Advancing Reproductive Rights in a Religious World:  
A Comparative Survey of Reproductive Rights in 
Poland, Indonesia and Israel

by

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Abstract
This paper surveys the legal implications of religious doctrines as they relate to the universal acceptance of reproductive rights. While the use of human rights to advance reproductive health has gained momentum over the last several decades, the variance in arranging religion and state relations and the significant impact religious institutions have over the substantive rights to reproductive freedom in many parts of the world necessitates a break from considering reproductive rights as a strictly secular issue. Using Israel, Poland and Indonesia as examples, this paper will explain how an understanding of the doctrines underlying major world religions is a crucial step towards recognizing how reproductive rights and freedoms can be advanced in a world where laws and policies are informed by both the sacred and the secular.
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Introduction

The global protection and promotion of rights relating to reproductive and sexual health have advanced significantly in the last few decades. National constitutions and laws as well as international human rights instruments have begun to reflect the recognition that the protection of reproductive and sexual health is not just a health issue; it is also a social justice, human rights, and development issue. Yet around the world, the right to health, and especially reproductive and sexual health, is far from reality for many women.

According to the World Bank, a full one-third of the illness among women ages 15-44 in developing countries is related to pregnancy, childbirth, abortion, reproductive tract infections, and human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS).\(^1\) With the spread of democratic government, a realization has emerged of the harmful effects on the health and welfare of individuals and societies caused by the control of reproduction and sexuality.\(^2\) This has fostered an approach to laws and policies that challenge patriarchal norms by advocating increased access to reproductive health services as a matter of human rights and social justice.\(^3\)

Women’s health status is affected by complex and interrelated biological, social and cultural factors that call for comprehensive analysis.\(^4\) Of particular importance to the advancement of reproductive rights, is the fact that this movement must be navigated through a minefield of deeply held ideological, moral, and religious beliefs. No society, no religion, no culture, and no system of national law has been neutral about issues of human reproduction.\(^5\) While human rights groups in various cultures are gaining momentum in

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3 Ibid.
4 Ibid.
5 Ibid at 3.
educating legislators, legal practitioners and judges on matters affecting reproduction and reproductive choice, there are other powerful and authoritative actors influencing these debates. With religion returning to the forefront of world politics, it is hard to overstate the influence of religious-based morality upon the legal debate surrounding reproductive rights. From the fundamentalist turn in predominantly Islamic polities to the spread of Catholicism and Pentecostalism in the global south, major religious institutions have gained a stronghold over the legal landscape respecting reproductive rights.

While the modern Western state has developed to a large extent as a political organization that has bid farewell to the union of church and state, in reality, religion has never disappeared from world politics. Indeed, the influence of religion in domestic politics is strong in many nations of the world, even those that proclaim to have a division between church and state. As Professor Ran Hirschl explains, a taxonomy of contemporary approaches to govern religion and state relations currently exist, ranging from atheism or strict separation to weak establishment, and from models of jurisdictional enclaves to strong establishment or parallel governance of constitutionalism and religion.6 Across these approaches, there has been a resurgence of religion intermingling with world politics. More people in both the West and the East are openly expressing religious sentiments in the public sphere and explicitly using guidelines they identify as religious to make decisions about political, economic, social and cultural concerns.7 While religious organizations have gained influence and authority in the public debate surrounding numerous legal and social issues, none have been so controversial and emotional as the topic of reproductive and sexual health.

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Interestingly, as religious morality increasingly gains strength as a political and legal motivator, so too has the concept of human rights as a stimulator for legal reform in expanding women’s rights and equality. Specifically, the use of human rights to advance reproductive health and self-determination has gained momentum through recent United Nations conferences, particularly the 1994 International Conference on Population and Development (ICPD), held in Cairo, and the 1995 Fourth World Conference on Women, held in Beijing. The Cairo and Beijing commitments introduced a new focus on meeting the reproductive health needs and preferences of individual women and men, rather than, as in the past, on achieving demographic or population-based targets.

While defining and articulating a woman’s right to personal choice and freedom in her decisions concerning her body and her reproductive options are important aspects of what has emerged as a movement to advance and protect women’s reproductive rights, reproductive and sexual health issues must be understood as embedded in and shaped by religious beliefs, cultural practices and historical circumstances and traditions. The variance in arranging religion and state relations and the significant impact religious institutions have over the substantive rights to reproductive freedom necessitates a break from considering reproductive rights as a strictly secular issue. Instead, an understanding of the framework of the legal and religious debate on reproductive and sexual health may shed new light on how reproductive rights can be advanced in a world of complex interactions between religious beliefs, law and politics.

The three largest Abrahamic faiths – Judaism, Catholicism, and Islam – serve as useful examples of how religious authority can influence the attainment of reproductive rights within domestic law. This paper surveys the legal implications of these religions on

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8 Rebecca Cook & Mahmoud Fathalla, “Advancing Reproductive Rights Beyond Cairo and Beijing” (1996) 22:3 International Family Planning Perspectives 115 at 115 [Cook, “Beyond Cairo”].
9 Cook, “Reproductive Health”, supra note 2 at 155.
10 Ibid at 156.
reproductive rights as they specifically relate to Israel, Poland, and Indonesia. The role that religion plays in the culture, politics and laws of these three countries is at once both similar and different. While Israel explicitly proclaims to be a Jewish nation, no particular religion is granted formal status in either Indonesia or Poland. Additionally, while Indonesia is not an official Islamic state and has not adopted Sharia law as the main law in the country, similar to the autonomy granted to Jewish courts in Israel, Islamic courts in Indonesia are granted jurisdiction over marriage, divorce, and inheritance for the Muslim population. Despite their differences in arranging religion and state relations, the dominant religious institutions in each of these countries continues to exert strong influence over their legal and political affairs, especially in relation to issues regarding reproductive health.

As of the early twenty-first century, it was estimated that 54 percent of the world’s population considered themselves adherents of the Abrahamic religions. While the three largest Abrahamic theologies share common origins and constructs, they each inform, constrain, dictate, and apply the laws and policies regarding reproductive and sexual health in vastly different ways and to different degrees. Their influence is nonetheless remarkable in shaping the reproductive debate, particularly in Poland, Indonesia, and Israel where, despite pronounced secular governments, a majority of the laws regarding family status and reproductive health demand strict religious adherence.

This paper aims to explore these interactions and unpack the tensions and compatibilities of these monotheistic religions and reproductive rights, using the issues of abortion, contraception, and assisted reproductive technologies (ART) as concrete

examples. Part I of this paper briefly examines the common origins and constructs of the three Abrahamic religions and explains why they are instructive in the debate surrounding reproductive rights. Part II further explains why the attainment of reproductive freedom is inextricably linked to human dignity, self-determination and equality. Defining reproductive rights as the legal rights and freedoms relating to reproductive and sexual health, this paper will address the religious and legal responses to services involved in providing for reproductive self-determination. Part III discusses the foundation of each religion as it informs the policies and practices of abortion, access to modern and effective methods of contraception, and access to ART, specifically focusing on the practice of in vitro fertilization (IVF). Part IV analyzes and compares the influence of Catholicism, Judaism, and Islam upon the law relating to reproductive rights in Poland, Israel, and Indonesia respectively. This analysis will present how the religions interpretations of reproductive issues become manifest in the law. Finally, while acknowledging other influences upon reproductive laws and policies, part V of this paper will nonetheless explain how an understanding of the doctrines underlying these and other major world religions is crucial towards recognizing how reproductive rights and freedoms can be advanced in a world where laws and policies are informed by both the sacred and the secular. A combination of an internal cultural and religious discourse with a cross-cultural dialogue can potentially provide a means of enhancing the universal legitimacy of reproductive rights.

1. The Abrahamic Religions

While disagreement and disparate worldviews often mark any debate among Catholics, Muslims, and Jews, it is instructive to begin a comparative approach and cross-
cultural dialogue between these religions at a central point of commonality.\textsuperscript{13} Many biblical scholars consider that common point to be a connection with Abraham.\textsuperscript{14} For Jews, it is their claim to physical descent from him, which in their faith makes them the recipients of the promises God made to him. Abraham is recorded in the Torah as the ancestor of the Israelites through his son Isaac, born to Sarah through a promise made in Genesis.\textsuperscript{15} Muslims accept him as a prophet and believe he helped found the Kaaba in Mecca as a place of pilgrimage.\textsuperscript{16} Christians refer to Abraham as a “father in faith.”\textsuperscript{17} They embrace Abraham as a prophet of Christ, and the New Testament book of Romans documents the sacrifice and release of Abraham’s son Isaac as a foreshadowing of Christ’s resurrection.\textsuperscript{18}

An additional, and equally significant, reason that the term ‘Abrahamic religions’ is commonly applied to Judaism, Christianity and Islam, is that ‘Abraham’ is taken to mean monotheistic, which is what all three religions claim to be.\textsuperscript{19} Through Abraham’s covenant with God to become “the father of many nations,”\textsuperscript{20} Abraham radically transformed man’s understanding of God, forming a new monotheistic paradigm: “one God, transcendent over nature, who rules all creation and governs humanity in the here and now.”\textsuperscript{21} They also affirm that obedience to this one creator God is to be lived out historically, and that human actions are to be lived in accordance with divine law revealed through scripture. The three monotheisms further confront one and the same problem: the problem of reconciling the rule of God with the rule of man.

\textsuperscript{13} Ibid at 717.
\textsuperscript{14} Ibid at 718.
\textsuperscript{15} See generally Genesis 17:16.
\textsuperscript{17} Holy Bible (New Int'l Version), Romans 4.
\textsuperscript{18} Bundren, “The Influence”, supra note 12 at 718.
\textsuperscript{19} Knowles, “The Galatian Test”, supra note 16 at 318.
\textsuperscript{20} Holy Bible (New Int'l Version), Genesis 17:4.
\textsuperscript{21} Jacob Neusner & Tamara Sonn, Comparing Religions through Law: Judaism and Islam (New York: Routledge, 1999) at 2.
While these religions share many beliefs, central among them is a code of morality that celebrates the dignity of human life. Each religion, in harmony with the law, has strong commitments to marriage and family. Each, however, counsels diverse practices, procedures and prohibitions relating to reproduction through their respective traditions and doctrines. Further, in Poland, Indonesia, and Israel, where each of the three theologies profoundly influences both culture and law, reproductive and sexual health practices reflect the religious instruction by legislative mandate or policy guidelines. In the analysis that follows, this paper will reveal how this shared belief in the importance of human life, marriage and family, informs and influences the law in ways that are both similar and different in three culturally and politically distinct nations of the world.

2. Overview of Reproductive Rights

To set the stage for the cross-cultural discussion of the substantive right to reproductive freedom, it is necessary to start with an overview of the movement to advance and protect reproductive and sexual health. When conceptualizing reproductive rights it is important to make distinctions between normative rights and substantive rights. Normative rights refer to theoretical norms regarding human rights that are widely accepted either at international, national or local levels. Substantive rights refer alternatively to how rights are actually recognized on the ground level.

The normative right to reproductive freedom lies at the heart of the promise of human dignity, self-determination and equality embodied in the Universal Declaration of Human Rights. Since this first international delineation of human rights, the use of

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23 Ibid at para 43.
human rights to advance reproductive health and self-determination has gained momentum in the international arena. Over the years, the human-rights-based approach to reproductive health has evolved to emphasize the rights to health, to have children by choice, and to have a safe and satisfying sex life.²⁶

Since the right to family planning was enshrined in 1968 at the Teheran Human Rights Conference, the value of family planning and of individuals and couples to make their own reproductive and childbearing decisions has been widely accepted within the international legal arena.²⁷ The 1994 ICPD and the 1995 Fourth World Conference on Women expanded the right to family planning to include the right to better sexual and reproductive health. The Program of Action adopted by 184 UN member states in Cairo recognized the importance of human rights in protecting and promoting reproductive health.²⁸ The Cairo Program was the first international policy document to define reproductive health, stating:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.²⁹

²⁷ Ibid.
²⁸ Cook, “Beyond Cairo”, supra note 8 at 115.
The Declaration and Platform for Action adopted by 187 UN member states in Beijing reaffirmed the Cairo Program’s definition of reproductive health, but established a broader context of reproductive rights:

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.30

These documents provide powerful tools in the movement to advance women’s reproductive self-determination. Significantly, Indonesia, Poland and Israel are signatories of the Program of Action adopted in Cairo and the Platform for Action adopted in Beijing. Moreover, the ICPD Plan of Action developed in Cairo specifically called on countries to make reproductive health services accessible no later than 2015:

All countries are called upon to strive to make reproductive health accessible through the primary health-care system to all individuals of appropriate age as soon as possible and no later than 2015. Such care should include, inter alia: family planning counselling, information, education, communication and services; education and services for prenatal care, safe delivery and post-natal care, especially breast-feeding and infant and women’s health care; prevention and treatment of infertility; abortion as specified in paragraph 8.25; treatment of reproductive tract infections, sexually transmitted diseases (STDs) and other reproductive health conditions; and information, education and counselling on human sexuality, reproductive health and responsible parenthood.31

In guiding the implementation of the recommendations contained in the Plan of Action, this document states that “clear recognition is given to the fact that the implementation of the recommendations ... is the sovereign right of each country, consistent with its national laws and development priorities, with full respect for the

various religious and ethical values and cultural backgrounds of its people...." While this document acknowledges differences in religious values, it fails to provide guidance regarding inevitable tensions between the stated recommendations and objectives and conservative religious doctrine. With this obligation on signatory countries, including Poland, Indonesia, and Israel, to make reproductive health services, including family planning, treatment of infertility, and abortion, available and accessible, dominant religious morality in each of these countries has significantly influenced and shaped the legal means towards achieving this end.

In addition to the documents developed through the population conferences, Indonesia, Israel, and Poland have signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (the Women’s Convention), an international human rights treaty which explicitly addresses human rights regarding family planning services, care and nutrition during pregnancy, and information and education to decide the number and spacing of one’s children. The Committee on the Elimination of Discrimination against Women (CEDAW) monitors whether states have brought their laws, policies, and practices into compliance with the Women’s Convention.33

Recently, the UN Population Fund (UNFPA) published a report that explicitly describes family planning – defined as the ability to plan for the number of children and the timing of pregnancies and childbearing through the use of contraceptive methods, excluding abortion – as a universal human right, equal to those found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In The State of World Population 2012, the UN explains how ensuring universal access to voluntary family planning is a matter of protecting human rights and social and economic

32 Ibid.
33 Cook, “Reproductive Health”, supra note 2 at 154.
development. Further, it suggests actions that governments and international organizations can take to ensure both men and women have the power and the means to decide freely and responsibly how many children to have and when to have them.

Despite these broad normative declarations of reproductive rights as human rights, actual recognition of reproductive health as a substantive right in domestic law varies greatly from state to state. The challenge is to turn the political, non-binding commitments made by governments in Cairo and Beijing into legally enforceable duties to respect reproductive rights. As will be explained below, this commitment becomes challenging when these declarations have been formed in the absence of a full dialogue within and between religious officials and lawmakers. Most countries have committed themselves to respect individuals' human dignity and physical integrity through their own national constitutions and other laws, and their membership in regional and international human rights conventions. Yet, despite the appeal from the international community to make reproductive health services available and accessible, in countries with strong religious influence, religious or moral opposition has shaped, and sometimes frustrated the recognition of rights to reproductive and sexual health within domestic law.

The substantive obtainment of reproductive rights can take many diverse forms, from access to legal and safe abortion, to the criminal law prohibitions against female genital cutting, sex-selection abortion and involuntary sterilization, and to the ability to access medical assistance to prevent and to overcome the effects of infertility. Unquestionably, the doctrines of Catholicism, Islam, and Judaism all speak to the moral and ethical acceptability of the various forms of healthcare and education relating to reproductive and sexual health. The discussion here, however, will be limited to the

35 Cook, “Reproductive Health”, supra note 2 at 155.  
36 Ibid at 158.
religious implications and instructions relating to reproductive self-determination and free choice of maternity: abortion, contraception, and access to ART or medically assisted reproduction, specifically to the practices and procedures of IVF.

2.1 Abortion

According to the UN, an estimated 222 million women worldwide are at risk of unintended pregnancy. Women’s reasons for terminating unwanted pregnancies reflect the economic, social, and cultural forces that shape their lives. Nancy Felipe Russo and Julia R. Steinberg outline some of the many reasons why a woman may choose to have an abortion:

A woman may be in adolescence, unmarried, divorced, widowed, or at the end of her reproductive years. She may already have one or more young children. A pregnancy may threaten a woman’s life or health, involve fetal impairment, or result from rape or incest. She may have HIV/AIDS, malaria, cancer, cardiovascular disease, or some other condition worsened by pregnancy. Her living conditions may involve famine, armed conflict, or natural disaster...

Regardless of the reason, a woman's ability to obtain abortion services is affected by the prevailing law in the country that she lives and how it is interpreted and applied. A global trend towards liberalization of abortion laws has continued in recent years. Currently, 61 percent of the world’s people live in countries where induced abortion is permitted either for a wide range of reasons or without restriction as to reason; in contrast, 25 percent reside in nations where abortion is generally prohibited.

Advancing reproductive rights requires abortion to be safe and accessible. When abortion is legally performed by a competent provider and meets medical standards, the death ratio is less than 1 in 100,000 abortions. In comparison, the maternal mortality ratio is 17 per 100,000 live births for developed countries, 290 for developing countries, and

37 UNFPA, "State of World", supra note 34.
38 Joan C Chrisler, ed, Reproductive Justice: A Global Concern (Santa Barbara: Praeger, 2012) at 160[ Chrisler, "Reproductive Justice"].
39 Cook, "Reproductive Health", supra note 2 at 346.
Legalization plays an important role in increasing the safety and accessibility of abortion. In countries where abortion is illegal or rarely practiced due to limited government-assisted services, women may seek abortion from unauthorized providers or attempt to induce abortion on their own.

The public health consequences of unsafe abortion have been addressed by countries at the United Nations Conferences held in Cairo and Beijing. Governments agreed at the 1994 Cairo Conference:

To strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education and family planning services should be offered promptly, which will also help to avoid repeat abortions.

A year later at the 1995 Beijing Conference, governments agreed to “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.” Nevertheless, governments continue to criminalize abortion and implement policies denying women’s rights to exercise their sexual and reproductive autonomy. In both developing and developed countries, attempts to legalize abortion are often met with strong religious opposition. An obvious theological issue in abortion concerns the moral status of the embryo/foetus. As will be discussed below, the various ethical positions the

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40 Chrissler, “Reproductive Justice”, supra note 38 at 160.
41 Ibid at 162.
42 UN, “Programme of Action”, supra note 31 at para 8.25.
43 UN, “Beijing”, supra note 30 at para 106(k).
Catholic, Jewish, and Muslim authorities have taken on this issue has substantially affected the legality of abortion in numerous countries, including Poland, Israel, and Indonesia.

2.2 Contraception

Providing sexually active women the means to prevent a pregnancy is a critical step in enabling them to achieve their childbearing goals. Additionally, ensuring access to contraceptive information and services has countless socioeconomic benefits and is central to achieving gender equality. It can “empower women and couples to determine whether and when to have children; enable women to complete their education; increase women’s autonomy within their households; and boost their earning power, thereby improving the economic security and well-being of women and their families.” With access to contraception, women can avoid unwanted pregnancies and births, allowing them better opportunities to pursue an education and career.

Despite these facts, the unmet need for safe and effective contraceptive services throughout the world continues to remain staggeringly high. Regardless of their desire to avoid or delay pregnancy, roughly 215 million women in developing countries either rely on traditional methods of birth control only, which have a high failure rate, or do not use any contraceptive method at all. Lack of access to modern contraceptive information and services means that women and adolescents are often unable to protect themselves from HIV and other sexually transmitted infections or to control their fertility and reproduction. Of the approximately 80 million women who annually experience

45 Chrisler, “Reproductive Justice”, supra note 38 at 156.
unintended pregnancies, 45 million have abortions.\textsuperscript{49} As was explained above, in countries where abortion is highly restricted or inaccessible, women often resort to clandestine abortions, which are frequently unsafe and pose a serious risk to their health and lives.\textsuperscript{50}

Modern contraceptive methods include all hormonal methods (i.e., the pill, injectables and implants), IUDs, male and female sterilization, condoms and modern vaginal methods (e.g., the diaphragm and spermicides).\textsuperscript{51} As the desire for smaller family sizes has spread around the world, use of these methods of contraception has risen. Despite the increase in new and effective methods of contraception, the continued high rates of unmet need for contraception are disturbing.

It is against this backdrop that the UN’s Population Fund has asserted that access to family planning and contraceptives is a universal human right that must be respected. This view, however, has not been met without criticism. On the national level, religious opposition has often forestalled legislative reform to require governments to provide affordable and accessible modern contraceptives. In many countries, the battle over contraceptive use has both religious officials and lawmakers accusing each other of overstepping boundaries between church and state. While religious adherents vary widely in their views on birth control, when the secular/religious divide becomes blurred, arguably resistance or acceptance from religious authority will dictate national action on the right to contraception.

\textbf{2.3 \textit{ART and In Vitro Fertilization}}

\textsuperscript{49} Anna Glasier et al., Sexual and reproductive health: a matter of life and death, 368 Lancet 1595, 1607 (2006)
\textsuperscript{51} Guttmacher Institute, “Adding It Up”, \textit{supra} note 47.
Family planning is not just about avoiding unwanted pregnancies; it is also about achieving wanted pregnancies. While access to abortion and contraception are means by which a woman can choose to terminate or avoid a pregnancy, access to ARTs allows infertile individuals or couples to enjoy the benefits of scientific progress for assistance in having children. The World Health Organization (WHO) estimates that approximately 8-10 percent of couples experience some form of infertility problems. On a worldwide scale, this means that 50-80 million people suffer from infertility. Although the global burden of infertility may not be considered a public health priority and generally receives considerably less attention as a component of family planning, as Lisa R. Rubin and Aliza Phillips note, “it is a central concern in the lives of those who experience it, and can lead to social and psychological suffering for both men and women.”

Since the birth of Louise Brown in 1978, the world’s first “test-tube” baby, there have been significant advances in the development of ARTs to treat couples with infertility. Over the past 35 years, ART and its variants “seem to have generated more interest and concern among religious leaders, bioethicists, and the general public than any other medical procedure.” Much of this attention has been devoted to the controversial form of treatment known as IVF.

IVF involves treating a woman with hormones such that her ovaries produce several eggs. When the eggs are ready to be retrieved, the follicles in which the eggs are developing are aspirated with a needle. The eggs are placed with sperm in a dish and left

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52 Chrisler, “Reproductive Justice”, supra note 38 at 6.
54 Chrisler, “Reproductive Justice”, supra note 38 at 173.
to culture in an incubator.\textsuperscript{58} If the eggs fertilize, then, a few days later, one or more embryos are transferred to the woman’s uterus in hopes of achieving a successful pregnancy.\textsuperscript{59} Given that not all eggs are transferred, those who believe that life begins at conception view the treatment of IVF as discarding human beings.\textsuperscript{60}

ART and IVF also often involve surrogacy arrangements. Surrogacy is an arrangement in which a woman agrees to become pregnant and deliver a baby for another couple or individual. Surrogacy arrangements can involve the creation of an embryo from the sperm and eggs of the commissioning parents or can involve donated material. For some, surrogacy raises strong moral and ethical issues as to lineage, inheritance rights, and adultery.

WHO has defined reproductive rights as “the basic rights of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so.”\textsuperscript{61} As well, the ICPD Program of Action mentions that “prevention and appropriate treatment of infertility, where feasible” were issues for future action.\textsuperscript{62} The Beijing Platform for Action additionally advocates for “the explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility.”\textsuperscript{63} Some scholars argue that for couples and individuals affected by infertility, reproductive rights should include the right to access ARTs among those who are interested.\textsuperscript{64} However, throughout many parts of the world,

\textsuperscript{59} Chrisler, “Reproductive Justice”, \textit{supra} note 38 at 178.
\textsuperscript{61} UN, “Programme of Action”, \textit{supra} note 31 at Principle 8.
\textsuperscript{63} UN, “Beijing”, \textit{supra} note 30.
\textsuperscript{64} Chrisler, “Reproductive Justice”, \textit{supra} note 38 at 181.
access to ARTs, and IVF in particular, is limited both by the high cost and by policies and practices set by legal and religious authorities.65

3. Religious Perspectives

“The vast majority of people in our society do believe in God.”66 Religion matters hugely in how people live their lives from birth to death. It is relevant because it is such a basic dimension of human life encompassing culture, tradition, language, worldview, values, and choices.67 From a religious perspective, reproductive health services are strongly tied to beliefs in the moral status of the foetus/embryo, the natural course of sexual relations, and proper arrangements of marriage and the family. It is therefore inevitable that religion and religious values may influence both individuals’ reproductive decisions, as well as government policies and laws regarding the availability of reproductive health services. It is therefore important when forming normative declarations on reproductive rights, such as the ICPD, that religious values are explored and discussed in order to provide legitimacy to the advancement of reproductive rights.

This section presents a sample of religious perspectives on abortion, contraception and IVF representative of Catholicism, Judaism, and Islam. One can see many parallels between the assorted religious perspectives and the various legal conclusions reached in Poland, Israel, and Indonesia. An important correlation is the internal discrepancies among and within the religious factions similar to those within the judiciary and legislative factions of the legal system.68 In practice, the picture in most predominantly religious polities – be they Islamic, Jewish, or Catholic – is complex and nuanced, “reflecting deep

65 Ibid at 181.
divisions and strife along secular/religious lines, as well as widely divergent beliefs, interpretations, and degrees of practice within religious communities.”

Indeed, an important acknowledgment is that an array of possible interpretations and schools of thought exist within virtually every religious tradition. While the following overview focuses primarily on the schools of thought that have been most influential within the three countries studied in this paper, a full cross-cultural and norm creating dialogue must strive to include wide and diverse perspectives on both the interpretation of religious scripture and how religious doctrines are to be reconciled with reproductive rights.

3.1 Catholic Perspective

The Catholic Church’s traditional view of reproduction can be traced to the early history of the religion. The foundational thinker of Latin Christianity, St. Augustine, in the late fourth and early fifth centuries established certain assumptions that still influence Catholicism today. According to Augustine, in the original state of innocence, humans would procreate without desire or sexual pleasure. The fall into sin distorted human sexuality, making every sexual act concupiscent. Rosemary Radford Ruether explains:

[T]his meant that every sexual act was objectively sinful, although this was forgiven or allowed within marriage for the sake of producing children. But sex even within marriage, if the reproductive effects of the sexual act were impeded, was sinful or “mere fornication.” This view made any form of birth control sinful and is the basis of Catholic teaching on birth control still today.

Despite these early assumptions, prior to the 1930s, the Church had no official position on contraception. However, on December 31, 1930, Pope Pius XI issued a papal encyclical, Casti Connubii (Latin for “Of Chaste Wedlock”), which for the first time explicitly

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71 Ibid.
prohibited Catholics from using contraception. Over the next three decades momentum continued to build for the Church to reconsider its position. In 1964, Pope Paul VI appointed a commission on birth control to advise him. Despite the fact that a significant majority of commission members were in favour of lifting the ban, in July 1968, Pope Paul VI issued a formal encyclical *Humanae Vitae* ("Of Human Life"), reaffirming the Church’s prohibition of any form of artificial birth control.

The expressed views of Paul VI reflected the teachings of his predecessors, all of whom had insisted on the divine obligations of the marital partners in light of their partnership with God. This traditional position views fertility as “an integral part of the bonding power of marital intercourse. That power to create a new life with God is at the heart of what spouses share with each other.” Therefore, when married couples deliberately act to suppress fertility, sexual intercourse is no longer fully *marital* intercourse. Using contraception denies part of the inherent meaning of married sexuality and does harm to the couple’s unity.

While the Church views procreation as the primary purpose of sex and condemns the use of artificial contraception, methods of natural family planning are considered morally permissible in some circumstances, as they do not usurp the natural way of conception. The rhythm method allows a married couple to engage in marital intimacy during the naturally infertile times in a woman’s cycle, “enabling couples to cooperate with

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75 Ibid.
76 “Humanae Vitae”, *supra* note 73 at no 16.
the body as God designed it.”77 According to Church doctrine, when couples use contraception, either physical or chemical, they suppress their fertility, asserting that they alone have ultimate control over this power to create a new human life.78 Natural family planning, on the other hand, respects God’s design for life and love.

In the *Humanae Vitae*, Pope Paul VI called attention to the close association between contraception and abortion, noting that "the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children."79 While there is an obvious corollary between contraception and abortion, within Church dialogue, abortion and contraception have generally been discussed in different contexts. While contraception is often discussed around the idea that sex is for procreation only and not for pleasure, abortion is generally discussed more in terms of violence.80 To many, abortion breaks one of the most fundamental religious tenets of the Bible – “Though Shall Not Kill.”81

From its foundation, the Church took the position that abortion was murder.82 In March, 1995 Pope John Paul II affirmed this association when he issued the encyclical *Evangelium Vitae*, describing abortion as a particularly grave moral disorder.83 Essentially, the moral reasoning within the Church holds that “human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person – among

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77 Catholic Bishops, "Married Love", *supra* note 74 at 5.
78 "Humanae Vitae", *supra* note 73 at no 17.
82 Fleishman, “The Battle”, *supra* note 80 at 281.
which is the inviolable right of every innocent being to life."\textsuperscript{84} With this understanding, ethical and legal restrictions of abortion are therefore seen as both right and good.\textsuperscript{85}

Likewise, discussions around ART and IVF are informed by Church doctrine regarding contraception and abortion. The Church generally disapproves of ART because, like contraception, it "separates the procreative aspect from the marital act."\textsuperscript{86} The Catechism of the Catholic Church clearly establishes that procreation is deprived of perfection when it is "not willed as the fruit of the conjugal act."\textsuperscript{87} In the Church's view, when fertilization occurs outside the body, as it does in IVF, "the procreative aspect of human sexuality has been wrongly severed from its unitive aspect, the spiritual and physical union of the parents."\textsuperscript{88}

The Church additionally condemns the practice of IVF because it might cause the disposal of embryos. Pope Benedict XVI affirmed this view in the Instruction on Respect for Human Life and Its Origin and on the Dignity of Procreation (\textit{Donum Vitae}), issued in 1987:

Human embryos obtained in vitro are human beings and subjects with rights; their dignity and right to life must be respected from the first moment of their existence... In the usual practice of in vitro fertilization, not all of the embryos are transferred to the woman's body; some are destroyed. Just as the Church condemn induced abortion, so she also forbids acts against the life of these human beings.\textsuperscript{89}

The Church has by no means sat silent while the practices of contraception, abortion and IVF have spread worldwide. Although it acknowledges that "not all moral

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\textsuperscript{84} Catechism of the Catholic Church, "Respect for Human Life", no 2270, available online: <http://www.vatican.va/archive/ENG0015/__P7Z.HTM#-2C6>.
\textsuperscript{85} Fleishman, "The Battle", \textit{supra} note 80 at 281.
\textsuperscript{86} Grothaus-Day, "From Pipette", \textit{supra} note 22 at para 44.
\textsuperscript{87} Catechism of the Catholic Church, "The Love of Husband and Wife", no 2377, available online: <http://www.vatican.va/archive/ENG0015/__P86.HTM>.
\textsuperscript{88} Bundren, "The Influence", \textit{supra} note 12 at 729.
\textsuperscript{89} Pope Benedict XVI, "Instruction on respect for human life in its origin and on the dignity of procreation" (\textit{Donum Vitae}) (22 February, 1987), available online: <http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html>.}

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objectives can be realized by means of law,” it nonetheless has promoted a legislative agenda which proffers that “certain practices must be legally prohibited because of the direct threats to human life and social order.”\textsuperscript{90} As such, the Church supports a legal ban on abortion for any reason and all ART procedures that involve fertilization outside the body.\textsuperscript{91} Additionally, while it no longer explicitly advocates for the legal prohibition on contraceptive use, opposition from the Catholic Church has paralyzed access to contraception throughout the world.\textsuperscript{92} This means opposing sex education curricula where contraception is discussed. It also entails opposition to state subsidies for contraceptives and for insurance policies that cover contraceptive drugs and devices.\textsuperscript{93} For example, in April 1998 the New York and Connecticut Catholic conferences lobbied against US legislation that would require health insurance policies to cover contraception.\textsuperscript{94}

Under the papacy of Pope John Paul II, Catholicism was particularly active in relation to the United Nations conferences on population in Cairo and Beijing. The Vatican, through its status as a permanent observer at the United Nations, enjoys both voice and vote at such UN conferences.\textsuperscript{95} The population conference in Cairo was designed to discuss all methods of population control and to put forth a platform of a more female friendly definition of human rights. Unfortunately, because this definition was to include reproductive rights, the Church took an active role in prolonging the debate.\textsuperscript{96} The Church sought to gather allies, mobilizing many sympathetic Catholic and Islamic states against: “voluntary choice in family planning; sexual and reproductive health and rights; safe

\textsuperscript{90} Helen M Alvare, “Catholic Teaching and the Law Concerning the New Reproductive Technologies” (2002) 30 Fordham Urb LJ 107 at 118.
\textsuperscript{91} Bundren, ”The Influence”, supra note 12 at 730.
\textsuperscript{93} Ruether, “Women”, supra note 70.
\textsuperscript{94} Ibid.
\textsuperscript{95} Ibid.
\textsuperscript{96} Fleishman, “The Battle”, supra note 80 at 284.
motherhood; [and] access to safe abortion.”

By successfully diluting the wording in certain provisions of the Program of Action, the Church proved itself to be a major player in international policy decisions concerning abortion and reproductive rights.

3.2 Jewish Perspective

From the perspective of the Jewish tradition, reproduction is a highly regarded phenomenon, indeed, a blessing. "Children are not only the continuation of the human species, but they enable humans to grow as adults, and they are also the vehicle for continuing the Jewish tradition.”

The importance placed on reproduction can be traced back to God’s commandment to Adam to “be fruitful and multiply.” This biblical mandate constitutes childbearing as not only a goal in one's own life, but as contribution to a collective mission.

It has been interpreted to mean that a couple should have at least one male and one female child, a responsibility that devolves upon the man. “It is a woman’s right but not her obligation to have children.”

Jewish law, or halakha, governs the decisions, acts, and practices of observant Jews in every life situation, including sexuality, birth control and childbirth. "Halakha represents a legal system based on Scripture and thousands of years of subsequent commentaries, which serves as a guide for living in a modern world.” Unlike Catholicism, rulings on current issues in the Jewish tradition cannot be promulgated by any central authority, as there is no formal hierarchal structure to the various rabbinic authorities and courts currently functioning. Positions on prevailing issues are developed

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97 Ibid.
99 See generally Genesis 1:28.
by circulation of responsa (rabbinic rulings) to questions posed to various rabbinic authorities. Collegial review and community acceptance eventually allow for specific opinions to emerge as dominant. Yet, even when one view surfaces as authoritative, individual rabbis or layman will often defer to their local authority, whose position is considered decisive.\footnote{Richard Grazi & Joel Wolowelsky, “Donor Gametes for Assisted Reproduction in Contemporary Jewish Law and Ethics,” (1992) 2:3 Assisted Reproduction Reviews 154}

Jewish law, unlike Catholicism, permits the use of modern contraception under some circumstances. While Judaism obligates couples to have children, it recognizes that this obligation must be balanced with competing concerns, such as the mother’s health and ability to cope.\footnote{Jewish Women’s Health, Contraception and Jewish Law, online: Jewish Women’s Health <http://www.jewishwomenshealth.org/article.php?article=11>}. Indeed, when there is a clear and current medical danger to the mother’s health, Jewish law permits contraceptive use.\footnote{Ibid.}

In the Talmud, there are precedents for the use of contraception, both temporary and permanent, in situations that threaten the woman’s life or health, including her mental health.\footnote{Feldman, “Orthodox Jewish Tradition”, supra note 101 at 31.} However, not all forms of modern contraception are acceptable. Jewish law prohibits men from destroying or wasting seed.\footnote{Ibid.} Thus, contraceptive methods such as coitus interruptus, condoms and vasectomy, that destroy or block the passage of seed, are forbidden by most orthodox rabbinic authorities.\footnote{Ibid.} Hormonal forms of birth control, such as pills, patches, injections and implants, are the most acceptable method to some authorities, “because it is removed from intercourse and interposes no artificial barrier between husband and wife.”\footnote{Ibid.} Others, however, regard them as dangerous to a woman’s health and therefore unacceptable.

\footnote{104 Jewish Women’s Health, Contraception and Jewish Law, online: Jewish Women’s Health <http://www.jewishwomenshealth.org/article.php?article=11>.

105 Ibid.


107 Ibid.

108 Ibid.

109 Ibid.}
A further difference between Catholicism and Judaism is that Jewish law does not impose a complete ban on abortion. Under Jewish law, abortion is permissible when the continuation of the pregnancy threatens the mother. Halakha affords the foetus no legal status, "since it is deemed an organic part of its mother rather than an independent entity." Furthermore, underlying Jewish principles assert that killing is allowed in self-defense, when the victim is not innocent but is considered an "aggressor". A foetus may be regarded as an aggressor when the mother’s health is endangered. Hence, the woman’s interests, when health considerations are at stake, override those of the foetus.

Additionally, while the contemporary Catholic position is that ensoulment occurs at conception, in contrast, ensoulment is not a halakhic issue, since full human status in Judaism pertains only at the birth of a full-term baby. Tirzah Meacham explains how the halakhic status of the embryo/foetus is dependent upon the stage of its development:

From conception to the fortieth day, it is considered to be merely water. At three months the pregnancy is physically recognizable. Prior to labor the [foetus] is considered a “limb of its mother,” i.e. without independent legal status. During labor, before the head (or the majority of the body in a breech birth) is delivered, the [foetus] is considered a living being but one whose life is less valuable than the mother’s. After the head or the majority of the body is birthed, the [foetus] has a nearly equal status with the mother, especially if it is a full-term pregnancy. Only after a full-term pregnancy or survival of the premature [foetus] for thirty days does full human status adhere.

Thus, the Jewish foetus has no "right to life" but a right to be born, but this right is relative to the welfare of the mother. In any moral clash, the mother has priority over the foetus, which is only a potential life.

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112 Ibid.
113 Tirzah Meacham, Abortion, online: Jewish Women Archive <http://jwa.org/encyclopedia/article/abortion> [Mecham, “Abortion”].
114 Hashiloni-Dolev, supra note 111 at 99.
Due to the importance placed on reproduction by biblical mandate, the "barren woman is an archetype of suffering in the Jewish imagination." Similar to the infertile woman's stigmatization within Islam, she is a woman to be pitied for her failure to fulfill the responsibility to procreate. For halakhically observant Jews, especially in the prenatal state of Israel, and in general in the post-Holocaust era, ART has been a blessing and many are perfectly willing to use artificial means to try to overcome infertility.

In general, contemporary rabbis “have spared no effort to determine the appropriate uses” of ART and have been extraordinarily accepting of assisted reproduction. Rabbi Seigel, Professor of Ethics at a Jewish Theological Seminary, “compared efforts to have children by whatever means to obeying God’s commandment to have children. ‘When nature does not permit conception, it is desirable to try to outwit nature. The Talmud teaches that God desires man’s cooperation.’” Unlike the Catholic tradition, the Jewish tradition does not view the difference between natural and artificial means to advance medical goals as being relevant. Consequently, from a Jewish perspective, the natural/artificial division in ART simply does not matter.

While the use of IVF is almost universally accepted as a means of treating infertility using the couple’s biogenic material, problems arise when the couple must use donor gametes. Similar to Islam, sperm and egg donation raises questions related to risk of adultery, incest, legitimacy, genealogy and inheritance. While the use of donor sperm is not considered adultery per se (since sexual relations are not involved), it is still

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116 Ibid at 740.
117 Tirzah Meacham, Reproductive Technology, New (NRT), online: Jewish Women’s Archive <http://jwa.org/encyclopedia/article/reproductive-technology-new-nrt> [Meacham, “Reproductive Technology”].
120 Dorff, “A Jewish Approach”, supra note 98 at 393.
121 Bundren, “The Influence”, supra note 12 at 740.
122 Ibid at 741.
considered to be an abomination by many, and is strongly discouraged.\textsuperscript{123} As well, due to uncertainties surrounding inheritance, a child born through donor insemination may be denied his birthright.\textsuperscript{124} Although donor insemination is considered by some to pose “grave moral problems,” Rabbi Elliot Dorff contends that donor insemination should be accepted because of the value placed on children within the Jewish tradition and the biblical mandate to reproduce Jews.\textsuperscript{125}

Additionally, according to traditional Judaism, the status of “who is a Jew” is determined by whether or not the mother is Jewish. In the case where the gestational mother and the genetic mother are the same person, then the issue is clear. Questions, however, arise when the genetic mother is a different person from the gestational mother. If the genetic mother is not Jewish and the gestational mother is, what is the status of the infant? Since determining the mother is crucial to establishing Jewish identity, including inheritance rights, some rabbis advise couples to use eggs from Jewish donors.\textsuperscript{126}

Additional halakhic issues arise in the debate around IVF regarding how semen may be procured for the procedure. Since there is a biblical admonition regarding the “spilling of seed”, some rabbis insist that the husband may not ejaculate to provide semen. Most rabbis, nonetheless, permit masturbation in the context of fertility treatments when performed specifically for the purpose of enhancing procreation.\textsuperscript{127}

For some rabbis, halakhic problems arise with the IVF procedures of multi-foetal pregnancy reduction (MPR) and the disposal of unused zygotes. As was discussed above, most Jewish authorities agree that an egg fertilized outside of the womb does not have any


\textsuperscript{124} Bundren, “The Influence”, supra note 12 at 741.

\textsuperscript{125} Wahrman, “Fruit of the Womb”, supra note 102 at 131-132.

\textsuperscript{126} Bundren, “The Influence”, supra note 12 at 741.

\textsuperscript{127} Wahrman, “Assisted Reproduction”, supra note 123.
human status and can be discarded.\textsuperscript{128} MPR, on the other hand, has generated a great deal of halakhic discussion as to its permissibility, since – according to some authorities – the procedure falls into the category of abortion.\textsuperscript{129} In an IVF procedure, generally three or more fertilized ova are inserted into the uterus. As even triplet pregnancies complicate the health/welfare of the developing foetuses and the mother, the removal of one or more of the embryos is often employed.\textsuperscript{130} Some rabbis allow the procedure based on the lifesaving aspects to the remaining foetuses and on the possibility that all the foetuses may be lost without MPR. All authorities allow MPR if the mother life is endangered.\textsuperscript{131}

3.3 \textit{Islamic Perspective}

The teaching of Islam covers all the fields of human activity; spiritual and material, individual and social, educational and cultural, economic and political, national and international.\textsuperscript{132} The instructions that regulate everyday activity of life to be adhered to by an observant Muslim are called Sharia.\textsuperscript{133} Islam is strongly pro-family and regards children as a gift from God.\textsuperscript{134} Indeed, the primary sources of Sharia, including the Holy Quran (the direct word of God as revealed to Muhammad), the Sunnah (the traditions and customs of Muhammad), and the Hadith (statement or actions of Muhammad, or his approval or criticism of something said or done in his presence), have affirmed the importance of marriage, family formation and procreation.\textsuperscript{135} Islam emphasizes that procreation within

\begin{itemize}
\textsuperscript{129} Meacham, “Reproductive Technology”, \textit{supra} note 117. \\
\textsuperscript{130} \textit{Ibid.} \\
\textsuperscript{131} \textit{Ibid.} \\
\textsuperscript{132} GI Serour, “Islamic Perspectives in Human Reproduction” (2008) 3:3 Ethics, Bioscience and Life 34 at 34 [Seour, “Islamic Perspectives”]. \\
\textsuperscript{133} \textit{Ibid.} \\
\textsuperscript{134} BBC, \textit{Islamic views on contraception}, online: BBC \texttt{<http://www.bbc.co.uk/religion/religions/islam/islamethics/contraception.shtml>}. \\
\textsuperscript{135} Seour, “Islamic Perspectives”, \textit{supra} note 132 at 35.
\end{itemize}
the family is a religious duty based on the commandment in the Quran to "procreate and abound in number."

Muslim sexual ethics forbid sex outside of marriage, so its teachings about birth control must be understood within the context of husband and wife.伊斯兰 clearly accepts that sexual relations are not just for the purposes of reproduction. Sexual unions play an important role in nurturing the relationship between partners and are a symbolic re-enactment of the union between the self and God.伊斯兰 There is no single attitude to contraception within Islam; however, eight of the nine classic schools of Islamic law permit it.

The Quran does not refer to contraception explicitly, but Muslims opposed to birth control often quote the Quran as saying "you should not kill your children for fear of want" and interpret this as including a ban on contraception as well as infanticide.支持者 of birth control, on the other hand, rely on the fact that contraception in the form of coitus interruptus (azl) and the spacing of children by breast feeding are explicitly mentioned in the Hadith and are therefore both acceptable within Islam.伊斯兰 The Islamic faith prioritizes human life, so being able to space out births allows a mother time to care for each child. Some scholars have argued that any method that has the same purpose and effect of azl – i.e. preventing contraception using condoms and diaphragms – is acceptable, as long as it does not have a permanent effect. Any method that causes sterilization that is not for medical reasons is forbidden partly because it prevents children permanently and partly

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136 Supra note 134.
137 Linda Rae Bennett, "Indonesian Women, Reproductive Rights and Islam" (2005) 29 Antropologi Indonesia 28 at 34 [Bennett, "Indonesian Women"].
138 Ibid.
139 Ibid.
140 Linda Rae Bennett, Women, Islam and Modernity (New York: RoutledgeCurzon, 2005) [Bennett, "Women, Islam"].
because of text forbidding men to castrate themselves.\textsuperscript{141} As well, birth control methods that disrupt the natural hormonal or menstrual cycle of a woman, such as the pill or the patch, in order to prevent pregnancy are usually prohibited in Islam unless there is a medical reason for doing so and the husband agrees.\textsuperscript{142}

There are several different schools of thought within Islam that prescribe a range of guidelines on abortion, from permitting abortion without qualification for pregnancies under 120 days to prohibiting the practice altogether.\textsuperscript{143} These prescriptions are informed by varying interpretations of when a foetus is considered to be a full human being.\textsuperscript{144} Although there are different opinions among Islamic scholars about when life begins and when abortion is permissible, most agree that the termination of a pregnancy after 120 days – the point at which, in Islam, a foetus is thought to become a living soul – is not permissible.\textsuperscript{145} Prior to ensoulment, most Islamic scholars contend that abortion should be permissible only in instances of rape or incest, or when the foetus has serious deformities.\textsuperscript{146} If the pregnancy poses a risk of harm to the mother’s life or to an already suckling child, a foetus may be aborted even after 120 days.\textsuperscript{147}

The prevention and treatment of infertility are of particular significance in the Muslim world. The social status of Muslim women, their dignity and self-esteem are closely related to their procreation potential, both for the family and society as a whole.\textsuperscript{148}

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\textsuperscript{141} \textit{Supra} note 134.
\textsuperscript{144} \textit{Ibid}.
\textsuperscript{147} \textit{Supra} note 143.
\textsuperscript{148} Serour, “Islamic Perspectives”, \textit{supra} note 132 at 35.
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Although ART was never mentioned in the primary sources of the Sharia, these sources have confirmed the importance of marriage, family and procreation.\textsuperscript{149} Through the promulgation of fatwas, the “law of the land”, issued by religious bodies, Muslim couples have been encouraged to seek infertility treatment, paving the way for hundreds of IVF centers that now operate in most major cities in the Islamic world.\textsuperscript{150} According to the fatwa delivered by the Grand Sheikh of Egypt’s Al-Azhar University, “Allah’s goal is to prevent harm and cause welfare;” therefore, “if a trustworthy physician recommends in vitro fertilization and shall be responsible for its appropriateness, then it is permissible as a treatment for a women who has pregnancy impediments.”\textsuperscript{151}

Within the Sunni Muslim sect, which comprises 90 percent of Muslims, ART treatment is only available through the use of the couple’s own biogenetic material as directed by the Grand Sheikh’s fatwa.\textsuperscript{152} Family heritage and blood lineage in Islam are paramount. Thus, there is great importance placed on the “preservation of progeny” and prohibition against fornication and adultery.\textsuperscript{153} Consequently, to avoid third party intrusion into the marital act of procreation, the use of donor material, whether from sperm, egg, embryo or womb is tantamount to adultery, and strictly forbidden.\textsuperscript{154} Given that Islamic law does not share Catholicism’s belief that life begins at the moment of conception, excess embryos may be destroyed. As well, MPR may be performed following the principles that necessity permits the choice of the lesser harm. It is performed with the intention not to induce abortion, but to preserve the life of the remaining fetuses and minimize complications to the mother.\textsuperscript{155}

\textsuperscript{149} Bundren, “The influence”, supra note 12 at 733.
\textsuperscript{150} Ibid at 734.
\textsuperscript{152} Bundren, “The influence”, supra note 12 at 735.
\textsuperscript{153} Grothaus-Day, supra note 22 at para 49.
\textsuperscript{154} Supra note 151.
\textsuperscript{155} Serour, “Islamic Perspectives”, supra note 132 at 36.
4. Religion in Poland, Israel and Indonesia: A Case Study of Religious Influence on Reproductive Rights

4.1 Influence of the Catholic Church in Poland

Poland is an almost entirely Catholic nation. The Catholic Church has always played a very important role in the history of Poland. The intermingling of politics and religion in Poland was observably early on in the State’s history as parishes and castles were established side by side.156 In the history of Poland, the Catholic Church “appears as a refuge against invaders, a defender of freedom and a symbol of the stability of the Polish nation.”157 Poles place an important role on religion, using it to define their national identity and consider being Catholic as “one of the most important features of belonging to the Polish nation.”158

After the First World War, when Poland became a Republic, the Church occupied a privileged place within the Pilsudski regime.159 The legal status of the Church was determined by the provisions of the 1921 Constitution and by the 1925 Concordat. These legal documents secured the freedom and liberty of the Catholic Church in the new Republic.160 At the end of the Second World War, Poland found itself in the sphere occupied by the Communist Soviet Union. The Communist Government abrogated the 1925 Concordat and changed the 1921 Constitution to restrict the Church’s privileged position.161

159 Heinen, “Reproductive Rights”, supra note 157 at 1008.
Interestingly, the hallmark of the state socialist regime in Poland, in power from 1947 to 1989, was the separation of Church and state, which particularly benefited women.\textsuperscript{162} Despite the historical strength of the conservative Catholic Church, the socialist state’s universal health care system openly endorsed family planning.\textsuperscript{163} Numerous progressive measures were passed to encourage female professional activity and alleviate women’s domestic tasks.\textsuperscript{164} Despite the fact that reproductive rights were not discussed during the period of state socialist rule, in 1956, the Polish state legalized abortion for socio-economic reasons and subsidized it fully in public hospitals.\textsuperscript{165} The state, however, failed to legalize sterilization, which was criminalized in 1932 and remains illegal to this day.\textsuperscript{166} Additionally, in 1959, a law was passed requiring doctors to inform women who had just delivered a child or had an abortion about their contraceptive options. “The state’s health care system began to cover 70 percent of the cost of prescription contraceptives, acknowledging and legitimizing women’s need for family planning services.”\textsuperscript{167}

Under the communist regime, Polish citizens were permitted to practice their religion despite the fact that the Church significantly contributed to the public’s high dissatisfaction of Soviet controlled governmental institutions.\textsuperscript{168} Significantly, during the last decades of the communist regime, the Church helped “unify and consolidate Polish society in the struggle against communism” and could claim a considerable share of credit in ending the communist regime in 1989.\textsuperscript{169} Pope John Paul II played a major role in

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163 \textit{Ibid.}

164 Heinen, “Reproductive Rights”, \textit{supra} note 157 at 1009.

165 Mishtal, “Neoliberal Reforms”, \textit{supra} note 162 at 56.

166 \textit{Ibid.}

167 \textit{Ibid.}

168 Czerwinski, “Sex, Politics”, \textit{supra} note 156 at 656.

169 Daniel, “Church-State Situation”, \textit{supra} at 404.
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increasing independence and solidarity in Poland in the years immediately preceding the collapse of communism. During his visits to his homeland he had encouraged the repressed Poles to rebel against the atheist regime, “unite against oppression” and “renew the face of Poland.”

The Catholic Church represented everything that the communist party disregarded. “Practicing one’s faith in that period was not only about religion. It was a subversive act against the authorities who claimed there was no God.” Siding with the position of the Church on such issues as the division of gender roles or abortion was desired because it was a sign of disobedience. The influence of the clergy prompted most Polish women to accept the role of mother to which the Catholic doctrine tended to confine them. During this period, the aura of the Church was intensified by the links established by the Catholic priests and the activists who were to establish the labour union Solidarity, a major social movement for democracy and capitalism. Solidarity’s growing influence in Polish society reached its pinnacle in 1989 when it received representation in the lower house of Polish Parliament, the Sejm. This event marked the collapse of the communist regime and the beginning of the Polish Third Republic.

After the fall of communism, Poland established a parliamentary democracy and in 1997 passed a democratic constitution. Although Poland’s political regime changed, the Catholic Church continued to play a major role in Polish society and politics. The authority of the Church during this period is illustrated through the 1993 Concordat between the Holy See and the Republic of Poland, which was ratified in 1998. It provides

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170 Czerwinski, “Sex, Politics”, supra note 156 at 657.
172 Ibid.
173 Heinen, “Reproductive Rights”, supra note 157 at 1009.
174 Ibid.
175 Czerwinski, “Sex, Politics”, supra note 156 at 657.
176 Ibid.
the Church with a set of regulations aimed at protecting its position in society. Although Poland is constitutionally a secular state, some scholars argue that “the Concordat de facto acknowledges the Catholic Church as an essential entity of Polish society and history.\textsuperscript{177}

At the present time, Poland has a legal system that is a mixture of Continental (Napoleonic) civil law, with some persistence of the previous state socialist regime.\textsuperscript{178} Its sources of universally binding law are the Constitution, statutes, regulations and ratified international agreements. Ratified international agreements become part of the domestic law and are directly applicable. They have precedence over domestic law and are second in the hierarchy of laws.\textsuperscript{179}

In 2007, after parliamentary elections, the centrist party Platforma Obywatelska established a new democratic government.\textsuperscript{180} Although the Church does not hold any official legal power in Poland, it gains its political power from the fact that Polish society is constructed and perceived as Catholic, by voters as well as by politicians. Most politicians fear losing the support of what they consider to be the most numerous social group in Poland, the Catholics. Through this influence, the Church continues to formulate norms of acceptable behavior in the political arena. This is demonstrated by the conflict around sexuality in contemporary Polish society. On this topic, a negative judgment issued by the Church generally suffices to defeat any sexual health policy initiative.\textsuperscript{181} Thus, although religion and state are not merged in Poland in the same way they are in some other countries, religion nevertheless exerts palpable authority through the state and through

\textsuperscript{177} Heinen, “Reproductive Rights”, \textit{supra} note 157 at 1009.
\textsuperscript{178} Center for Reproductive Rights, \textit{Poland}, online: Center for Reproductive Rights http://reproductiverights.org/sites/default/files/documents/Poland.pdf at 102.
\textsuperscript{179} \textit{Ibid} at 103.
\textsuperscript{180} Dorota Gozdecka, “The Polish Catholic Church and the Regulation of IVF in Poland: Polarised Political Discourses and the Battle over ‘Proper’ Reproduction” (2012) 2:1 Feminists @ Law 1 at 9 [Gozdecka, “The Polish Catholic Church”].
\textsuperscript{181} Heinen, “Reproductive Rights”, \textit{supra} note 157 at 1011.
political parties. This is illustrated by Poland’s laws regarding abortion, contraception and ART.

Human rights in Poland are guaranteed by the second chapter of the 1997 Constitution of Poland. Poland guarantees its citizens respect for human and civil rights. The constitution states that the inborn and irrevocable dignity of man constitutes the source of his freedom and of his rights as an individual and a citizen. Further, the European Convention on Human Rights ensures that no one shall be deprived of life intentionally, guarantees individual’s right to respect for private and family life, and prohibits discrimination in the enjoyment of the rights guaranteed by the convention on any ground, including sex and religion. Despite these provisions, Poland has regulated reproduction in a manner incompatible with the rights of women.

A. Polish Regulation of Contraception

The Polish government committed itself to the 1994 ICPD Program of Action held in Cairo, but has taken no practical action to fulfill this commitment.182 Following the fall of communism, a combination of Catholic and pro-natalist influences severely restricted Poland’s regulation over family planning.183

Contraceptives in Poland have the same legal status as any other pharmaceutical product. However, through the Church’s influence, Poland adopted a conscience clause law, the Profession of a Physician Act, which protects healthcare providers who have religious or moral objections to providing some or all reproductive health services. While this law mandates that physicians who refuse to provide services must refer the patient to another doctor, the complete lack of oversight of conscientious objections results in

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182 Supra note 178 at 108.
183 Ibid.
doctors often refusing to make referrals.\textsuperscript{184} This law effectively restricts access to contraceptives and prescription drugs such as hormonal testing and antenatal testing for foetal anomalies by allowing doctors to cite religious objections to providing these lawful medical services.\textsuperscript{185} The Church’s propaganda against family planning in sermons, confessions, and religious classes has a profound influence on doctors, some of whom claim to not prescribe contraceptives for fear of being criticized by the Church.\textsuperscript{186}

Sterilization as a method of family planning continues to be illegal. Even with the written consent of the patient, sterilization is considered to be a criminal injury, and carries a penalty of up to 10 years in prison.\textsuperscript{187} The law on voluntary sterilization is so restrictive that even women with serious contraindications to pregnancy are denied access to sterilization. The Catholic Church considers sterilization a sin and “any effort to decriminalize the procedure would undoubtedly be opposed.”\textsuperscript{188}

The Polish constitution of 1997 guarantees everyone the right to protection of their health, and guarantees citizens, regardless of their material situation, equal access to health care services financed through public means. However, a loophole exists to allow the state to selectively exclude services from the publicly-funded “health benefit basket”, and recent reforms have limited access based on ability to pay.\textsuperscript{189} Until 1998, eight brands of oral contraception were completely subsidized by the state budget.\textsuperscript{190} In 1998, religious rhetoric and the promotion of natural family planning fueled the withdrawal of five of these contraceptives from the list of subsidized medicines, deeming their use as elective

\begin{footnotes}
\footnote{184 Center for Reproductive Rights, \textit{RR v. Poland, R & S v. Poland, and Z v. Poland} online: Center for Reproductive Rights \langle\text{http://reproductiverights.org/en/rr-v-poland-st-v-poland-z-v-poland}\rangle.}
\footnote{185 Mishtal, “Neoliberal Reforms”, \textit{supra} note 162 at 57.}
\footnote{186 \textit{Supra} note 178 at 109.}
\footnote{187 \textit{Ibid} at 156.}
\footnote{188 Mishtal, “Neoliberal Reforms”, \textit{supra} note 162 at 57.}
\footnote{189 \textit{Ibid} at 59.}
\footnote{190 \textit{Supra} note 178 at 108.}
\end{footnotes}
rather than medicinal.\textsuperscript{191} Intrauterine devices (IUDs) and emergency contraception are also no longer subsidized.\textsuperscript{192}

\textbf{B. Poland’s Abortion Laws}

During the communist regime, women were granted the right to receive an abortion on demand.\textsuperscript{193} From 1956 to the early 1990s, abortion in practice was available upon request up to 12 weeks from the presumed date of conception if the woman faced “hard life conditions,” or had a “difficult personal situation.”\textsuperscript{194} Socially, however, abortion remained a taboo subject. Most women preferred to have an abortion through private doctors at a relatively high cost but with discretion assured, rather than going to a public hospital where abortions were free of charge.\textsuperscript{195}

In the period of changes that occurred in Poland after the fall of communism, the Church directly intervened in political debates, most notably on the issue of abortion. In the late 1980s, the Church and ‘pro-life’ organizations initiated a series of vocal campaigns against abortion.\textsuperscript{196} Following a bill issued in 1988 at the initiative of the Catholic Church, in March 1993, under the liberal government of the Democratic Union, the Polish Sejm (parliament) finally passed the \textit{Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act}, which entailed a quasi-ban on abortion.\textsuperscript{197} According to this law, abortion was legal only if a woman’s life and health were threatened,

\begin{flushright}
\textsuperscript{191} \textit{Ibid.}
\textsuperscript{192} \textit{Ibid.}
\textsuperscript{193} Czerwinski, “Sex, Politics”, \textit{supra} note 156 at 657.
\textsuperscript{195} Heinen, “Reproductive Rights”, \textit{supra} note 157 at 1012.
\textsuperscript{196} \textit{Ibid.}
\end{flushright}
when the pregnancy was the result of a crime, or in cases of severe foetal abnormality. Jacqueline Heinen and Stephane Portet comment that “[a]lthough the majority of Poles, and specifically women, when questioned anonymously, declared their opposition to this project, the very fact that the law was passed in parliament with almost no opposition testifies [to] the central role played by the Church in the political landscape.”

After more than three years of debate, the Sejm in 1996 passed the Act on *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion.* It significantly liberalized the 1993 law, allowing abortion on social grounds through the twelfth week of pregnancy. The Sejm, however, reinstated the 1993 restrictive law only a year later in 1997. The 1997 abortion law, which is the current law, significantly reflects Catholic beliefs. The Sejm withdrew the liberal 1996 law based on the Constitutional Tribunal’s decision that Article 38 of the Polish Constitution, which guarantees legal protection of life to every human being, implies the protection of “life at every stage.”

Currently, abortion in Poland is only permitted under three circumstances: if the pregnancy constitutes a threat to the life and health of the mother; if the pre-natal examination shows a high probability that the foetus has irreversible and severe disabilities or an incurable disease which endangers its life; and if the pregnancy is the result of a criminal act (such as rape or incest). Abortions under the first two circumstances are permissible only until the foetus is capable of living outside the womb.

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198 Center for Reproductive Rights, “Poland”, *supra* note 178.
199 Heinen, “Reproductive Rights”, *supra* note 157 at 1012.
201 Czerwinski, “Sex, Politics”, *supra* note 156 at 658. See also, Polish Constitution (1997) art. 38, which states: “The Republic of Poland shall ensure the legal protection of the life of every human being.”
Abortions where pregnancy results from a criminal act are possible only during the first 12 weeks of the pregnancy.\textsuperscript{202}

Despite these grounds for legal abortion, anti-abortion sentiment is so strong in Poland that even in those cases, doctors will often object to the service on the grounds of their own religious beliefs. The best known example is the case of Alicja Tysiac, who was awarded 25,000 euros in 2007 by the European Court of Human Rights, after being denied an abortion even though eye specialists had warned that giving birth could make her go blind. Poland was judged to have failed to create mechanisms to ensure women's right to an abortion within the current law.\textsuperscript{203}

Another troubling case is that of a 14-year old girl who became pregnant as a result of rape.\textsuperscript{204} When she demanded a legal abortion, the hospital denied her the service without providing her with referrals by doctors on the basis of the conscience clause. Additionally, the hospital breached the patient's right to confidentiality when it notified a priest and anti-abortion activists who tried to convince her not to terminate. When the girl finally had an abortion through clandestine means, one Polish Bishop, Stanis Baw Stefanek commented that "the ideology of death was victorious" in this case. Anka Grzywaca comments that "[t]his cruel statement shows clearly the disregard of church representatives for women's, and in this case, the girl's well-being."\textsuperscript{205} The European Court of Human Rights found the government of Poland to have violated its positive duty to safeguard respect for the teenager's and her mother's private life when it failed to ensure their effective access to legal abortion.

\textsuperscript{202} Center for Reproductive Rights, "Poland", \textit{supra} note 178.
\textsuperscript{203} \textit{Tysiac v Poland} (2007), 03 ECHR 5410
\textsuperscript{204} \textit{P and S v Poland} (2012), ECHR 1853.
\textsuperscript{205} Anka Grzywacz, "Where reproductive Rights are a joke: Poland, politics and the Catholic church" (2009) 3 Women in Action 60.
The majority of Polish society, despite its Catholicism, does not support the ban on abortion. The involvement in the church in the political and social debates on the topic, however, obstructs the establishment of a stronger, better organized and more effective pro-choice movement. At present, abortion remains effectively illegal under the 1997 law, and although ideally such restriction should make access to family services a high priority, such services are generally not provided in the public health care system for the reason noted above.

C. Polish Regulation of ART and IVF

Poland’s total fertility rate plummeted from 2.1 in 1989 to 1.27 in 2008. The falling birthrates since the fall of state socialism led the state, in 1999, to implement a pro-natalist pro-family program that provided few material benefits for families. The Polish Church’s narrow and conservative interpretations of pro-life teachings has led this program to focus on restricting family planning services rather than providing medical services to infertile couples. Despite Poland’s ageing population and low birth rates, Polish bishops have decided to go into war against IVF procedures, condemning infertile couples who have undergone this type of treatment in the hopes of having a child.

Specialized laws regulating assisted reproduction including IVF, gamete donation and surrogacy do not currently exist in Poland. In particular, IVF has been entirely unregulated in Poland and a political debate has been raging for years over whether or not IVF should be state subsidized and regulated, or even legal. Thus far, private clinics have been providing infertility services to both domestic and foreign patients. State regulation of IVF treatment has been paralyzed by opposition from the Catholic Church, which objects

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206 Mishtal, “Neoliberal Reforms”, supra note 165 at 60.
207 Grzyacz, “Where Reproductive Rights are a joke”, supra note 205.
208 Ibid.
to assisted reproduction in principle and public funding of the service in particular.\footnote{Mishtal, “Neoliberal Reforms”, supra note 165 at 63.}

When the \textit{Sejm} announced it was considering refunding IVF treatments for infertile married couples, the bishops’ conference decided to interfere. In 2007, they issued a letter appealing to parliamentarians not to support the initiative. The letter described the method as a “sophisticated abortion,” due to the fact that the procedure usually leads to the destruction of several embryos.\footnote{Ibid.}

Even though the IVF procedure was a relatively uncontroversial issue and, in 2009, was supported by as much as 77 percent of the Polish population, the Church began a steady attack against the legality of IVF. In 2008, when the first legislative initiative to ban the procedure, \textit{Contra In Vitro}, was being prepared, the Conference of the Episcopate of Poland issued an official statement that encouraged the members of parliament to introduce an absolute ban on IVF:

\begin{quote}
When the first initiative to regulate [IVF] is taken, all the members of Parliament who are concerned with the protection of human rights should take all the steps necessary to ban this method absolutely. If, however, such a solution were rejected in the Parliament, it is an ethical duty of the members of Parliament to be active in the legislative process and maximally limit the harmful aspects of this regulation.\footnote{Episcopate of Poland, Konferencji Episkopatu Polski [Statement of the Group of Experts on Bioethical Issues of the Conference of the Episcopate of Poland in cooperation with the Central Board of the Conference of the Episcopate of Poland], 22 December 2008 at para 5.}
\end{quote}

The same statement referred to the method as “evil” due to the destruction of embryos as well as the fact that the method is manipulative and subjects a human being to “massive production.”\footnote{Ibid at para 4.}

A similar statement was again issued in March 2010 when the Episcopate’s Group of Experts on Bioethical Matters underlined that:

\begin{quote}
The opposition of the Catholic Church against the in vitro method stems from the Christian faith, which is the guide in taking all decisions. God created a
woman and a man to create life in the act of marital love and only by them themselves. During the in vitro procedure, human dignity is infringed, since the conception does not happen in the act of love, but as a result of an experimental technical procedure. The procedure resembles ‘production of human beings’.214

The Episcopate’s Experts justified the necessity of such a ban by reference to the Catholic understanding of natural law, according to which it should be natural to oppose procedures producing a number of human embryos that will not be used and will be eventually experimented on or destroyed.215

In May 2010, the Episcopate’s Group of Experts on Family Matters issued a statement going even further. When the Contra In Vitro proposal was, for the second time, rejected in Parliament, the Experts on Family Matters condemned all the Members of Parliament who voted against it, comparing them to child murderers and refusing them the right to participate in Holy Communion.216

The justification for Contra In Vitro refers directly to the Christian heritage of Poland and implies that moral standards in the case of IVF ought to be uniform regardless of religious or non-religious beliefs, even in a pluralistic society. According to the draft, not only destroying an embryo but any kind of embryo creation outside of a woman’s body ought to be forbidden and penalized by imprisonment for up to two years in the case of creation and up to five years in the case of its destruction.217

In the last parliamentary debate concerning the matter held on October 22, 2010, the majority of the argument concentrated on the dichotomy between religious and non-religious understandings of the beginning of life.218 MP Piecha, for example, referred to the

214 Episcopate of Poland, Konferencji Episkopatu Polski [Statement of the Group of Experts on Bioethical Issues of the Conference of the Episcopate of Poland in cooperation with the Central Board of the Conference of the Episcopate of Poland], 24 March 2010 at paras 4-5.
216 Ibid.
217 Ibid at 19.
218 Ibid at 26.
process of eugenics and underlined the “rightfulness” of the Bishops’ opinion on the matter. MP Wargocka underlined the religious roots of human dignity and expressed the conviction that moral compromises in controversial matters like IVF, abortion, or euthanasia constituted the greatest dangers for this dignity.219

Despite the arduous efforts to ban this procedure, thus far, none of the draft proposals have succeeded in being adopted into law. Nonetheless, the debates within the Sejm clearly show how the legality of IVF in Poland is strongly tied to moral and religious beliefs.

4.2 Judaism and Israel

The place of religion in the Israeli legal system is derived from a complex historical and political reality.220 “Israel was created as a homeland for the Jewish people after two thousand years of persecution as a religious and racial minority dispersed throughout the world.”221 In this respect, Israel was established as a Jewish and democratic state, as reflected in constitutional documents. Ran Hirschl suggests that “[i]t is this commitment to the creation of an ideologically plausible and politically feasible synthesis between particularistic (Jewish) and universalistic (democratic) values that has proven to be the major constitutional challenge faced by Israel ever since its foundation.”222

In 1947, the secular leadership of the Zionist movement in pre-state Israel and leaders of the Jewish community concluded an informal agreement that created a framework for the establishment of the country.223 “The agreement, known as the ‘status quo agreement,’ laid out ground rules for the relationship between the state and religion in

219 Ibid at 27.
221 Ibid.
222 Hirschl, Constitutional Theocracy, supra note 69 at 140.
223 Ibid at 139.
four major areas: Shabbat, education, Kashrut (Jewish dietary rules), and matrimonial law.”

The arrangement continued the Ottoman Millet system, which allowed each religious community, including Muslim, Christian, and Druze, to maintain autonomous, judicial institutions and to follow their own laws in matters of personal status and family law (i.e., marriage, divorce, maintenance, inheritance, and the custody of children).

As a result of this policy, matters of religion and state have changed little from the time the State of Israel was established.

Israel's legal system combines three legal traditions: English common law, civil law, and Jewish law (Halakha). Israel is today a country without a formal written constitution. It depends on a series of Basic Laws that are ultimately intended to form a constitution.

The Constituent Assembly in February 1949 enacted a Transitional Law that became the basis of the constitutional activity of the state. It was anticipated that the document would be replaced by a more extensive one. However, after the Knesset (parliament) debated the merits of a constitution for a year, it became apparent that the religious parties were opposed to the idea of an entrenched constitution because it would invest the ultimate source of sovereignty in the citizenry rather than in God or Jewish law. “The Torah is our Constitution!” argued the religious parties.

Israel's Declaration of Independence was one of the earliest constitutional documents in the world to include sex as a group classification within a guarantee of equality in social and political rights. The principles of the Declaration, however, were not subsequently ensconced in a constitution. In 1951, the Women’s Equal Rights Law was

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224 Ibid.
225 Ibid.
228 Ibid.
229 Hirschl, “Constitutional Theocracy”, supra note 69 at 140.
passed, but as is explained by Frances Raday, it was an ordinary statute and, “although it provided a framework principle of equality, it did not have constitutional status.”

However, in 1992, the Knesset introduced a partial constitutional bill of rights, the Basic Law: Human Dignity and Liberty, which guaranteed, amongst other rights, the right to human dignity. This law grants superiority to the human rights listed, which cannot be violated except by a law which is in accordance with the values of the State of Israel as a Jewish and democratic state, which are for a justified purpose and which are not disproportionate for the achievement of that purpose. The judges of the Supreme Court who have addressed the issue have, for the most part, held that equality for women is incorporated in the right to human dignity. This guarantee of equality combined with the Jewish endorsement of reproductive rights arguably provides Israeli women with broad freedoms with regards to decisions concerning their reproductive options.

For a host of historical and political reasons, the Orthodox stream of Judaism is the sole branch of the Jewish religion formally recognized by the state. This exclusive status has enabled the Orthodox community to impose rigid standards on the process of determining who is a Jew – a question that has practical implications for the support and regulation of ART. Although Israeli law as enacted by the Knesset is secular law, Jewish law and its influence on secular state legislation has been a matter of controversy since the inception of the State in 1948. Religious values are disproportionately visible and influential in legislative debates due to the swing-vote power that religious parties enjoy in Parliamentary politics. “Without the support of conservative religious parties, the reigning

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232 Ibid.
secular leadership ... loses the votes necessary to maintain power.” Consequently, Jewish law wields enormous power over the “secular” Knesset legislative enactments, and is the foundation from which Israeli law and policy, including reproductive health practices, are determined.235

A. Israel’s Regulation of Contraception

Israel has maintained a pro-natalist policy with regards to reproductive care. For decades, Israel’s reproductive policy has aimed at raising fertility rates within the country’s Jewish population. For example, Israel’s first prime minister, David Ben-Gurion, offered 100 lira to “Heroine Mothers” who gave birth to ten or more children.236 Today, the country’s reproductive policy applies to the entire population regardless of religious affiliation, although an argument has been made that the pro-natalist goal is directed primarily at the Jewish population.237 The biblical mandate to “Be fruitful and multiply” has been “depicted as a major moral behest – a goal in one’s life as well as a collective mission to be accomplished.”238

As already mentioned in an earlier section, halakha allows contraception in certain cases. Jewish orthodox communities still adhere closely to the Talmud, and only allow the use of contraceptive methods by women in life-threatening circumstances.239 The conservative movement (“Masorti Judaism”), however, along the Jewish reformists have moved to endorse family planning. Thus, in the State of Israel, which takes account of the religious interests of Jews, contraceptive devices are legal and openly available.240

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235 Ibid.
238 Ibid at 102.
240 Ibid.
The Israeli government provides health care along a continuum from family planning services through childbirth.\textsuperscript{241} In 1995, the Knesset passed the National Health Insurance Law, 5754-1994, which secured free health services to all of Israel's citizens.\textsuperscript{242} Overall, Israel's public health insurance includes a generous package of services including visits to general practitioners and specialists, a long list of medications and treatments, and some preventative services, including mammograms.\textsuperscript{243} The National Health Insurance in Israel will, however, only meet the costs of contraceptive methods in certain cases. Vasectomy and female sterilization are almost unheard of.\textsuperscript{244} This reinforces Israel's pronatalist policy and Judaism's attitude towards fertility, procreation, and acceptable methods of birth control.

\textbf{B. Israel's Abortion Laws}

Until recently, the abortion debate in Israel had never become a highly political or religious issue. In 1977, the Knesset decriminalized abortion by amending the relevant sections of the criminal law.\textsuperscript{245} This amendment permits the termination of pregnancy under certain circumstances when performed in an accredited medical institution and following the approval of a medical committee. Such circumstances include the age of the woman; the pregnancy deriving from rape, incest, or an out-of-wedlock relationship; and foetal disabilities and physical or mental danger to the mother posed by the continuation of the pregnancy.\textsuperscript{246}

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\textsuperscript{241} \textit{Supra} note 100 at 1.
\textsuperscript{242} National Health Insurance Law, 5754-1994, Sefer HaHukim [SH] [Book of Laws, Official Gazette], p 156, as amended. See \textit{supra} note 100 at 3.
\textsuperscript{246} \textit{Supra} note 100 at 1.
The Penal Law, 5737-1977, as amended, imposes a penalty of a five-year imprisonment or a fine on “[a]ny person who knowingly interrupts a woman's pregnancy, either by medical treatment or in any other manner....”247 A woman who undergoes an unlawful abortion, however, does not bear any criminal liability. In spite of these restrictions, in reality, abortions are performed in Israel with and without authorization. According to Israel’s Law Library of Congress, this penal provision has never been enforced.248

The lack of interest in prosecution reflects the limited scope of the abortion debate in Israel. It has been reported that over 98 percent of all requests for abortion to the committees have been approved.249 An important factor that assists in ensuring that Israeli women have the right to an abortion is the fact that there is no absolute prohibition against abortion in Jewish law.250 As was noted above, under Jewish law, abortion is permissible when the continuation of the pregnancy threatens the mother. According to halakha, life begins at birth and not at conception; hence the mother’s life and safety are given preference over the life of the foetus.251

According to Delila Amir, Israeli abortion law is actually Jewish law, in particular because it has two unique characteristics:

First the law makes no differentiation between the mother and the [foetus], which means that there is no time limit for any abortion. This is highly unusual compared to most other Western countries and particularly significant in the case of 'late' abortions. The second feature is a clause that permits abortion on the grounds of extramarital sex, which is based on the Halakhic fear of giving birth to what religious law calls a ‘mamzer’ (bastard).252

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247 Penal Law, 5737-1977, Laws of the State of Israel. See supra note 100 at 12.
248 Supra note 100 at 2.
249 Ibid.
250 Supra note 245 at 219.
252 Supra note 111 at 100.
In spite of the general low level of interest in the topic of abortion in Israel, an increased awareness of competing views on abortions has recently been sparked with the introduction of a bill in 2009 meant to repeal the legal requirements for committee approval. According to the bill’s explanatory notes, the existing abortion procedures under Israeli law are “paternalistic, in that they do not provide the woman with freedom of choice and do not enable her to take responsibility for her choice.” Knesset Member Nitzan Horowitz, who coauthored the 2009 bill, submitted an additional bill in October 2010, similarly calling for abolition of the restrictions on abortion for the same reasons.

Other Knesset members and religious leaders have called for the opposite result. For example, on July 11, 2011, Knesset Member Nisim Zeev, of the Shas (Shephardi Guardians of the Torah) ultra-religious party proposed a bill calling for the outlawing of abortions after the twenty-second week of pregnancy. As well, in December 2010, Israel’s Chief Rabbis Yona Metzger and Shlomo Amar called on all Israeli rabbis to fight what they called the “abortion epidemic in our country.” While abortion continues to be allowed in Israel under certain circumstances, this recent attitude against abortion arguably stems from fear that abortion disregards the biblical commandment to “Be fruitful and multiply.”

C. Israel’s Regulation of ART and IVF

Israeli policies regarding ART and IVF have historically promoted the commandment to procreate. As such, reproduction in Israel is perceived as a positive good, and both religious and secular authorities are supportive of medical technology capable of lending infertile women procreative assistance. Ultra-orthodox Jews, who have a higher representation in Knesset than their proportion in the total population, have
promoted a "fertility" agenda for decades. As a result, they have secured fertility-friendly policies that have encouraged infertility treatment such as offering national health coverage for unlimited IVF treatment, up to two live births. Beginning with the premise that government owes each citizen access to a minimal standard of healthcare, Israel defines ART as part of that basic package.

Despite the conservative pull of Jewish scripture on Israeli law, the fertility industry in Israel services married couples, lesbians, and single women alike, where “religious authorities appear complicit with providers in a “don't ask – don't tell” partnership of mutual avoidance.” As well, rabbis have devised ingenious ways around the problematic aspects of ART under Jewish law. For example, most ART techniques require male masturbation, which violates the prohibition against the “spilling of seed”. Additionally, the use of donor sperm threatens to create children who might be stigmatized as mamzers (children of incestuous or adulterous relations). To get around these problems, some rabbis have interpreted the prohibitions against adultery to exclude the union of egg and sperm accomplished through medical manipulation.

Israel’s pro-natalism is evidenced by the sheer volume of fertility assistance taking place within its borders. Israel has the highest rate of IVF clinics in the world per capita. Data collected by the Ministry of Health between 1993 and 1996 reveals that 2 percent of all Israeli births in that three-year span were a product of IVF. In 2006, Israel provided 3,400 IVF treatments per one million people, increasing the percentage of children born

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259 Ibid.
260 Ibid at 84.
261 Ibid.
262 Landau, “Religiosity”, supra note 244 at 68.
263 Ministry of Health (1999), By-laws regarding assisted reproduction, Jerusalem, cited in Ibid at 70.
through IVF to 5 percent. Such high numbers result, in part, because the Israeli government heavily subsidizes ART treatment.

In addition to the importance placed on family and children within the Jewish tradition, experts have also noted the impact of the Jewish history of persecution and particularly the Holocaust as an explanation for Israel's pro-natalist approach. The genocide perpetrated on Jews in the Holocaust and the ongoing loss of life in terrorist attacks and in wars since the establishment of the State are considered to have strengthened Israel’s resolve to survive as a Jewish homeland. “This resolve seems to be directly connected with Israel’s public policy in support of reproductive rights.”

The practice of ART treatment in Israel is not guided by specific legislation but is regulated by the Ministry of Health. The only legislation in this area of assisted human reproduction in Israel is a law that legalizes surrogacy. This law resulted from a case heard before the Supreme Court of Israel in 1996, Nahmani v Nahmani, involving a protracted battle over eleven stored embryos following the couple's separation. In 1987, the Nahmani couple decided to attempt IVF and had the wife’s eggs fertilized with the husband’s sperm with the intention of later finding a surrogate mother. The fertilization process was carried out in Israel, and the fertilized eggs were deposited at a medical institute in the United States, as surrogate pregnancies were forbidden in Israel at that time. The husband later withdrew his consent to use the fertilized eggs for the surrogacy procedure. His wife, however, insisted on her right to become a mother through the process. In a 162-page opinion written after months of deliberation, the Court ordered the embryos released to the wife, stating, “[J]ewish heritage, which is one of the

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264 Waldman, “Cultural Priorities”, supra note 234 at 81-82.
265 Supra note 100 at 21.
266 Ibid.
267 Landau, “Religiosity”, supra note 244 at 70.
fundamental principles of the Israeli legal system, considers having children an important value, whereas not having children is not considered a value at all.”

Following this case, in 1996, Israel passed the *Agreement for the Carriage of Foetuses (Approval of Agreement and Status of the New Born) Law, 5756-1996*, which permits couples to enter into surrogacy agreements with unmarried women. As with abortion procedures, a committee must approve the agreement and verify that all parties have freely consented to it. The law prohibits a family member of one of the intended parents to serve as the surrogate mother. As well, the law states that the sperm used for IVF has to come from the intended father, and that, excluding exceptional cases, only unmarried women of the same religion as the intended mother can serve as a surrogate mother.

The surrogacy law directly reflects Jewish doctrine. Among the reasons stated by the Insler Committee for the prohibition against anonymous sperm donation were to prevent the risk of “Mamzerut”. Similarly, the surrogate mother should be single or divorced, “otherwise the child is ‘illegitimate’ according to the Jewish religion.” Additionally, according to Judaism, the religion of the child is determined by the religion of the mother. Therefore, the approval committee suggests that the surrogate mother be of the same religion as the commissionary couple, “although if all the parties are not Jewish,

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270 Supra note 268.
274 Ibid at 20.
the Committee may allow an inter-religious agreement following consultation with the clergyman from the Committee.”

In sum, despite some rabbinic reservations about certain ART practices, specifically egg and sperm donation, “it would be difficult to envision a more ART-friendly state, backed by financial, political, legal, moral and religious incentives to fulfill God’s procreative commandment.” Most rabbis are therefore willing to interpret halakhic law in a manner supportive to legislative and political initiatives towards achieving that goal.

4.3 Islam and Indonesia

Indonesia is a sprawling archipelagic state of some 17,000 islands. It has been home to a number of locally powerful states from the middle of the first millennium, but was never under a single administrative authority prior to the colonial era. While Indonesian nationalists often speak of “300 years of Dutch colonial domination,” it was only in the early twentieth century that Dutch dominance extended to what was to become Indonesia’s current boundaries.

Since independence was declared in 1945, Indonesian governments have tried to control the extraordinary economic, social and political diverse region by a highly centralized and authoritarian bureaucratic system, which has only in the past decade begun to be unraveled by a devolution of power to the regions. The government today is still carried out by a tiny, scattered elite through a complex bureaucracy which is still centered, to some extent, on the capital, Jakarta. Outside Jakarta, tens of millions of Indonesians “still live in ways not so dissimilar to those of ancestors a century ago or more,

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276 Ibid.
279 Ibid at 14.
281 Ibid.
with many often relying on the values and norms of those ancestors to guide their daily lives.”

Indonesia’s legal system reflects its history, which has been characterized not only by successive waves of influence from overseas but also by its peoples’ ability to absorb those influences and make them part of their own cultures. The legal culture of Indonesia includes three normative traditions: indigenous adat law, Islamic law, and Dutch civil law. Built on the communal way of life of the people, adat law is communal in its logic of legalism. Islamic law and Dutch civil law are, on the other hand, imported legal traditions that came to the archipelago in the wake of Islamic propagation and Dutch colonization in the region.

The Republic of Indonesia was set up by its founding fathers as a modern state established by a sovereign people with a mandate conferred by its citizens. Despite efforts by politicians to make Indonesia an official Islamic state, to date, the project of an Islamic state has not been fully realized in the state structure of Indonesia. Yet, despite the supremacy of the national constitution, Indonesia cannot be considered a fully secular state. The preamble of the constitution refers to the Pancasila state ideology as the highest source of law, within which the first “pillar” or principle is identified as the “belief in the One and Almighty God.” The Ministry of Religion has been specifically tasked with translation of the first pillar into state policy and practice.

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282 Ibid.
283 Ibid at 3.
284 Ratno Lukito, Legal Pluralism in Indonesia: Bridging the unbridgeable (New York: Routledge, 2013) at 6.
287 Ibid.
The Indonesian legislature has largely defined the relationship between national law and sharia in the state's enactment of the Law of Religious Judicature in 1989 (Law No. 7 of 1989) in procedural terms, and in substantive terms in the Marriage Act I/1974 and in the 1991 Compilation of Islamic Law (No. 1 of 1991), designed to serve as a source of substantive laws applied in the Religious Courts.\footnote{Ibid.} Ratno Lukito suggests that the new Acts were a sign of a sustained positive attitude on the part of government when dealing with the position of Islamic law in the country.\footnote{Supra note 284 at 94.} "The enactment of the two laws indisputably marked the deliberate process of the transformation of Islamic law from an institution outside the realm of the state into a veritable state institution itself."\footnote{Ibid at 96.}

Although Indonesia's constitution assures the right for all persons to worship according to his or her own religion, only six religions are officially recognized (Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism). All Indonesians must choose one of these recognized religions and declare it – the declaration appears on the national ID card, which everyone is required to carry.\footnote{Claudia Surjadjaja, "Policy Analysis of Abortion in Indonesia: The Dynamic of State Power, Human Need and Women's Right" 39:3 IDS Bulletin 62 at 63.} While Indonesia contains a diverse population, it is significant to note that close to 90 percent of Indonesians identify as Muslim.\footnote{Bennett, "Indonesian Women", supra note 137 at 29.} Additionally, while Indonesia is an official "secular" state, most Indonesians look to their religious leaders for answers on moral issues. "They do not consider laws of the State moral guidance, but instead expect the State to look to religion for moral guidance in making laws."\footnote{Supra note 291 at 63.}

The Constitution of the Republic of Indonesia of 1945, Chapter XA on human rights contains provisions that are important when considering the legal framework for
reproductive rights in Indonesia. Article 28B(1) states that “[e]ach person has the right to establish a family and to generate offspring through a lawful marriage.” This caveat on lawful marriage underscores Islamic beliefs on the importance of reproduction in the context of marriage. Further, the Indonesian Law Concerning Human Rights, Law No. 39/1999, provides legal standards with regards to human rights issues in Indonesia. The legislation expressly recognizes the standards set forth in the United Nations Charter and the Universal Declaration of Human Rights. The preamble also expressly situates human rights in connection to “God Almighty”. Article one explains that “human rights mean a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth.” With regards to the reproductive rights of women, article 49(3) of this Act states that “[t]he special rights to which women are entitled arising from their reproductive function are guaranteed and protected by law.” Unfortunately, what “special rights” entails is not elaborated or explained. A final provision worth noting is one that directly speaks to the legal and moral permissibility of abortion under human rights. Article 53(1) states that “[f]rom conception, every child has the right to life, to maintain life and to improve his standard of living.” As will be discussed below, even though numerous Islamic scholars believe ensoulment to occur 120 days after conception, the limited circumstances in which a woman is legally permitted to obtain an abortion in Indonesia follows this more strict provision to protect life from the moment of conception.

Indonesia has a majority Sunni population who adhere to the teachings of elected Islamic scholars. Islamic leadership in Indonesia is divided into three principal sources: (1) the religious leaders (ulama or kyai) who work for the Ministry of Religious Affairs and other government departments; (2) the independent religious leaders and scholars who have individual followers; and (3) the major Islamic organizations. In particular, three organizations have a significant role in influencing and changing attitudes towards policy and legislation: the Majelis Ulama Indonesia (MUI, Indonesia Religious Leaders Council), the Nahdlatul Ulama (NU) and the Muhammadiyah. These organizations, the MUI in particular, have had a profound influence on shaping the legal and moral discourse surrounding reproductive health.

A. Regulation of Contraception and Family Planning in Indonesia

Under Indonesia’s so-called New Order regime that came into power in 1966, President Suharto signed the World Leaders’ Declaration on Population in 1967 and set up a family planning program – well known by its Indonesian acronym, BKKBN. BKKBN was charged with developing a national family planning program and with managing foreign aid provided for this purpose. One of the key activities leading to the establishment of the official family planning program was the compilation and publication of a pamphlet on “Views of Religions on Family Planning” (Panitya Adhoc Keluarga Berentjana [Ad Hoc Committee on Family Planning] 1968). Based on a panel discussion that included government representatives and religious leaders in February 1967, the purpose of the pamphlet was to document the general acceptance of principles of family

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planning by four of the five officially recognized religions: Islam, Protestant Christianity, Catholic Christianity, and Balinese Hinduism.\textsuperscript{299}

Those who contributed to these discussions made many points that remain controversial decades later. The acceptable motivations for family planning were couched in terms of the welfare of the family, and the pamphlet assumed that having “too many” children was a threat to both mothers and offspring.\textsuperscript{300} Yet at the same time, it stated that the “use of birth control for selfish reasons, just to have a luxurious lifestyle and the like, obviously cannot be accepted by religion.”\textsuperscript{301} In summary, while religions, including Islam, could be accepting of birth control, it was only acceptable in the context of a philosophy of family planning that was responsible, unselfish, and moral.\textsuperscript{302} This moral and religious ideology continues to plague reproductive health in Indonesia today.

In the early days of the program, various religious leaders expressed dissatisfaction with specific family planning methods, especially the intrauterine device, condoms, and abortion, and some conservative leaders questioned the presumptuousness of the notion that parents, rather than God, would decide family size.\textsuperscript{303} For example, the widely distributed Islamic magazine \textit{Panji Masyarakat}'s report on decisions of the 1983 Congress of Islamic Scholars included condemnation of sterilization and pregnancy termination except in the case of an emergency. The Congress only accepted the intrauterine device on the condition that it be inserted by a woman doctor, or, in emergencies, by a male doctor in the presence of the woman’s husband or another family member. Such complaints not only served to shape public attitudes about the family planning program; they also

\textsuperscript{300} \textit{Ibid}.
\textsuperscript{301} \textit{Ibid}.
\textsuperscript{302} \textit{Supra} note 297.
\textsuperscript{303} \textit{Supra} note 299 at 242.
established notional boundaries to the National Family Planning Coordinating Board’s policies and activities, preventing official acceptance of sterilization.304

Despite the widely acclaimed success of the Indonesian Family Planning Program in drastically reducing the national fertility rate over the past several decades, Indonesian women continue to face problems in accessing reproductive health services.305 The basic right to safe contraception is still far from guaranteed in Indonesia. While approximately 57 percent of married women were estimated to have access to modern forms of contraception in 2000, the unmet need of contraception for married women was estimated to be as high as 15 percent in some provinces.306 The situation for unmarried women is even more grave. Social stigma and legal barriers deter single women from accessing the reproductive health services and the contraceptives they require.307 Further, single and married women alike frequently lack the necessary information to successfully negotiate reproductive health and family planning services.308

As described above, family planning and contraceptive use for married couples is widely understood as compatible with Indonesian Islam. Family planning, however, is not acceptable for use by unmarried women. Resistance to allowing single people access to state-sponsored family planning services has resulted in the Indonesian Government placing reservations on human rights documents such as the Cairo Declaration, the Beijing Platform and the Indonesian Population Law so that they apply only to married couples.309 In practice, family planning services are not provided to unmarried women by the

304 Ibid.
305 Bennett, "Indonesian Women", supra note 137.
306 Bennett, "Women, Islam", supra note 140.
307 Bennett, "Indonesian Women", supra note 137 at 30.
308 Ibid.
309 Bennett, "Women, Islam", supra note 140.
Indonesian government clinics or hospitals. According to the Indonesian "Family Welfare" Law, family planning programs are only available to married couples or families. Article 21 states that "[f]amily planning is implemented to help the candidate or husband and wife/couples make their decisions regarding reproductive rights on: ideal age for marriage; ideal age for childbearing; ideal number of children; spacing; and reproductive health." Critics argue that the laws on Health and Population Growth and on Family Planning, both adopted in Indonesia in 1992, objectify women's roles as mothers and caregivers. "Not only is women's health defined in terms of their fertility, but men have the right to decide on the spacing and number of children a couple should have and on the kind of contraception used." In terms of reproductive rights, women have generally been defined in terms of targets of contraceptive-use, and not as individuals in their own right. To a large extent, this ideology regarding women's reproduction have been encouraged by political Islamist groups' conservative interpretations of Islam.

B. Abortion in Indonesia

In Indonesia, where religion is considered an essential component of social life, discussion of reproductive health inevitably has a theological dimension. In general, Indonesians view abortion from narrow theological and ethical-religious perspectives. Although their religiosity invariably differs, ranging from pious to less committed followers, when it comes to abortion, Indonesians rarely express their support for it.

310 Mary Huang Soo Lee & Li Shiang Cheng, “Addressing the Unmet Need for Family Planning Among the Young People in Indonesia” (Paper delivered at the UNFPA-ICOMP Workshop on Operationalizing the Call for Elimination of Unmet Need for Family Planning in Asia and the Pacific Region, 18-19 September 2012), online: <http://site.icomp.org.my/clients/icomp/Downloads/Final_Report_Indonesia94201244749PM5.pdf> at 17.
311 Ibid at 21-22.
313 Ibid.
As well, despite a thriving public concern for reproductive health, every endeavor to legalize abortion in Indonesia faces constraints and resistance due to the sensitivity of this issue from religious and moral points of view.\footnote{Mohamad Abdun Nasir, “The Majelis Ulama’s Fatwa on Abortion in Contemporary Indonesia” (2011) 101 The Muslim World 33 at 36.} According to Indonesian law, abortion is illegal because it is contrary to legal, religious, and ethical norms as well as respectability.\footnote{Law of the Republic of Indonesia No. 23/1992.} Unfortunately, the sensitivity of the issue has created legal contradictions making the legality of abortion both vague and difficult to navigate. Both the criminal law [Kitab Undang-undang Hukum Pidana (HUHP)], modeled on the Dutch colonial legal system, and Sharia law forbid abortion. However, under the Health Law, abortion is permitted to save the woman’s life. In addition, some clinics will provide abortions in the case of contraceptive failure because it is then deemed to be a health service failure and not the fault of the woman who had taken reasonable steps to prevent an unwanted pregnancy. In these cases, however, clinics require women to bring their husbands and prove that they are married.\footnote{Supra note 296.}

Under section 346-348 of the Indonesian \textit{Criminal Code}, any person performing an abortion is subject to imprisonment for five and a half years and a woman willfully inducing her own miscarriage is subject to imprisonment for up to four years.\footnote{Indonesian Penal Code (KUHP) Number 1, 1946, chapter 346-349.} Moreover, if the procedure brings about the death of the woman, he or she can be charged with a maximum of seven years in prison. Chapter 349 additionally reminds medical workers, midwives or traditional healers not to commit or to help someone else commit these offences lest they face similar sentences and dismissal from their professional jobs.\footnote{Supra note 314 at 37.}

Although the provision contains no exceptions to its general prohibition, in the 1970s, an “understanding” was reached by medical professionals, on the advice of the Chief

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\begin{itemize}
\item \footnote{Mohamad Abdun Nasir, “The Majelis Ulama’s Fatwa on Abortion in Contemporary Indonesia” (2011) 101 The Muslim World 33 at 36.}
\item \footnote{Law of the Republic of Indonesia No. 23/1992.}
\item \footnote{Supra note 296.}
\item \footnote{Indonesian Penal Code (KUHP) Number 1, 1946, chapter 346-349.}
\item \footnote{Supra note 314 at 37.}
\end{itemize}
Justice of the High Court, that abortions could be performed to preserve a woman’s life or health. As a result of this informal agreement, continuous attempts were made to reform the abortion law formally. Eventually the draft bill of 1989 on *Pregnancy Termination for Health Considerations* was passed into law (Health Law No. 23/1992) in September 1992. Article 15(1) of this law specifies that “[i]n the case of emergency and with the purpose of saving the life of a pregnant woman or her foetus, it is permissible to carry out certain medical procedures.” Unfortunately, instead of clarifying the legal status of abortion, it substitutes the term “abortion" for “certain medical procedure", making the law vague and obscure.

Article 15(2) of this law describes in detail the reasons and the conditions under which “a certain medical treatment" is allowed. It states that this “certain medical treatment” can only be performed if: (a) it is based on medical signs that require such treatment; (b) it is done by medical practitioners who have expertise and authority to do so and must be done in accordance with their professionalism as well as based on the consideration given by experts; (c) consent of the pregnant woman concerned or her husband or family must be given; and (d) it must be performed in a medical clinic.

In 2001, President Megawati tabled the first bill to amend the Health Law. The draft bill provided that “qualified, safe, and responsible pregnancy cessation should be performed based on the emergency situation justified by authorized health personnel” (Chapter IX, article 63, section 3). During President Megawati’s term, wide consultation was held on the draft Bill encompassing NGOs, religious and professional organizations, as well as government institutions. After years of debate and changes in government, on September 14, 2009, the Health Bill was approved by the legislative body and passed into Law (enacted on October 13, 2009). The reproductive health component (including

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319 Supra note 291.
320 Supra note 314 at 38.
abortion) appears under articles 71-77 while the penalty component appears under article 194. Article 75 continues to stipulate that abortion is a crime, and is only allowed to protect the life of the mother and the infant, if the foetus has a dangerous genetic sickness, or if the pregnancy was the result of rape. Article 76 indicates that abortion can take place for any reason up to six weeks after the first day of the last menstruation except under medical emergency, and shall be under the consent of the woman and her husband, except in the case of rape. Article 77 states that the government shall protect and prevent women from having non-qualified, unsafe and irresponsible abortions, as well as abortions that oppose religious norms and legal provisions.

Support from the Islamic leadership in the MUI (The Indonesian “Ulama” Council) provided the initiative to turn public and Parliamentary opinion in the Bill’s favour, leading to its enactment in 2009. Importantly, this new law parallels the fatwa issued by the MUI in 2006, which addresses abortion from Islamic perspectives. This fatwa contends that abortion is not categorically forbidden. Mohamad Abdun Nasir comments that this “fatwa attempts to mediate tensions between a strict state legal provision and the rising [number] of unsafe abortion[s] that often claim many lives.”

Statements from the MUI in Indonesia can lend significant influence towards legislative change. Established in 1975, the MUI is a state-appointed board of ulama (Muslim religious scholars) whose main charge is to advise the government regarding Muslim affairs and to help maintain mutual and beneficial solid relations between the state and its Muslim citizens. Fatwas issued by this body represent Muslim jurists’ perspectives about a certain issue. They reflect legal reasoning and ethical values of Islamic law. Moreover, they draw boundaries between what is legally acceptable or

321 Ibid at 23.
322 Ibid at 33.
323 Ibid at 34.
deniable in Islam according to Muslim scholars’ views.324 Although the MUI is not fully state-based, its ties to the bureaucracy afford it great influence.325 This influence has allowed the MUI’s fatwa on abortion to play a significant role in producing legal responses to abortion in Indonesia.

Despite the strict laws on abortion in Indonesia, over two million Indonesian women seek termination of unwanted pregnancies each year.326 The clandestine nature of all of these abortions, driven by social stigma, religious prohibitions and serious legal consequences, conceals the extent to which unsafe abortion causes death and illness. According to the Guttmacher Institute, the death rate from unsafe abortion is about 14 to 16 percent in Southeast Asia.327 In 1983 and 1992 the MUI declared that abortion was absolutely prohibited (haram). The most recent MUI fatwa on abortion, however, has attempted to address the problem of unsafe abortions in Indonesia and clear up some of the tension between the government’s aversion to legalizing abortion and Islamic teachings.

The fatwa relies on the primary Islamic scriptural texts, the Quran and the hadith, to support the idea that killing human beings is, in principle, against God’s will, except if it is done for a just cause. The verses quoted in the fatwa do not relate directly to abortion; rather, they are concerned with the sanction against killing children and with the process of human creation. For example, the fatwa quotes Bani Isra’il [17]:31: “Slay not your children, fearing a fall to poverty. We shall provide for them and for you. Lo! The slaying of them is a great sin.”328

324 Ibid at 35.
326 Supra note 291.
328 Supra note 314 at 43.
The other versus cited are concerned with human conception and the stage of foetal growth within the womb. To the MUI, the scriptural texts support the premise that within a particular period of gestation, abortion is partially permitted on the basis of a just reason. The fatwa quotes verse *al-Mu’minun* [23]: 12-14:

> Verily We created man from a product of we earth; then placed him as a drop (of seed) in a safe lodging; then fashioned We the drop of clot, then fashioned We the clot a little lump, then fashioned We the little lump bones, then clothed the bones with flesh, and then produced it another creation. So blessed be Allah the Best of Creator.\(^{329}\)

In addition to the verses, the fatwa quotes three hadith, two of which explain the process of human creation and the legal sanction against killing a foetus, and the other concerns the prohibition against inflicting harm and retaliation for it. From these scriptural sources as well as guidance from Muslim jurists, the fatwa eventually declares three legal statements regarding abortion:

1. Abortion is forbidden from the time that a blastocyst implantation takes place within the mother’s uterus.
2. Abortion is allowed in necessity (*darura*) and need (*haja*) situations.
   a. The situation of necessity that permits abortion can happen (1) if the pregnant woman has been infected by a lethal disease such as cancer and tuberculosis stated by a doctor, and (2) if the pregnancy jeopardizes the mother’s life.
   b. The condition that justifies performing the abortion occurs when (1) the foetus has been detected as being genetically imperfect and is foreseen incurable after being born, and (2) the foetus results from sexual coercion in which the occurrence of rape can be proved by the victim’s family, doctors and Muslim scholars.
   c. The approval to abortion as indicated in point (b) must be performed before the 40th day of gestation.
3. Abortion is forbidden for a pregnancy if it is the result of fornication (illicit sexual intercourse).\(^{330}\)

With this fatwa, the MUI issued an explanation to society that abortion can be performed and be considered legitimate provided there is adherence to certain medical

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\(^{330}\) For the complete and original version of the fatwa, see the MUI’s website under the column of fatwa at http://mui.or.id/?option=com_docman&Itemid=73.
conditions and religious requisites. Importantly, this began to open the door to legal reform with one of Indonesia’s most influential religious advisory groups. In 2006, support from the MUI provided the initiative to turn the public and Parliamentary opinion in favour of the new Health Bill. In short, the Indonesian Muslim discourse on abortion reflected in the MUI fatwa and the subsequent adoption of the Health Bill demonstrates the dynamic and influential power of Islamic legal thought in Indonesia.

C. The Regulation of ART and IVF in Indonesia

As is the case with the discourse on contraception and abortion in Indonesia, the moral and legal acceptability of ART and IVF revolve around the marital couple. As currently practiced in most Sunni-majority Muslim countries, IVF is allowed, as long as it entails the union of ova from the wife with the sperm of her husband and the transfer of the resulting embryo(s) back to the uterus of the same wife. In Indonesia, the MUI released a fatwa stating that IVF with the sperm and ovum of the husband and wife couple are legally permissible. The scholars, however, prohibited the use of IVF technology to deposit the embryo in the womb of another woman. The scholars assert that, in the future, surrogacy would lead to complicated problems in relation to inheritance. Therefore, sperm donation for IVF and all other forms of gamete donation are prohibited in Indonesia. In 1997, researchers Meirow and Schenker surveyed the IVF practices in 62 countries around the world, including Indonesia, and commented that “[i]n many Islamic countries, where the laws of Islam are the laws of the state, donation of sperm was not practiced. AID [Artificial Insemination, Donor] is considered adultery and leads to confusion regarding the lines of genealogy, whose purity is of prime importance in Islam.”

ART in Indonesia is practiced in accordance with Islamic law, and as such, is only available to married couples. Article 127 of the 2009 Health Law (No. 36) provides that the attempt at pregnancy outside of the natural way can only be done by married couples under certain legal provision: (a) the fertilization of sperm and ovum of the couple are implanted in the womb of the wife; (b) the procedure is carried out by health personnel with the expertise and authority to do so; and (c) at authorized health care facilities.

Surrogacy in Indonesia is not an accepted practice under the law. As was noted above, Indonesia’s legal code is heavily influenced by Islamic religious jurisprudence, Sharia law. Most reputable Islamic scholars do not approve of surrogacy on the basis of motherhood because only the woman who delivers the child can be considered to be the natural and legitimate mother. Hence, according to Boon Chin Heng, "surrogacy is likely to remain unlawful in ... Indonesia in the foreseeable future."334

5. Advancing Reproductive Rights through the Secular and the Sacred

As the world witnessed at the Cairo and Beijing conferences, there is a wide diversity of views concerning reproductive rights. Convincing actors like the Catholic Church or the MUI to alter their positions on the moral permissibility of certain reproductive health services is a difficult task. As was noted by Professor Abdullahi Ahmed An-Na’im, in his book Human Rights in Cross-Cultural Perspectives: A Quest for Consensus, while globally there are still gross violations of human rights that were established in the Universal Declaration of Human Rights in 1948, the addition of newer more specialized human rights, like reproductive rights, “cannot be seen as truly universal unless they are conceived and articulated within the widest possible range of cultural

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traditions.” The limitation found within the secular approach to the articulation of reproductive rights is that it does not take into account the variety of interpretations and beliefs about reproductive and sexual health held by world religions. As was explained above, in numerous countries around the world, religious doctrines have profound impacts on the creation of legal norms of acceptable reproductive and sexual health services. Therefore, if there is to be any real debate and universal acceptance of these services, there needs to be a discourse concerning reproductive rights that directly addresses both religious concerns and the human rights of women. The proposed approach thus combines an internal cultural and religious discourse with a cross-cultural dialogue as a means of enhancing the universal legitimacy of reproductive rights.

The Cairo and Beijing conferences significantly advanced the global recognition that the protection of reproductive and sexual health is a matter of social justice, and that the realization of such health can be addressed through the improved application of national and international human rights documents. At the 1994 ICPD, a total of 179 governments signed up to the Program of Action, with the goal of providing universal access to family planning and sexual and reproductive health services and reproductive rights. Despite the aim of making reproductive and sexual health a universal right, some actors have criticized the organizers of the conference for not fully taking into account and recognizing the religious values of developing countries. For example, the then head of the Holy See delegation to the Prepartory Committee, Monsignor Diarmuid Marting, commented that the organizers of the ICPD did not grasp the “cultural, ethical, spiritual

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and religious values” of developing countries and that the Draft Document lacked “a clear vision.”

Much of the religious controversy during the PrepComs and the Cairo conference related to the issues of abortion and contraception. The Catholic Church generated most of this attention by working hard to convince those countries that might be sympathetic to its point of view for religious or cultural reasons. During the PrepComs, for example, the international media focused its attention on the worldwide campaign undertaken by the Holy See to convey to the international community as well as individual UN members its strong views against abortion. While the position of the Catholic Church received most of the media attention, theologians, thinkers and ethicists belonging to Protestant churches and several other religious faiths also sought to clarify their own positions, yet did not receive much coverage. Many of them participated in a Round Table on Ethics, Population and Reproductive Health held in New York from the 8th to the 10th of March 1994. This Round Table actually supported a broad definition of reproductive rights and made a strong statement in favour of decriminalizing abortion:

Despite cultural and religious views that oppose abortion, women have always sought and will continue to seek an end to unwanted pregnancies. Maternal morality and morbidity, as well as infertility, that can be traced to criminalization of abortion are preventable negative consequences of reproductive health policies. The separation of church and state that obtains in most nations throughout the world justifies, for the improvement of reproductive health, the decriminalization of a procedure officially condemned by some religions but accepted by many other religions and secular groups.

Another statement regarding the intersection of religious beliefs and international norms was issued by a group of theologians and academics belonging to Buddhism, Christianity, Hinduism, Islam, Judaism and several other religious traditions who met in

339 Ibid at 54.
340 Ibid at 54.
Genval, Belgium, under the auspices of the Park Ridge Center for the Study of Health, Faith, and Ethics, from the 4th to the 7th of May 1994. The group took the position that:

[T]he ICPD, of course cannot and should not reach into particular religious communities and seek to impose its will on the consciences of individual believers. But international bodies could not achieve anything of importance for the larger world community if they were never permitted to challenge the religious outlook of one or more faiths or never allowed to develop programs that one or another of the religious communities might oppose. Religious groups themselves must respect the beliefs and values of others, because no single faith may claim final moral authority in international discourse.\(^341\)

The group recognized that “abortion is universally treated as a serious moral and religious concern” but it also noted that it is treated differently among and within religious communities:

Whatever their stance on abortion, religious communities cannot disregard the fact that it occurs and that, in places where abortion is illegal or heavily restricted, it often poses risk to the life and health of the women. Decriminalization of abortion, therefore, is a minimal response to this reality and a reasonable means of protecting the life and health of women.\(^342\)

While the period leading up to the ICPD provided ground for open theological discussion, unfortunately, during the ICPD conference itself, most of these divergent religious views were subjugated by the strong and vocal position of the Holy See and proponents on the rights of women. In the end, the sovereign right of each country to implement the ICPD Program of Action in accordance with its own national laws allowed many countries to place reservations on the consensus on issues that did not accord with religious beliefs, ethical values, or cultural traditions. Some of these reservations recorded by individual countries were on the use of the term “individual” in the phrase “individuals and couples” (Afghanistan, Libya, and Indonesia). Other countries stated that the Program of Action would be applied in accordance with Islamic laws and moral values (Jordan and Kuwait). Additionally, several countries affirmed that life begins at conception, and

\(^{341}\) Ibid at 55.
\(^{342}\) Ibid at 55.
recorded their reservations or clarifications on various words or concepts in the approved text (El Salvador, Honduras, Nicaragua, and Peru). Thus, the inability to create an open and inclusive religious dialogue created the opportunity for any universal conception of reproductive rights to be diluted by the reservations of individual nation states.

In the years since the ICPD, at the global level, various meetings and pronouncements have reaffirmed the central role of reproductive rights and reproductive health in achieving human rights and attaining gender equality. Such events included the ICPD+5, ICPD+10 and the United Nations General Assembly Special Session (UNGASS) on HIV/AIDS and the political declaration in 2006. In 2000, world leaders met at the United Nations in New York to commit their countries to achieving the Millennium Development Goals (MDGs). In 2005, the World Summit reaffirmed that universal access to reproductive health is critical to achieving the MDGs. In October 2007, the target of universal access to reproductive health was added to MGD 5, for improving maternal health.

Further, after the ICPD, many countries passed laws and enacted policies on sexual and reproductive health and began to implement targeted programs within their healthcare systems. According to a 2004 UNFPA survey on progress since Cairo, about 86 percent of countries had adopted policy measures, laws or institutional changes at national levels to promote or enforce reproductive rights, and 54 percent had formulated new policies. However, despite considerable progress since the ICPD, millions of people still lack access to sexual and reproductive health information and services.

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343 Ibid at 69.
345 Ibid.
346 Ibid.
347 Ibid at 4.
The UNFPA has developed frameworks to address these deficiencies and provide overall guidance for the engagement of policy dialogue, policy analysis and advocacy for the inclusion of sexual and reproductive health issues in national development strategies and government-driven processes. For example, the reproductive rights and sexual and reproductive health framework developed in 2008, presents a conceptual and operational basis for UNFPA to contribute to achieving the goals of the Program of Action of the ICPD and the MDGs. The document identifies key priorities and specific strategies for sexual and reproductive health related strategic plan outcomes. This framework is stated to apply within a human rights-based approach where attention will be given to the several dimensions of social disadvantage, including “wealth, locality, gender, age, religion, disability and ethnic/indigenous origin.” It thus accounts for religious perspectives on an individual level. However, for reproductive rights to truly be obtained universally, greater attention needs to be paid to how religious beliefs on a national and international level interpret and inform reproductive and sexual health.

In the framework’s strategy for creating access to and utilization of quality family planning services, UNFPA states that it will undertake advocacy and partnerships with faith-based organizations, religious leaders and parliamentarians.348 This is a helpful step towards creating a universal understanding of reproductive rights. Greater efforts, however, need to be made within the international arena to create forums whereby faith-based organizations can express and explain their divergent views on these issues in an attempt to reconcile the secular and the sacred.

5.1 Engaging an Internal Religious Discourse

Often proponents of reproductive freedom center their arguments around women’s bodily integrity, while faith-based organizations use religious doctrines to explain their

348 Ibid at 24.
stance on reproductive and sexual health issues. Both sides have strong positions, but their arguments will never persuade the other side because their points do not often address each other’s concerns. A starting point then for engagement in a meaningful dialogue is to explore religious arguments within the religious context.

As was explained above, within religious traditions, religious leaders and thinkers have various views on reproductive freedom. For example, within Catholicism, the Vatican’s unqualified prohibition of abortion is only one of several orthodox Catholic opinions on the issue. Indeed, there is a strong faith-based movement in support of legal access to abortion in many parts of the world. In an open letter to Colin Powell, an ad hoc coalition of religious leaders – including Catholic and Protestant leaders – called for renewed U.S. support of the ICPD, stating:

We want to make clear that while people of various faith traditions believe abortion to be a serious moral issue, most religious denominations affirm the moral right of women to decide when abortion is morally justified in light of their circumstances, the teachings of their denomination and the dictates of their conscience.

As well, historical abortion policies of the Catholic Church demonstrate that there was once a policy that granted women reproductive rights. In the eighteenth century, the Catholic theologian Thomas Sanchez held that “abortion was acceptable in cases of rape, of a single woman whose family would kill her for having become pregnant, and a woman “betrothed to another”.” Additionally, during Pope Gregory XIII’s leadership of the Church from 1572 to 1585, he “allowed ... [abortion] in the first 40 days of pregnancy and for single women under extenuating circumstances.” These historical positions bring

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349 Religious Voices Worldwide Support Choice, page 1
351 Fleishman, "The Battle", supra note 80 at 308.
352 Ibid.
justification to the concept that there is more than one way for Church scholars to interpret
religious doctrine relating to abortion.

Besides using past institutional Church policies, another way to engage in a
religious discourse is to listen to alternative interpretations of scripture. Some theologians
argue that the Bible should not be used today to support a doctrinaire opposition to
abortion. As Rishona Fleishman describes it, "[i]f one traces the term *nepesh*, the Hebrew
word describing a human being, one can use this as evidence that the definition does not
include the [foetus]."\(^\text{353}\) This word occurs in the Old Testament 755 times and the
etymology of its root means "to breathe." This concept of breath to describe human beings
was continued in the New Testament. A living being was "basically understood as a
creature that breathes, then a foetus is not a *nepesh*, not a living person until birth."\(^\text{354}\)

Other scholars have attempted to identify the core Islamic principles that can guide
ethical frameworks for reproductive health advocacy. Linda Rae Bennet, for example,
explains that Islam is explicitly concerned with social justice and human rights.
Consequently, to promote human rights is a form of *jihad* (striving on behalf of the faith)
that is both a duty and meritorious. She further explains that "Islam clearly accepts that
sexual relations are not just for the purposes of reproduction. Sexual unions play an
important role in nurturing the relationship between partners and are a symbolic re-
enactment of the union between the self and God."\(^\text{355}\)

Like the various interpretations of the Bible, scholars have interpreted Islamic
scripture as a means of strengthening women’s reproductive rights. The Quran states that
the welfare of women as individuals, not only as mothers, is fundamental to the welfare of
society. Furthermore, as was explained above, some theologians have argued that

\(^{353}\) *Ibid* at 309.

\(^{354}\) *Ibid*.

\(^{355}\) Bennett, "Indonesian Women", *supra* note 137 at 34.
contraception and the spacing of children are explicitly mentioned in the Hadith, and are therefore both acceptable within Islam. Progressive interpretations of the Quran and Hadith increasingly refute the notion that a wife does not lack the right to refuse her husband sex and that a husband may strike his wife for refusing to comply with his sexual demands.\textsuperscript{356} Masdar Mas'udi, for example, provides extensive discussion of several hadith in which the Prophet Mohammad instructs Muslims not to treat their wives not as animals, but to tend to their emotional needs.\textsuperscript{357}

The fundamental tenet of Islam, which disallows the violation of one person's rights by another, is also intimately linked to the argument that all women have the right to self-determination on matters of pregnancy and abortion. As Bennett explains:

\begin{quote}
The [Quran] and hadith explicitly address the importance of protecting women's life and well being by ensuring they become pregnant by choice. They also specify when a foetus is deemed to be a human life ... In accordance with Islam's emphasis on equality for all human beings they must be understood as applicable to [both wives and] single women. The absence of any Quranic instruction, which differentiates single women's rights from those of married women, also indicates that these principles apply equally to all women regardless of marital status.\textsuperscript{358}
\end{quote}

Within Judaism, most contemporary rabbis are willing to interpret scripture in a way that will promote procreation. For example, although donor insemination with ART is considered to pose “grave moral problems,” Rabbi Elliot Dorff contends that “donor insemination should be accepted because of the value placed on children within the Jewish tradition, the hardship infertile couples have already endured, and the biblical mandate to reproduce Jews.”\textsuperscript{359} As well, Ronit Irshai explains that some contemporary halakhic scholars have attempted to justify abortion in terms other than the danger to the mother.

The author explains that technological and medical advances have made it possible to

\textsuperscript{356} Bennett, "Women, Islam", \textit{supra} note 140.
\textsuperscript{358} \textit{Ibid}.
\textsuperscript{359} Bundren, “The Influence”, \textit{supra} note 12 at 742.
examine the health of the foetus, leading to questions regarding whether and when the foetus’ health might justify abortion.\textsuperscript{360}

As can be seen, divergent interpretations of scripture and historical religious doctrine present a picture of religion that is diverse and non-absolute. It is this type of scholarship and discourse that might be the most persuasive in arguing for reproductive freedoms. If there can be an acceptance of divergent views within religious discourse, a cross-cultural dialogue can then assist in encouraging mutual respect for diverging attitudes towards reproductive rights.

\textbf{5.2 Engaging a Cross-Cultural Dialogue}

The UN conferences on reproductive rights presented an ideal venue to share and explore the various religious and cultural beliefs on reproductive and sexual health and how these beliefs can inform women’s right to bodily integrity. Unfortunately, debates within these conferences viewed these issues from opposite ends of the sacred/secular divide without fully considering the other side’s concerns. Going forward then, the challenge will be to promote both an internal religious discourse and a cross-cultural dialogue so that peoples of diverse cultural and religious traditions can agree to the meaning, scope, and methods of implementing reproductive rights. This type of approach to legitimize reproductive rights will force nations and cultures of the world to push the limits of their own specific cultural norms and values when forming international human rights standards.\textsuperscript{361} The use of this type of discourse may lead to a broadening and acceptance of the definitions of reproductive rights.

As religion continues to inform law and politics, an understanding and acceptance of the diverse views on reproductive and sexual health is necessary for the creation of


\textsuperscript{361} Fleishman, "The Battle", \textit{supra} note 80 at 311.
reform that is supported by all sides of the controversy. While the broad and diverse understandings of reproductive rights may make it difficult to come to any shared consensus on future progress, an open and inviting dialogue will create the building blocks to inform acceptance and legitimacy of these rights. Within an area as controversial as reproductive rights, universal reform and advancement can only occur if all actors are heard on both sides of the religious and secular divide.

**Conclusion**

Significant advancements have been made over the last several decades towards making reproductive and sexual health a universal human right. National constitutions and laws as well as international human rights instruments have begun to reflect the recognition that the protection of reproductive and sexual health is a human rights issue. Despite this increased recognition, the right to reproductive and sexual health is far from reality in many nations of the world.

Of particular significance to this impediment is that, in many countries, any movement to advance reproductive rights must be navigated through a legal landscape where secular values are infused with religious beliefs. Poland, Israel and Indonesia are three examples of how religious doctrines inform and instruct the laws on reproductive rights. Despite these countries’ commitments to advance reproductive and sexual health under international instruments, such as the ICPD Program of Action, the dominant religious institutions in these countries continue to affect the legality and practical reality for women in obtaining reproductive self-determination.

While the UN conferences presented an ideal venue to advance the universality of reproductive rights, the lack of discourse that directly addressed both religious concerns and the human rights of women left the topic a source of both conflict and opposition. Going forward then, the challenge will be to promote both an internal religious discourse
and a cross-cultural dialogue so that peoples of diverse cultural and religious traditions can agree to the meaning, scope, and methods of implementing reproductive rights. If the world is to expand the definition of human rights to include reproductive rights, the leaders of international delegations, governments, and religious institutions must begin to engage in a discourse that works within a religious and cross-cultural framework. While it may be a difficult task, if the work of UN conferences is to truly have an international impact, reproductive rights must be accepted, or at least tolerated, both within and between religious beliefs.
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