their list of people who need *tzedakah*. This extends to other close relatives, as well. The code zooms out to the greater picture to say that a person's obligation is first to the poor of their household, then to the poor of their city, and followed by the poor of another city. Rabbi Moshe Isserles often comments in the Shulchan Aruch when Ashkenazi customs differ from the Sephardic customs that Rabbi Caro details. He adds here that people who are residents of a city take precedence over visitors. Additionally, a person is obligated to those in *Eretz Yisrael* before any other area. Then Rabbi Isserles restates the list of priorities, including that a person must support themselves prior to their close relatives, then their parents if they are poor, then their children, followed by their siblings, beyond that their other relatives, so far as their

neighbors, the people of the city, and finally, people of another city. This rule applies to saving captives, as well.

Similar to the text above, segment four prioritizes by familial relation. Not only does the priority exist, but there is also a mechanism by which the community can enforce this. The community obligates the father to support his child who has fallen into poverty even if that child is an adult. His father is required to support his child before any wealthy people in the city may help.

In segment five, the text answers what happens to money given to the community and how to distribute money promised by someone on their deathbed. Once a person gives their money to the *gaba'im*, the people who collect and distribute *tzedakah*, that person and their heirs cannot designate where the money will go. It becomes part of a public fund and the community is responsible for choosing how it is distributed. Rabbi Isserles discusses adds that if this is a pledge of *tzedakah* that someone makes on their deathbed and does not specify to whom it belongs, then those handling the matter must work to determine whom the intended recipient was. First, they assess if the person had poor relatives at the time he made the pledge. If so, then they receive the money. If, however, they were wealthy at the time of the pledge and now are poor, they do not receive the money because there is no reason to assume the person on their deathbed was thinking about them. Isserles clarifies that this concerns one who gives tzedakah alone. If a person on their deathbed donates along with a community, then their intention was to give the money to the communally decided priority.

This short piece, segment six, states that a person should let poor people be members of their household. It comes from *Pirkei Avot*, the Ethics of Our Ancestors. A commentary on *Pirkei Avot* called *Avot d'Rabi Natan* has a *midrash*, story, about this verse. It should not be

taken literally to mean the "members of their household," which at that time meant servants. Rather, let poor people go out and talk about what it is they eat and drink in this person's home. This comes from the story of Job in which poor people knew Job to be a charitable man, and they would talk to each other about the hospitality Job showed them. There is a larger picture *midrash* involved, as well. Job, in his great suffering, queried God for the reasoning, pointing out all of the *tzedakah* he did for those in need. God explained that while Job had done wonderful things, he was not nearly as great as Abraham. Abraham went out to search for those in need of food and shelter. He fed them better than they were accustomed to eating. Further, Abraham happily created places on the side of the roads for travelers to eat and drink. This story is shared to explain that the verse above, "Let the poor be members of your house" means it is not enough merely to give *tzedakah*. A person must seek out those who are in need and provide for them.

The text prioritizes different types of need in segment seven. If there are multiple people standing in front of someone and the person is deciding how to distribute their funds, the hungry come before the naked. Hunger is a greater need than clothing because the person who needs clothing has at least something to cover themselves.

The passage that follows shows how to set priorities based upon social status and economic difficulty. First, it states that a woman takes precedence over a man if both come asking for support. This applies when the support needed is clothing, as well. This conflicts with the earlier text from Horayot which says that in saving a life the man comes first. If, in this example, the man and woman ask for food, that might be considered a lifesaving need. The commentators harmonize this disagreement by saying that the Horayot passage refers to acute lifesaving situations such as drowning. Giving food, on the other hand, is a regular act

of *tzedakah*. A woman is given preference because it would not be fitting for a young woman to go door to door for food, while a young man could reasonably do this. Next the text addresses orphans who come requesting aid to be married. In rabbinic times, a woman needed a dowry to be married, and a man was supposed to provide a house in which the couple could live. The orphans came to the *tzedakah* donor for financial support because they no longer have their parents, a support system, and they are poor. They need this aid to get married. In this case, the donor should favor the woman first because her shame and economic difficulty at being single is a greater burden to her than it would be for a man. She is reliant upon a husband to provide for her because it would be quite difficult in those days to procure employment for herself.

Segment nine details a standard case of limited resources and one way to solve it. It states the problem as follows: a person who gives *tzedakah* is approached by many poor people, and he does not have the financial resources to help all of them either by providing support, clothing, or ransom to save them from captivity. The list prioritizes social standing through purity of lineage, just as was detailed in the material on Horayot. It also reiterates that this ranking exists when everyone possesses equal intellect, yet if a *mamzer*, someone born of a forbidden sexual relationship, is a great Torah scholar, and the *Kohen Gadol*, community leader, is an imbecile, then the *mamzer* precedes the *Kohen Gadol*. Those who are wise take precedence over those who are not. The *Siftei Kohen*, a seventeenth century talmudist and halakhist, and other rabbis struggled with this concept. It seemed morally ambiguous at best to favor smarter people. He works around this structure by employing the concept of *yeridat hadorot,* that wisdom lessens with each successive generation, meaning that there are no longer great Torah scholars like the text writes about. There is no ability to

favor that type of person as he no longer exists. He emphasizes this principle with respect to matters of saving a life. The principle applies to gradations of lineage, as well. One cannot discern who is a *Kohen*, a *Levite*, or any of the other categories, so we cannot use those markers, either. The *Siftei Kohen* concludes that if these categories applied at all, they applied in the days of the Mishnah and Talmud but not to the present day or beyond. He criticizes the Shulchan Aruch for failing to mention this, as the Shulchan Aruch was written as a way to follow halakhah in times beyond those of the Mishnah and Talmud. After the *Siftei Kohen*'s gloss, the passage continues that the wife of a scholar takes his social status in terms of priority setting. Finally, normally the greater scholar takes precedence, unless the other person is the donor's rabbi or his father. The donor's duty of *kavod harav*, respect to his rabbi, is greater than the duty to honor a more renowned scholar with whom he has no relationship. Similarly, the donor's father who must be a Torah scholar takes precedence over a renowned scholar because his duty of honoring his father is greater. The *Siftei Kohen* wonders why the classification of Torah scholar is necessary. The *mitzvah* of honoring his father is greater regardless of the intellectual status of the father.

Segment ten is concerned with the misappropriation of *tzedakah* funds. It states that a donor should not question the background of a person asking for food. The donor should feed the person immediately. However, if someone arrives asking for clothing, their background may be checked. If the donor knows the person, then they may be given clothing immediately.

The *Shulchan Aruch* offers some leniency to the priority scales it has offered so far in section 11. A scholar is upset that he fed a stupid person in the middle of a two-year drought. Food was scarce, and he knew it would take away from what he could offer a Torah scholar.

Even so, the scholar is obligated to support the stupid person. The text tells the scholar not to worry. Yes, ideally, the scholar would give precedence to a Torah scholar, but everyone still has to be fed. It also warns that if someone arrives who is starving to death, the priority scale no longer applies. The scholar must feed that individual. This passage shares a more compassionate approach than the texts above.

The short text of section 12 details a way for poor people to observe the *mitzvah* of *tzedakah*. They may give to each other. This allows them to fulfill the *mitzvah* without detrimental effect. Rabbi Isserles adds that this applies specifically to *tzedakah*. If the two people owe a fine to *tzedakah,* likely because they violated a community rule of some sort, they may not give to one another. A fine should have punitive impact.

In the next segment, 13, the Shulchan Aruch dictates how a community must prioritize its needs for communal professionals. Traditionally, the rabbi and the prayer leader were separate roles. If the community needs a rabbi and a prayer leader but does not have adequate funds to hire for both positions, the rabbi should come first if he is renowned, a good teacher, and has extensive knowledge in ritual and monetary instruction. If not, then the community should hire the prayer leader. This person need only read Hebrew aloud and have a nice voice. Rabbi Isserles notes that a rabbi should not be supported out of the community *tzedakah* fund. This would be highly insulting and humiliating to the rabbi to be on public *tzedakah*. The community needs to find another way to support him.

Segment 14, the final text studied from the Shulchan Aruch, examines what to do if someone pledges money as *tzedakah* and later needs to use that money for another purpose. It rules that a person is able to change where the money is assigned even if they set it aside for Torah learning, a most precious category. The ruling comes from a responsum given by

Rabbeinu Asher ben Yechiel, a scholar in Spain during the late thirteenth and early fourteenth centuries. An individual pledges a certain amount of money to Torah learning but realizes he must pay his public taxes to the ruler, and he has no other money with which to pay. At this time, the Jewish people paid the ruler for protection against foreign enemies and the ability to live freely in that area because they were not considered citizens. They lived there solely at the whim of the ruler. Rabbeinu Asher concludes that the person may use the money he pledged to pay his tax. His reasoning is that paying the ruler's tax falls under the category of saving a life which is the only priority that precedes Torah learning. The ruler demands a sum from the community of Jews under his rule at a certain time. The community has a fund for this tax, and it is understood that some people will be able to pay into it while others will not. If the individual fails to pay into the community's fund, the poor people who cannot afford to pay will be beaten and stripped by the ruler.

WHOSE BLOOD IS REDDER

The next set of texts consider if it is possible to prioritize based on saving the larger group of people rather than the smaller group. On the surface, it appears to be logical; if it is a *mitzvah* to practice medicine in order to save life, then the more lives someone can save with the medical resources they possess the better. However, the rabbis only allow it in extremely specific circumstances.

Mishnah Sanhedrin 4:5 describes the process used for compelling witnesses in a capital case to tell the truth. They were warned that hearsay, rumors, and educated guesses would not be tolerated and that their testimony would be subjected to rigorous investigation, so they should think carefully about what they would say. It warns them that capital cases are

more difficult than monetary cases, in which the guilty party can pay what they owe and that atones for their sin. In a capital case, the guilty party will be killed, and along with him die any future generations he might have sired. It uses the story of Cain killing Abel in Bereishit 4:10 as a prooftext. God says to Cain, "The bloods of your brother cry out." The text says bloods, not blood, meaning Abel's and his potential descendants' blood. The midrash states that for this reason the human species began with a single individual, to teach people that anyone who destroys one soul, the Torah considers it as if they have destroyed a whole world, and anyone who saves one soul, the Torah considers it as if they have saved a whole world. This segment of Mishnah Sanhedrin 4:5 teaches that life is invaluable. It would be impossible to measure two lives against one. Each individual possesses inestimable value, so the witnesses in a capital case must take extreme care to ensure their testimony is accurate so that an innocent man is not put to death.

Mishnah Terumot 8:12 deals with the sexual assault of Jewish women captives. It reaches a similar conclusion to the Sanhedrin 4:5 text above. It portrays a situation in which non-Jewish aggressors say to a group of Jewish women, "Give us one woman from your group for us to rape, for if you do not, we will rape all of you. It rules that the women must all submit to rape because they may not pick a single woman to give to the aggressors. Rabbi Ovadia mi'Bartenura comments that this is done because we cannot disrespect and degrade one life to save another. Rather than saying that each life is inestimable, this text teaches that each life is of equal value, so that there is no basis on which to decide that one woman over instead of another woman should be raped.

This passage is the Talmud Yerushalmi's commentary on the Mishnah Terumot 8:4. In this example, it is a group of men who are accosted by aggressors who demand they

designate one Jew for them to murder, otherwise they will murder the entire group. It reaches the same conclusion as the scenario with the women; even though all of them will be murdered as a result, the men may not choose one from among them to give to the aggressors. Then, the Yerushalmi provides a variant that the Mishnah did not consider. Suppose the aggressors designate one of the Jews, as in the case of Sheva ben Bichri, for the Jews to hand over and save themselves from being killed. The story of Sheva ben Bichri is found in II Samuel 20. He commits treason against King David, and when King David's army, led by Yoav, finds him in a walled town of refuge they issue the town a choice: the town can give them Sheva ben Bichri or face utter ruin by siege. The town complies. Sheva ben Bichri was a traitor. That crime is always punishable by death so long as someone can capture the traitor. He would have died regardless, so the town was allowed to hand him over.

Rabbi Shimon ben Lakish (Reish Lakish) and Rabbi Yochanan, Talmud scholars in Israel during the late second and early third centuries, discuss this variant in the text. Reish Lakish argues that the group of Jewish men are allowed to hand over the man singled out by the aggressors so long as that person is already subject to death by a crime. Rabbi Yochanan offers a more lenient view, saying that even if the person singled out is not subject to death for a crime, the group may send him to the aggressors. If they named Ploni, and the options are either Ploni dies, or all of you die, Ploni will die regardless of their choice. In this instance, it is better to save the larger group.

Then the Yerushalmi relates the tale of Ula bar Koshav. This is a similar story to Sheva ben Bichri. The Roman kingdom wanted Ula for his crimes, so Ula fled to a great scholar, Rabbi Yehoshua ben Levi (Ribal), for protection. The Romans came, surrounded the

city, and said, “If you all do not give him to us we will destroy the city.” The Ribal calms Ula and reconciles him to his fate so that he surrenders himself to the Romans. Essentially, the Ribal gives Ula over to the Romans in order to save his town. Here is where the story differs. The great prophet, Eliyahu, used to appear to the Ribal, but after this, he refuses, insisting that the Ribal is a traitor for turning Ula over to the Romans. The Ribal argues that he acted in accordance with the law, and Eliyahu explains that individuals of the Ribal’s moral standing are held to a higher standard. This story is used to show that everyone is obligated to that higher standard. Sacrificing one person to save many more people, even if it is for good reason, is not something people should do.

In the Mishneh Torah, section Y’sodei Hatorah 5:5 Maimonides concurs with the Mishnah from Terumot 8:12 about aggressors approaching a group of women. He upholds the Yerushalmi’s similar argument in the scenario with a group of men. In the variant including Sheva ben Bichri, he chooses Reish Lakish’s argument that the person singled out by the aggressors must be guilty of a capital crime for the group to release him to the aggressors.

Also discussing Mishnah Terumot 8:12, in his work Kesef Mishnah, a commentary on the Mishnah, Rabbi Yosef Caro finds Maimonides’ approval of Reish Lakish’s argument interesting. Typically, in the Talmud when there is a difference of opinion between Rabbi Yochanan and Reish Lakish, Rabbi Yochanan’s opinion is taken since he was Reish Lakish’s teacher. This is the only exception to that rule.

CHAPTER 2: ELIGIBILITY CRITERIA FOR IVF GRANTS

This chapter begins by describing the importance of family for Jewish couples. Then it analyzes seven Jewish IVF organizations and grants' eligibility criteria. Finally, it presents ethical dilemmas based upon some of those criteria.

Family is a central value of the Jewish community. In Bereishit 1:28 God commands the first human, saying, "*pru urvu*," "Be fruitful and multiply." The liturgy of the *sh'ma*, which includes the *v'ahavtah*, states, "and you shall teach [the mitzvot] diligently to your children." Synagogues hold joyous public ceremonies to mark new babies' entry into the Jewish people. Then, as they grow, those babies become children who learn about Judaism in religious school. Congregations put on a wide array of programming for young families, from Tot Shabbat to P.J. Library events. During the holiday of Passover Jewish parents are commanded to share the story of the exodus from Egypt with their children.[1] It is particularly painful then that one in six Jewish couples will struggle with infertility. Infertility is understood as the inability to conceive after at least one year of unprotected sexual intercourse between a male and female.[2] Many couples who receive this diagnosis turn to assisted reproductive technology to build their families. The most effective and commonly used assisted reproductive technology is in vitro fertilization (IVF).[3] In an article on insurance coverage of IVF writer, Vanessa Grigoriadis, describes it as "the gold standard."[4]

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[1] Exodus 13:8

[2] "Infertility," www.cdc.gov (Centers for Disease Control and Prevention, 2019), https://www.cdc.gov/reproductivehealth/infertility/index.htm.

[3] "Infertility"

[4] Vanessa Grigoriadis, "I.V.F. Coverage Is the Benefit Everyone Wants," *The New York Times*, January 30, 2019, sec. Style, https://www.nytimes.com/2019/01/30/style/ivf-coverage.html.

Unfortunately, IVF is the gold standard in more ways than one. The Society for Assisted Reproductive Technology (SART) shares that "the average cost of an IVF cycle in the United States is between $10-15,000. The cost is dependent on insurance coverage, patient characteristics, and treatment center."[5] Because it is so expensive, many do not have the financial resources to pay for it on their own.

Seven Jewish infertility organizations and loan and grant programs around the United States were studied. Many of them shared a founding story: a couple struggled with infertility, and after their successful attempt(s) they chose to give back to the Jewish community to help create other Jewish families. Priya Dallas has given IVF grants to Jewish couples in the Dallas-Fort Worth area since its establishment in 2009.[6] It is housed by Jewish Family Services so grant recipients have access to mental health and social services throughout the process.[7] Founded in 2011, Hasidah is a Jewish organization that seeks to spread awareness about infertility and provide emotional and financial resources to Jewish couples and individuals who experience it across the United States.[8] The Making Miracle Babies Fertility Fund, established in 2014, is a loan provided in partnership with the Greater Miami Federation and the Hebrew Free Loan Society of South Florida.[9] The Jewish Fertility Foundation (JFF) was established by Elana Frank in Atlanta in 2016 after she struggled with

[5] "Frequently Asked Questions," www.sart.org (Society for Assisted Reproductive Technology), accessed January 7, 2021, https://www.sart.org/patients/frequently-asked-questions/.

[6] "The Priya Fund: Growing Jewish Families," Jewish Family Service of Greater Dallas, accessed January 4, 2021, https://jfsdallas.org/services/for-adults/priya/.

[7] "The Priya Fund"

[8] "FAQs," Hasidah, accessed January 4, 2021, https://hasidah.org/get-help/faqs/.

[9] "Greater Miami Jewish Federation: Help Create a Miracle!," action.jewishmiami.org, accessed January 5, 2021, https://action.jewishmiami.org/gift/miraclebabies/.

infertility for a decade.[10] In 2019 it expanded to include an office in Cincinnati. Its mission also shares the three pillars of education, emotional support, and financial assistance. The Tree of Life Grant which is given in partnership with the Fertility Foundation of Texas contributes financial support to Jewish couples pursuing IVF in central Texas.[11] It was established in 2017.[12] Provided under the Jewish United Fund, the Infertility Support program founded in 2019 awards IVF grants to Jewish couples in the Chicago area.[13] Most recently, The Mishpacha Project, a grant established by Congregation Beth Israel of Scottsdale, Arizona, was founded in 2020.[14]

While these programs make IVF treatment more accessible for many, they do not have enough financial resources to fund every applicant's IVF procedures. They must prioritize who receives their funding. Each organization, grant, and loan uses criteria for eligibility as well as preferences to guide their decisions.

CRITERIA

The most comprehensive list of medical eligibility criteria came from Hasidah and JFF. Both require that applicants submit their diagnoses of medical infertility and Body Mass Index (BMI) and complete a full genetic screening. Hasidah and JFF have similar age

[10] "About Us," Jewish Fertility Foundation, accessed January 4, 2021, https://jewishfertilityfoundation.org/about-us.

[11] "About the Tree of Life Grant," Tree of Life Foundation, 2017, https://treeoflifegrant.com/about-the-grant.

[12] "About the Tree of Life Grant"

[13] "Jewish United Fund Infertility Support Program," Coalition for Family Building, accessed January 5, 2021, https://coalitionforfamilybuilding.org/juf-infertility-support-program/.

[14] "Mishpacha Project-Fertility Assistance Grants," Congregation Beth Israel, Scottsdale Arizona (Congregation Beth Israel, April 2020), https://cbiaz.org/mishpacha-project-fertility-assistance-grants/.

restrictions and preferences. Hasidah prioritizes applicants under the age of 41. They also prefer applicants between the ages of 41 and 45 who plan to use donor eggs.[15] JFF lists that they prioritize women under the age of 38.[16] Additionally, Hasidah states that it "reserves the right to decline applicants who do not have a reasonable likelihood of success from treatment."[17] The age requirement is tied directly to the likelihood of a successful pregnancy. According to SART, women younger than 35 have a 54.7% success rate while in the next age bracket, 35-37 years old, women have a 40.6% success rate. It drops to 25.6 % in women 38-40 years old, 12.8% for women aged 41-42, and a dismal 4.4% viability in women over the age of 42.[18] In addition to these medical criteria, both organizations prohibit applicants who smoke.

Age	<35	35-37	38-40	41-42	>42
Live Births	54.7 %	40.6 %	25.6 %	12.8 %	4.4 %

The Mishpacha Project specifies age ranges for both male and female applicants. Women must be between the ages of 21-45 while men have a slightly wider range from 21-50.[19] No other medical criteria appear on its website, however the application for the grant

[15] "FAQs," Hasidah, accessed January 4, 2021, https://hasidah.org/get-help/faqs/.

[16] "JFF Fertility Grant FAQs," Jewish Fertility Foundation, accessed January 4, 2021, https://jewishfertilityfoundation.org/financial-assistance#110c0a07-8ef1-4eb7-af3a-cf11d958a034.

[17] "FAQs," Hasidah, accessed January 4, 2021, https://hasidah.org/get-help/faqs/.

[18] "National Summary Report," www.sartcorsonline.com (Society for Assisted Reproductive Technology, December 2018), https://www.sartcorsonline.com/rptCSR_PublicMultYear.aspx?ClinicPKID=0#patient-cumulative.

[19] "Mishpacha Project-Fertility Assistance Grants," Congregation Beth Israel, Scottsdale Arizona (Congregation Beth Israel, April 2020), https://cbiaz.org/mishpacha-project-fertility-assistance-grants/.

includes a medical form to be filled out by the applicant's physician. That form includes BMI, the cause of infertility, and whether the applicant smokes. It is not clear if any of the answers determine eligibility. The Mishpacha Project is one of two grants which requires its applicants be members of a synagogue or temple. In this case, they must be members of Congregation Beth Israel in Scottsdale, Arizona, or the children, grandchildren, or siblings of members.

The Making Miracle Babies Fertility Fund lists the fewest criteria for applicant eligibility. It stipulates an age range of 25-40 years old.[20] It also provides a medical form for the applicant's physician to certify that the applicant is eligible for treatment. The Priya Fund's medical form for the physician to fill out goes much more in depth. It asks for the applicant's BMI, a full fertility work up, and information about past IVF treatment(s).[21] Neither fund lists financial criteria. Both funds have a geographic limit; Making Miracle Babies serves those in the Miami-Dade and Broward counties,[22] and Priya grants to those living in the Dallas-Fort Worth area.[23] Additionally, Making Miracle babies requires that applicants have no children.[24] At least one parent must be Jewish. Priya strongly advocates

[20] "Greater Miami Jewish Federation: Help Create a Miracle!," action.jewishmiami.org, accessed January 5, 2021, https://action.jewishmiami.org/gift/miraclebabies/.

[21] "The Priya Fund: Growing Jewish Families," Jewish Family Service of Greater Dallas, accessed January 4, 2021, https://jfsdallas.org/services/for-adults/priya/.

[22] "Greater Miami Jewish Federation: Help Create a Miracle!," action.jewishmiami.org, accessed January 5, 2021, https://action.jewishmiami.org/gift/miraclebabies/.

[23] "The Priya Fund: Growing Jewish Families," Jewish Family Service of Greater Dallas, accessed January 4, 2021, https://jfsdallas.org/services/for-adults/priya/.

[24] "Greater Miami Jewish Federation: Help Create a Miracle!," action.jewishmiami.org, accessed January 5, 2021, https://action.jewishmiami.org/gift/miraclebabies/.

for a Jewish household.[25] It requires that both parents be Jewish and members of a synagogue, as well as intend to provide their future children with a Jewish education.

Two grant providers, The Tree of Life and Jewish United Fund's Infertility Support, share similar age requirements at under 40 years old[26] and under 42 years old[27] respectively. Applicants must provide their diagnosis of medical infertility, as well. The Jewish United Fund also requires applicants to share their BMI. Financially, the two grants diverge. A total household income of less than $100,000 per year is a criterium for The Tree of Life grant.[28] That number is $200,000 for the Jewish United Fund's applicants.[29] Both grants necessitate that at least one parent be Jewish.

ETHICAL DILEMMAS

Certain questions arise when looking at the different criteria used by organizations to allocate funding for IVF grants and loans.

Financial Concern

One requirement that sets Hasidah, JFF, and The Mishpacha Project apart from the rest is financial contribution from applicants. In combination with Hasidah's criteria of

[25] "The Priya Fund: Growing Jewish Families," Jewish Family Service of Greater Dallas, accessed January 4, 2021, https://jfsdallas.org/services/for-adults/priya/.

[26] "About the Tree of Life Grant," Tree of Life Foundation, 2017, https://treeoflifegrant.com/about-the-grant.

[27] "Jewish United Fund Infertility Support Program," Coalition for Family Building, accessed January 5, 2021, https://coalitionforfamilybuilding.org/juf-infertility-support-program/.

[28] "About the Tree of Life Grant," Tree of Life Foundation, 2017, https://treeoflifegrant.com/about-the-grant.

[29] "Jewish United Fund Infertility Support Program," Coalition for Family Building, accessed January 5, 2021, https://coalitionforfamilybuilding.org/juf-infertility-support-program/.

income below $150,000 and active insurance which excludes IVF coverage, it narrows the field of potential applicants.[30] The Mishpacha Project's eligibility criteria also include a total household income limit, this time at less than $175,000 and a mandate of insurance which does not include IVF coverage.[31] Furthermore, Hasidah prioritizes those who have spent money on IVF treatment already.[32] It raises the concern that only those who are financially stable may access IVF funding from the Jewish community. If, for example, one couple has a combined income of $70,000 and they apply for funding because they cannot afford their first round of IVF, and another couple has a combined income of $150,000 but has spent $15,000 on a failed round of IVF prior to applying for the grant, why should the second couple receive priority? It presents an ethical dilemma that the couple with more money and therefore opportunity to pursue IVF on their own should precede the couple who cannot afford to pursue IVF without financial help.

Systemic Concern

Seven organizations and grants provide seven different sets of criteria for eligibility. The system is inherently inequitable. A couple with one Jewish partner and one non-Jewish partner who plan to keep a Jewish home are eligible for almost all of the grants, but if they live in Dallas, their household does not qualify for the Priya grant.[33] Age is another inequity.

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[30] "FAQs," Hasidah, accessed January 4, 2021, https://hasidah.org/get-help/faqs/.

[31] "Mishpacha Project-Fertility Assistance Grants," Congregation Beth Israel, Scottsdale Arizona (Congregation Beth Israel, April 2020), https://cbiaz.org/mishpacha-project-fertility-assistance-grants/.

[32] "FAQs," Hasidah, accessed January 4, 2021, https://hasidah.org/get-help/faqs/.

[33] "The Priya Fund: Growing Jewish Families," Jewish Family Service of Greater Dallas, accessed January 4, 2021, https://jfsdallas.org/services/for-adults/priya/.

Living in Arizona[34] or Chicago,[35] a 42-year-old woman can apply for an IVF grant. Unfortunately, if she lives in central Texas, she does not meet the eligibility criteria for the Tree of Life grant.[36] The maximum total household income varies among these grant opportunities, as well. The most prominent distinction lies between the Tree of Life grant and the Jewish United Fund Infertility Support grant. Even when controlled for cost of living, these two totals differ greatly. All organizations specifying different sets of criteria creates an unequal playing field for those in the Jewish community suffering from infertility and seeking financial assistance.

Moral Concern

JFF alone excludes those couples who have undergone a vasectomy or bilateral tubal ligation.[37] A vasectomy prevents sperm from leaving the testicles,[38] and bilateral tubal ligation prevents eggs from leaving and sperm from entering the uterine tubes,[39] both of which are necessary for conception without reproductive technology. Patients pursuing IVF with and without bilateral tubal ligation have similar live birth success rates. According to

[34] "Mishpacha Project-Fertility Assistance Grants," Congregation Beth Israel, Scottsdale Arizona (Congregation Beth Israel, April 2020), https://cbiaz.org/mishpacha-project-fertility-assistance-grants/.

[35] "Jewish United Fund Infertility Support Program," Coalition for Family Building, accessed January 5, 2021, https://coalitionforfamilybuilding.org/juf-infertility-support-program/.

[36] "About the Tree of Life Grant," Tree of Life Foundation, 2017, https://treeoflifegrant.com/about-the-grant.

[37] "JFF Fertility Grant FAQs," Jewish Fertility Foundation, accessed January 4, 2021, https://jewishfertilityfoundation.org/financial-assistance#110c0a07-8ef1-4eb7-af3a-cf11d958a034.

[38] "Vasectomy - Mayo Clinic," Mayoclinic.org, 2019, https://www.mayoclinic.org/tests-procedures/vasectomy/about/pac-20384580.

[39] "Tubal Ligation - Mayo Clinic," Mayoclinic.org, 2018, https://www.mayoclinic.org/tests-procedures/tubal-ligation/about/pac-20388360.

research studied by Dr. Eva Malacova of the University of Western Australia in Crawley, the data shows that the difference is not statistically significant.[40] Given that information, it is clear that this criterium from JFF places a value judgement on those applicants who have elected to undergo these surgeries.

[40] Reuters Staff, "IVF Baby Possible after Tubal Sterilization," *Scientific American*, January 16, 2015, https://www.scientificamerican.com/article/ivf-baby-possible-after-tubal-sterilization/.

IVF Grant Criteria

	Medical								Financial							Jewish Household			
	Age	Diagnosis of Infertility	Body Mass Index	Genetic Screening	Likelihood of Success	Non-smoking	No drugs	No Vasectomy/BTL	Income	Applicant Contribution	Insurance	No IVF Coverage	Money Spent on IVF Treatment	# of Children	Geographic Limit	Member Limit	1 Jewish Parent	2 Jewish Parents	Jewish Education
The Jewish Fertility Foundation	< 38 priority	X	X	X		X	X	X		X				1	X		X		
Hasidah	40 (self) 45 (donor egg)	X	X	X	X	X			< $150,000 priority	X	X	X	priority	0 priority					
The Mishpacha Project	21-45 (W) 21-50 (M)								< $175,000	X	X	X				X	X		
Making Miracle Babies	25-40													0	X		X		
The Priya Fund Dallas															X	X		X	X
The Tree of Life Grant	< 40 priority	X							< $100,000			X		0 priority	X		X		
JUF Infertility Support Program	< 42	X	X						< $200,000						X		X		

CHAPTER 3: ETHICAL ANALYSIS OF IVF GRANT CRITERIA

This chapter affirms that the setting of priorities for the distribution of scarce resources is essentially an ethical question. Then it evaluates criteria set by Jewish organizations, grants, and loans that financially support Jewish people seeking IVF treatment on the basis of texts detailed in chapter one.

The Jewish organizations, grants, and loans that help fund IVF treatment provide vital assistance to Jewish couples trying to build their families. They were created because someone saw a need in the community and wanted to alleviate suffering. It is an act of *tzedakah.* "Let the poor be members of your household," taught one text on priorities in giving *tzedakah*.[1] Beyond giving *tzedakah,* one must seek out its recipients. The very act of creating these organizations, grants, and loans speaks to this principle. Rather than wait for couples experiencing infertility to approach their congregation or local federation alone and ashamed, they normalize infertility in the community and offer avenues of assistance for those who are affected. JFF reaches out to local synagogues to offer programs for congregants to raise awareness about infertility and the grants they provide. The Mishpacha Project serves members of Congregation Beth Israel's community. These organizations exist to seek out Jewish people and help them. The challenge lies in their limited resources. They cannot fund every request, so they must set priorities to sift through applicants.

Fortunately, according to Jewish legal tradition setting priorities in saving lives and allocating *tzedakah* can be ethically justified. Sometimes, these priorities can be set by comparing the personal status and characteristics of the applicants. One text studied, Horayot 13a from the Bavli, outlines the rankings within society. It explains that the scholar precedes

[1] Shulchan Aruch, Yoreh De'ah, Hilchot Tzedakah 251:6

the king of Israel, who precedes the *Kohen Gadol*, who precedes the prophet. It also gives justification for each level of the hierarchy. Lastly, it dictates that if a person has the chance of saving life, they must save it in accordance with that social hierarchy. While this scale of social class prioritization might seem unpalatable to a modern audience, it does indicate the possibility for a system to exist in which certain members of a community act more closely in accordance with the ideals it upholds than others do. In this case, the rescuer is obligated to prioritize those who respect and fulfill the ideology of the community most closely. I acknowledge the problematic nature of the text. It grates that this text does not consider all life equally valuable to save.[2] Ben Petura argues for the egalitarian approach to saving life in the case of two travelers walking in the desert with only one canteen of water. Rather than save one person's full life, he requires the travelers to split the water equally so that each will receive a little more life.[3] However, the sages uphold Akivah's opinion that the traveler who owns the canteen should drink all of the water. Even in that most dire situation, they determine that it is necessary to set priorities in saving life if the resources are scarce. I also must note that I am evaluating the mitzvah of giving *tzedakah* rather than *pikuach nefesh,* saving a life. I use the Horayot 13a text because I believe the principle behind this specific example teaches that it is possible to determine a rationale for the setting of legitimate priorities, not because I agree with its criteria.

[2] Though the text of M. Terumot 8:12, described in chapter 1, maintains the egalitarian principle in stating that a group may not sacrifice one individual to save the remainder of the group. Each life retains equal value, so there is no way to pick which one should be sacrificed.

[3] B. Baba Metziah 62a

POSITIVE CRITERIA

The text of Mishnah Horayot 3:8 describes the social hierarchy in greater detail. It adds the caveat that the strata apply when the people in question possess equal knowledge of Torah. However, even though the *mamzer* has much lower social standing, if he is a Torah scholar and the *Kohen Gadol* is not, then the *mamzer* should be prioritized. Although this hierarchy was outdated even in the days of the Mishnah (there was no *Kohen Gadol* in the absence of a Temple), the Maharal of Prague translates this specific example of Torah scholarship to mean intellect. He shows how the text prioritizes one value over another, and he takes an outdated system of prioritization and makes it relevant in his medieval context. His explanation demonstrates that a community can determine its own values to inform its allocation of scarce resources. The Mishpacha Project and The Priya Fund choose the value of community membership. They require applicants to be members of a synagogue, which for The Mishpacha Project is its home congregation, Congregation Beth Israel in Scottsdale, Arizona. For both grant organizations, the process of building Jewish families does not stop at childbirth. They want to ensure that their grant recipients have a strong connection to their community because they understand that a person's Jewish identity blossoms when that person is surrounded by other Jews. Five of the seven entities define a Jewish household as having at least one Jewish parent. This casts a wider net for applicants and shows dedication to growing Jewish families in the many ways they exist in the world. These organizations lift up the value of inclusion.

Most of the organizations, grants, and loans studied set geographic limitations. They recognize the need in their immediate area. Adam and Phil Loewy, the founders of The Tree of Life Grant, describe their desire to give back, "As a result of the ups and downs associated

with the fertility process, we realized we wanted to help other Jewish couples who are dealing with this issue."[4] The Loewys invest in the Jewish community in many ways, including a generous gift to their local Jewish Federation. Adam expresses his commitment to the area, saying, "I just believe the giving should start at home, and that we as a community need to take care of ourselves first and foremost."[5] It seems his conviction of starting at home applies to all areas of philanthropy to which the Loewys contribute, including The Tree of Life Grant. This is consistent with the principle in Shulchan Aruch Yoreh De'ah Hilchot Tzedakah 251:3 that people are obligated to give to the poor in their community before the poor in another community.

ETHICAL DILEMMAS

Financial Concern

As raised in the previous chapter, Hasidah and The Mishpacha Project require several financial components of their applicants including a household income below a certain threshold, financial contribution from applicants, and insurance that excludes IVF coverage. Additionally, Hasidah favors applicants who have spent money on prior IVF treatments. Those financial requirements narrow the applicant pool significantly. The preference for applicants who have paid for past IVF treatments appears logical at first. Those applicants have incurred financial burden, and the organizations seek to alleviate it. It could appeal to the emotional burden, as well. The couple has felt the hope of having a child and the

[4] Tonyia Cone, "Tree of Life Grant Assists Local Jewish Couples Facing Infertility," *The Jewish Outlook*, September 2017, https://shalomaustin.org/jewish-outlook-september-2017/.

[5] Tonyia Cone, "Fostering Generational Giving: Philanthropists Announce Annual Campaign Match at IGNITE!," *The Jewish Outlook*, April 2018, https://shalomaustin.org/jewish-outlook-april-2018/.

subsequent grief of a failed IVF attempt(s). Here, the organizations offer compassionate preference in the hopes of ending the couple's fertility struggles. However, by setting this priority Hasidah misses the opportunity to help those couples who cannot attempt IVF without outside assistance. Section seven of the Shulchan Aruch material cited above offers guidance. It describes a person approached by two people for *tzedakah*; one is hungry, and one needs clothing.[6] The person should give *tzedakah* to the hungry one first because hunger is the more dire need. When applied to the financial requirements of Hasidah and The Mishpacha Project, this text teaches that setting a threshold for household income is ethically justifiable. Those with less money have greater need. However, I would argue that it is unethical to give preference to those who have spent money on IVF treatment previously. Those applicants possess disposable income making their need less pressing than those who lack it.

Systemic Concern

Of the seven organizations, grants, and loans studied, each imposes its own set of criteria for applicants. The highest admissible age for applicants varies from under 38 to 45 years old. JFF accepts applicants who have a child. Hasidah and The Tree of Life Grant prioritize those applicants who do not have children, and The Making Miracle Babies Fertility Fund only accepts applicants without children. The threshold for household income fluctuates, as well. All of these differences reveal inequity for applicants depending upon where they live. I think it would benefit the Jewish community if the criteria were standardized. Based upon my understanding of the Mishnah's Horayot 3:7 and Shulchan

[6] Shulchan Aruch, Yoreh De'ah, Hilchot Tzedakah 251:7

Aruch Yoreh De'ah Hilchot Tzedakah 251:8, I believe Jewish scholarship would agree. Horayot 3:7 presents a method of prioritization in which men precede women when saving a life or restoring property. The material from the Shulchan Aruch discusses prioritization in giving *tzedakah*. It states that if both a woman and a man approach someone to ask for help, the woman precedes the man. The commentators raise a situation in which both ask for food, which could be considered a lifesaving need. On the surface level, it seems the Shulchan Aruch material contradicts the text in Horayot 3:7 where a man takes precedence in the saving of life. However, the commentators work to harmonize the seemingly conflicting material. They narrow the Horayot passage to refer to acute lifesaving situations like drowning. They say that giving food constitutes a routine act of *tzedakah*, and that a woman takes priority because it would be unseemly for a young woman to go door to door begging for food, whereas a young man could do this. The rabbis work diligently to present one set of criteria for the Jewish community to follow. Based upon this, I believe they would support a single set of criteria for Jewish organizations providing financial assistance to couples entering IVF treatment.

Moral Concern

Finally, JFF excludes from eligibility those couples who had a vasectomy and/or bilateral tubal ligation. As asserted in the previous chapter, women undergoing IVF treatments with and without bilateral tubal ligation maintain similar live birth rates. The difference is not statistically significant. JFF's prohibition serves as a judgement of those individuals. The typical scenario for a man or woman to seek a vasectomy or bilateral tubal ligation depicts a couple who decides not to have more children. Then that couple divorces, and when one of

them remarries, the new couple wishes to have children together. Couples do not plan for divorce. Surely JFF does not expect them to do so. Section one of the Shulchan Aruch material sheds light on this predicament. It states that the Jewish community holds no obligation to give money to a Jewish person who has sinned and refuses to repent. These couples have not sinned, so they ought not to fall into this category. From another point of view, if having a vasectomy or bilateral tubal ligation constitutes a sin by nullifying the *mitzvah* of *pru u'r'vu*, then a couple's decision to have children through IVF serves as evidence of *t'shuvah*, repentance. In fact, they want what our Jewish tradition and community value so greatly, a happy, healthy Jewish family. JFF should not refuse them that possibility.

CONCLUSION

The first chapter of this thesis examined the Jewish texts that speak about the ethical nature of setting priorities for the distribution of scarce resources. Those texts determined priorities for *pikuach nefesh* and *tzedakah* and explored the possibility of sacrificing one to save many. The scenarios ranged from the simplest, prioritizing one over another to the more complex, priority setting based upon a social hierarchy involving many groups of people. Then, the second chapter introduced seven Jewish organizations, grants, and loans whose funding helps couples pay for IVF treatment, their application criteria, and some ethical dilemmas that arose after they were scrutinized closely. Finally, the third chapter utilized the texts on setting priorities to evaluate certain criteria to determine if they were ethical.

The decision on financial criteria for IVF applicants including a household income threshold, insurance, and money spent on IVF treatment, should be carefully weighed. Applicants who have spent money on past IVF treatments have invested financial resources, hope, concern, and love into that process. Yet, in the end, no baby was delivered into their waiting arms. That emotional devastation deserves compassion. From a different perspective, applicants who do not have disposable income to put towards multiple IVF treatments deserve compassion, as well. It is possible they are equally distraught, having waited to find an organization to help cover the financial burden because without that assistance they cannot afford even one round of IVF treatment. One implication that can be drawn from the prioritization of prior investment in IVF treatment is that those with disposable income stand a better chance of receiving financial assistance. While Shulchan Aruch Yoreh De'ah Hilchot Tzedakah 251:7 provides a framework that, from my understanding, makes the household income threshold ethically justifiable, I do not see any ethical way to measure the financial

and emotional needs of one applicant versus another in terms of past investment in IVF treatment. For this reason, I argue that Hasidah and The Mishpacha Project should think carefully about removing its prioritization of applicants who have paid for past IVF treatments.

As shown in chapter two, the seven different sets of criteria for applicants automatically creates inequality. Some organizations possess more criteria than others. A difference in the age criterium allows one applicant the possibility of receiving funding while an applicant to a different organization would be turned away. This applies to medical and Jewish household criteria, as well. The two texts, Mishnah Horayot 3:7 and Shulchan Aruch Yoreh De'ah Hilchot Tzedakah 251:8, that discuss the prioritization of one gender over another in situations of saving a life, restoring property, and giving *tzedakah* appear contradictory, however the rabbis harmonize them so that they achieve the end result of one system of prioritization. The harmonization between the texts leads me to contend that their support of a single system of priorities would extend to the Jewish organizations, grants, and loans that fund IVF treatment, as well. In my opinion, based off of my understanding of the two texts, the seven entities studied should find a single set of criteria for their applicants. Regarding the criterium of household income threshold, I believe this number should be a percentage adjusted for the cost of living in each locale. In the event that the entities cannot agree to one set of criteria, I argue that, most importantly, they should maintain the same medical criteria. The grants as well as the grantees desire a healthy baby at the conclusion of treatment. The best way to achieve that and avoid giving applicants false hope is to require the full list of medical criteria that assure the best likelihood of success.

Lastly, the moral concern introduced in chapter two involving the medical criterium from JFF that prohibits applicants who have had a vasectomy or bilateral tubal ligation appears judgmental. That criterium lacks medical import for the success of an IVF treatment. I also wonder if potential applicants who see it listed in the JFF criteria would feel shame for having had either procedure as a result. While I do not believe that is JFF's intended impact, the organization should take it into consideration. I find this criterium unethical, and according to my understanding of Shulchan Aruch Yoreh De'ah Hilchot Tzedakah 251:1 that the Jewish community is not obligated to give *tzedakah* to those who have sinned and refuse to repent, I believe Jewish halakhic literature bolsters that finding. Having a vasectomy or bilateral tubal ligation is not a sin, and for those who might disagree based upon the *mitzvah* to be fruitful and multiply, the couple who seeks out IVF treatment after having either operation shows its repentance and desire to fulfill that *mitzvah*. JFF's goal is to help create Jewish families. Applicants who have had those operations still deserve a chance to bring a Jewish child into the world and their community. Therefore, I urge JFF to forgo its criterium prohibiting a vasectomy and/or bilateral tubal ligation.

Bibliography

"About the Tree of Life Grant." Tree of Life Foundation, 2017. https://treeoflifegrant.com/about-the-grant.

"About Us." Jewish Fertility Foundation. Accessed January 4, 2021. https://jewishfertilityfoundation.org/about-us.

Cone, Tonyia. "Fostering Generational Giving: Philanthropists Announce Annual Campaign Match at IGNITE!" *The Jewish Outlook*, April 2018. https://shalomaustin.org/jewish-outlook-april-2018/.

———. "Tree of Life Grant Assists Local Jewish Couples Facing Infertility." *The Jewish Outlook*, September 2017. https://shalomaustin.org/jewish-outlook-september-2017/.

"FAQs." Hasidah. Accessed January 4, 2021. https://hasidah.org/get-help/faqs/.

"Frequently Asked Questions." www.sart.org. Society for Assisted Reproductive Technology. Accessed January 7, 2021. https://www.sart.org/patients/frequently-asked-questions/.

"Greater Miami Jewish Federation: Help Create a Miracle!" action.jewishmiami.org. Accessed January 5, 2021. https://action.jewishmiami.org/gift/miraclebabies/.

Grigoriadis, Vanessa. "I.V.F. Coverage Is the Benefit Everyone Wants." *The New York Times*, January 30, 2019, sec. Style. https://www.nytimes.com/2019/01/30/style/ivf-coverage.html.

"Infertility." www.cdc.gov. Centers for Disease Control and Prevention, 2019. https://www.cdc.gov/reproductivehealth/infertility/index.htm.

"Jewish United Fund Infertility Support Program." Coalition for Family Building. Accessed January 5, 2021. https://coalitionforfamilybuilding.org/juf-infertility-support-program/.

"JFF Fertility Grant FAQs." Jewish Fertility Foundation. Accessed January 4, 2021. https://jewishfertilityfoundation.org/financial-assistance#110c0a07-8ef1-4eb7-af3a-cf11d958a034.

"Mishpacha Project-Fertility Assistance Grants." Congregation Beth Israel, Scottsdale Arizona. Congregation Beth Israel, April 2020. https://cbiaz.org/mishpacha-project-fertility-assistance-grants/.

"National Summary Report." www.sartcorsonline.com. Society for Assisted Reproductive Technology, December 2018. https://www.sartcorsonline.com/rptCSR_PublicMultYear.aspx?ClinicPKID=0#patient-cumulative.

Reuters Staff. "IVF Baby Possible after Tubal Sterilization." *Scientific American*, January 16, 2015. https://www.scientificamerican.com/article/ivf-baby-possible-after-tubal-sterilization/.

"The Priya Fund: Growing Jewish Families." Jewish Family Service of Greater Dallas. Accessed January 4, 2021. https://jfsdallas.org/services/for-adults/priya/.

"Tubal Ligation - Mayo Clinic." Mayoclinic.org. , 2018. https://www.mayoclinic.org/tests-procedures/tubal-ligation/about/pac-20388360.

"Vasectomy - Mayo Clinic." Mayoclinic.org. , 2019. https://www.mayoclinic.org/tests-procedures/vasectomy/about/pac-20384580