

Philosophy of Halakhah in *Even ha-ezer*

Seth Winberg

1. בראשית א, כז-כח

וַיְבָרֵא אֱלֹהִים אֶת הָאָדָם בְּצַלְמוֹ בְּצַלְמֵ אֱלֹהִים בָּרָא אֹתוֹ זָכָר וּנְקֵבָה בָּרָא אֹתָם: וַיְבָרֵךְ אֹתָם אֱלֹהִים וַיֹּאמֶר לָהֶם אֱלֹהִים פְּרוּ וּרְבוּ וּמְלֵאוּ אֶת הָאָרֶץ וּכְבַשְׁתֶּהּ וּרְדוּ בְּדֹגַת הַיָּם וּבְעוֹף הַשָּׁמַיִם וּבְכָל חַיָּה הַרְמֵשֶׁת עַל הָאָרֶץ:

2. יבמות סה:

מתני'. האישה מצוה על פריה ורביה, אבל לא האשה. רבי יוחנן בן ברוקה אומר, על שניהם הוא אומר: (בראשית א') ויברך אתם אלקים ויאמר להם [אלקים] פרו ורבו.

גמ'. מנא הני מלי? אמר ר' אילעא משום ר' אלעזר בר' שמעון, אמר קרא: (בראשית א) ומלאו את הארץ וכבשה. איש דרכו לכבש ואין אשה דרקה לכבש. רב יוסף אמר, מהכא: (בראשית לה) אני אל שדי פרה ורבה, ולא קאמר פרו ורבו...

MISHNAH. A man is commanded to be fertile and increase; not so a woman. Rabbi Yohanan ben Beroka says: Of both it says “God blessed them and God said to them: ‘Be fertile and increase.’”

GEMARA. How do we know this? Rabbi Ila'a said in the name of Rabbi Elazar ben Rabbi Shimon: The Torah said (Genesis 1): “Fill the earth and master it.” It is a man’s way to conquer, but it is not a woman’s way to conquer. [But it might be objected] on the contrary: it says “conquer it” [using a plural verb], implying two [are to do so]! Said Rav Nahman ben Isaac: it is written “conquer it” [using a singular verb]. Rav Yoseph said: We learn it from this (Genesis 35): “I am El Shaddai. Be fertile and increase [singular verbs]”; it does not say “Be fertile and increase [plural verbs].”

3. יבמות סה:

יהודית דביתהו דרבי חייה הוה לה צער לידה שנאי מנה ואתאי לקמיה דרבי חייה אמרה אתתא מפקדא אפריה ורביה אמר לה לא אזלא אשתיא סמא דעקריתא לסוף איגלאי מילתא אמר לה איכו ילדת לי תדא כרסא אחריתא...

Yehudit, the wife of Rabbi Hiyya, had difficult birthing pain. She disguised herself, came before Rabbi Hiyya, and asked him: Is a woman commanded to be fruitful and multiply? He said to her: No. She went and drank a sterility potion. Eventually the matter became known [and he found out]. He said to her: If only you had borne me one more pregnancy.

4. יבמות סא:

מתני'. לא יבטל אדם מפריה ורביה - אלא א"כ יש לו בנים. ב"ש אומרים: שני זכרים, וב"ה אומרים: זכר ונקבה, שנאמר: זכר ונקבה בראם.

MISHNAH. A man shall not abstain from the duty of *peru urevu* unless he already has children. Bet Shammai say: two males and Bet Hillel say: a male and a female, as it says: “Male and female He created them.”

5. רמב"ם איסורי ביאה פרק כא הלכה כו

וְאִין הָאִישׁ רָשָׁאי לְיִשֵּׁב בְּלֹא אִשָּׁה וְלֹא יִשָּׂא עֲקָרָה וְזִקְנָה שְׂאִינָה רְאוּיָה לְיִלֵּד וְרִשׁוּת לְאִשָּׁה שְׂלֹא תִנָּשֵׂא לְעוֹלָם אוֹ תִנָּשֵׂא לְסָרִיס וְלֹא יִשָּׂא בְּחוּר זִקְנָה וְלֹא יִשָּׂא זָקֵן יְלָדָה שְׂדָבָר זֶה גוֹרֵם לְזָנוּת.

A woman can choose to never get married or to marry a sterile man...

6. רמב"ם אישות פרק טו הלכות א ו-טז

הָאִשָּׁה שֶׁהִרְשִׁית אֶת בַּעְלָהּ אַחֵר הַנִּישׁוּאִין שִׁמְנַע עוֹנְתָהּ הָרִי זֶה מוֹתֵר. בַּד"א בְּשִׁהְיוֹ לוֹ בָּנִים שֶׁכָּבָר קִיִּים מִצְוֹת פְּרִיָּה וְרִבְיָה אֲבָל לֹא קִיִּים חַיִּיב לְבַעוֹל בְּכָל עוֹנָה עַד שִׁיְהִיוּ לוֹ בָּנִים. מִפְּנֵי שֶׁהִיא מִצְוֹת עֲשֵׂה שֶׁל תּוֹרָה שֶׁנֶּאֱמַר פָּרוּ וּרְבוּ.

A woman who after marriage gives her husband permission to withhold her conjugal rights from her—this is permitted. When does this apply? When he has children, for in that case he has already fulfilled the commandment. If, however, he has not yet fulfilled it, he is obligated to have sexual intercourse with her according to his schedule until he has children, because this is a positive commandment of the Torah...

אָף ע"פ שְׂקִיִּים אָדָם מִצְוֹת פְּרִיָּה וְרִבְיָה הָרִי הוּא מְצוּוֹה מְדַבְּרֵי סוֹפְרִים שְׂלֹא יִבְטֵל מְלַפְרוֹת וְלִרְבוֹת כָּל זְמַן שִׁישׁ בּוֹ כַּח. שְׂכָל הַמוֹסִיף נֶפֶשׁ אַחַת בְּיִשְׂרָאֵל כְּאִילוֹ בָּנָה עוֹלָם. וְכֵן מִצְוֹת חֻמִּים הִיא שְׂלֹא יִשָּׁב אָדָם בְּלֹא אִשָּׁה שְׂלֹא יָבֵא לְיַדֵּי הַרְהוּר. וְלֹא יִתְשֵׁב אִשָּׁה בְּלֹא אִישׁ שְׂלֹא תַחֲשֵׁד.

Even if a man has already fulfilled the commandment, he is still obligated by rabbinic enactment not to cease being fertile and increasing as long as he has the power to do so, because whoever adds one soul to Israel has built a whole world. It is also a precept of the Sages that no man should live without a wife, in order that he should not come to unchaste thoughts, nor should a woman live without a husband, in order that she should not become subject to suspicion...

7. תרומת הדשן א, רסג

QUESTION: Reuven, having already fulfilled the commandment to be fertile and increase, is widowed and wants to take a wife. He fears that there may be quarrels between his new wife and his children, and he therefore wants to choose a woman widely known not to be at all quarrelsome, but also incapable of bearing children. If he cannot find such a wife, he is thinking of not marrying at all, given his concerns about quarrels. Is he acting properly or not?

ANSWER: It appears that he is acting properly in one respect but not in the other. How so? If he marries a woman who is not at all quarrelsome, he is acting properly, even though she is totally incapable of bearing children... But in the other respect—that is, his plan, if he fails to find a woman who is not at all quarrelsome, to refrain entirely from taking a wife—we cannot say that he is acting properly, for the Sages declared that a man should not remain without a wife.

8. שלחן ערוך אבן העזר א:ח

הגה: מיהו אם מכיר שאינו בן בנים עוד ואינו ראוי עוד להוליד ישא אשה שאינה בת בנים (נ"י ב' הבא על יבמתו) וכן אם יש לו בנים הרבה ומתיירא שאם ישא אשה בת בנים יבאו קטטות ומריבות בין הבנים ובין אשתו מותר לישא אשה שאינה בת בנים אבל אסור לישיב בלא אשה משום חשש זו: (ת"ה סי' רס"ג).

Isserless: However, if it is recognized that there will not be more grandchildren and it is not appropriate that more will not be born to him, he marries a woman who is not capable of bearing children, and thus if he has many sons and he fears that if he marries a woman of child bearing age an altercation will come and discord will come between the children and his wife he is permitted to marry a woman who is not capable of bearing children but it is forbidden to settle down without a wife because of this fear.

9. ערוך השלחן אבן העזר סי' א סע' ח

וכן צוו חכמים שאם מכיר בעצמו שעדיין ראוי להוליד – ישא אשה בת בנים, אם מעמדו מספיק לפרנסם... ובכלל הענין לישא בת בנים, כתב הרמב"ן ז"ל דאין כופין אותו לכל הדעות, דלאו תקנה היא אלא כעין ישוב דרך ארץ, ואין מחמירין עליו כל כך (בית שמואל). וכן משמע מדברי הרמב"ם...

And so the Sages commanded that if he seems himself as still fit to father children then he should take a wife capable of bearing children if his situation is adequate to support them... Regarding the general matter of taking a wife capable of bearing children, Ramban of blessed memory wrote that according to no opinion is he compelled to do so, for there is no such enactment; rather, it is a rule of sound conduct, and it is not treated so stringently. And Maimonides' words suggest similarly.

10. מאירי יבמות סג: ד"ה מכיון

מכיון שנצטוו האדם על פריה ורביה כדי להעמיד הישוב, כל הפורש לגמרי ממנה הרי הוא כשופך דמים, ר"ל שמונע קיום הישוב, ועוד שמא זה שהוא מונעו היה בא לתכלית שלמות, ועל זה נאמר כאילו ממעט את הדמות, רומז למה שאמר בצלם א-לוהים ברא אותו, ר"ל בשכל...

מכל מקום כל הנמנע מזה לכונת קיום התורה ופרישות העולם, אע"פ שלא קיים מצוה זו הואיל ורואה בעצמו שכך נוח לו לקיום התורה ומצותיה מעבירין לו, והוא שאמר בן עזאי, מה אעשה שנפשי חשקה בתורה ואיפשר לעולם שיתקיים על ידי אחרים.

Since a person is commanded to procreate for the sake of establishing the world, anyone who abandons it complete is as if he has shed blood, that is to say, he has prevented the sustaining of the world, and in addition, perhaps this person that he would have given birth to would have achieved ultimate perfection, and in regards to this the Talmud states, "it is as if he has diminished the Divine image", which alludes to what is said "In the Image of God created He him," meaning, with intellect...

Nevertheless, whoever refrains from this for the sake of fulfilling (or 'sustaining') the Torah and ascetic separation from the world, although he has not fulfilled the mitzvah, since he sees in himself that this is the

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best way that he can fulfill the Torah and its commandments, it is waived for him. And this is what Ben Azzai says, "What can I do, but my soul desires Torah and it is possible for the World to exist through others."

11. משך חכמה לבראשית ט, ז

לא רחוק הוא לאמר הא שפטרה התורה נשים מפריה ורביה וחייבה רק אנשים כי משפטי ה' ודרכיו דרכי נועם וכל נתיבותיה שלום ולא עמסה על הישראלי מה שאין ביכולת הגוף לקבל. .. ואם כן, נשים שמסתכנות בעיבור ולידה... לא גזרה התורה לפרות ולרבות על האשה. וכן מותרת לשתות כוס עקרין וכעובדא דיהודית דבתייהו דרבי חנינא סוף הבא על יבמתו...

It seems reasonable to say that the reason the Torah exempted women from *peru urevu* and obligated only men is because God's law and His ways are "ways of pleasantness and all of its paths are peace" (Prov. 3:17), and the Torah did not burden a Jew with an obligation that he is physically unable to handle... Therefore, regarding women, who are endangered during pregnancy and childbirth... the Torah did not obligate them to procreate. And thus it is permitted for them to take a medicine which will make them sterile, as we find in the case of Yehudit, the wife of Rebbe Chanina (Yevamot 65b).

12. Rabbi Shlomo Luria's *Yam shel shlomo*, Yevamot, chapter 6 section 44

A man is commanded to be fertile and increase but not so a woman. Rabbi Yohanan said the commandment applies to both... The halakhah is according to the rabbis, and a woman is not required to be fertile and increase... and she is permitted even to drink a sterilizing potion. This wrote the *Sefer Mitzvot Gadol*. And his proof is from the passage at the end of that chapter, regarding Rabbi Hiyya's wife... But I say that this cannot be cited as proof except for a woman, like Rabbi Hiyya's wife, who has difficulty in childbirth. And it is all the more forbidden if her sons do not walk the straight and narrow, and she is afraid she cannot raise them, as if the right were hers.

13. בית שמואל לשו"ע אבן העזר סי' ה סע' יא-יב ואשה מותרת וכו' משמע אפילו בלא צער כלל מותר...

A woman is permitted etc. – This implies that it is permitted even in the absence of any difficulty in childbirth.

14. יבמות יב:

תני רב ביבי קמיה דרב נחמן שלש נשים משמשות במוך קטנה מעוברת ומניקה קטנה שמה תתעבר ושמא תמות מעוברת שמה תעשה עוברת סנדל מניקה שמה תגמול בנה וימות...

דברי רבי מאיר וחכמים אומרים אחת זו ואחת זו משמשת כדרכה והולכת ומן השמים ירחמו משום שנאמר שומר פתאים ה'...

Rav Bivi taught before Rav Nahman: Three women use a contraceptive *mokh*... A minor lest she become pregnant and die. A pregnant woman lest her fetus become a *sandal*. A nursing woman lest she wean her child and he die... that is the view of Rabbi Meir. The Sages say: It is the same for every woman; she engages in intercourse in the usual way and Heaven will have mercy as it says "the LORD protects the simple."

15. תוספתא נידה ב ו

מניקה שמא תהרוג את בנה שהיה ר"מ אומר דש מבפנים וזורה מבחוץ וחכ"א משמש כדרכו ומן השמים משמרים על ידו שנאמר שומר פתאים ה'.

A nursing woman lest she kill her child by becoming pregnant and ending lactation. For Rabbi Meir would say that all twenty-four months of nursing he treads inside and sows outside, but the Sages say he engages in intercourse in the usual way and God protects him, as it is said, "the LORD protects the simple."

16. רב האי גאון שם

As for the matter of the three women: The rabbis said she uses a *mokh* during intercourse and said all of them engage in intercourse in their usual way. It does not mean they forbade use of a *mokh*; rather, they are permitted to engage in intercourse in their usual way, and Heaven will have mercy. But it is always permitted to have sex using a *mokh* and where women do not rely on "Heaven will have mercy" they and their husbands should use a *mokh* during sex, and there is no concern whatsoever about doing so.

17. חתם סופר יורה דעה קעב

The rule is, in my humble opinion, that [use of a *mokh*] during intercourse should not be permitted, but after intercourse there may be a basis for leniency, but it is subject to the will and authority of the husband.

18. כתב סופר אבן העזר

Danger is treated as weightier than a prohibition, and where life is at stake, we do not rely on the premise that, in most instances, the danger will not eventuate. Therefore... the prohibition is nevertheless set aside because of the possible danger. But it may be asked: why not say that husband and wife should abstain from intercourse? We must say that because he has the duty to engage in conjugal relations with his wife at specific intervals it is permitted for him to do so using a *mokh*.

19. שו"ת אגרות משה שו"ת אגרות משה חלק אה"ע א סימן סג ד"ה ענף ד

ולכן מכל המבואר נלע"ד להתיר בלי שום פקפוק לאשה בסכנה לה להתעבר לשמש במוך בשעת התשמיש ולסמוך על כל הפוסקים נגד דעת ר"ת שבתוס' כיון שהוא שעת הדחק...

והנה לשיטת הר"י ודעימיה שבמוך הוא כעל העצים ואבנים ומ"מ התירו כיון שהוא לצורך מצות עונה אין זה לבטלה יש מקום להתיר אף בכיסים שלובש האיש קודם התשמיש דנהי שהוא כעל עצים ואבנים מ"מ כיון שמקיים בזה מצות עונה הוא לצורך באשה שיש בה סכנה להתעבר ולא לבטלה ומותר כמו במוך. אבל לשיטה הב' שהיתר מוך הוא משום שהוא דרך תשמיש מסתבר שאסור לשמש בכיסים אלו דהוא ודאי כעל עצים ואבנים וזה לא הותר לשיטה זו. וראיתי באחיעזר להגאון רח"ע זצ"ל שגם בהכיסים שלובש האיש מחשיב דרך תשמיש ומתיר במקום סכנה אף שהוא הזכיר רק שיטה זו להתיר ולא מסתבר זה כלל... מאחר שכשפירש ממנה מוציא גם הזרע אתו נמצא שאין הזרע בתוך רחם האשה רק אצלו מחוץ לגופה שהוא שלא כדרך תשמיש ול"ד למוך שנשאר הזרע ברחם אף כשפורש ממנה...

ואם יראה לסמוך על מוך וראבער שמכנסת האשה לרחמה מפגי שחשש סכנה שלה גדול יש מקום להתיר גם בכיס שלובש האיש כדהתיר באחיעזר אבל לא מטעמיה אלא מטעם שיטה א' שבארתי דכדאי הם רוב

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הפוסקים והרמ"א בתוכם לסמוך עליהו בשעת הדחק גדול ועינוי נפש כזה וגם מקום עיגון ועשיית שלום בין איש לאשתו שהתורה וחז"ל הקלו בהרבה דברים.

20. Rav Yehuda Henkin's B'nai Banim 1:30, 2:38, 4:15 or the summary at <https://www.yoatzot.org/family-planning/2128/>

21. Nishmat's "Choosing a Method" at <https://www.yoatzot.org/family-planning/572/>

When contraception is [halachically permissible](#) for a couple, they should work together with their halachic authority and physician to choose the most appropriate method. A couple cannot simply learn from the experience of others, or even from their own experience at a different stage of life. Both medical and halachic factors need to be considered to answer the following questions:

Is the method halachically permissible? Some methods are halachically preferable to others, and some are not permitted. The permissibility of a given method may depend on the couple's individual circumstances, and on the rabbi's halachic approach.

Is the method safe? Safety is an important halachic concern. A woman should discuss with her physician which methods are safe for her to use.

Is the method [effective](#)? If it is essential to avoid pregnancy, a very reliable method should be chosen. If pregnancy would not be disastrous, a couple may opt for a more convenient method that is somewhat less dependable.

Are there halachically significant side effects? Some contraceptive methods may cause bleeding or spotting. Physicians should be aware of the problems this can present for couples. Couples using such methods should be prepared for a difficult beginning (spotting often subsides after a few cycles), and should be familiar with the laws of [stains](#)...

Purposeful emission of semen without the ability to enter a woman's body is prohibited as [hotza'at zera l'vatalah](#), generally translated as wasting of seed. The condom is therefore prohibited by all authorities, as the semen is completely blocked from entering the wife's body. While in certain circumstances, a condom may be used for semen collection as part of an attempt to allow the couple to fulfill the commandment to procreate, it is not an acceptable method of contraception except in very extenuating circumstances. Other [barrier methods](#) (e.g., the diaphragm and sponge) that allow entry of the semen into the wife's body but not progression through the cervix, are a matter of debate. Some authorities also consider this a prohibited form of emission, but others permit it because the semen does enter the vaginal canal. Allowing marital relations to take place as "naturally" as possible is also a consideration; thus, some weight is placed on whether the husband is physically aware of the barrier device or not...

Another halachic concern with contraception is the prohibition against sterilization. Leviticus 22:24 prohibits the sacrifice of an animal whose genitalia have been damaged, and goes on to prohibit inflicting such damage. The Shuchan Aruch Even HaEzer 5:11 explicitly prohibits the sterilization of men and animals. According to most opinions, sterilization (*sirus*) is a [Torah prohibition](#) for men and a rabbinic prohibition for women. This prohibition applies, according to most opinions, to a permanent and stable condition and not to a temporary state. Vasectomy and tubal ligation are permanent forms of birth control and thus raise serious problems of *sirus*. Vasectomy is not a halachically accepted form of birth control and tubal ligation ("tying the tubes") is permitted only under very extenuating circumstances. (Now that these procedures can sometimes be reversed, although with variable success, there are those who are somewhat more lenient.)

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22. Rabbi Moshe Kahn's "The Halakhic Parameters of Delaying Procreation," p. 9

Many rabbis, generally speaking, are opposed to contraception, but would grant a reprieve to a childless couple for a limited amount of time, generally three to six months. After that time the women are expected to stop using contraception or consult the rabbis once more for a dispensation. Yet, because the women are again embarrassed or fearful, they either avoid the rabbi and suffer ensuing guilt or they conceive a child whether they feel ready or not. Paradoxically, their initial submission to rabbinic authority creates a subsequent aversion to that same authority.

The rabbis are faced with an internal contradiction in their position: If they grant any dispensation to a childless couple they are relying on the "lenient" interpretation of the law—apparently, they conclude that a delay is permitted. If so, they need not qualify their decision or limit its validity to an arbitrary period of time, whether three or six months [18]. On the other hand, if delay is forbidden, then no moratorium should be tolerated because no rabbi has the authority to permit that which is forbidden. He must find a halakhic basis for it. Presumably, the rabbis who issue temporary dispensations are functioning as pastoral/spiritual counselors who wish to encourage the couple to establish a faithful house in Israel. In that case, they should clarify their role to the couple, and tell them directly that they speak as spiritual advisors, rather than halakhic decisors.