

Evyatar Marienberg, "Traditional Jewish Sexual Practices and Their Possible Impact on Jewish Fertility and Demography," *Harvard Theological Review* 106:3 (2013) 243-286

Copyright 2013 Cambridge University Press – Harvard Theological Review – The President and Fellows of Harvard College

Permanent URL: <http://dx.doi.org/10.1017/S0017816013000114>

HTR

Harvard
Theological
Review

CAMBRIDGE
UNIVERSITY PRESS

106:3

JULY 2013

ISSN 0017-8160

Traditional Jewish Sexual Practices and Their Possible Impact on Jewish Fertility and Demography*

Evyatar Marienberg

University of North Carolina at Chapel Hill

More than the Jews kept the laws of menstrual impurity, the laws of menstrual impurity kept the Jews.¹

The birth of this daughter was a miracle. For seventeen years, [Sulka, my sister-in-law] was barren. When [Sulka's mother] was about to die, she summoned her daughter . . . and said to her: "My dear daughter, I am in God's hands and will soon die. If I have one merit before God,

*I first presented drafts of this study at Princeton University (December 2006), following an invitation by Peter Schäfer, and at St. Thomas More College in Saskatoon (February 2007), having been invited by Carl Still. I would like to thank both of them warmly, as well as all those who were present at these two talks and offered valuable insights and remarks. Elisheva Carlebach read an early draft, and her comments were invaluable. Later, Shaye J. D. Cohen offered also some insights and crucial encouragement. The anonymous reviewers who read an earlier version of this article when it was submitted to this journal provided me with extremely valuable comments and saved me from some pitfalls. I am extremely grateful to them. I alluded briefly to some of the ideas expressed in this article in the last two pages of a short paper published in 2002 (Evyatar Marienberg, "Le bain des Melunaises: Les juifs médiévaux et l'eau froide des bains rituels," *Médiévales* 43 [2002] 91–101, at 99–100). Due to public debate on current aspects of the topic at the heart of this article, which suddenly erupted in Israel in 2006–2007, well after the bulk of this article had already been written, I decided then to postpone, and maybe even refrain from, publishing the article, as it seemed the topic had been sufficiently discussed. Now, several years after the climax of interest in the subject, it appears that the topic still merits a scholarly historical review. I have decided therefore to publish it, giving the 2006–2007 debate its due place.

¹ יותר מששמרו ישראל על טהרת המשפחה—שמרה טהרת המשפחה על ישראל (More than Israel kept family purity, family purity kept Israel) (letter from an anonymous reader, *Amudim: The Magazine of the Religious Kibbutz Movement* 682 [2004], accessed March 21, 2013, <http://www.kdati.org.il/info/amudim/682/13.htm> [Hebrew]). The translation given in the inscription above is less than literal in order to make it more accessible to a wider audience. This sentence is based on a famous statement about the Sabbath attributed to Asher Zvi Hirsch Ginsberg (1856–1927), who is best known by his Hebrew pen name, Ahad Ha'am.

I shall beg that you should bear children.” And after her death, [Sulka] became pregnant and in due time gave birth to a daughter . . . named Sarah, after her mother. Seven years later she bore a son, Samuel.²

Many religious traditions attempt to regulate the sexual practices of their members. Generally, their main tool for doing so is prescribing with whom one may or may not have intimate relations. Forbidden partners might include, for example, members of the same sex, relatives, or people of other religious and ethnic groups. Additional methods for defining how and when intimate relations are permissible are also not unheard of. For example, sexual relations using certain positions or occurring on certain days or hours or in certain places might be declared sinful. The three main Bible-related religious traditions, Judaism, Christianity, and Islam, all have in their toolboxes these various regulatory instruments; many other religious groups use them as well.

The impact of such prescriptions on reproductive rates among heterosexual couples who are members of these religious groups is not a new topic. In some cases, the implications seem to be self-evident. In a religious group that instructs its members to avoid efficient contraceptives, it seems reasonable to assume that members who obey this rule will generally have a higher number of children compared to people around them who use efficient contraceptives.³ The phenomenal growth in recent decades in the numbers of Haredi (formerly known as “ultra-Orthodox”) and Hardali (“national ultra-Orthodox”) Jews in Israel is unquestionably related to their limited use of contraceptives (even if, of course,

² Glückel of Hameln, *The Life of Glückel of Hameln (1646–1724) Written by Herself* (ed. and trans. Beth-Zion Abrahams; Philadelphia: The Jewish Publication Society, 2010) 34. The text in Turniansky’s edition reads: *דיא טאכטיר דיא ער ניהאט האט איזט ממש בנס ניבוהרין, דען ער האט י”ז שני’ עם אשתו חתנה ניהאט אונ’ קיין קינדר עמה ניהאט. אלזו איזט חמותו קראנק ניוועזין אונ’ זולין: שטערבין, האט זיא בתה, אשת של ניסי מהורר’ אברהם לאזין צו זיך הולין אונ’ ניואנט: מ’יין ליבה טאכטיר, איך ליג אין נאטיש ניוואלט אונ’ ווער שטערבין. וואן איך איין זכות ווער פאר השי’ האבין, זוא ווער איך איז בעפן דא דוא ווערשט קינדר האבין. . . . לאחר מותה איזט ניסתי סולקה . . . טראגין ווארין אונ’ צור רעכטער צייט איין בת ניוואונג אונ’ זעלבי נאך איר מוטר שרה לייאן לאזין. ז’ שנים דאר נאך האט זיא אין זון ניקראגין, וולעכר שמואל ניהייסן (*Glückel: Memoirs 1691–1719* [ed. and trans. Chava Turniansky; Jerusalem: Zalman Shazar Center, 2006] 118).*

³ As is well known, Catholics are no longer such a group, so they cannot be used as an example. For several decades already, the vast majority of Catholics worldwide have not avoided the use of contraceptives, despite the official teaching of the magisterium against it. On the situation in the U.S., see Charles F. Westoff and Elise F. Jones, “The End of ‘Catholic’ Fertility,” *Demography* 16 (1979) 209–17. Renzo Derosas and Frans van Poppel state that not only do most Catholics today clearly not adhere to the Church’s doctrine on the issue, but, during the last decades of the twentieth century, “countries where the Roman Catholic Church had been strongest had reached the lowest fertility in the world” (introduction to *Religion and the Decline of Fertility in the Western World* [ed. Renzo Derosas and Frans van Poppel; Dordrecht: Springer, 2006] 1–19, at 17). It seems reasonable to assume that Catholics who adhere to the official stance tend to have particularly large families, but I am not aware of a scholarly study that explores such cases. For a fascinating study that discusses the fact that religious affiliation can often be related to higher fertility, see Michael Blume, “The Reproductive Benefits of Religious Affiliation,” in *The Biological Evolution of Religious Mind and Behavior* (ed. Eckart Voland and Wulf Schiefenhövel; Frontiers Collection; New York: Springer, 2009) 117–26.

it also has other reasons). On the other hand, in a society that encourages total abstinence, one is likely to see fewer children among members who obey this rule than among those who do not. Obviously, when this prescription is carried to the extreme, the group will sooner or later become extinct, unless there is a constant influx of new members. Such an attitude undoubtedly contributed to the demise of various “utopian” societies in history, for example the eighteenth- and nineteenth-century Shakers in the United States.⁴

Cases like this, in which radical official rules are more or less followed, are nevertheless exceptional. They can only be imposed effectively in small, sect-like groups, where all members are supposed to adhere strictly to all of the group’s regulations and may risk exclusion if they fail to do so. Generally speaking, both the restrictions and the level of adherence to them vary among religious groups. The religious rules might say one thing, while the reality among members of the group will be another. Thus, suggesting a model of cause (religious rules) and effect (demography) is precarious and far from certain. This understanding will accompany us throughout this article.

Demographic data of various kinds, such as information extracted from official censuses performed by modern governments, are available to those who would like to explore such issues in societies of the past two centuries and, to a limited extent, in even earlier ones. Many studies of this kind exist, providing us with insights about possible correlations between religion and fertility. A good example is the “modern fertility transition,” a sharp decline in reproduction rates that has characterized the Western world since the 1870s. Scholars who study this subject unanimously agree that any serious attempt to understand the particulars of this decline must take into consideration the religious affiliation of the subgroup under examination.⁵

This article is specifically concerned with Jews, and generally before the modern era. Thus it would seem that the significant corpus of scholarship about the modern fertility transition would be of little relevance. Still, studies on this crucial demographic shift provide not only an elaborate theoretical framework, but also some important facts. Of the greatest relevance for this study is the undisputed fact that practically all Jewish communities in Europe and North America, since at least the latter decades of the nineteenth century, have had a particularly constant low rate of reproduction—measured as the number of children (or live births) per woman—when compared to several other religious groups.⁶

⁴ See William Sims Bainbridge, “Shaker Demographics 1840–1900: An Example of the Use of U.S. Census Enumeration Schedules,” *JSSR* 21 (1982) 352–65.

⁵ A relatively recent volume exploring this very issue is *Religion and the Decline of Fertility* (ed. Derosas and van Poppel). Its introduction provides an excellent and comprehensive summary of the current state of research on the matter.

⁶ See, for example, Sergio DellaPergola, “Patterns of American Jewish Fertility,” *Demography* 17 (1980) 261–73, at 261: “Research over the last several decades has consistently shown [that low fertility] has been characteristic of Jewish communities in Central and Western Europe since as early

Why do Jews have such a low reproduction rate? And is this something that also characterized them in earlier periods? Regarding the first question, the explanations given by experts are diverse and complex. It is generally assumed that Jews are not biologically any less fertile than other groups. Rather, their low reproduction rate is believed to have resulted from their own direct or indirect choices. Most scholars agree that, beside factors that are not completely voluntary, such as age of first marriage or urbanization, Jews probably used the same means of birth control that were available to others—coitus interruptus, abstinence, prolonged breast-feeding, condoms, certain herbs,⁷ abortion, and maybe direct or indirect infanticide or “abandonment”/“exposure”⁸—but they must have used them, or some of them, more frequently, and more systematically, than members of some other religious groups.⁹ In short, this low number of children is not something that happened to most Jews against their will: it was the result of well calculated decisions and acts, even if some of these decisions and acts had other motives.

I do not have an answer to the question as to whether Jews were always characterized by a low rate of reproduction. This article will consider the possibility that, regardless of whether or not Jews had a relatively low number of offspring before the modern fertility transition, certain rabbinic rules contributed to a lower birth rate. I will explore the eventuality that these rabbinic rules may have had a demographic impact on certain traditional Jewish communities and perhaps contributed to a low rate of reproduction, sometimes despite the will of those involved.

■ Jean-Louis Flandrin’s *A Time to Embrace*

While this study considers the effects of religious rules on fertility in a specifically Jewish context, it is strongly influenced by the late French historian Jean-Louis Flandrin, whose 1983 book *A Time to Embrace* addresses this issue in a Christian context.¹⁰ One of the central questions in Flandrin’s book is similar to the one

as the second half of the nineteenth century. . . . Similar findings had been observed . . . in the United States, indicating that comparatively low Jewish fertility dates back to before the beginning of the [twentieth] century.”

⁷ The common scholarly assumption that ancient and medieval contraceptives and abortifacients made of plants were ineffective has been called into question in recent decades. See, for example, John M. Riddle, “Oral Contraceptives and Early-Term Abortifacients during Classical Antiquity and the Middle Ages,” *Past and Present* 132 (1991) 3–32.

⁸ On this method of birth control (which is too often neglected by scholars), see ChaeRan Yoo Freeze, “Lilith’s Midwives: Jewish Newborn Child Murder in Nineteenth-Century Vilna,” *Jewish Social Studies* 16 (2010) 1–27; and Christine E. Gudorf, “Contraception and Abortion in Roman Catholicism,” in *Sacred Rights: The Case for Contraception and Abortion in World Religions* (ed. Daniel C. Maguire; New York: Oxford University Press, 2003) 55–78.

⁹ See also the excellent article of Shalem Yahalom, where he concludes that medieval Jews probably made use of contraceptive methods (“Moch: Family Planning in the Jewish Communities of France and Catalonia in the Middle Ages,” *Pe’amim* 128 [2011] 105–73, at 160–63 [Hebrew]).

¹⁰ Jean-Louis Flandrin, *Un temps pour embrasser. Aux origines de la morale sexuelle occidentale (VI^e–XI^e siècle)* (Paris: Seuil, 1983).

raised here. Flandrin wanted to know whether medieval ecclesiastical rules regarding marital sexuality, such as prohibitions pertaining to sexual relations on certain days, impacted medieval women's reproduction. In the period analyzed by Flandrin, between the sixth and the eleventh centuries, a large number of so-called "penitentials," or "books of penitence,"¹¹ were common on the European continent and on what we call today the British Isles. These books were intended for confessors. Using them, a confessor could learn what he should ask a penitent during confession and what appropriate expiatory act he should then prescribe. Many different issues are dealt with in these books, but Flandrin is concerned only with questions of sexuality between husbands and wives. On this subject, the instructions in these books sound often like this: "Did you unite with your wife during her menstruation / on a Sunday / while she was pregnant / in a non-natural way? If you did, your punishment is seven days without meat / ten days of cold baths / six months of weekly fasts."¹² Even a superficial reading of the penitentials gives the impression that on many days of the year, sexual intercourse between a husband and wife was considered sinful: Flandrin's inquiry seems therefore to be well justified.

In his study, Flandrin uses a great number of penitentials and employs modern knowledge about the female fertility cycle as well as sophisticated mathematical models to estimate the fertility of medieval women and the implications of various levels of observing these religious regulations. Finally, he reaches two conclusions. The first one is that the vast majority of the prohibitions that were related to the biological cycle of the woman—such as prohibitions against having intercourse during pregnancy, during menstruation, and for some time after delivery—had very little impact, if any, on women's rates of reproduction, since they referred to periods in which women's chances of becoming pregnant were slim at best. Flandrin's second conclusion is that calendar-based prohibitions, such as prohibition of sexual relations on certain days or seasons, could have had an impact on fecundity. Those lasting several consecutive days and at times many weeks, such as those related to Advent or Lent, or to additional periods that were marked in the medieval Christian world, could have been very significant: they were likely to cause a woman to lose opportunities to conceive, if ovulation occurred during the prohibited time.

Based on the data he gathered from his sources, Flandrin reaches one fundamental conclusion. Not only can it be assumed that some of the prohibitions caused a decline in the birth rate among Christians who observed them, but if these prohibitions had been adhered to meticulously, and in large areas, the very existence of Western European culture would have been risked as a result. Luckily for European Christianity, the clergy's demands were one thing, and the actual sexual behavior of the laity in general was quite another.

¹¹ They are known by their Latin name as *libri poenitentiales*.

¹² This is not an actual instruction taken from such a book, but a fictional text created in the same style.

■ Medieval Jewish Regulations of Marital Sexuality

Limits regarding the days on which a married couple could have sexual relations have a history also among Jews. Unlike the situation in large parts of the Christian world, this is not only a matter of the past: these limits still exist among Jews who observe, more or less strictly, rabbinic law. The number of those who observe these laws is often estimated to be between 10 and 20 percent of world Jewry today. Can a study similar to the one performed by Flandrin, but applied to the Jewish world, be useful?

Flandrin found that the majority of the Christian prohibitions were related to the days of the week and to the liturgical calendar. Only a few depended on the woman's biological cycle. In the Jewish world, the situation is exactly reversed. The majority of the prohibited days for intercourse are directly related to feminine biology. The Jewish calendar contains very few days in which marital relations are categorically prohibited. Two of them originate in talmudic law: Yom Kippur (Day of Atonement, the holiest day of the year)¹³ and the ninth day of the month of Av, a fast commemorating the destruction of the temples.¹⁴ The other prohibited days are of a much later origin and depend on local or group (e.g., kabbalistic, Hasidic) traditions: Christmas night, or as it is often called in Jewish sources, the "Nittel";¹⁵ the first (and some also say the last) night of Passover; the holiday of Shavuot,¹⁶ the Jewish counterpart (or, to an extent, origin) of Pentecost; the Jewish New Year; and a few other dates.

It is obvious that the impact of not having relations on these few days of the year is, on the whole, negligible, even if it might influence the chances of a specific woman at a specific time to conceive. Having said that, we should remember the existence of two additional rabbinic practices that connect sexuality to the weekly cycle: a custom of not having relations on Saturday, Sunday, Monday, and Tuesday, and another custom of having marital relations specifically on Friday night (a night also referred to in this article as "Sabbath Eve"). These two

¹³ *m. Yoma* 8:1.

¹⁴ The same prohibition against sexual relations also applies to mourners, as well as to ad hoc fasts, for example, prohibitions declared in the case of a war or drought. See *m. Ta'anit* 1:4–6; *b. Ta'anit* 30a.

¹⁵ For a good summary of the probable origins of the term, see Eliezer Segal, "Silent Night," accessed March 21, 2013, http://www.acs.ucalgary.ca/~elsegal/Shokel/041223_Nittel.html. See also Marc Shapiro, "Torah Study on Christmas Eve," *The Journal of Jewish Thought and Philosophy* 8 (1999) 319–53, and in a more amusing style, Benyamin Cohen, "Holy Night: The Little-Known Jewish Holiday of Christmas Eve. Seriously," *Slate*, December 23, 2009, accessed March 21, 2013, <http://www.slate.com/id/2238708/>.

¹⁶ On the two last customs, see Judah ben Simon Ashkenazi (Germany/Poland, 18th cent.), *Ba'er Hetev* on *Shulhan Arukh*, Orah hayyim 240, as well as the commentary by Abraham Halevi Gombiner (Poland, ca. 1635–1683), *Magen Avraham*, on the same text. See also Elliot Horowitz, "Between Masters and Maidservants in the Jewish Society of Europe in Late Medieval and Early Modern Times," in *Sexuality and the Family in History: Collected Essays* (ed. Israel Bartal and Isaiah Gafni; Jerusalem: Zalman Shazar Center, 1998) 193–211, at 210 [Hebrew].

practices are found in the talmudic period (around the third to sixth centuries C.E.)¹⁷ and continue to be attested, although in very different frequency, in later generations. The first custom seems to be, at best, a marginal curiosity. We will mention it again later but will remain skeptical about the possibility that it ever had many followers. The second one is much more commonly attested; however, it is not always clear whether this meant couples refrained (or were encouraged to refrain) from relations on other days of the week, making Friday their exclusive day for intimate relations. The prescription may have led some couples to have more frequent relations on Fridays without necessarily refraining from relations on other days of the week as well. With regard to our issue, the difference between these two options might be significant. Nevertheless, we will assume for now that even observant couples did not refrain from having relations on other days of the week; therefore, this “Friday rule” is negligible for our concerns. Later, we will raise the issue again, and consider what its implications might have been for couples who engaged in marital relations almost exclusively on Sabbath Eve.

Considering all of the above, it seems that in order to understand the implications of traditional rabbinic laws on the reproduction rates of Jewish women who observe them, one should focus on biology-related prohibitions, not on calendar-related ones. But if this is the case, are we not simply wasting our time? Did not we learn from Flandrin that such prohibitions have only a minor effect on fecundity, because the prohibited days are almost always infertile ones anyway?

In order to answer this question, we must ask whether Flandrin’s findings are relevant to the Jewish world. And for this, we have to consider the issue of *niddah* and the way it is integrated with women’s fertility cycles.

■ *Niddah*

The term *niddah* is used in Jewish tradition with regard to menstruation: it implies “a menstruating woman,” “menstruation,” “laws related to menstruation,” etc. The root of the term means “wandering” or “exclusion” and is most certainly related to the exclusion of the menstruating woman from various social activities. The Jewish laws of *niddah*, like many Jewish laws, are based on biblical laws but are, at the same time, very different from them. Three biblical texts on the issue from Leviticus (15:19–24, 18:19, 20:18) are particularly crucial to understanding these laws. According to these texts (assuming all of these laws are considered complementary), sexual relations are forbidden for seven days after the appearance of menstrual bleeding. During this time the woman (and, if they have relations, her partner as well) is impure; the punishment, if this prohibition is transgressed, is severe.¹⁸

¹⁷ See *m. Ketubbot* 5:6; *b. Ketubbot* 62b and 64b; *b. Bava Qamma* 82a.

¹⁸ How severe? See my article, Evyatar Marienberg, “*Qui coerit cum muliere in fluxu menstruo . . . interficietur ambo* (Lev. 20:18)—The Biblical Prohibition of Sexual Relations with a Menstruant in the Eyes of Some Medieval Christian Theologians,” in *Shoshannat Yaakov: Jewish and Iranian Studies*

Obviously, Jewish law did not stop with the Bible but continued to develop. In the talmudic period, the length of prohibited time was extended. This extension became part of the halakhah, the Jewish legal system, to this day and combined what seem to be, in the Bible, two different types of bleeding: a “regular” type (menstruation) and an extended one.¹⁹ It has been claimed in the rabbinic literature that it was women who decided to act more severely and make the prohibited period longer.²⁰ According to this law, the period of seven days was considered to begin only after the end of the blood flow. These days were now called “the seven clean/white days” (in English, one can also find the expression “seven days of cleanliness”). It was mandated that during these seven days, the woman must make sure, by frequently checking herself, that she is not bleeding. Only after the cessation of the bleeding, and the additional seven days, can the woman be considered ready to enter a state of purity. Thus, since the time of bleeding is generally four to six days, the entire prohibited period became approximately eleven to thirteen days for most women. The talmudic literature also made a ritual bath an obligatory step at the end of that time, without which the woman remains impure. This is not the case in the Bible, where a ritual bath seems to have been prescribed only for women who have long and extensive bleeding, not for women who have a normal menstrual flow.²¹

During the Middle Ages another rule, based on talmudic concepts, came into being and was universally accepted around the sixteenth century: if a woman engaged in sexual relations immediately prior to the beginning of her period (and according to some, even if she did not), the bleeding period was decided to be, regardless of its actual length, no less than five days—or, according to Spanish and North African (“Sephardic”) Jewish codifiers, four days. The reason behind this practice is related to the fact that much of the sperm ejaculated in a woman’s vagina is expelled minutes, or hours, or days after intercourse. According to talmudic law, this release of sperm may render the woman a subject of another type of impurity, which can invalidate her counting of the “seven clean days.”²² The impact of this rule is that a woman cannot be considered impure for less than twelve days (5+7)—or eleven days, if she follows the Sephardic custom of 4+7—from the onset of her period. For Jews observing Jewish law in its Orthodox form, this is still the law

in Honor of Yaakov Elman (ed. Shai Secunda and Steven Fine; The Brill Reference Library of Judaism 35; Leiden: Brill, 2012) 271–84.

¹⁹ See Tirzah Meacham (leBeit Yoreh), “An Abbreviated History of the Development of Jewish Menstrual Laws,” in *Women and Water: Menstruation in Jewish Life and Law* (ed. Rahel R. Wasserfall; HBI Series on Jewish Women; Hanover, N.H.: Brandeis University Press, 1999) 23–32.

²⁰ See *b. Niddah* 66a. See also Charlotte Elisheva Fonrobert, “When Women Walk in the Way of Their Fathers: On Gendering the Rabbinic Claim for Authority,” *Journal of the History of Sexuality* 10 (2001) 398–415, at 413–14.

²¹ See Leviticus 15:1–15, 19–24, and 25–30.

²² See the roots of this idea in *m. Shabbat* 9:3 and *b. Niddah* 33a. See also Israel Isserlin ben Petahiah, *Terumat Hadeshen* 245.

to be followed today.²³ Obviously, for many women who experience a bleeding period that is longer than four or five days—and current studies show that this is not rarely the case²⁴—the actual time of being in the halakhic status of *niddah* might be longer than this minimum of eleven or twelve days.

One should remember that the number of days inappropriate for sex in each cycle is based upon an assumption that the woman performs the ritual bath immediately at the end of the prohibited period, in the evening that ends the “seven clean days.” If the bath is delayed, the woman remains impure. Thus, the prohibited period for sexual relations will be longer. The same will happen if the woman experiences various types of spotting during the seven clean days; in some cases, the counting will even have to start all over again.

■ The Menstrual Cycle

The Jewish laws we have discussed so far are obviously related to a biological cycle. Before we move forward, a quick refresher on this cycle might be appropriate.

Key factors in the regulation of the cycle are the follicles, the protective shells of the eggs that grow in the ovaries during the first half of the menstrual cycle (“follicular phase”). Their growth is triggered by follicle-stimulating hormone, which arrives from the pituitary gland after it receives hormonal signals (gonadotropin-releasing factor) from the hypothalamus. When the follicles grow, they produce increasing levels of estrogen. Once the estrogen produced by the growing follicles reaches a certain level, it triggers the pituitary gland to release a surge of luteinizing hormone. The luteinizing hormone causes the most mature follicle to burst open and release its egg into the fallopian tube: this is ovulation.

The time surrounding ovulation is, as is well known today (but was not known until the 1930s), the most apt for conception. Nevertheless, because the released egg can survive in the woman’s body for twelve to twenty-four hours, relations that occur until about a day after ovulation might still lead to conception. It is also possible that more than one egg may be released from the ovaries: in such a case, the window of fertility might extend even longer. But there is still another scenario that can extend the window of fertility: sperm cells can survive in a woman’s body for several days; because of this, even if relations occur a few days before ovulation, there is still a chance of fertilization.

²³ The conclusive decision for Sephardim is that of Joseph Karo (1488–1575), *Shulhan Arukh*, Yoreh de’ah 196, especially paragraphs 1, 11, and 13. The Ashkenazic practice is formulated in the commentary of Moses Isserles (1520–1572) on this same paragraph 11. It should be noted, though, that because the day begins in the Jewish tradition at sunset, the evening of the twelfth (or eleventh) day of the cycle is, according to Jewish accounting, the thirteenth (or twelfth) day and thus appropriate for the ritual bath and, successively, marital relations.

²⁴ Richard J. Fehring, Mary Schneider, and Kathleen Raviele report that, in their study, the mean length of menses was 5.8 days (SD = 2.9), the median 6 days, and the mode 5 days. Further, 95 percent of the menstrual cycles had a length of menses between 3 and 8 days (“Variability in the Phases of the Menstrual Cycle,” *Journal of Obstetric, Gynecologic, and Neonatal Nursing* 35 [2006] 376–84, at 380).

If the egg is not fertilized, the luteal, or post-ovulatory, phase begins. In about twelve to sixteen days after ovulation, the uterus will shed its lining, bleeding will occur, and a new cycle will begin. It is generally assumed in the medical literature that for many healthy women in the so-called “childbearing age” who have a cycle of about twenty-eight days, the middle of the cycle (more or less from the twelfth to the sixteenth day) is the most plausible time for conception. This does not necessarily apply to all women, at all times. Significant variations are known, and some healthy women might ovulate earlier or later.²⁵ Certainly, this does not mean that a woman is equally fertile at all times within this long period: it only means that a short window of fertility of about twenty-four hours occurs during this time frame, and that sexual relations performed during or shortly before this window may lead to conception. If a woman wants to become pregnant, she should try to catch this window by having relations between days twelve and sixteen. If she wants to avoid pregnancy, and she is not using a more efficient contraceptive method, it is better if she avoids relations during these days; or, for those without access to modern tests that indicate the exact timing of ovulation, a still more cautious approach would be to avoid sexual relations between days nine and eighteen. Sex outside the wide range of days nine to eighteen is less likely to lead to conception, although conception might still occur if ovulation is very early, very late, or in rare cases, if a second ovulation happens.

■ *Niddah* Laws and Fertility

Based on all of the above, one might suggest that the *niddah* laws increase human reproduction: couples who follow them are likely to avoid relations during the first twelve days of the cycle, and engage in them exactly when the woman is most fertile. To quote Rachel Biale in her *Women and Jewish Law*: “By virtue of the fact that purification and resumption of sex normally coincided with ovulation, the laws of *Niddah* favored procreation.”²⁶ The same conclusion, but in a more scientific style, may be found in an article published in 1988 in the *Journal of Biosocial Science*. There, the author, Susan K. Gardin, concludes that since most Orthodox Jewish women complete the period of ritual impurity and supposedly attend the ritual bath on or before their ovulation, “the majority of cycles are potentially

²⁵ See Rudolf F. Vollman, *The Menstrual Cycle* (Major Problems in Obstetrics and Gynecology 7; Philadelphia: W. B. Saunders, 1977) 73–190; and Allen J. Wilcox, David Dunson, and Donna Day Baird, “The Timing of the ‘Fertile Window’ in the Menstrual Cycle: Day Specific Estimates from a Prospective Study,” *British Medical Journal* 321 (2000) 1259–62. According to Fehring, Schneider, and Raviele, “66% of the cycles had all days of the 6-day fertile phase within days 13 to 20 of the menstrual cycle. The 6-day fertile phase varied by more than 7 days among 33.6% of the participants. . . . The mean beginning of the 6-day fertile phase was day 13, and the mean day . . . indicating the beginning of fertility . . . was day 12 ($SD = 3.4$), range 5 to 26 days. The mean end of the 6-day fertile phase was the same as the estimated day of ovulation, that is, day 16.5 ($SD = 3.4$)” (“Variability in the Phases,” 380).

²⁶ Rachel Biale, *Women and Jewish Law: The Essential Texts, Their History, and Their Relevance for Today* (New York: Schocken, 1984) 148–49.

exposed to coital activity during a fertile period. . . . The increased likelihood of coitus following abstinence has potential fertility-enhancing effects.”²⁷ These two statements—which are given here only as two well-formulated examples of a very common claim²⁸—might be correct with regard to many women within certain scenarios of observance and practice. But they might not be so accurate with regard to many other women or when modes of observance and practice diverge from certain idealized scenarios.

The idea that the menstrual cycle lasts for twenty-eight days, and that ovulation happens exactly halfway through, is very helpful for calculations. The reality is that although some women indeed have a stable cycle of twenty-eight days, with ovulation occurring exactly in the middle of it, many women do not. Healthy women can have a cycle lasting from about twenty-two days to about thirty-six days and with the length varying from cycle to cycle.²⁹ When one takes this into consideration, the calculations come out differently.

For women who keep *niddah* laws and who have an average-length cycle (around twenty-six to thirty days), there is indeed a good chance that they will resume sexual relations just around the time of ovulation (which is likely to occur at days twelve to sixteen). If these women want to become pregnant, keeping *niddah* laws might in fact push them towards having relations at a very apt moment.

For women with a long cycle (thirty to thirty-five days), there is a good chance that before they ovulate (which is likely to occur around days sixteen to nineteen), they will already have resumed sexual relations. If they continue to have relations during the days following their ritual bath, these relations may lead to conception.

Unlike the two groups above, for women with a short cycle (less than twenty-six days), there is a good chance that when ovulation occurs, around days nine to twelve, they will still be considered impure and will not be able to have sexual relations. If they plan on having children, this is a bad news: relations that occur after their ritual bath will simply be too late. If they keep the *niddah* laws meticulously, their chances of getting pregnant will be severely affected. If the length of their cycle fluctuates, and it is sometimes longer, they may eventually become pregnant, although they might have to wait a long time for their first pregnancy or have longer than wished-for intervals between pregnancies. If on

²⁷ Susan K. Gardin, “The Laws of Taharat HaMishpacha: Potential Effects on Fertility,” *Journal of Biosocial Science* 20 (1988) 9–17, at 15.

²⁸ The fascinating article of Beth S. Wenger (“Mitzvah and Medicine: Gender, Assimilation, and the Scientific Defense of ‘Family Purity,’” *Jewish Social Studies* 5 [1998–1999] 177–202) unfortunately does not deal with this particular “scientific” claim, probably because the article concentrates on the first decades of the 20th cent., during which time the idea had perhaps not yet developed.

²⁹ Fehring, Schneider, and Raviele found that the mean length of the menstrual cycles in their data was 28.9 days (*SD* = 3.3) and the median was 29.0 days (mode 28). Of the cycles in their data, 95 percent were between 22 and 36 days in length (“Variability in the Phases,” 379). See also Laurence A. Cole, Donald G. Ladner, and Francis W. Byrn, “The Normal Variabilities of the Menstrual Cycle,” *Fertility and Sterility* 91 (2009) 522–27.

the other hand their cycle is consistently short, their chances of ever becoming pregnant are very low.

■ The Situation Today

For decades already, the fertility challenges for women with a short cycle who observe *niddah* laws have been known to gynecologists treating these women and to the rabbis who work with them. A name was even invented for this man-made problem: “religious sterility.”³⁰ The first substantial rabbinic discussion of this issue that I have found was composed in 1964. The author, the eminent halakhic jurist Shlomo Zalman Auerbach, prefaces his discussion by stating that this is only an attempt to deal with the issue, to be considered by other halakhic experts. He does not necessarily mean it as a practical ruling. At the same time, he acknowledges very clearly in his opening words:

As is well known, there are many women who were not privileged to have fruit of womb because, according to the physicians, the main reason for the prevention of their pregnancy is that those few days during which the woman can conceive happen during the time they are still in the status of *niddah*, because they cannot bathe before twelve days from the beginning of their period. Due to their great sadness, they came to ask for permission to bathe a few days earlier.³¹

Auerbach’s solution is that women who suffer from such a condition should insert a special kind of rubber tube into their vaginas before the beginning of their period. The tube would be constructed in a way that would channel all menstrual blood directly out of the woman’s body, without any contact between the blood and the vagina.³² Using sophisticated halakhic logic, such a device would enable the woman, according to Auerbach, to bathe seven days after the beginning of her period and become available to her husband on the eighth day.

Was Auerbach’s proposal not accepted because of technical difficulties or disagreement with other halakhic experts? I do not know. I was not able to find later discussions of Auerbach’s suggestion.³³

³⁰ Or, in Hebrew, עקרות דתית. Another variant of the name is also used often, “halakhic sterility” (עקרות הלכתית), “halakhic” being of course an adjective based on the word *halakhah*, or Jewish law.

³¹ כידוע יש הרבה נשים שלא זכו להפקד בפרי בטן אשר לדעת הרופאים עיקר הסבה למניעת ההריון הוא מפני שאותם הימים האחרים שהאשה מסוגלת להתעבר בהם מוזמן אצלה תוך הימים שהיא עדיין בנדחתה הואיל ואינן יכולות לשבול אלא לאחר י”ב יום מתחלת הוסת, ולכן מרוב עצבותם נפשם לשאול גניעו (Shlomo Zalman Auerbach, “A Proposal for the Benefit of Women in Matters of Niddah,” in Avraham Dov Auerbach, *Imre Avraham* [Jerusalem: n.p., 1964] *1–*33 [Hebrew]). Auerbach (Jerusalem, 1910–1995) published his discussion at the end of a book written by his brother.

³² Auerbach reports that two physicians told him his idea would be technically feasible.

³³ In an article that we will discuss later, it is claimed that “apparently, Rabbi Auerbach himself subsequently withdrew his endorsement of the suggested device” (Getzel Ellinson and Mitchell Snyder, “Early Ovulation as an Impediment to Conception: A Halachic Problem and Some Suggested Solutions,” *Proceedings of the Association of Orthodox Jewish Scientists* 6 [1980] 157–76, at 173 n. 3).

Some years after Auerbach's proposal, in 1970, the first scientific article on the matter that I have been able to locate was published, co-authored by biologist Bruno Lunenfeld along with a certain N. Birenbaum.³⁴ It was introduced by an editorial note that hints that the issue was well known among halakhah experts: "This article . . . deals with an urgent and disturbing problem, as any expert of practical halakhah knows."³⁵

Ten years later, the first article in English on this matter of which I am aware appeared in a collection published in 1980.³⁶ Both the articles from 1970 and 1980 were produced by and written for a learned Orthodox readership interested in sophisticated halakhic questions. They can also be considered as belonging to an important sub-genre of studies on the interfaces between medicine and Jewish law.

The first discussion of the same issue in secular medical literature appeared in a journal called *Harefu'ah* (Medicine), in 1970—the same year Lunenfeld and Birenbaum's article appeared.³⁷ Its author, Shlomo Renzo Toaff, was a well-known Orthodox gynecologist who headed the maternity department of a hospital in Tel Aviv.³⁸ Some years later, in 1976, a short summary of Lunenfeld and Birenbaum's previously mentioned article—which Lunenfeld also presented orally at a conference in 1976—appeared in a volume of *Sefer Assia*, an annual collection of medical articles.³⁹ In 1981, another article by Lunenfeld on the matter was published in the Israeli equivalent of *Scientific American*, the journal *Madda* (Science),⁴⁰ and in 1984 an article by Joseph Green touching on this very same problem appeared in the Hebrew medical journal *Assia*.⁴¹

I doubt this is true, for the simple reason that the appendix was still included in a second edition of his brother's work, *Imre Avraham*, prepared by the author and published in 1986 (six years after Ellinson and Snyder's article and nine years before Shlomo Zalman Auerbach's death).

³⁴ Bruno Lunenfeld and N. Birenbaum, "Treating Infertility Caused by Discrepancy between the Fertile Days and the Time of Ritual Bathing," *Moriyah* 2 (1970) 48–52 [Hebrew]. Lunenfeld had been a well-known expert in reproductive endocrinology for many years. Having been initially trained in Geneva, Lunenfeld retired from Bar-Ilan University in Israel in 1992 after serving on the faculty of its Department of Life Sciences for more than three decades. I have unfortunately not been able to locate any information on N. Birenbaum. In their article, they briefly refer to a review of the matter published in 1962 by Dr. Yaakov Levi (1889–1977), an Orthodox pediatrician from Jerusalem ("Treating Infertility," 49). Despite my efforts, I have not succeeded in locating Levi's article.

³⁵ "המאמר . . . עוסק בבעיה דוחקת, כידוע לכל בעל הוראה" ("Treating Infertility," 48).

³⁶ Getzel Ellinson and Mitchell Snyder, "Early Ovulation as an Impediment to Conception: A Halachic Problem and Some Suggested Solutions," *Proceedings of the Association of Orthodox Jewish Scientists* 6 (1980) 157–76.

³⁷ Renzo Toaff, "The Religious Cause of Infertility," *Harefu'ah* 78 (1970) 162–65 [Hebrew].

³⁸ I would like to thank Michael E. Toaff from Pennsylvania, the son of Shlomo R. Toaff and a gynecologist himself, as well as Michael Shenhav, a gynecologist from Tel Aviv, for helping me with the identification of Renzo Toaff.

³⁹ "Treating Religious Infertility," *Sefer Assia* 1 (1976) 150–51 [Hebrew].

⁴⁰ Bruno Lunenfeld, "The Fight Against Infertility: The Principles of Drug Treatment to Cause Ovulation," *Madda* 25 (1981) 72–77 [Hebrew].

⁴¹ Joseph Green, "Artificial Insemination as a Solution for 'Religious Sterility,'" *Assia* 10 (1984) 17–29 [Hebrew].

With these six articles published in religious and secular journals over the course of fourteen years, it is fair to say that this rather disturbing conflict between Jewish law and contemporary medical knowledge has been exposed for the world to see. Obviously, the “world” probably mostly means physicians and other laypeople interested in science who care to read such articles. I do not know when this issue became widely known to observant Orthodox women, the population to whom this information would have been particularly pertinent.

This problem is perhaps disturbing to some, but in the eyes of the authors who wrote these articles, it is not a serious one. The reason is that, together with describing the problem, they propose some reliable solutions, the main one being this or that protocol of treatment by hormones.⁴²

In fact, in a certain halakhic mindset, if modifying Jewish law is too complicated, one should try instead to modify Jewish women.⁴³ Each of the authors of these articles, themselves Orthodox men, did not even raise the possibility of a change in religious practice. This attitude still prevails in more recent years: doctors worldwide who treat Orthodox women (often these doctors are Orthodox themselves) prescribe hormones to these women.⁴⁴ This is done in order to extend

⁴² Some (e.g., Green, “Artificial Insemination”) also propose using methods of artificial insemination: according to this solution, due to the fact that religious law prohibits intercourse during the seven days after the cessation of the period but does not prohibit insemination, an injection of the husband’s sperm into the woman’s vagina using a syringe would solve the problem. Because this solution has other problems (for example, finding an acceptable way to collect the husband’s semen in a framework in which masturbation is forbidden), many authors avoid suggesting it; therefore, we will not discuss it here. See also Ellinson and Snyder, “Early Ovulation as an Impediment to Conception,” 168–73.

⁴³ This is, of course, not the mindset of all Orthodox halakhic experts. In recent years, some Orthodox rabbis have hinted that during private counseling to couples, they might suggest more lenient practices than those they speak about in public. And yet, these ad hoc solutions likely affect only a very small number of couples. In a recent study of forty-five women in Jerusalem who suffered from this condition, the following information is given: “Consultation with a Rabbinic authority was reported by 64% of women, but no halachic solution was provided to any of the applicants. Two-thirds of these couples were referred by the Rabbinic authority to seek medical advice and treatment. The majority of patients with precoital ovulation (23/34, 68%) chose medical treatment for halachic infertility” (Ronit Haimov-Kochman et al., “Infertility Associated with Precoital Ovulation in Observant Jewish Couples: Prevalence, Treatment, Efficacy and Side Effects,” *Israel Medical Association Journal* 14 [2012] 100–103, at 101). In short, the reality remains that in the vast majority of cases, Orthodox rabbis do prefer to modify the women rather than the law. A relatively recent book by Daniel Rosenak, to which we will return later, tries among other things to challenge these rabbis and make public some halakhic solutions they give in private. See Daniel Rosenak, *To Restore the Splendour: The Real Meaning of Severity in Applying Jewish Marital Traditions* (Tel Aviv: Yedioth Ahronoth, 2011) [Hebrew]. For a rather striking example of a physician—the head of an IVF unit in the religious hospital Shaare Zedek in Jerusalem—who openly suggests complex protocols of pills and hormone injections to deal with this “problem,” see Ehud Margalio, “Preventing Ovulation before Immersion,” in *Woman’s Health: Innovations, Problems, and Their Solutions* (Jerusalem: Puah Institute, 1996) 41 [Hebrew].

⁴⁴ See, for example, the discussion in Richard V. Grazi, *Overcoming Infertility: A Guide for Jewish Couples* (New Milford, Conn.: Toby Press, 2005) 277–309, esp. 301–4. For a report on the (positive) results of such an approach, see Yael Yairi-Oron, Jacob Rabinson, and Raoul Orvieto, “A Simplified Approach to Religious Infertility,” *Fertility and Sterility* 86 (2006) 1771–72; and Ronit

their cycle and guarantee that they do not ovulate before they can take their ritual bath. And it works. “These days, no woman remains childless because of the problem you mentioned,”⁴⁵ wrote Rabbi Yossef Eitan, one of the advisers in an Orthodox institute in Jerusalem that specializes in fertility issues. This was his online answer to a woman who had written, some hours earlier, “I want to keep *niddah* laws, but my ovulation occurs between days ten and twelve, before the end of the ‘seven clean days.’”⁴⁶ Probably, in most cases, this rabbi is right. The hormone-based solution works: these women’s cycles are prolonged, and they are able to become pregnant.

Leaving aside the possible debate about the ethical justification of using hormones in such cases—to which those supporting this option would answer by saying that many women take, often for years and of their own will, contraceptive hormones, while those opposing it say this is a futile comparison between very different dosages and protocols⁴⁷—some questions still linger after reading this rabbi’s answer, one of which is the following: What is the percentage of halakhah-observant women today who have difficulties in becoming pregnant simply because they ovulate during the halakhically prescribed *niddah* period?

Rabbi Dr. Mordechai Halperin, the head of the Schlesinger Institute for Medical-Halachic Research,⁴⁸ located in the Orthodox-affiliated Shaare Zedek hospital in Jerusalem, affirmed in a personal communication that, based on his clinical experience but lacking hard data, he estimates that the combination of a short period, together with observance of *niddah* laws, is the reason for the conception difficulties of roughly 20 percent (with a possible deviation of 10 percent) of women who contact their clinic.⁴⁹ Not unlike Eitan, quoted earlier, Halperin concluded his response by saying that this condition is one of the most easily correctible fertility problems he confronts. Obviously, an assertion “based

Haimov-Kochman, Daniel Rosenak, Raoul Orvieto, and Arye Hurwitz, “Infertility Counseling for Orthodox Jewish Couples,” *Fertility and Sterility* 93 (2010) 1817–18. There are also those who propose various types of “natural” or “holistic” approaches to the issue: see an example in J. Rivkah Asoulin, “Natural Approaches to Halakhic Infertility,” n.p., accessed March 21, 2013, <http://www.yoatzot.org/article.php?id=187>.

⁴⁵ בימינו אין אשה שנשארת בלי ילדים בשל הבעיה שצינת. This exchange is from the website of the Puah Institute (www.puah.org.il; accessed September 2006), an Orthodox Jewish institute in Israel that is involved in advising and supervising halakhically approved fertility treatments. The exchange no longer appears on the website.

⁴⁶ אני רוצה לשמור נידה אבל הביוץ נופל בין היום ה-10 ל-12 לפני סיום כפירת הימים הנקיים. (ibid.).

⁴⁷ An article that strongly supports such use of hormones is Tova Ganzel and Deena Rachel Zimmerman, “Hormonal Intervention for Religious Concerns: A Halakhic and Ethical Discussion,” *Nashim: A Journal of Jewish Women’s Studies and Gender Issues* 21 (2011) 114–29. For a systematic critique of this opinion in the same volume, see Haviva Ner-David, “Hormonal Intervention for Religious Concerns: A Response,” *Nashim: A Journal of Jewish Women’s Studies and Gender Issues* 21 (2011) 130–33.

⁴⁸ Also known as the Schlesinger Institute for Jewish Medical Ethics.

⁴⁹ I would like to thank Rabbi Dr. Halperin and Ms. Liora Moshe for their help and answers in several emails in February 2005.

on clinical experience but lacking hard data” is very problematic, but it seems Halperin’s insights are, if not identical, at least somewhat close to those provided by other researchers and practitioners.

In fact, another Orthodox gynecologist, Dr. Daniel Rosenak, provided a similar figure in a 2006 interview in a religious newspaper.⁵⁰ According to Rosenak, this seems to be the cause of inability to conceive in about one out of every four Orthodox women he checks for possible infertility. In other words, according to these two testimonies, for about one out of every four or five halakhah-observant women today in Israel who have difficulties becoming pregnant without medical assistance, the reason for the problem seems to be mostly related to their observance of the *niddah* laws rather than to any other medical-organic issue. The scientific study by Haimov-Kochman et al., published shortly before the final revision of this article, suggests a similar estimate: it finds that, among the infertile Orthodox women under study, the prevalence of precoital ovulation is 21 percent.⁵¹ It should be noted that none of these studies or practicing gynecologists attempts to give an estimation of the total number of women affected by *niddah*-related infertility within the wider Orthodox community: they speak about one out of every four or five women they see for infertility issues.⁵² It is very risky to try to estimate the percentage of women from the general population of observant Jewish women who are affected by this problem. As we will mention later, studies to determine this number are currently underway. Meanwhile, considering the fact that roughly 10 percent of women worldwide are considered to have some kind of infertility issues, and even if Orthodox women, who tend to marry young, might suffer less from such problems, it seems reasonable to guess that the number of those suffering in particular from “religious infertility” is somewhere between 1 and 4 percent. Of course, this estimate should be taken with a grain of salt until more solid numbers about the situation today are available.

In November 2006, a heated public debate on this issue erupted in Israel. It seems to have begun with an article already mentioned, presented as an interview in the National-Orthodox weekly newspaper *Hatsfofe* and written by Ms. Rivkah Shim’on, an Orthodox woman who instructs brides about the laws of *niddah* prior to their wedding. The interviewee was Dr. Daniel Rosenak, the

⁵⁰ Daniel Rosenak and Rivkah Shim’on, “The Severity of Rabbi Zeira: Is the Time Right for New Thinking?,” *Hatsfofe*, November 3, 2006 [Hebrew], accessed March 21, 2013, <http://www.kolech.com/show.asp?id=15318>.

⁵¹ See Haimov-Kochman et al., “Infertility Associated with Precoital Ovulation,” 100–101.

⁵² The study described in the article by Fehring, Schneider, and Raviele found that although 66 percent of cycles had their window of fertility during days thirteen to twenty, about 25 percent had that window earlier, between days ten and seventeen (“Variability in the Phases,” 376 and 381). An earlier study puts this number at around 30 percent (Wilcox, Dunson, and Baird, “Timing of the ‘Fertile Window’,” 1259). Although it is hard to draw conclusions from this data, these findings hint that a significant minority of women’s fertility windows ends around the same time that halakhah-observant women can only begin to have sexual relations.

Orthodox male gynecologist we have just quoted.⁵³ In this article, Shim'on and Rosenak artificially construct a format of questions (by Shim'on) and answers (by Rosenak), laying out Rosenak's arguments against the rabbinic practice of adding seven days to the actual period of bleeding and his call to return to the biblically sanctioned custom of seven days of *niddah*. Rosenak provides various arguments, including nationalist ones, why this is, in his opinion, a desideratum, as well as why he believes such a reform is halakhically feasible. For the sake of our discussion, only his arguments for a change due to the problem of the so-called "religious sterility" are relevant.⁵⁴

Rosenak claims that, based on his experience, more than a quarter of the cases of infertility among observant women are the outcome of the observance of *niddah* laws. He also hints, though very briefly, that this is not a new phenomenon, and that Jewish demography must have been affected by this problem: "Calculate by yourself," he urges Shim'on: Since the rule of the "seven clean days" was enacted during the talmudic period, "we have lost millions of Jewish souls! They, and their descendants, and the descendants of their descendants." Objecting to the idea that hormones are an appropriate solution, he acknowledges the fact that in the Orthodox world, of which he is part, the possibility that major rabbis will put his suggestion into practice is very unlikely; but for him, in any case, such a change should come from the grassroots. His goal, he argues, is not to convince rabbis but to make observant laymen and -women aware of the problem and its possible solutions.

Minutes after this article was published on the journal's website, reactions started to appear online, some supporting it and some objecting to it. A few days later, substantial responses began to be published in the same journal and in others, in print as well as online. Rosenak published several formal responses dealing with the points raised in the initial article and in articles criticizing it.⁵⁵ The details of the debate have little importance for our topic: most of them concern the exact halakhic definition of the seven clean days and the (im)possibility of its modification, as well as the pastoral issues the debate raised. Some of those opposing Rosenak, generally not physicians themselves, argued that a treatment with hormones has no substantial risk, a point Rosenak refuted.

⁵³ Rosenak and Shim'on, "Severity of Rabbi Zeira."

⁵⁴ For a comprehensive view of Rosenak's arguments, see his book *To Restore the Splendour*. It is worthwhile to mention that the actual Hebrew title of the book is much more to-the-point than the official English title given by the editor. In the Hebrew, the title is approximately this: "To Return Purity to Its Past: The Severity of the 'Seven Clean Days' and Its Implications; Medical, Halakhic, Moral, and National Aspects" (החזיר טהרה ליושנה: חומרת שבעת הנקיים והשלכותיה: היבטים רפואיים, הלכתיים, ערכיים, ולאומיים).

⁵⁵ Rosenak's two most substantial early responses are "Do Not Throw the Ball to the Medical Field!," *Hatsofe*, December 1, 2006 [Hebrew], accessed March 21, 2013, <http://www.kolech.com/show.asp?id=15988> and "The Halakhot of *Niddah*: The Reality and the Ideal," *De'ot* 32 (May 2007) 12–20 [Hebrew], accessed March 21, 2013, http://toravoda.org.il/files/D_R.pdf. Later, of course, his most comprehensive response was his book, mentioned above.

Among the many articles that have been published on the matter since then,⁵⁶ one of the most comprehensive is by Tova Ganzel, a biblical scholar, and Deena Zimmerman, a pediatrician.⁵⁷ They conducted their research under their role of “halakhah counselors” (*yo’atsot halakhah*), a rather new profession of Orthodox women who are trained to instruct other women in halakhic questions, often ones related to the *niddah* laws. One of these authors’ main theses is the suggestion that if women who are presumed to suffer from “halakhic infertility” would check their ovulation patterns and, at the same time, stick to permissible halakhic practices (such as bathing at the earliest allowed moment), the number of those who would still need hormonal treatment would be significantly lower than previously estimated.

Most of Ganzel and Zimmerman’s work is based on the study of medical records from various clinics in Israel, in neighborhoods where the vast majority of the population are Orthodox Jews. In their own calculations, Ganzel and Zimmerman find that for about 35 percent of the women whose main reason for visiting the clinics is infertility, delaying ovulation might be helpful.⁵⁸ In other words, they probably have “religious infertility.” And yet, in some other clinics, the percentage of those thought by the clinic personnel themselves to suffer from the same situation is significantly lower.⁵⁹ These two authors also believe that many women delay their bath, perhaps more than they would if they had more precise medical and halakhic instruction. Thus, for example, they found that only about 14 percent of the Orthodox women who were treated for possible “religious infertility,” and whose records they studied, bathe normally on the twelfth day of their cycle. Most (about 70 percent) bathe later, on days thirteen through fifteen. The authors claim that a careful medical and halakhic analysis of these women’s cycles would show that many of them are halakhically able to bathe earlier than they think and could thus enhance their chances of conception.

It is unnecessary for our purposes to go into the details of all their claims; suffice it to say, the main argument of Ganzel and Zimmerman might actually support our suspicion: many women, if they refrain from sexual relations during the first two weeks of their cycle due to their own understanding of their cycle and halakhic rules,

⁵⁶ See, for example, Eliezer ben-Porat and Pesach Kleiman, “Halakhic Options in Cases of Early Ovulation,” *Assia* 85–86 (2009) 83–88 [Hebrew], accessed March 21, 2013, <http://www.medethics.org.il/articles/ASSIA/ASSIA85-86/ASSIA85-86.08.asp>. One of the most recent articles is Naomi Zveloff, “For Some, Halacha Makes Conceiving Tough,” *Forward*, June 18, 2012, accessed March 21, 2013, <http://www.forward.com/articles/157819>.

⁵⁷ Tova Ganzel and Deena Zimmerman, “Halakhic Infertility: Medical-Halakhic Diagnosis and Treatment,” *Assia* 85–86 (2009) 63–82 [Hebrew], accessed March 21, 2013, <http://www.medethics.org.il/articles/ASSIA/ASSIA85-86/ASSIA85-86.07.asp>. I will cite the online version, which uses only section numbers, not page numbers.

⁵⁸ Ganzel and Zimmerman, “Halakhic Infertility,” section 4.

⁵⁹ *Ibid.* One should note that the figure of 35 percent is higher than the figures suggested by Halperin and Rosenak, who hint that 20–25 percent of those treated for infertility might have the problem because of “religious infertility.”

might have problems conceiving. The sophisticated methods Ganzel and Zimmerman suggest for solving this problem are entirely dependent on a modern understanding of the menstrual cycle and of ovulation—and on a realization that for some women, every day and possibly every hour of delay might be crucial. Teams of experts can explain all this to women, but women who do not have this information cannot increase their chances of conceiving, either because they are unaware that an early bath is so important or because they do not know when they are most fertile.

■ *Niddah* Laws and Jewish Women's Fertility in Previous Generations

All the solutions suggested in the articles we mentioned are based, implicitly or explicitly, on four facts or assumptions:

1. That the biology of the cycle is known to us through modern research, and that there are reliable methods for determining the moment of ovulation.
2. That hormones can generally help in modifying the cycle, so that ovulation will occur later than it naturally would otherwise.
3. That due to all this knowledge, any solution generally needs to be used for a well-defined time: only when the couple is actively trying to conceive.
4. That the halakhically prescribed length of the *niddah* period can, for some women, end after twelve days (Ashkenazic custom), or eleven days (Sephardic custom).

Despite disagreement on various details and practical questions, most experts involved in the debate surrounding halakhic infertility seem to agree with the claim that “these days, this is not a problem.” Or better said: it is a problem to which reliable (although, according to Rosenak, still medically and ethically problematic) solutions exist. One can only hope that Orthodox women who have to deal nowadays with this issue will consult specialists and get appropriate help—whether they do it by revising their *niddah* practices, following halakhic experts; by seeking hormonal treatment; or by simply ignoring some of the halakhic rules is, obviously, not our concern.

But what happened in the past? Ovulation has been understood only since the 1930s, and efficient ways of affecting the menstrual cycle using hormones were not available before the 1950s and 1960s. Reliable methods that enable women to know the time of their ovulation (initially the Basal Body Temperature method, and today ovulation predictor kits) are much more recent. Thus, the first three basic elements necessary for effective solutions to this problem were not available until at best a few decades ago. What happened before then to Jewish women who had short cycles? And further, were women with short cycles the only ones at risk of reduced fertility, or did *niddah* laws also affect women with longer cycles? If the first three factors required for effective infertility treatment were not valid prior to the second half of the twentieth century, was the fourth factor at least valid, that the halakhically prescribed length of the *niddah* period for most women is twelve or eleven days? Or is this piece of the puzzle also something that we should not take for granted?

Following our discussion above, we conclude that some observant Jewish women who lived before the secrets of the menstrual cycle were discovered—and thus, needless to say, did not have the option of taking hormones to modify their cycles artificially—were denied the chance to conceive because of the *niddah* laws. But how many were in this situation? Are the statistics we have gathered about our own time of any value in helping us comprehend their situation? One might object to the application of modern medical data about fertility and cycles to a study of the past. Indeed, there are many issues related to fertility and women's cycles that we know were different in pre-industrialized eras. Further, there are differences even today when one compares developed and developing countries. Among the differences are the average age at which girls experience menarche (which was probably later in earlier societies)⁶⁰ and the number of cycles a woman has in her lifetime (which was probably often much smaller).⁶¹ Nevertheless, I am not aware of any studies claiming that the length of the cycle, and the point at which ovulation occurred, would have been significantly different. The idea that the “normal” length of the cycle is rather close to the length of a lunar month (29.5 days) is well attested since antiquity.⁶² Today, when various populations are studied, a difference of one day in the mean length of the cycle between different communities is considered a significant find.⁶³ Unless future studies show that women in earlier times had significantly different menstrual patterns, it seems the current medical data should not be dismissed. For a certain percentage of

⁶⁰ See, for example, Darrel W. Amundsen and Carol Jean Diers, “The Age of Menarche in Classical Greece and Rome,” *Human Biology* 41 (1969) 125–32; Darrel W. Amundsen and Carol Jean Diers, “The Age of Menarche in Medieval Europe,” *Human Biology* 45 (1973) 363–69; Vern Bullough and Cameron Campbell, “Female Longevity and Diet in the Middle Ages,” *Speculum* 55 (1980) 317–25, at 323 n. 35; “W.H.O. Multicenter Study on Menstrual and Ovulatory Patterns in Adolescent Girls. I. A Multicenter Cross-sectional Study of Menarche,” *Journal of Adolescent Health Care* 7 (1986) 229–35; Douglas C. Kimmel and Irving B. Weiner, *Adolescence: A Developmental Transition* (2nd ed.; Hoboken, N.J.: Wiley, 1995) 69; and Alfredo Morabia and Michael Costanza, “International Variability in Ages at Menarche, First Livebirth, and Menopause,” *American Journal of Epidemiology* 148 (1998) 1195–205.

⁶¹ According to one estimate, the number of cycles for an average woman in an industrialized society is between 350 and 400, compared to about 110 in a non-industrialized society. See Meredith F. Small, “A Woman’s Curse?,” *The Sciences* (January/February 1999) 24–29, at 28.

⁶² See, for example, Pliny the Elder, *Nat.* 7.13. As Lesley Dean-Jones says, “Words for menstrual blood in Greek and Latin (καταμήνια and “menses”) show that ancient Mediterranean society did expect it to flow monthly. . . . Both the Hippocratics and Aristotle thought women who menstruated more often than once a month were ill in some way” (“Menstrual Bleeding according to the Hippocratics and Aristotle,” *Transactions of the American Philological Association* 119 [1989] 177–91, at 185). The reasoning behind the peculiar idea, found in Tannaitic and then later halakhic literature, that women’s cycles are eighteen days in length remains unclear to me, and anybody who knows rabbinic literature will agree I am not alone in my bafflement (see, for example, *m. Niddah* 4:7; *b. Niddah* 72b; Maimonides, *Mishneh Torah*, Issure bi’ah 6:3). Nevertheless, a good explanation of how it works is given in Meacham, “Abbreviated History,” 30.

⁶³ See, for example, L. Jeyaseelan and P. S. S. Rao, “Correlates of Menstrual Cycle Length in South Indian Women: A Prospective Study,” *Human Biology* 65 (1993) 627–34.

Jewish women, the chances of conceiving must have been positively affected by the *niddah* laws; but for another percentage of Jewish women, the laws had a negative effect on their fertility.

For many of those women who were negatively affected, this inability to conceive was certainly tragic. At times, they were probably offered explanations: sin, sorcery, or other metaphysical causes. Not knowing what we know today about the way the menstrual cycle works, it is unlikely that many of them suspected the *niddah* laws had anything to do with their misfortune. Many might have thought that the reason for their infertility was due, instead, to negligence of certain laws, and perhaps they even tried to resolve the problem by “raising the bar” of their observance. It is possible that some of them remained childless even after many years of hoping to conceive. It is likely that some of them also suffered divorce as a result of their infertility, following a rabbinic rule kept in some communities that a husband can, or even should, repudiate his wife if ten years of marriage without offspring have passed.⁶⁴

If we adhere though to our previous estimate, based on modern medical data, that these rules would have affected only a small percentage of Jewish women, then it is unlikely that their fate would have had a palpable effect on Jewish demography. But what if—due to issues we have not yet considered—the chances of conception for a much higher percentage of Jewish women, at least in some places and times, were significantly reduced?

■ When Did Women Actually Bathe?

Until now, we have assumed that generally, women took their ritual baths as soon as they considered this to be halakhically permissible, whether this was on day twelve, thirteen, or fourteen of their cycles, and that they resumed sexual activity soon after. But this assumption seems to be, at least at times, problematic. Ganzel and Zimmerman report that after analyzing the medical files of 108 women who were treated for “religious infertility,” they found that only 41 percent of these women usually bathed on the twelfth or thirteenth day of their cycles. Another 24 percent usually bathed on day fourteen, and yet another 19 percent on day fifteen.⁶⁵

Can these statistics, based as they are on a relatively small group of women, be considered representative for contemporary Orthodox women at large? I do

⁶⁴ The origins of this idea are found in *m. Yevamot* 6:6, *b. Yevamot* 64a, and *b. Ketubbot* 77a. It was later codified in major works of halakhah: see Maimonides’s 12th-cent. *Mishneh Torah*, *Hilkhot ishut* 15:7, and the 16th-cent. *Shulhan Arukh*, *Even ha’ezer* 154:10. From various sources, it seems that rabbinic courts did not generally force a man to repudiate his wife in such a case against his will. See, for example, Moses Isserles’s gloss on the paragraph from the *Shulhan Arukh* mentioned above (at 9 n. 23). But if a man wanted to repudiate his wife, such a claim was probably very useful in case the wife resisted the divorce. See also David M. Feldman, *Birth Control in Jewish Law* (Northvale, N.J.: Jason Aronson, 1998) 36–37 and 54; and Elisheva Baumgarten, *Mothers and Children: Jewish Family Life in Medieval Europe* (Princeton, N.J.: Princeton University Press, 2004) 33–34.

⁶⁵ Ganzel and Zimmerman, “Halakhic Infertility,” section 4.

not know. It seems many of these women went to the bath at a relatively late date because their actual period of bleeding was longer than five days. Ganzel and Zimmerman argue that, with appropriate halakhic instruction, some of these women could have still gone earlier. Can this teach us anything about Jewish women of the past? Again, I have no answer to that. But still, it might put some doubts in our perhaps too “pious” assumption that women generally went to bathe as soon as they knew they were halakhically permitted. The extremely frequent warnings, in all strata of rabbinic literature, that women should bathe immediately at the end of the “seven clean days,”⁶⁶ very likely hints that these authors knew that many women acted otherwise.

At the very least, four issues might make us think that women in the past would have been even less likely than contemporary women to bathe promptly. The first reason as to why even very religiously meticulous women in the past may have delayed their ritual bath is a question of comfort. It is very likely that all 108 Israeli women from Ganzel and Zimmerman’s study have, within walking distance or a short drive from their home, a relatively clean and heated ritual bath. This would not have been the case for many of their predecessors. Elsewhere I have argued that many medieval ritual baths were not heated.⁶⁷ We do have significant medieval halakhic material on this issue and on disputes between women and rabbis regarding the (im)possibility of heating the water. As some of these sources hint, the refusal of women to dip into cold ritual baths in the winter was not unheard of. Simcha Emanuel has also argued, and in strong terms, that

from these sources it becomes apparent that entire communities of women used to avoid taking ritual baths during the winter. The length of the forbidden days was therefore in Germany (and maybe also in France) not only a week, as the Bible prescribes, and not only two weeks, as the talmudic sages prescribe, but many months!⁶⁸

One must remember that dipping in cold water in many parts of Europe and the Middle East can be an unpleasant experience, even when winter is officially over.

⁶⁶ In the halakhic literature, the question as to whether one is commanded to perform the ritual bath at the first possible moment (טְבִילָה בְּיָמֶיהָ מִצְוָה) is debated in many places. The generally accepted majority conclusion is that it is not mandatory, although bathing on time is highly recommended, and a ritual bath of a *niddah* can be postponed only in rare cases. See, for example, *b. Yoma* 8a; *b. Niddah* 30a; *b. Shabbat* 120b–121a; Tosafot on *b. Yoma* 8b “dekhule alma”; *Shulhan Arukh*, Yoreh de’ah 197b. See also Judith R. Baskin, “Women and Ritual Immersion in Medieval Ashkenaz: The Sexual Politics of Piety,” in *Judaism in Practice: From the Middle Ages through the Early Modern Period* (ed. Lawrence Fine; Princeton, N.J.: Princeton University Press, 2001) 131–42.

⁶⁷ Marienberg, “Le bain des Melunaises,” 91–101; idem, “Women, Men, and Cold Water: The Debate over the Heating of Jewish Ritual Baths from the Middle Ages to Our Own Time,” *Jewish Studies: An Internet Journal* 12 (2013, forthcoming) [Hebrew].

⁶⁸ Simcha Emanuel, “The Seven Clean Days: A Chapter in the History of the Halakhah,” *Tarbiz* 76 (2007) 233–54, at 251 [Hebrew]. I imagine Emanuel’s claim that the Talmud prescribes “two weeks” is a simplification, though we will soon discuss the practice of a two-week *niddah* period, even if it is not, strictly speaking, talmudic.

Perhaps in warmer seasons women did not totally avoid ritual immersion, but it is very likely that many of them did not always run to the cold bath quickly and with great excitement even when the air temperature was not too cold. It is worthwhile to remember that many studies of common birthdates and the estimated dates of conception show, not surprisingly, that couples tend to have relations in cold and temperate seasons more than in warm seasons.⁶⁹ If meticulously observant Jewish couples avoided having relations if the wife refrained from bathing due to extreme cold, they missed a certain “intimacy peak,” followed by a birth peak nine months later, which others groups probably benefitted from.

Another possible reason why women might have delayed their bath in the past more than today is related to the scientific understanding of the menstrual cycle. One can hope that today most women have at least a basic understanding of the ovulation cycle—especially those who, as in Ganzel and Zimmerman’s survey, are trying to conceive. They should know that each day, and sometimes even each hour, can make a difference between the fertilization and non-fertilization of the egg. Women of the past did not have this information. It is unlikely they would have realized that to improve their chances of conceiving, they would have had to make haste with their bath.

We can think of two other possible reasons for such delays: One is women’s desire to control their fertility. Even if they did not know all the scientific facts about “how babies are made,” most women probably assumed that less sexual activity is likely to mean fewer babies. If a woman had a pious husband who would refrain from relations before his wife’s immersion in the ritual bath, then delaying the bath may have served as an efficient tactic (if observed regularly and for significant periods of time) for women who did not wish to become pregnant: abstinence is obviously one of the most effective methods of contraception. The second reason is the exercise of soft power: we also know that women refrained from the bath in order to use this “embargo” on sexual relations as a way to pressure their husbands on various issues, ranging from financial considerations to requests for a divorce.⁷⁰

It should be clear that cases like the last two—in which women delayed their bath intentionally in order to put pressure on their husbands or to prevent pregnancies—are not fully related to our scope: our interest lies only with scenarios wherein the observance of certain laws or customs affected fertility, without the couple’s intention that this would be the case.⁷¹ When the system was used intentionally by women or by couples to reduce fertility, this is certainly not something for which the laws should be blamed.

⁶⁹ See, e.g., Kaye Wellings et al., “Seasonal Variations in Sexual Activity and their Implications for Sexual Health Promotion,” *Journal of the Royal Society of Medicine* 92 (1999) 60–64.

⁷⁰ See Judith R. Baskin, “Male Piety, Female Bodies: Men, Women, and Ritual Immersion in Medieval Ashkenaz,” *Jewish Law Association Studies* 17 (2007) 11–30, at 13–20. See also Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (trans. Jonathan Chipman; Hanover, N.H.: Brandeis University Press, 2004) 109–10 and 240–52.

⁷¹ Likewise, other voluntary practices done to prevent conception are also not part of our investigation. For those, see Yahalom, “Moch.”

■ A Fourteen-Day *Niddah* Period

In her article mentioned above, Susan K. Gardin shows, relying on earlier studies, that if, for example, couples do not have relations until day twelve of the cycle, in 6.7 percent of cycles, ovulation might have already occurred. If they resume relations only on day thirteen, an additional 5.6 percent of the cycles will be post-ovulatory.⁷² These are not negligible numbers, even if one might doubt the accuracy of the figures: regardless of the exact percentage, it is clear that every additional day adds an increasing percentage of “missed cycles” to the calculations. What happens if relations are delayed even more?

Any delay in the resumption of sexual relations would result in reduced fecundability for a much larger proportion of cycles. For example, if sexual relations are not resumed until day 15, the proportion of cycles wherein coitus is restricted to the postovulatory phase increases from a maximum of 29.05% to 40.71%. . . . Observance of the [*niddah* laws] will not greatly diminish the overall fertility of the population, assuming that (1) the majority of [impurity] intervals do not extend beyond 14 days, and (2) coital activity is resumed immediately following return from [the ritual bath]. For the individual woman with a predominance of short cycles, delays in conception are probable.⁷³

If women did not delay the resumption of marital relations beyond day thirteen or fourteen, the vast majority had a reasonable chance of conceiving from these relations.⁷⁴ But maybe some did delay it, not because they did not want to engage in relations, or because they wanted to avoid conception,⁷⁵ or because of some practical issue related to the bath, or because of lack of modern medical knowledge, but due to religious reasoning and customs?

A paragraph in the *Tanhum*, a rabbinic text composed in Palestine around the middle of the first millennium C.E., hints at the existence of halakhic rules that

⁷² Gardin, “Laws of Taharat HaMishpacha,” 14.

⁷³ *Ibid.*, 15–16. Some of the aforementioned articles use the statistics that appear in this article by Gardin and in Vollman, *Menstrual Cycle*. One can only hope that we will have more accurate data relevant to the population in question, based also on changes in scientific knowledge about the cycle since these sources were written, in the near future. It seems that a study that tries to do exactly this is currently underway, led by Ganzel and Zimmerman. Not having other sources for now, I must also continue to rely on Gardin’s article.

⁷⁴ Of course, by saying “reasonable chance” we merely refer to the probability of conception for any healthy and fertile heterosexual couple having intercourse on a regular basis without the use of contraceptives, including around the time of ovulation. It is generally assumed that one in three copulations of such a couple, at the time of ovulation, may initiate a pregnancy. See Allen J. Wilcox, Clarice R. Weinberg, and Donna Day Baird, “Timing of Sexual Intercourse in Relation to Ovulation: Effects on the Probability of Conception, Survival of the Pregnancy, and Sex of the Baby,” *New England Journal of Medicine* 333 (1995) 1517–21.

⁷⁵ In an article based on interviews with thirty Orthodox women in Jerusalem in 2001, the practice of postponing the ritual bath as a contraceptive method is mentioned, but the issue of “religious sterility” is not. See Tova Hartman and Naomi Marmon, “Lived Regulations, Systemic Attributions: Menstrual Separation and Ritual Immersion in the Experience of Orthodox Jewish Women,” *Gender and Society* 18 (2004) 389–408, at 403–4.

the name of Reuven Strobilus, who had the right to go before the king without the need to ask for permission. . . . One day he went before the king and found him to be alone. He told him: "My lord the king . . . These Jews are of a small number because they keep the laws of *niddah*: each [Jewish woman] sits seven days [of separation from her husband], fourteen days, or forty-eight days. If you cause them not to keep the *niddah* laws, and they have marital relations day and night, [even] when the women are menstruating, they will multiply like us!" The king told him: "You have well spoken! This edict should be annulled." [Reuven] told him: "Write a letter [about this] and send it to the Land of Israel." Immediately, the king ordered that such a letter be written.⁸¹

These three texts certainly do not provide us with proof that women actually kept a *niddah* period of fourteen days, which would have meant that they were not able to resume relations until the fifteenth day of their cycle. But their existence does suggest that, at the very least, such a practice was imaginable in rabbinic literature and culture, and, according to some, even desirable. Can we find proof that such an idea was ever put into practice? The answer to this question is a definitive "yes." A number of sources from different places and times hint, and at times even say explicitly, that a practice of fourteen days of *niddah* was observed.

In twelfth-century France, a disciple of Salomon ben Isaac (Rashi)⁸² recorded the existence of people who believed in the necessity of keeping fourteen days. From the disciple's perspective, his master Rashi provided winning counter-arguments to those who say "[the women] should wait seven and seven: seven days of *niddah* first, and then seven clean [days]."⁸³ Yet the very existence of this debate shows that some had different opinions. The same text also mentions sources from the gaonic period (possibly two or three centuries earlier, composed in the area of current-day Iraq) that hint at similar practices.⁸⁴

In twelfth-century Egypt, Maimonides, one of the major codifiers of law in Jewish history,⁸⁵ explicitly attacked such a practice, although it is not clear from

Days," in *Studies in History* (1972) (ed. and trans. Israel Shatzman and David Asheri; ScrHier 23; Jerusalem: Magnes, 1972) 85–125; and Charlotte Elisheva Fonrobert, "When Women Walk in the Way of Their Fathers."

⁸¹ *Midrash Eikhah Zuta* 1, 43: וְשָׂמוּ בֶן יוֹחָאי, רַבִּי שְׁמוּעוֹן בֶּן יוֹחָאי, וְשָׂמוּ רַבִּי רַאוּבֵן שְׁלֹשׁ נְזוּתֵי נֹרָה מְלֻכּוֹת הַרְשָׁעָה בְּיַמֵּי רַבִּי שְׁמוּעוֹן בֶּן יוֹחָאי, וְשָׂמוּ רַבִּי רַאוּבֵן שְׁלֹשׁ יַתְקִיִּים מִצּוֹת מוֹלָה, וְשָׂמוּ לְקִיּוֹם אֶת הַשְּׁבִיט, וְשָׂמוּ לְקִיּוֹם אֶת הַנְּהַר וְהִיא שֵׁם זָקֵן אֶחָד וְשָׂמוּ רַבִּי רַאוּבֵן הַאֲיִצְטְרוּבֵלִי, וְהוּא נִכְסָא וְיוֹצֵא לְפָנֵי הַמֶּלֶךְ בְּלֵא רִשּׁוּת . . . [יּוֹם] אֶחָד נִכְסָא לְפָנֵי הַמֶּלֶךְ וּמִצָּא אוֹתוֹ שְׁחִיָּה יּוֹשֵׁב לְבָדוֹ, אָמַר לוֹ רַאוּבֵן אֲדוֹנֵי הַמֶּלֶךְ . . . אֵלּוֹ הַיְהוּדִים אֵינֶם מוֹעִטִים אֵלָּא בְּשִׁבְלֵי שְׁחָם מִשְׁמָרִים אֶת הַנְּהַר, אֶחָד מִהֶם יּוֹשֵׁב שְׁבַע יָמִים, אַרְבַּעַת עָשָׂר, וְאַרְבַּעִים וְשִׁמּוֹנָה, וְאֵם אֶחָד מִכֻּסְטָל נָדָה מִהֶם, וְהֵם מִשְׁמָשִׁים מִטּוֹתֵיהֶם בֵּין בָּיּוֹם וּבְלַיְלָה כְּשֶׁהֵן נְדוּת, הֵם פְּרִים וְרַבִּים כְּמוֹתֵינוּ, אָמַר לוֹ יִפְהָ אֲמַרְתָּ תִּבְטַל נְזוּרָה זֶה. אָמַר לוֹ כְּתוּב אֲנֵרְתָּ בָּיּוֹם וְשָׂמוּ לְפָנֵי הַמֶּלֶךְ לְכַתּוּב אֲנֵרְתָּ לְהֵם וְשָׂמוּ לְפָנֵי יִשְׂרָאֵל, מִיָּד צִוָּה הַמֶּלֶךְ לְכַתּוּב אֲנֵרְתָּ. It is clear that the core of this midrash uses earlier appearances of this folkloric theme. See also the previous note.

⁸² 1040–1105 C.E.

⁸³ *Sefer Hapardes* (ed. Hayyim L. Ehrenreich; Budapest: Katzburg, 1924) 4; *Mahzor Vitry* (ed. Simon Hurwitz; Nuremberg: Bulka, 1923) 606. See also on this issue Eric Zimmer, *Society and Its Customs* (Jerusalem: Shazar, 1996) 240–49, at 242–243 [Hebrew].

⁸⁴ *Mahzor Vitry*, 608. See also Israel M. Ta-Shma, "On some Franco-German *Niddah* Practices," *Sidra* 9 (1993) 163–70 [Hebrew], who discusses similar texts referring to two periods of seven days.

⁸⁵ Cordoba (Andalusia) 1135 – Fostat (Egypt) 1204.

context whether it was known in his area or whether the “some places” to which he refers were remote ones:

The custom that you may find in some places, that the menstruating woman sits seven days of *niddah* even if she saw blood for only one day, and then, after these seven days, she sits another seven clean days, is not a [valid] custom, but an error of the one who told them to do so. One should not relate at all to this practice. Rather, if a woman saw blood for one day, she should count after it seven [clean days], and then immerse on the eighth night, which is the second night after [the seven days of] her *niddah* [period]. She is then permissible to her husband.⁸⁶

References to such a practice do not disappear, although, as Eric Zimmer suggests, it is possible that observance of this custom declined during the twelfth and thirteenth centuries in the areas we now call France and Germany.⁸⁷ In more eastern regions, references to it continue to appear in later periods. Thus, in the Archduchy of Austria⁸⁸ during the first half of the fifteenth century, Israel Isserlin ben Petahiah⁸⁹ mentions the same custom in his work *Terumat Hadeshen*:

I heard that the [author of the book] *Or Zarua*⁹⁰ wrote that women in Austria have the custom of commencing [counting] the seven clean [days] only after the completion of seven days from the first sight of blood, even if the woman saw blood, or found a blood stain, only for one day. I did not hear any reason for this [practice]. . . . It is indeed true that most women in Austria keep this custom, but I also noted that some [women] do not tend to extend [the *niddah* period] so much. [This can also be learned from] the words of Maimonides, of Blessed Memory, who said: “You may find that in some places, a woman who saw blood keeps seven days of *niddah*, and [only] then counts seven clean days. . . . And this is a mistake of the one who ordered them to do so.

⁸⁶ Maimonides, *Mishneh Torah*, Issure bi’ah 11:14: זה שתמצא במקצת המקומות שהנדה יושבת שבעת ימים בנדתה אף ע"פ שלא ראתה דם אלא יום אחד ואחר השבעה חשב שבעת ימים נקיים אין זה מנהג אלא טעות הוא ממי שהורה להם כך, ואין ראוי לפנות לדבר זה כלל אלא אם ראתה יום אחד סופרת אחריו (נקיים) וטובלת בליל ח' שהוא ליל שני שלאחר נדתה ומותרת לבעלה. Maimonides was involved in attacking various local practices related to the laws of *niddah*. See further Mordechai A. Friedman, “Menstrual Impurity and Sectarianism in the Writings of the Geonim and of Moses and Abraham Maimonides,” *Maimonidean Studies* 1 (1990) 1–21 [Hebrew]; and Shaye J. D. Cohen, “Purity, Piety, and Polemic: Medieval Rabbinic Denunciations of ‘Incorrect’ Purification Practices,” in *Women and Water: Menstruation in Jewish Life and Law* (ed. Rahel R. Wasserfall; Hanover, N.H.: Brandeis University Press, 1999) 82–100. It should be noted that Maimonides does not take into account here a concept that will only later become universally accepted: that there is a minimum period a woman must wait before she begins to count the “seven clean days,” regardless of the actual length of the bleeding. At the same time, one should remember that menstrual bleeding that lasts just one day is rather rare.

⁸⁷ Eric Zimmer, *Society and Its Customs*, 244. Of course, a century or two later Jews were expelled from many of these areas, so the lack of later evidence for the practice should be placed in such a context.

⁸⁸ The term used in Hebrew is simply “Osterreich” (אושטרייִך), yet at that time this probably meant the eastern parts of today’s Germany or the Archduchy of Austria (*Erzherzogtum Österreich*). The Empire of Austria (*Kaisertum Österreich*, later *Österreich-Ungarn*) was founded only in 1806. After World War I, it was followed by the Republic of Austria, in the borders of the region one would associate with the term “Austria” today.

⁸⁹ Maribor, 1390 – Wiener Neustadt, 1460.

⁹⁰ The author of the book *Or Zarua* was Isaac ben Moses of Vienna (ca. 1200 – ca. 1270).

One should not adhere to this practice at all. . . .” It is possible that the practice of the daughters of Austria originates in the same places, from the disciples of those same teachers [mentioned by Maimonides], and this is why they have the custom of always waiting seven days from the beginning of the bleeding, before starting [to count] the seven clean days.⁹¹

We have information about similar practices from a few decades later, around 1490, in the book *Agur* by Jacob ben Judah Landau, a German author residing in Italy. It is not easy to learn from his statement how common this practice was:

And in the land of Ashkenaz some/they have the custom of adding one day [in addition to the five discussed earlier], and of waiting six days, or seven days. . . . And although Maimonides rejected such opinions strongly, some act like this. And they have a few weak reasons, but the common practice is of five days.⁹²

Almost a century later, around 1570, another major Ashkenazic codifier, Moses Isserles, who used Isserlin as one of his major sources, described a similar reality:

Some women are used to being severe even more [than the previously mentioned practice of five or six days], waiting up to seven days [before the seven clean days]. And this custom is baseless. Whoever wants to be severe may, and whoever wants to be more lenient will be rewarded for making himself/herself available sooner for the fulfillment of the commandment [to procreate].⁹³

The practice of fourteen days was noted by some non-Jews. In a paragraph from a book written in the early part of the seventeenth century by Johannes Buxtorf, a German Christian observer of Jewish life, we find the following important remark: “After seven days of uncleanness, the woman counts again seven days of cleanness, and when she finds herself completely clean, she . . . has to bathe in cold water completely naked.”⁹⁴

⁹¹ Israel Isserlin ben Petahiah, *Terumat Hadeshen* 245: שמועתי שהר"ח א"ז כתב שנוהגין נשים באושטריי"ך: שלא להתחיל ז' נקיים רק כשכלו כבר ז' ימים מתחילת ראייתה, אפי' לא ראתה אלא יום אחד או מצאתה כחם ביום אחד, ולא שמועתי שום טעם בדבר . . . אמנם אמת הוא שרוב נשים באושטריי"ך נוהגים הכי, אך ראיתי נ"כ מקצת שלא חשו להאריך כ"כ, נ"כ לשון הרמב"ם כך הוא וז"ל: תמצא במקצת מקומות שהאשה שראתה דם יושבת ז' ימי נידה ואח"כ סופרת ז' ימים נקיים . . . ושעות הוא ממי שהורה להם כך ואין לפנות לדבר זה כלל. . . ונראה דאפשר הוא דמנהג בנות אושטריי"ך בא מאותן מקומות מתלמידי אותם בעלי הוראה, ולכך נהגו להמתין לעולם ז' ימים מתחלת ראייתה עד שיתחילו ז' ימים הנקיים. It seems that the Hebrew text is slightly corrupt, as it contains the letter *hêt*, instead of the expected *yôd*, in the abbreviation of the author's name (Isaac).

⁹² Judah ben Jacob Landau, *Agur*, art. 1372: ובארין אשכנז נוהגים להוסיף יום אחד וממתנות ז' ימים: ויש להם קצת שבעים ויש ז' ימים . . . אף כי הרמב"ם הרחיק מאד דעות אלו מכל מקום איכא דנהני הכי. ויש להם קצת שבעים ורחוקים אבל מנהגי דעלמא חמשה ימים.

⁹³ Moses Isserles, *Mapah*, Yoreh de'ah 196:11: ויש נשים שנהגו להחמיר עוד להמתין עד שבעה ימים, Rosenak, in his article with Shim'on, also briefly mentions the fact that in medieval Ashkenazic communities it is possible that a practice of fourteen days existed, but he does not explicitly discuss its possible implications. According to Isaac Lifshitz, he knows from actual witnesses that the practice of 7+7 days was common in White Russia in the first half of the twentieth century (personal communication, May 2013). I would like to thank him for this testimony and for other useful comments he had after reading the pre-final version of this article.

⁹⁴ Johannes Buxtorf (1564–1629), *Synagoga Judaica*, ch. 31. This translation is a slightly

One should also not think that Maimonides's objection to such customs in Egypt made them disappear in non-Ashkenazic communities. Ovadya Yosef,⁹⁵ the most important Sephardic codifier of our time, tried to fight more or less similar practices while living in Egypt in 1948. In his discussion of the matter, he also reports such practices in nineteenth-century Baghdad. He himself later encountered such a practice in Jerusalem. In that case, he commanded a woman who suffered from a violent husband not to wait seven days before counting the seven clean days but rather four, following the practices Yosef was trying to enforce:

And I asked her how many days she waits before the counting of the seven clean days, and she replied that she is following the custom of her mother and her family, to wait seven days, even though her bleeding ends after four days. I commanded her that four days should be sufficient, and that after these four days, if she finds her bleeding ended, she should count the seven clean days, because peace is important.⁹⁶

Having seen all these texts, can we tell how common the practice of seven plus seven was, and where? Unfortunately, no. Nevertheless, it is clear not only that such a practice existed in various periods in many corners of the Jewish world but that in some circles it was actually considered the right thing to do. This should not really surprise us. From a legal, halakhic perspective, this practice makes much sense. As we have seen in Leviticus, it seems the biblical period of menstrual impurity is seven days. The talmudic rabbis also spoke of seven days, but these days were the “seven clean days,” which begin after the bleeding ends. From their perspective, the Torah's rule was just slightly extended by delaying the counting of seven days: instead of starting when the period begins, the counting begins a few days later, when the bleeding ends. Thus, they probably did not see their ruling as too radical a change from the biblical norm. The later fourteen-day practice seems to result from a similar intention. This time, the “conceptual”

modified version of Alan D. Corr e's English translation, available online at <https://pantherfile.uwm.edu/corre/www/buxdorf/>. The book was first published in German in 1603 under the title *Synagoga Judaica: Das ist J udenschul*, and it was later published in Latin. The text of the 1603 edition reads: “Nach siben tage / der Unreinigkeit / zehlet sie wider siben tage der Reinigkeit / unn nachdem sie sich ganz rein befindet / [. . .] mu  [sie] in kaltem Wasser ganz nacket [. . .] badent” (593–94). See an online version of that edition here: <http://tinyurl.com/SynagogaJudaicaGerman>. On Buxtorf, see Stephen G. Burnett, *From Christian Hebraism to Jewish Studies: Johannes Buxtorf (1564–1629) and Hebrew Learning in the Seventeenth Century* (Studies in the History of Christian Thought 68; Leiden: Brill, 1996).

⁹⁵ Born in Baghdad in 1920.

⁹⁶ *Yabi'a Omer*, Yoreh de'ah 15: וענתה ואמרה, וכמה ימים היא ממתנת לפני ספירת ז'י, ומשפחתה להמתין ז' ימים אע"פ שהיא טהורה ממוקור דמיה אחר ארבעה ימים, והורתי לה שמשפיק לה בארבעה ימים, ואח"כ תפסוק בטהרה ותספור שבעה נקיים, כי גדול השלום (Ovadya Yosef, *Sefer She'elot u-Teshuvot Yabi'a Omer* [vol. 1; Jerusalem: n.p., 1953]). For a fuller discussion of this issue, see Ariel Picard, *The Philosophy of Rabbi Ovadya Yosef in an Age of Transition: Study of Halakha and Cultural Criticism* (Ramat Gan: Bar-Ilan University Press, 2007) 233–38 [Hebrew]. The words “because peace is important” suggest that the woman should make herself more sexually available to her violent husband, with the hope that this will bring about peace in their home.

period of bleeding was just slightly extended beyond the length of its actual, physical occurrence. Perhaps this was influenced by a reading of the biblical rule, which also spoke of seven days (although of course not the same ones).⁹⁷ It is not unreasonable to think that people considered a period of seven days to be a nice round number, and that two times seven cannot be a bad idea either, certainly not for those who want to show their piety.

What happened to couples who kept such a lengthy period of separation? Even if women bathed on day fifteen, their chances of conceiving were significantly reduced, as we have learned: if we use contemporary data, it is possible that 40 percent or more of their cycles were already in their post-ovulatory phase. But the reality was probably even worse. Today, as we said, when observant Jewish women (and men, one hopes) know the basics of the ovulation cycle, women who have a short cycle know how crucial it is for them to bathe and have relations as soon as they halakhically can. This was certainly not the case in the past. It is reasonable to assume that many women who kept fourteen days did not see much harm in delaying their bath another day or two. By then, and even for women who had a cycle of average length, the chances of conceiving were very low.

■ Thank God It's Friday!

If the scenarios described above are not bad enough from a fertility-related point of view, one can add another detail that made the situation even worse for some couples. Particularly pious couples who kept the rule of fourteen days of abstinence in each cycle (and even some observant people who did not keep this rule) were likely to observe another pietistic recommendation that appears in mainstream halakhic literature, which we briefly alluded to earlier: to have marital relations on Friday.

One might wonder why such a practice would negatively affect fertility rates. In fact, it might be argued that it would have done the exact opposite, by actually encouraging couples to have relations on a night on which they might not have been intimate otherwise. This might in fact be true for times, places, and communities in which the Friday rule did not mean relations on other nights were considered inappropriate. But what happened when this custom had the effect of channeling the entire sexual activity of observant Jewish couples to Friday night and made them generally avoid having relations on other days of the week? By exploring the development and extent of this practice, the ways it was understood, and the possibility that at some times and places religiously meticulous Jews limited their marital activity to Friday because of it, we might be able to determine whether the issue is relevant to our concerns.

The very idea that sexual relations on Sabbath Eve (and on the Sabbath Day itself) are permitted, even recommended, was not always obvious in Jewish culture,

⁹⁷ Joel ben Samuel Sirkis (Poland, 1561–1640), in his commentary on Jacob ben Asher's *Arba'ah Turim* of the 14th cent., discusses this issue, mentioning several important authorities, and he seems to understand the origin of the 7+7 custom in a similar way (*Bayit Hadash*, Yoreh de'ah 183).

in which so many other types of human activities are forbidden on the seventh day. In fact, it is not impossible that the strong promotion of such relations is a relic from various periods in which the issue was hotly debated, a remainder from the ultimately successful campaign of the talmudic and later medieval rabbis to legitimate such relations, fighting other groups who considered them unlawful.⁹⁸ At the same time, no matter how the issue played out during the Second Temple period, the early rabbinic period, and the medieval period, the rabbinic literature opted for a clear line, and it is this line, stipulating that sexual relations are permitted on the Sabbath, that continued to be the backbone of all subsequent discussions on the matter in the literature and culture about which we are concerned here.

In addition to the fundamental notion that sexual activity is not forbidden on the Sabbath for talmudic and post-talmudic rabbinic Judaism, the “sex on Friday” practice seems to have originated in the reconciliation of three related ideas that appear in talmudic literature. The first one is the oft-quoted talmudic-Amoraic idea that wives of rabbinic scholars are entitled to have relations with their husbands “from Sabbath Eve to Sabbath Eve.” This ruling is generally attached to a mishnaic text that discusses this issue for various professions but does not

⁹⁸ Such an attitude is attested, for example, in the extra-canonical book of Jubilees, probably composed in the 2nd cent. B.C.E., where it is stated that “the man who does any work [on the Sabbath] is to die. Any man who desecrates that day; who lies with a woman . . . is to die.” (*Jub.* 50:8; translation from *The Book of Jubilees* [ed. and trans. James C. VanderKam; CSCO 511; *Scriptores Aethiopiici* 88; Louvain: Peeters, 1989] 326). Similar ideas might also be hinted at in some of the sectarian scrolls from Qumran. On this, see Cana Werman and Aharon Shemesh, *Revealing the Hidden: Exegesis and Halakha in the Qumran Scrolls* (Jerusalem: The Bialik Institute, 2011) 162–63 [Hebrew]; and Aharon Shemesh, “Marriage and Marital Life in the Dead Sea Scrolls,” in *The Dead Sea Scrolls and Contemporary Culture* (ed. Adolfo D. Roitman, Lawrence H. Schiffman, and Shani Tzoref; Leiden: Brill, 2011) 589–600, at 594–95. Abstinence on the Sabbath is also the tradition among the Samaritans and among the Karaites. On the Samaritans, see Raphael Kirchheim, *Karmeil Shomron* (Frankfurt am Main: Kaufmanni Bibliopolae, 1851) 27 [Hebrew]. I would like to thank Benyamim Tsedaka, an important Samaritan scholar, who wrote me (in an email, September 2011): “Sexual relations on Shabbat are out of the question [for Samaritans] because each should keep himself pure for Shabbat Services. The Torah said that whoever has relations is considered impure in any day of the week and should wash himself/herself and be considered as impure till the evening. A sperm that is a result of a wet dreamer who ejaculates is considered impure too. In that case he should sit in the back of the synagogue and not raise his voice nor read the Shabbat portion because he cannot hold the Torah book in his hands till the sunset, although he washed.” On the Karaites, see Leon Nimoy and Joseph Y. Schwartz, “Chapters on the Sabbath by al-Qirkisani,” *Horev* (1935) 200–6 [Hebrew]. For al-Qirkisani, an important tenth-century Karaite thinker, intercourse is forbidden on the Sabbath for three reasons: because it brings impurity, because of the effort it requires, and because it is similar to another forbidden activity, the planting of seeds. This remains the custom of Karaites to this day. Shlomo D. Goitein discusses the impact of this difference in opinion on “mixed couples” in Egypt—that is, when one spouse was Rabbinite and the other Karaite (*The Family* [vol. 3 of *A Mediterranean Society*; Berkeley: University of California Press, 1978] 168–69). For an explanation of the sex-on-Sabbath practice as counteracting pagan beliefs and practices, see the commentary of Bahya ben Asher (Spain, ca. 1255 – ca. 1340) on Deuteronomy 18. See also the attack of Abraham ibn Ezra (1089–1164) on this Karaite idea in his commentary on Exod 34:21. On the prohibition of relations on the Sabbath among *Beta Israel* (“Ethiopian Jews,” “Falashas”), see Sharon Shalom, *From Sinai to Ethiopia* (Tel Aviv: Miskal, 2012) 161–63 [Hebrew].

provide a rule for its most attentive readers, the scholars themselves: “The duty of marriage enjoined in the Torah is: every day for them that are unoccupied; twice a week for laborers; once a week for ass-drivers; once every thirty days for camel-drivers; and once every six months for sailors. So Rabbi Eliezer.”⁹⁹ The talmudic editors, perhaps somewhat insulted by this disregard for their own professional guild, offer a complementary ruling:

When are scholars to perform their marital duties?—Rav Judah in the name of Samuel said: “From Sabbath Eve to Sabbath Eve”; “Which yields its fruit in season” (Ps 1:3): Rav Judah, and some say Rav Huna, or again, as others say, Rav Nahman, stated: “This [verse] refers to a man who performs his marital duty from Sabbath Eve to Sabbath Eve.”¹⁰⁰

What is the meaning of the expression “from Sabbath Eve to Sabbath Eve”? Does it require, or at least recommend, that relations be performed in the households of rabbinic scholars specifically on Sabbath Eve, or does it merely mean they should happen not less often than once a week?¹⁰¹ As we shall see, this ambiguity gave legitimacy to both readings.

In various places in the Babylonian Talmud, one may find the notion that Sabbath Eve is indeed an apt moment for marital relations, regardless of one’s profession or a man’s legal obligation towards his wife. Thus, for example, a claim that the biblical Ezra commanded that garlic should be eaten on Friday—needless to say, this is a late idea and not actually mentioned in the Bible—is explained with regard to sexual relations: garlic, it is said, enhances the sperm and increases love between husband and wife.¹⁰² Such a practice is also hinted at in a saying that, for scholars, the Sabbath’s enjoyment is made by having on Sabbath’s Eve

⁹⁹ *m. Ketubbot* 5:6: העונה האמורה בתורה הטיילין בכל יום הפועלים שתיים בשבת החמורים אחת בשבת רבי אליעזר הנגמלים אחת לשלשים יום הספנים אחת לששה חרשים דברי רבי אליעזר. The English version is from Herbert Danby, *The Mishnah* (Oxford, U.K.: Oxford University Press, 1933). One might also have the suspicion that an idea of discouraging reproduction among those of lower socioeconomic strata may be at play, but we will not delve into this possibility here.

¹⁰⁰ *b. Ketubbot* 62b: מעשה של תלמידי חכמים אימה? אמר רב יהודה אמר שמואל: מעשה לע"ש. אשר פריו זה המשמש משתו מעשה לע"ש. יתן בעתו—אמר רב יהודה, ואיתומא רב הונא, ואיתומא רב נחמן; זה המשמש משתו מעשה לע"ש. Soncino’s translation, modified. See also *b. Bava Qamma* 82a. David Biale highlights the possibility that these laws were created in order to fight a growing tendency among scholars to suspend marital relations altogether, seeing them as an obstacle to holiness in general or to Torah study in particular: “The laws . . . were designed to resolve the conflict, but they clearly did not provide a definitive solution” (*Eros and the Jews: From Biblical Israel to Contemporary America* [New York: Basic Books, 1992] 55).

¹⁰¹ In many other places in talmudic literature, such an expression seems to mean “once a week” or “an entire week.” Therefore, there is no doubt it can be read as meaning simply that. See, e.g., *t. Arakhin* 4:27; *b. Pesahim* 57a; *b. Ta’anit* 17a; *b. Nazir* 5a; *b. Menahot* 103b.

¹⁰² See *y. Megillah* 4a (75a); *b. Bava Qamma* 82a; *b. Nedarim* 63b. I do not know how to explain the last statement. Did the talmudic rabbis find the smell of garlic sexually appealing? I have no answer to that, although it is possible that text refers to baked, rather than fresh, garlic. Thus, *Sefer Hasidim* (Parma) 390 warns that while baked garlic increases lust, fresh garlic decreases it. See also *Mishnah Berurah* 280:1. On the meaning of the term “love” in rabbinic culture, see Michael L. Satlow “One Who Loves His Wife like Himself”: Love in Rabbinic Marriage,” *JJS* 49 (1998) 67–86.

“a prepared bed, and a prettified woman.”¹⁰³ One might suspect that this textual combination of Sabbath Eve, bed, and a good-looking woman is a hint for a very specific type of activity.¹⁰⁴ Yet another talmudic text dealing with the prescribed self-examination for women prior to and following relations to ensure they are not menstruating shows that this was a special concern on Fridays.¹⁰⁵

A third rabbinic idea, which is somewhat related to our topic, is that marital relations performed on Saturday, Sunday, Monday, or Tuesday might increase the risk of birth on the day of the Sabbath, which would have been undesirable:

Samuel said: “[The time between the moment when] a woman conceives and [the moment she] gives birth is 271, 272, or 273 days.” His words are like the opinion of the Early Pious, as it is said: “The Early Pious had relations only on Wednesdays, so that their wives would not have to transgress the Sabbath.” [Did they really have relations] only on Wednesdays? [No. It means they had relations] from Wednesday on.¹⁰⁶

The explanation given for the practice in this paragraph, even if it is perhaps not actually the reason for the custom of those “Early Pious,”¹⁰⁷ seems to be based on a rather simple idea: if pregnancy takes nine months, its length is 270 days (9×30).¹⁰⁸ Adding one, or two, or three days until conception occurs following the relations would yield 271, 272, or 273 days.¹⁰⁹ By dividing this number into weeks, one can presumably calculate the probable day of birth if the day of the week during which relations took place is known:

¹⁰³ *b. Shabbat* 25b.

¹⁰⁴ Michael L. Satlow argues: “There is a predominantly Babylonian suggestion that Friday night is the best time for a husband, especially if a student, to fulfill his conjugal obligation. No reason for this opinion is given, nor is it suggested that intercourse on Friday is additional to other conjugal obligations” (*Tasting the Dish: Rabbinic Rhetorics of Sexuality* [Atlanta: Scholars Press, 1995] 278–80).

¹⁰⁵ *b. Niddah* 17a.

¹⁰⁶ *b. Niddah* 38ab: אמר שמואל: אין אשה מתעברת ויולדת אלא למאתים ושבעים ואחד יום, או למאתים ושבעים ושנים יום, או למאתים ושבעים ושלושה! הוא דאמר כחסידים הראשונים, דתניא: חסידים הראשונים לא היו משמשין משותיהן אלא ברביעי בשבת, שלא יבואו נשותיהן לידי חלול שבת. ברביעי ותו לא? אימא: מרביעי ואילך.

¹⁰⁷ One should remember that this talmudic paragraph is a well-crafted piece that combines various texts. In fact, the correlation between the assumed length of pregnancy and the testimony about the practice of the “Early Pious” is an editorial one and is not necessarily historically correct. This might also be the case in the last sentence, which explains that these pious people did not have relations only on Wednesdays but from Wednesday on. Although it is generally assumed that the “Early Pious” depicted in the Talmud feared that a transgression of this precept might cause a woman to deliver on the sacred day and limited relations to days following Wednesday accordingly (including, it seems, on the Sabbath itself), some modern scholars have suggested that the actual fear of these “Early Pious” was that if remains of the man’s semen were released from the woman’s body on the Sabbath (something that can happen up to three days after coitus according to an ancient rabbinic understanding), she will become impure, an undesired event on the Sabbath. For similar reasons, relations on the Sabbath itself were, for them, absolutely forbidden. On this, see Werman and Shemesh, *Revealing the Hidden*, 162–63.

¹⁰⁸ This calculation disregards the exact length of the Jewish month, which is about 29.5 days.

¹⁰⁹ This explanation for the numbers is the most convincing I have found; there may be others.

Day of relations	Birth 270 days later	Birth 271 days later	Birth 272 days later	Birth 273 days later
Sun	Thu	Fri	Sat	Sun
Mon	Fri	Sat	Sun	Mon
Tue	Sat	Sun	Mon	Tue
Wed	Sun	Mon	Tue	Wed
Thu	Mon	Tue	Wed	Thu
Fri	Tue	Wed	Thu	Fri
Sat	Wed	Thu	Fri	Sat

Even though transgressing the Sabbath to deliver a Jewish baby is allowed in Judaism as we know it (though this was not necessarily the rule in all branches of ancient Judaism), it was still considered better to prevent birth from happening on the Sabbath. As the table shows, if pregnancy is 271, 272, or 273 days in length, relations on Saturday, Sunday, and Monday carry the risk of a birth on the Sabbath. Since the sources also speak of Tuesday as inappropriate, I assume the counting of “the Early Pious” included also the possibility of a birth on the day we would count as the 270th. Although the avoidance of Sabbath births is not specifically mentioned by talmudic editors as a reason for prescribing relations on Friday, it would make Friday one of most appropriate three days for intercourse, together with Wednesday and Thursday.¹¹⁰

How were all these sporadic and at times ambiguous talmudic statements connecting the Sabbath Eve with marital relations understood in later generations, those generations on which our study actually focuses? Many texts seem to hint that two interpretations often existed side by side: on the one hand, that Sabbath Eve is an apt moment for relations but that does not exclude other nights; on the other hand, that Sabbath Eve is the right time¹¹¹ and other moments during the

¹¹⁰ Did many religiously meticulous Jewish couples follow this advice? I do not know. The only thing of which we can be sure is that those men who had direct or indirect access to the important tractate of *Niddah* in the Talmud were potentially aware of it and that the idea was repeated, and at times even prescribed, in various books addressing a certain religious elite. See, e.g., mentions of this idea in *Sefer Hasidim* from 12th/13th-cent. Germany, in its Parma edition, paragraphs 264, 517, and 565. See also *Sefer Ha'eshkol*, Hilkhot tzeni'ut 36b (Abraham ben Isaac of Narbonne, *Sefer ha-Eshkol* [ed. Hanokh Albeck; Jerusalem: Mas, 1935–1938]); and Elisheva Baumgarten, *Mothers and Children*, 42.

¹¹¹ In the Roman world, Friday was called *Dies Veneris*, the day of Venus, the Goddess of love and sexuality. See an explanation in Cassius Dio, *Roman History*, 37.18–19 (available online at http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Cassius_Dio/37*.html). I would like to thank Moshe Blidstein (Oxford) for this reference. In Greek, the day's name is a Greek version of the same thing: *Hemerea Aphroditēs*, “Day of Aphrodite.” I am still trying to find out whether these names had practical meaning: in other words, whether Friday was connected with sexual activity in the Greek and Roman worlds, as well as the origins of the expression “Act of Venus” used in different places to refer to copulation. Note that in Jewish Greek of the 1st cent. C.E., the day had a more banal, and “Jewish,” name: it was simply called “day of preparation” (παρασκευή). See for example Mark 15:42, Luke 23:54, and John 19:14.

week, although not forbidden, are significantly less appropriate for this type of activity. In fact, many of the statements on the matter remain ambiguous and can be interpreted either way. Because the more interesting ones for our purposes are those that clearly support, or hint at, a “Friday only” attitude, or at least a “best on Friday” one, we will mention here only a few examples of this kind from the post-talmudic period.¹¹²

In medieval Europe, Salomon ben Isaac (Rashi), one of the most important Jewish authors of all time, who was already mentioned above, was quick to explain that a reference to “Sabbaths Eves” in a certain talmudic text is there because this is the appropriate moment for “pious and scholars” to have marital relations.¹¹³

In kabbalistic literature, the idea that marital relations should be specifically performed on Friday is commonly found. It appears in one of its most fundamental books, the *Zohar*, the core of which was composed in Castile in the thirteenth century. There, we learn in several places that relations on Friday are particularly appropriate because they coincide with the union that happens at the same time in the divine realms. Thus, for example, a biblical text from the book of Isaiah is given an entirely new meaning:

“For thus said the Lord: As far as the eunuchs who keep my Sabbaths, who have chosen what I desire and they hold fast to My covenant, I will give them, in My house and within My walls, a monument and a name better than sons and daughters, I will give them an everlasting name that shall not perish” (Isaiah 56:4–5): Who are the eunuchs? These are the comrades engaged in Torah. They castrate themselves the six days of the week and study Torah, and on the night of Sabbath they prepare themselves for intercourse, for they know the supernal secret concerning the time when the Matrona unites with the King.¹¹⁴

¹¹² As this article went to press, I came across a long discussion of sex on the Sabbath in talmudic and other ancient Jewish literatures in Anat Sharbat, “The Concept of Sexuality in the World of the Sages” (Ph.D. diss., Bar-Ilan University, 2011) 55–130 [Hebrew].

¹¹³ Rashi on *b. Niddah* 17a.

¹¹⁴ *Zohar* 2:89a. Translation from Elliot R. Wolfson, “Eunuchs who Keep the Sabbath: Becoming Male and the Ascetic Ideal in Thirteenth Century Jewish Mysticism,” in *Becoming Male in the Middle Ages* (ed. Jeffrey Jerome Cohen and Bonnie Wheeler; New York: Garland, 1997) 151–85, at 158. See also *Zohar* 3:142b–143a (Idra Rabba): “When the Consort sits with the King and they unite face to face, who can enter between them? Who can get closer to them? . . . This is the reason [for the idea] that the appropriate time for sexual relations for scholars, who know this secret, is from Sabbath to Sabbath” כיון דמטרונייה יחבת עם מלכא ואחחברו אפין באפין, מאן ייעול בנייהו מאן הוא דיקרב) “to Sabbath (בהדרייהו) . . . בנין כך סתימא דמלה ענתן של ת”ח דידעין רוא דנא משבת לשבת Daniel Abrams for his help with this text. See also various long paragraphs on the matter quoted in Isaiah Tishby, *The Wisdom of the Zohar: An Anthology of Texts* (trans. David Goldstein; 3 vols.; Oxford: The Littman Library and Oxford University Press, 1989) 3:1390–94 (in the Hebrew edition of 1961: 2:637–40). See Gershom Scholem’s short explanation of the matter in his *Zohar—The Book of Splendor: Basic Readings from the Kabbalah* (New York: Schocken Books, 1949) 35–36. See also Manfred Harris, “Marriage as Metaphysics: A Study of the ‘Iggeret Hakodesh,’” *HUCA* 33 (1962) 197–220, at 213–14; Karen Guberman, “The Language of Love in Spanish Kabbalah: An Examination of the ‘Iggeret ha-Kodesh,’” in *Approaches to Judaism in Medieval Times* (ed. David R. Blumenthal; Brown Judaic Studies 54; Chico, Calif.: Scholars Press, 1984) 53–105, at 74–75; Elliot K. Ginsburg, *The*

The notion that scholars should only have intercourse on Friday is also found in many works by authors for whom the *Zohar* was a major source of inspiration. Menahem Recanati, an Italian kabbalist from the same generation, mentions it several times in his biblical commentary.¹¹⁵ It is also discussed extensively in the third chapter of the rather famous “Holy Letter” produced around the same time,¹¹⁶ as well as in an earlier text of a somewhat similar genre, the *Ba’ale Hanefesh* of the twelfth-century author Abraham ben David of Posquières.¹¹⁷ “Mystics were exhorted to have relations on Friday night alone,” summarizes Sharon Koren.¹¹⁸ This idea appears also in a later mystical wave among the kabbalists who were active in the Galilee in the sixteenth century. Thus, for example, Moses ben Makhir, the head of a school in Ein Zeiton, near Safed, in the second half of that century, mentions a local custom in which men would go to bathe on Friday afternoon with their wives; the suspicion that this practice was related not only to a general preparation for the Sabbath but also to marital relations that evening seems very likely.¹¹⁹ Another major kabbalist from the same time and place, Moses ben Jacob Kordovero, reminds his readers of an earlier idea that Adam and Eve, having been created on Friday, were supposed to have marital relations on Sabbath Eve in the Garden of Eden. Unfortunately, they sinned before that time and were expelled: the most opportune time for relations was missed. Readers of his work should try harder.¹²⁰

The “Friday sex” idea appears also in the three most important Jewish legal codes: Maimonides’s *Mishneh Torah* of the twelfth century, the fourteenth-century

Sabbath in the Classical Kabbalah (Albany: State University of New York Press, 1989) 289–93; Esther Cohen and Elliot Horowitz, “In Search of the Sacred: Jews, Christians, and Rituals of Marriage in the Later Middle Ages,” *The Journal of Medieval and Renaissance Studies* 20 (1990) 225–49, at 241; Elliot R. Wolfson, “Coronation of the Sabbath Bride: Kabbalistic Myth and the Ritual of Androgynisation,” *Journal of Jewish Thought and Philosophy* 6 (1997) 301–43; Michael Stanislawski, “Toward the Popular Religion of Ashkenazic Jews: Yiddish-Hebrew Texts on Sex and Circumcision,” in *Mediating Modernity—Challenges and Trends in the Jewish Encounter with the Modern World: Essays in Honor of Michael A. Meyer* (ed. Lauren B. Strauss and Michael Brenner; Detroit: Wayne State University Press, 2008) 93–106, at 99–100; and Natan Ophir, “Meditative Instructions for Friday Night Conjugal Intimacy: Romantic Kabbalah in the Writings of R. Moses Kordovero,” *Massakhet* 10 (2010) 87–113 [Hebrew].

¹¹⁵ Menahem Recanati (Italy, ca. 1250 – ca. 1310), commentary on Gen 1:3; Gen 2:21; Deut 31:20.

¹¹⁶ See Seymour J. Cohen, *The Holy Letter: A Study in Medieval Jewish Sexual Morality Ascribed to Nahmanides* (New York: Ktav, 1976). On the modern uses of this text, see Evyatar Marienberg, “Jews Have the Best Sex: The Hollywood Adventures of a Peculiar Medieval Jewish Text on Sexuality,” *Journal of Religion and Film* 14:2 (2010), accessed March 21, 2013, http://www.unomaha.edu/jrff/vol14.no2/Marienberg_JewishText.html.

¹¹⁷ Abraham ben David of Posquières, *Ba’ale ha-Nefesh*, Sha’ar Haqedushah.

¹¹⁸ Sharon Koren, “Mystical Rationales for the Laws of *Niddah*,” in *Women and Water: Menstruation in Jewish Life and Law* (ed. Rahel R. Wasserfall; Hanover, N.H.: Brandeis University Press, 1999) 101–21, at 106.

¹¹⁹ See Elliot K. Ginsburg, “Kabbalistic Rituals of Sabbath Preparation,” in *Essential Papers on Kabbalah* (ed. Laurence Fine; New York: New York University Press, 1995) 400–37, at 432 n. 39.

¹²⁰ Moses Kordovero (1522–1570), *Shi’ur Qomah* (Warsaw: Goldman, 1883) 30a (see ch. 15, “Adam”). On the processes that caused esoteric kabbalistic ideas to penetrate mainstream Jewish thought and have major impact on Jewish life, see Roni Weinstein, *Kabbalah and Jewish Modernity* (Tel Aviv: Tel Aviv University Press, 2011) [Hebrew].

practice from the *genizah*, Goitein remarks that this custom was not dissimilar to a Muslim practice, and he makes an interesting suggestion: “For Muslims, the night preceding Friday, their holy day, played a similar role, and I suspect that the entire matter had its origin in ancient Greek medical advice on sound hygiene.”¹²⁶

Maimonides’s discussion of the issue in his central halakhic work was certainly not unique. In the next major successful attempt to codify Jewish law, the *Arba’ah Turim* of Jacob ben Asher in the fourteenth century, the topic appears in two places. Jacob ben Asher does not make an effort to be more specific than the Talmud itself, as he simply uses the same expression: “The marital obligation of Torah scholars is from Sabbath Eve to Sabbath Eve.”¹²⁷ The following major code of Jewish law, the sixteenth-century *Shulhan Arukh* of Joseph Karo, uses the same expression, although in one place it emphasizes—by repeating almost verbatim Maimonides’s words on the subject (quoted above)—that the appropriate moment for marital relations for scholars is on Sabbath Eve.¹²⁸

With all these major sources mentioning the practice of scholarly sex on Friday, it is not surprising that it continues to be referred to in many later works, and it seems very reasonable to assume it was well known at least among learned Jews, if not in larger circles. Calls such as the one found in the fourteenth-century book *Orhot Hayyim*—which states in regard to the practice: “And every man should behave like a scholar,”¹²⁹—might have made the practice a goal for many. Even today, in some Orthodox circles, Friday night is called at times “mitzvah (commandment) night,” with the understanding that the mitzvah in question is of a very distinct nature.¹³⁰

What happened when people acted on this recommendation? When pious couples had sexual activity almost exclusively on Friday, what was the impact of this practice on their fertility? As so many factors are again involved, it is unlikely that we can ever provide a clear answer to such a question. To add to the ambiguity, in quite a number of sources the prescription of this practice is accompanied by a

¹²⁶ Shlomo D. Goitein, “Sexual Mores,” 50. Goitein’s last suggestion, although interesting, is not free of problems, beginning with the fact that for Jews, Friday night is already a part of the holy day, not simply preceding it. The additional facts that many activities are forbidden on the Sabbath and that various Jewish groups actually considered sexual activity during that day to be prohibited just add to the doubts regarding his theory. And yet it is worth further consideration.

¹²⁷ ועונה ת”ח בלילה שבת ללילה שבת. See *Arba’ah Turim*, Orah hayyim 240; Even ha’ezer 25.

¹²⁸ See *Shulhan Arukh*, Orah hayyim 240, 280:1.

¹²⁹ *Orhot Hayyim*, Ketubbot 38: ועל עולם יעשה כל אדם עצמו כחלמיד חכם. In the same sentence, the author also includes the practice of relations on the night of the ritual bath. We will return to this soon. For an example from the 17th cent. of a desire to spread this practice among the masses, see the outstanding book of Roni Weinstein, *Juvenile Sexuality, Kabbalah, and Catholic Reformation in Italy: Tiferet Bahurim by Pinhas Barukh ben Pelatiah Monselice* (trans. Batya Stein; Studies in Jewish History and Culture 21; Leiden: Brill, 2009) 221–23. For a fascinating critique of this same practice, see *ibid.*, 80–81. This discussion also appeared in Hebrew: Roni Weinstein, *The Glory of Young Men* (Tiferet Bahurim): *The First Jewish Guidebook for Weddings* (Jerusalem: Ben-Zvi Institute, 2010) 60–70, 188–89.

¹³⁰ For an interesting visualization—and perhaps critique—of this practice, see the images “Mizvah Night I” and “Mizvah Night II” by the Israeli artist Ruth Schreiber, under the category “sculpture” on her website, accessed March 21, 2013, <http://www.ruthschreiber.com>.

statement that a man should also have relations with his wife on the night following her ritual bath.¹³¹ If the bath was taken early enough in the cycle, and if the woman did not have a particularly short cycle, such relations obviously could have led to conception. It is also possible that this “Friday rule” actually pushed couples who would otherwise not have frequently engaged in marital relations to have them out of piety at least once a week when the woman was pure. In that case, the rule would have actually increased, and not decreased, their sexual activity. Other authorities even add additional days on which relations are commendable, days that become in a way “pseudo-Fridays”: certain holidays and the day (or days) marking the new month. How can we take these practices into account?

The issue is certainly complex. I tend to suspect that generally, if the practice of limiting relations (almost) exclusively to Fridays had any impact on pious couples’ chances of conceiving, it was not a positive one, but I doubt we can ever come to a definitive answer about this question.

■ Proofs from Reality?

Let us again put aside the possibility that some couples limited their sexual activity to only Friday and return to discussing those couples who followed the fourteen-day rule we explored above, without further limiting their sexual activity by the “Friday only” custom.

In fact, the analysis of both medical data and halakhic material done thus far leaves us with what seems to be a clear-cut understanding: most women, if they have relations only after day fourteen or fifteen of their cycle, dramatically reduce their chances of conceiving. If for whatever reason these women delay relations even more, they are unlikely to conceive at all. Women who meticulously followed halakhic recommendations or communal customs that encouraged or legitimized such delays—miracles aside—inevitably would have had lower rates of fertility than women who did not follow these customs. Several halakhic texts confirm that such practices existed at different times and places, but none of the sources we have seen so far has hinted that this created a reduction in fertility. Theory aside, can we prove that this indeed happened to some women?

If one awaits absolute, irrefutable proof, the answer is probably no. Anyone who has ever dealt with social history of medieval or ancient communities knows

¹³¹ See *Arba'ah Turim*, Even ha'ezer 25; Orah hayyim 240; *Shulhan Arukh*, Orah hayyim 240:1. This idea is undoubtedly related to a talmudic concept that a woman can become pregnant only close to the time of her ritual bath. It is important to note that this is not the only opinion on the matter in talmudic literature. At the same paragraph, another opinion—that conception can occur only “close to her period”—is expressed as well. See *b. Niddah* 31b and *b. Sotah* 27a. On this and other related issues, see Evyatar Marienberg, “Female Fertility in Talmudic Literature,” *HUCA* 83 (forthcoming, 2014) [Hebrew]. In much later periods, in some Lurianic-kabbalistic sources, it is mentioned that the couple should engage in relations on the night of the ritual bath even if the bath does not fall on the eve of the Sabbath. It seems that some of these texts consider such relations to be as good as relations on Sabbath Eve (see, for example, Moses Kordovero, *Tefillah le-Moshe*, Part 1, Sha'ar 10, Siman 13), while others do not say this explicitly (see, for example, in *Siddur Qol Ya'aqov* of Jacob Koppel Lifshitz, commandment 86).

interests, not ovulation and hormones. Obviously, the literary genre of this particular text hinders the possibility of gleaning from it any historical data of value. Nevertheless, would it be totally impossible to suggest that the story might stem from some observation of the author? Can it not be used as proof that there was at least some awareness among medieval Jews that significant differences existed between the fertility rates of women in different communities?

In an article in 1987, Kenneth Stow showed that Jewish families in the twelfth-century Rhine area were very small.¹³⁵ He based his conclusions on a study of Jewish memorial books, in which, often after deadly persecutions, the names of the victims and their family ties were recorded. Unlike accounts saying things such as “hundreds died,” which are needless to say very problematic, these memorial books seem to be a relatively reliable source: due to the authors’ respect for the dead and the use of these books in *ad memoriam* liturgy, they tried to be accurate and precise.

According to Stow’s findings, in about 18 percent of these Rhine area families there were no children, and in another 67 percent there were only one or two. The average number of children in that society was 1.77 per family.¹³⁶ In another sample of Jews in the same area but in the late thirteenth century, Stow’s findings were practically the same. Although this low number of children is surely related more to high childhood mortality than to extremely low fertility, and although it seems Christian families were also not as large as some might imagine,¹³⁷ one is tempted to suggest that in addition to voluntary contraceptive methods, some Jewish religious practices contributed—possibly unintentionally—to a low

¹³⁵ Kenneth R. Stow, “The Jewish Family in the Rhineland in the High Middle Ages: Form and Function,” *AHR* 92 (1987) 1085–110.

¹³⁶ Avraham Grossman suggested in 1981, and kept this statement in later editions of his seminal work on the early sages of Ashkenaz, that the average number of children in rabbinic families was four (*The Early Sages of Ashkenaz: Their Lives, Leadership and Works (900–1096)* [Jerusalem: Magnes Press, 1981] 8–9 n. 32 [Hebrew]). He based this assertion on a short paragraph on this matter in Bernhard Blumenkranz, “Germany, 843–1096,” in *The Dark Ages: Jews in Christian Europe, 711–1096* (ed. Cecil Roth and Israel H. Levine; rev. ed.; vol. 2.2 of *The World History of the Jewish People*; New Brunswick, N.J.: Rutgers University Press, 1966) 162–74, at 165. In later editions (1989, 2001), Grossman added a note dismissing Stow’s article but unfortunately without providing substantial arguments. The arguments presented by Blumenkranz in 1966 seem to me to be very lacking by today’s standards.

¹³⁷ In quite a number of studies, there is evidence that the number of people living in an average European household during the Middle Ages was often between four and six. Although it is tempting to assume this means two to four children per family, many of these studies show that the very nature of these households was complex and fluid, including at times more than two adults or, on the other hand, young people who were not part of the biological family. I am still not aware of studies that can answer a question that to us moderns might seem simple: How many living children did an average medieval couple have? For more on medieval households, see Jean-Louis Flandrin, *Families in Former Times: Kinship, Household, and Sexuality* (trans. Richard Southern; London: Cambridge University Press, 1976) 53–65; and David Herlihy, *Medieval Households* (Cambridge: Harvard University Press, 1985) 56–78.

rate of fertility.¹³⁸ Pietistic practices of many kinds were developed in precisely these communities.¹³⁹ The argument can also go in another direction: even if one might argue that this low number of children was not related to *niddah* practices, in communities with such a low number of living children to begin with, every small factor that influences fertility can have a tremendous impact on the continuation of families.¹⁴⁰ Even if one might argue that Jewish religious practices reduced the fertility of only a small number of women, it is very possible that for many of them such a reduction meant the difference between having one child and having none at all.

■ Conclusions

It is repeatedly claimed today by Orthodox Jewish authors and speakers that *niddah* laws “protect(ed) the Jewish family” and “favor(ed) procreation.” In a play on a famous statement regarding the Sabbath, one can even find declarations that “More than Israel (i.e., the Jewish people) kept family purity (i.e., the laws of *niddah*), family purity kept Israel.”¹⁴¹

The theological or sociological value of the above statement is beyond the scope of this study, but this article claims that although it is possible that at times these laws favored procreation, not infrequently these laws—and common practices related to them—affected procreation negatively. They may have even put the very existence of quite a few Jewish families at risk. It is hard to say, on a large scale, whether the laws of *niddah* in their prescribed or lived form (with or without some additional Jewish practices regulating sexual activity) enhanced Jewish fertility or reduced it. It seems possible that these practices directed some Jewish couples, unknowingly, to have relations around ovulation. Did this enhance their chances of conceiving? I do not know. Considering the fact that in many cultures people avoid, for various reasons (fear, pain, disgust, embarrassment, various beliefs), relations during the time of the actual menstrual bleeding, one

¹³⁸ This idea has been raised occasionally by other scholars, but without further exploration. See for example a comment by Patricia Skinner: when mentioning the possibility that many medieval Jewish families were small, she said that this “may have been due to the strictness of Jewish purity laws which acted as a regulator to sexual activity” (“Gender, Memory, and Jewish Identity: Reading a Family History from Medieval Southern Italy,” *Early Medieval Europe* 13 [2005] 277–96, at 292).

¹³⁹ See, for example, Talya Fishman, “The Penitential System of Hasidei Ashkenaz and the Problem of Cultural Boundaries,” *Journal of Jewish Thought and Philosophy* 8 (1999) 201–29; Haym Soloveitchik, “Piety, Pietism, and German Pietism: ‘Sefer Ḥasidim I’ and the Influence of Ḥasidei Ashkenaz,” *JQR* 92 (2002) 455–93; and Ephraim Kanarfogel, “R. Judah he-Hasid and the Rabbinic Scholars of Regensburg: Interactions, Influences, and Implications,” *JQR* 96 (2006) 17–37.

¹⁴⁰ An article about Jewish demography in late antiquity also discusses the pattern of very small families. However, the period discussed, which was well before many of the halakhic factors considered in our study evolved, makes it of little relevance for our topic. See nevertheless Amram Tropper, “Children and Childhood in Light of the Demographics of the Jewish Family in Late Antiquity,” *JSJ* 37 (2006) 299–343.

¹⁴¹ See such a statement at the very beginning of this article.

or two likely “spontaneous” sexual acts during the days after the cessation of the bleeding (more or less, days five to eleven) would have a reasonable chance of being procreative due to the survival of the sperm, in the woman’s body, for several days. But even if we assume the common (but as far as I know, unproven, and indeed, very questionable) Orthodox claim that having relations on days twelve to thirteen is particularly apt for procreation, it should also be noted that the same laws, even in their minimalistic, “mainstream” version, reduced the fertility of many other women. When kept with higher degrees of “piety,” the number of affected women, unless miracles were involved, would have been significantly larger. It is very likely that some of them were considered barren, with all the social implications this situation meant in traditional communities. Not infrequently, Jewish law caused perfectly healthy women to be seen, and to see themselves, as sterile.

Did such cases have a palpable impact on Jewish demography at large? I do not know. After all, to answer this question tentatively, we would need to know how many Jewish people actually kept these laws. If we include in this category not only those Jews who lived in relatively organized communities but also those who lived outside of them, and if we do not subscribe to the somewhat pious view that most Jews kept rabbinic laws, we might have to conclude that a very significant number of Jews were not affected by these laws, either positively or negatively, for the simple reason that they did not adhere to them, either because of lack of interest, lack of knowledge, or lack of means.¹⁴² I can only agree with Joseph Shatzmiller’s conclusions about medieval ritual baths:

Jews did not have a ritual bath in every locality, and not even, as was mentioned before, an ordinary, secular, bathhouse. We must ask ourselves how those who lived in tiny localities were able to obey the ancient law. Did they immerse themselves in rivers considered according to Jewish law as acceptable means of ritual purification? Or maybe they went regularly to a larger neighboring community? Or perhaps they did not follow these precepts meticulously? I do not have an answer to these questions, although the last possibility cannot be discarded without serious reflection.¹⁴³

Of course these laws might only have significantly affected those Jews who actually adhered to them. It seems reasonable to assume that the more strictly the *niddah* laws were kept, the fewer days those who adhered to them would have

¹⁴² See also Ephraim Kanarfogel, “Rabbinic Attitudes toward Nonobservance in the Medieval Period,” in *Jewish Tradition and the Nontraditional Jew* (ed. Jacob J. Schacter; Lanham, N.J.: Jason Aronson, 1992) 3–35; and Judith R. Baskin, “Male Piety, Female Bodies,” 20–23. For a survey of contemporary levels of observance of these laws among Orthodox Jews, see Mark A. Guterman, “Observance of the Laws of Family Purity in Modern-Orthodox Judaism,” *Archives of Sexual Behavior* 37 (2008) 340–45.

¹⁴³ Joseph Shatzmiller, “Les bains juifs aux XII^e et XIII^e siècles,” *Médiévales* 43 (2002) 83–89, at 85 [my translation].

had sexual relations. And because, as we saw, the window of fertility for many women, if not most of them, is dangerously close to the twelfth, or thirteenth, or fourteenth day of their cycle, and because there are many reasons a woman might have delayed her bath, it seems reasonable to conclude that the *niddah* laws more often had a negative effect than a positive one, as has generally been claimed, on the fertility of religiously meticulous Jews.

In an article cited previously, Susan K. Gardin discusses several demographic and ethnographic studies and summarizes her findings thus:

Coital frequency affects fertility during the peak reproductive years in societies where the frequency is very low, i.e. less than six coital acts per month. . . . Within the range of six to twelve coital acts per intermenstrual period, increases in coitus had little effect on fertility; however, when the frequency was less than six, small changes in coital activity produced large changes in waiting time to conception.¹⁴⁴

Many observant Jewish women with consistently short cycles probably never conceived. Many women with average cycles also very likely had a reduced level of fertility. That those who adhered to additional customs reduced their coital activity even further only made matters worse. Couples who kept even a relatively “liberal” version of the *niddah* laws but limited their relationships to Friday night and the night of immersion could not have had more than three or four coital acts in each cycle. Even if they occasionally broke this rule, that number was likely to have remained low. Admittedly, couples who already had children and who lived, like most people at the time, in often very small and crowded residences, probably had limited opportunities to engage in sexual activity regardless of these rules. Still, these rules probably made it even harder for them to find such moments, crucial for both intimacy and procreation. It is possible that one factor limiting Jewish populations (preventing desired pregnancies or saving couples from unwanted ones)—and particularly those of observant individuals and communities—was the existence of Jewish laws that regulated the sexual behavior of married couples, in one or another of their variants.¹⁴⁵

¹⁴⁴ Gardin, “Laws of Taharat HaMishpacha,” 10.

¹⁴⁵ Daniel Rosenak hints in many places that the *niddah* laws might have had a negative demographic impact on Jews in the past. He nevertheless does not discuss this assertion in any detail, nor does he consider many of the questions we deal with in this article. See Daniel Rosenak, *To Restore the Splendour*, 19, 69–70, 97, 123, 129, 137, 150, 161, 213 n. 284, 247, 256–59.

Harvard Theological Review

106:3

JULY 2013

ARTICLES

- Traditional Jewish Sexual Practices and Their Possible
Impact on Jewish Fertility and Demography 243
Evyatar Marienberg
- “To Defer and Not to Hasten”: The Anabaptist and Baptist
Appropriations of Tertullian’s Baptismal Theology 287
Brian C. Brewer
- Conquest and Form: Narrativity in Joshua 5–11 and Historical
Discourse in Ancient Judah 309
Ian Douglas Wilson
- Images of Empire, Imaging the Self: The Significance of the
Imperial Statue Episode in *Acts of Peter* 331
Callie Callon
- Eugeio Pacelli—Man and Pope 357
Paul O’Shea
- Books Received** 371

Cambridge Journals Online
For further information about this journal
go to the journal website at:
<http://www.journals.cambridge.org/htr>

CAMBRIDGE
UNIVERSITY PRESS