Khamene'i’s fatwa collection on the shelves of their surgeries.

Doctors keep Khamene'i’s fatwa collection on the shelves of their surgeries. Lebanon has a thriving and diverse reproductive medical sector: procedures are practised that have aroused much ethical controversy, such as those using donor eggs and sperm. Sunni ulama have reached a broad consensus on these matters, and do not allow donor procedures. However, Shiite opinion remains diverse: some Shiite authorities allow their followers these controversial treatments, but have evolved concomitant rulings that entail surprising new patterns of kinship relations.

I myself have carried out extensive fieldwork in Lebanon, and have for the most part welcomed these new medical techniques as a remedy for infertility. And yet some of the possibilities such procedures raise are still problematic for many, coming from a variety of ethical perspectives. IVF involves fertilizing an egg outside the body with a sperm and then transferring it to the uterus of a woman for gestation and delivery: this allows eggs, sperm and uterus to be from unrelated parties, unrelated that is, in terms of marriage or “partnership.” Commentators in the West have sensed that such possibilities herald a new age in kinship thinking and practice, or at the very least force people to question the meaning of even the most basic kinship concepts, such as motherhood: is motherhood a genetic relation, or one earned through the carrying and delivery of the child? My own research has investigated to what extent such transformations and interrogations might apply in the Islamic Middle East, both in theory and in practice: for, beyond the discussions of the ulama, IVF and allied technologies are now widely available and utilized in the region.

Sunni ulama have reached a broad consensus that medical interventions in human reproduction should restrict themselves to a husband and (one) wife couple, without the involvement of any other parties, as would be the case in those procedures using donor sperm and eggs, and gestational surrogates (where another woman carries an embryo formed from the couple’s sperm and egg). Such third party procedures are seen as akin to, if not identical with, zina: that is, illicit sexual relations, such as fornication and adultery. They, like zina, imply a “mixing up” or “confusing” of relations. This is consonant with a wider popular unease concerning such procedures. However, while many scholars have assumed that this Sunni consensus signifies the end of the matter, some Shiite opinions are to be found alongside one another, and thus debate is perhaps more immediate than elsewhere. Techniques such as IVF are widely available and utilized in Lebanon. However, no consensus has been reached on the ethical regulation of such technology between the religious communities, and so even ethically controversial procedures such as those involving donor eggs remain relatively freely practised: and indeed patients come from other Middle Eastern countries to benefit from this relaxed regime. Of course, not everyone pays strict attention to the opinion of religious experts, and the relationship between fatwa and practice has formed an important part of my research.

Shiite opinions on IVF

The lack of consensus in Lebanon over these matters, and the widespread practice of donor egg procedures, among other controversial measures, is in no small part due to the position adopted by Ayatollah ‘Ali al-Khamene’i, spiritual leader of the Islamic Revolution in Iran and thus widely followed amongst Lebanese Shiites. Khamene’i does not prohibit the use of sperm or eggs from a third, or even fourth, party, by a husband and wife (nor, by implication, does he prohibit surrogacy arrangements), he holds that zina requires the physical act of sexual intercourse. This opinion, stated in a fatwa collection widely available in Lebanon and confirmed for me by Shaykh Muhammad Tawfiq al-Miqdar, Khamene’i’s representative in Beirut, has proved highly influential in the practice of such procedures in Lebanon. Doctors keep Khamene’i’s fatwa collection on the shelves of their surgeries to demonstrate the permissibility of such procedures to sceptical Muslim patients; and many such patients have profited from it to undertake donor sperm and egg procedures, even surrogacy arrangements, with a clear conscience. Amongst the ulama, however, it is viewed with some astonishment, consistent with a common lack of high regard for Khamene’i as a legal thinker. I was strongly advised by those in Shiite jurisprudential circles in Lebanon to go beyond Khamene’i’s opinion to look at those of other authorities.

Ayatollah Muhammad Husayn Fadlallah, Lebanon’s most prominent Islamic figure, does not hold with the entirety of Khamene’i’s opinion, finding the use of sperm from a third party unacceptable. He does, however, permit the use of donor eggs. While, according to doctors, patients were previously advised by Shiite authorities that it was admissible, or essential, for the egg donor to marry the husband, albeit temporarily, this condition seems recently to have been lifted. This holds true of Fadlallah’s position, as I discovered from my interviews with him and other members of his staff. For his part, Khamene’i clearly stipulates in his fatwa that marriage is not required. This removal of the need for such a marriage is significant for the practice of egg donation, not so much because of the difficulty of persuading an egg donor to undertake such a marriage, as due to the fact that egg donation very frequently occurs
between sisters. In Islamic law, a man is forbidden from marrying two sisters simultaneously; but the way has now been cleared by this new wave of Shiite rulings for what is, doctors assured me, a relatively common procedure in Lebanon nowadays.

However, again, Fadlallah is considered somewhat "hasty" by many others in jurisprudential circles, and I was further recommended to check the thinking of some other authorities, notably Ayatollahs 'Ali al-Sistani and Muhammad Sa'id al-Tabatabai al-Hakim. Both these authorities advise caution in these matters, and view third party interventions as most likely unacceptable. But in terms of the practice of these procedures in Lebanon, and despite the widely acknowledged and growing supremacy of Sistani's opinions more generally, these other standpoints regarding IVF are not widely known. No doubt this is because they are not as immediately useful for patients or practitioners: while it is commonly sensed that the use of donor sperm or eggs is in some way ethically dubious, those opinions that hold otherwise are valuable evidences for the moral permissibility of undertaking such a course.

Debating kinship

What of the potential "confusion" of kinship relations identified by the Sunni ulama? Khameeni, Fadlallah and many other Shiite authorities hold that paternity and maternity follow the sperm and the egg: that is, the genetic relation. This is not, one should note, the opinion of Sistani, who follows the late Ayatollah Abul-Qasem al-Khu'i in holding that it is the gestational carrier who is to be considered the mother, and not the provider of the egg. This latter is also the opinion of those holding otherwise are valuable evidences for the moral permissibility of undertaking such a course.

high istidili (legal analysis) to these debates, an invaluable resource for other scholars. Here a comprehensive range of scenarios—artificial insemination by husband and donor, egg donation and embryo transfer, among many others—are fully explored, with the arguments illustrated with a wealth of citations of the Qur'anic and riwayat literature, as well as references to secondary works and the opinions of the major authorities. Paralleling to some extent discussions in Western "bioethics" and anthropology, the consequences for relatedness and even the meanings of basic kinship terms such as "mother" and "father" are debated, as well as more typically Islamic concerns such as the ramifications for inheritance law and marriage regulation.

Sistani's work, while perhaps posing more questions than clear answers, opens up for other scholars a fascinating window into this area of Shiite jurisprudential debate, at a time when the Western media are just waking up to the vibrant engagement Shiite scholars have had with other such new technologies, as witnessed by last year's Western media are just waking up to the vibrant

Digital rendering of the IVF process

Notes

1. As medical anthropologist Marcia Inhorn has documented: see, for example, her Local Babies, Global Science (New York: Routledge, 2003).


5. I am drawing on email correspondence and interviews with representatives in Beirut, as well as published sources here: Ayatollah 'Ali al-Sistani, al-Fiqh il-
