

Mitzvah Children
by Rabbis Kassel Abelson and Elliot Dorff
Even HaEzer 1:5 (Final Version, December, 2007)

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Sheelah:

How many children should a young married Jewish couple seek to have? What are the duties of the Jewish community to make it possible for them to have more than two?

Teshuvah:

The Torah includes two positive commandments with regard to sexual relations, one for the companionship, pleasure, and mutual bonding of the couple (Exodus 21:10), and the other for procreation (Genesis 1:28). Although this responsum focuses only on the latter, an extensive discussion of the former can be found in the Rabbinical Assembly's *Rabbinic Letter on Human Intimacy*.¹

Those Unable to have Children and Those Who Can Produce Only One or Two

Because this responsum deals with procreation, right at the beginning we want to emphasize that **there is no obligation to procreate when the couple is unable to have any children or when they cannot have any more children than they have already produced.** We sympathize immensely with those couples who long to have children but have not been able to do so because of physical or financial reasons. Our hearts go out to those who have tried assisted reproductive technologies or adoption and have not been successful. We also are keenly aware of the huge financial costs involved in adoption and in using some of the more sophisticated techniques to assist reproduction. We also understand and sympathize with the immense psychological burdens of couples finding themselves infertile and then going through the rigors of the new assisted reproductive techniques, all-too-often to no avail, or adoption, often accompanied by a long search for a child, with promises made and broken and with worries about the genetic legacy of the child they find. We want such couples to know that in a previous responsum approved by the Committee on Jewish Law and Standards, Rabbi Elliot Dorff pointed out that "commandments make logical and legal sense only when the one commanded has the ability to obey."² **Hence, in cases where a couple is unable to have**

1. Elliot N. Dorff, "*This Is My Beloved, This Is My Friend*": *A Rabbinic Letter on Human Intimacy* (New York: Rabbinical Assembly, 1996), esp. pp. 13-15, 19-29; reprinted in Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), Chapter 3, esp. pp. 82-94.

2. Elliot N. Dorff, "Artificial Insemination, Egg Donation, and Adoption," in *Responsa of the Committee on Jewish Law and Standards 1991-2000* (New York: The Rabbinical Assembly, 2002), p. 463. The responsum is available at www.rabbinicalassembly.org under the link "Contemporary Halakhah," and reprinted in Dorff, *Matters of Life and Death* (Philadelphia: Jewish Publication Society, 1998), Chapters Three and Four. An infertile couple may but are not legally required to explore the use of assisted reproductive techniques or

children, or where they can only have one or two, they are no longer obligated to fulfill the commandment to reproduce. Therefore this responsum does not apply to them, and they should feel no guilt whatsoever in not being able to help achieve the goal of this responsum, namely, to increase the number of Jews in the world. One cannot be held responsible for what one cannot do, and neither the infertile couple themselves nor anyone else should impose an impossible burden on anyone, including themselves.

At the same time, all of us, including those who cannot have two children, must help raise the next generation to be informed and practicing Jews. All of us can and should contribute to this goal by living our lives as serious Jews, thus affording the younger generation good Jewish role models. We can and should also contribute to the strength of the Jewish community and its tradition by teaching children about Judaism and by contributing financially to the Jewish education of children, teenagers, and adults, especially those of one's extended family or community.

The Commandment to Procreate

For those able to procreate, there is no specific limit on the number of children that would constitute a Jewish family. However there is a minimum number that the early *halakhah* requires and an additional recommendation that each couple should carefully consider when they discuss their ideal family size.

Jewish tradition has always considered children a blessing. The stories of the Patriarchs and Matriarchs include extensive accounts of the difficulties Sarah, Rebecca and Rachel had in conceiving and bearing children and the great joy that their children brought to the parents. When God blesses Abraham, it is with the promise that his descendants would be as numerous as the stars in the heavens.

ויוצא אתו החוצה ויאמר הבט נא השמימה וספר הכוכבים אם תוכל לספר אתם ויאמר לו כה יהיה זרעך.
“He took him outside and said ‘Look toward heaven and count the stars, if you are able to count them.’ And he added, “So shall your offspring be.”³

Children are considered not only a blessing, but also an obligation. The Torah tells us that God blessed the first man and woman and commanded them:

פרו ורבו ומלאו את הארץ וכבשה
“Be fertile and increase, fill the earth and conquer it”⁴

Who is Commanded?

The *Mishnah* seems to limit the command to procreate to the man:

האיש מצוה על פריה ורבייה אבל לא האשה
“The man is required to be fruitful and multiply but not the woman.”⁵

adoption to have children.

3. Gen. 15:5.

4. Gen.1:28.

5. M. *Yevamot* 6:6.

The exegetical reason offered in the Talmud to restrict the duty to procreate to men is the juxtaposition of “Be fruitful and multiply” with “and fill the earth and conquer it” (Genesis 1:28). The Rabbis reason that because the last part of the verse applies solely to men, for in their time only men conquered the earth, so too the beginning of the verse must apply only to men. At the same time, the Talmud (B. *Yevamot* 65b-66a) records conflicting opinions as to whether a woman is also obligated to procreate and ultimately does not decide the matter. The later codes, however, limit the duty to men. This seems counterintuitive, especially since Rabbi Yohanan ben Beroqa seems to have captured the Torah’s meaning as indicated by the context of the commandment in Genesis 1:28, where God is speaking to both the first man and the first woman. The same Mishnah in *Yevamot*, goes on to say:

ר' יוחנן בן ברוקא אומר על שניהם הוא אומר, ויברך אותם אלהים ויאמר להם פרו ורבו
“R. Yohanan b. Beroqah says, ‘Concerning both of them does Scripture say, *And God blessed them and said to them, Be fruitful and multiply*’”(Gen.1:28).⁶

There are several modern theories to explain why the Mishnah restricts the duty to men and why later authorities chose to interpret the verse that way. It may be, for example, that the Rabbis limited the commandment to men because of the state of their knowledge of medicine: it was not until many centuries later that scientists discovered that the woman contributes to the genetic structure of the child through her ova and is not “just” an incubator for the sperm that the man inserts in her. It may also be for economic reasons: the man was going to be economically responsible for the sustenance of his children, and so he had to be commanded to produce them in the first place, against his economic interests.⁷ The risks of pregnancy to the woman was undoubtedly also a factor in the Rabbis’ ruling: they held that women were exempt from the commandment to procreate because they interpreted the Torah such that it does not require us to endanger our lives except to avoid committing murder, idolatry, or adultery/incest.⁸

Whatever the reason for limiting the duty to procreate to men, the developing tradition adopted this stance. This worked to the advantage of women. A woman was not legally obligated to procreate; therefore she could practice contraception to protect her health and wellbeing. She could also use contraceptives for purposes of family planning.

A Shared Obligation

Still, R Yohanan ben Beroqah says the obligation is a shared one. In his view, the couple, both the man and the woman, are commanded to have children. This seems to be in accord with the *pshat* (obvious meaning) of the biblical text. It is possible that the Rabbis chose to make only the male responsible out of concern for the woman’s health, and today, despite the egalitarian view in the Conservative movement, it does not seem to be wise to give up the right the woman was granted to practice birth control. Nonetheless, in our day, when we have accepted the equality of men and women, and when we know that women contribute genetically to the creation of a child just as men do, and when effective contraceptive methods for both sexes are available, we should recognize that **both the husband and the wife should together**

6. *Ibid.*

7. On this, see Dorff, *Matters of Life and Death* (at note 2 above), p. 335, note 8.

8. B. *Sanhedrin* 74a; see also B. *Yoma* 82a; B. *Ketubbot* 19a; and B. *Peshahim* 25a-25b.

decide the number of children they would like to have and the timing and methods they choose to achieve their goal. Indeed, as Rabbis Dorff, Nevins, and Reisner asserted in their paper on the subject, homosexual Jews should also see it as their duty to procreate or adopt, if they can, to convert their children according to Jewish law, if necessary, and to raise them as Jews.

This will mean that a Jewish couple may use birth control at various points in their child-bearing years as part of their family planning. Further, in accordance with Jewish law and previous CJLS rulings, the woman must arrange to abort a fetus that is causing imminent danger to her, and she may arrange to abort it if she will be at greater risk than is normal in pregnancy (e.g., if she has diabetes), if the fetus poses a grave risk to her mental health, or if the fetus will suffer from a significant genetic disease.⁹ Nothing in this responsum should be read to qualify or reverse these previous rulings.

The Number and Gender of Children

The Torah commands us to have children, but it does not specify the number that we are to have. The Rabbis debated this question in the Mishnah, and determined that the commandment of the Torah was fulfilled by having two children:

לא יבטל אדם מפרייה ורביה אלא אם כן יש לו בנים. בית שמאי אומרים שני זכרים, ובית הלל אומרים זכר ונקבה, שנאמר זכר ונקבה בראם.

“A man should not give up having sexual relations unless he has children. The House of Shammai say, ‘Two boys.’ And the House of Hillel say, ‘A boy and a girl, since it is said, *Male and female he created them* [Gen. 5 : 2]”¹⁰

In the *Mishneh Torah*, Maimonides endorsed the position of Hillel and held that the command to have children requires producing a boy and a girl.

כמה בנים יהיו לאיש והתקים מצוה זו בידו, זכר ונקבה.

“How many children must a man have to fulfill the command (to have children)? A boy

9. “The Mishnah (*Ohalot* 7:6) explicitly indicates that one is to abort a fetus if the continuation of pregnancy might imperil the life of the mother...The Rabbinical Assembly Committee on Jewish Law and Standards takes the view that an abortion is justifiable if a continuation of pregnancy might cause the mother severe physical or psychological harm, or when the fetus is judged by competent medical opinion as severely defective.” Ben Zion Bokser and Kassel Abelson, “A Statement on the Permissibility of Abortion,” *Responsa 1980-1990 of the Committee on Jewish Law and Standards of the Conservative Movement*, David J. Fine, ed. (New York: Rabbinical Assembly, 2005), p. 817.

10. M. *Yevamot* 6:6 (61b). The Talmud there bases the House of Shammai’s ruling on the fact that Moses had two sons. A Tosefta there asserts that the House of Shammai actually requires two boys and two girls, while Rabbi Nathan in the Talmud there says that the House of Shammai requires a male and a female and the House of Hillel either a male or a female. The Jerusalem Talmud (J. *Yevamot* 6:6 [7c]) records the opinion of Rabbi Bun, according to which the House of Shammai requires two sons and the House of Hillel, known to be more lenient than the House of Shammai, then says that *even* a boy and a girl would suffice (but two boys would definitely suffice). Although the later tradition settled on one boy and one girl, it is clear that from the very beginning there were differing traditions as to what genders one’s two children had to, or could, be in order to fulfill the commandment. See Dorff, *Matters of Life and Death* (at note 2 above), page 336, note 9.

and a girl.”¹¹

In the *Shulhan Arukh*, R. Joseph Qaro agrees that having two children, specifically a boy and a girl, is required, and he adds a further requirement that to fulfill the commandment both children must themselves be able to procreate:

כיון שיש לאדם זכר ונקבה קיים מצוות פריה ורביה, והוא שלא יהיה הבן סריס או הבת אילנית.

When a person has a male and a female, he has fulfilled the command to “be fruitful and multiply.” This applies when the son is not a eunuch and the daughter is not barren.¹²

In the next paragraph, where he elaborates on the requirement of producing a son and a daughter, Rabbi Qaro voices an age-old concern that the number of Jews in the world not diminish and that each couple replace itself:

נולדו לו זכר ונקבה ומתו והניחו בנים הרי זה קיים מצוות פריה ורביה.¹³ במה דברים אמורים כשהיו בני הבנים זכר ונקבה והיו באים מזכר ונקבה, אף על פי שהזכר בן בתו והנקבה בת בנו, הואיל ומשני בניו הם באים הרי קיים מצוות פריה ורביה

If a male and a female were born to him and they died but they left children, he fulfilled the command to procreate. When does this apply? When the [grand]children were male and female and they came from male and female. Even if the male is descended from his daughter and the female from his son, he fulfilled the command to procreate...

A family with a boy and a girl would literally replace the father and mother in the world. However the *Shulhan Arukah* suggests that when one views the number of males and females over a generation or two, the number of males and females will probably balance. Based on this broader view it is the number of children, two, that is the key. With the passage of a generation or two, the children of this marriage together with the children of other marriages will statistically reproduce and approximately balance the number of males and females needed to populate the world.¹⁴ Knowing even more now about the statistical probabilities of producing children of both genders in the general population, and wanting to express in law that we cherish each and every Jew, regardless of gender, we should rule that **the gender of the children need not be a consideration; rather, a young couple ready to start a family should seek to have at least two children.**¹⁵

11. M.T. *Hilkhot Ishut* 15:4.

12. S.A. *Even Haezer* 1:5.

13. S.A. *Even Haezer* 1:6.

14. See note 10 above. The *Arukh Hashulhan* 1:16 mentions that some authorities hold that the *Mitzvah* of procreation can be fulfilled if there are descendants of both genders in a future generation, and it seems reasonable also to us to say that the offspring of the broader population will balance the male-female numbers and that the important thing is to replace ourselves numerically. Ironically, in our own day, when modern technology has suddenly provided us with some control over the gender of our children but when the Jewish community simultaneously suffers from a major population deficit and values girls as much as boys, we would affirm that technologically-assisted gender selection should *not* take place, that we welcome children into our midst regardless of their gender, and that we see any two of them as fulfillment of the commandment to procreate.

15. As we write this, Rabbi Mark Popovsky is preparing a responsum on the use of preimplantation genetic diagnosis (PGD). Our stance here would agree with the one he intends to take, namely, that PGD should not be used to ensure that the child is one gender or the other except in the case of sex-linked genetic diseases.

More than Two Children?

Although the minimum number to fulfill the obligation to reproduce is two, the tradition encourages couples to have larger numbers, and Jewish history made it necessary to go beyond the acceptable minimum. Thus the Talmud (B. *Yevamot* 62b) asserts that a man who has had two children should continue to have as many children as he can. It bases this on two verses, Isaiah 45:18 (“Not for void did God create the world, but for habitation [*lashevet*]”) and Ecclesiastes 11:6 (In the morning sow your seed, and in the evening [*la'erev*] do not withhold your hand,” where “morning” is understood to refer to a person’s youth and “evening” to a person’s older years). Maimonides later codifies this as law:

אף על פי שקיים אדם מצות פריה ורביה הרי הוא מצווה מדברי סופרים שלא יבטל מלפרות ולרבות כל זמן שיש בו כח, שכל המוסיף נפש אחת בישראל כאלו בנה עולם.

Even after a person has fulfilled the (biblical) command to “be fruitful and multiply,” he is still commanded by the Sages ‘to be fruitful and multiply’ all the time that he has the strength, for one who adds a soul to Israel is as though he built a whole world.¹⁶

Why did encouraging the birth of as many Jewish children as possible become the dominant view in the Halakhah? Rabbi Robert Gordis helps us understand the reason the Halakhah developed in this direction.

...The answer lies in the history of the Jewish people, for whom the Middle Ages lasted from the sixth to the eighteenth century and beyond. Over and above the natural calamities of famine and disease to which medieval men generally were exposed, Jews suffered decimation through frequent and violent expulsions, massacres, and forced conversions. The full rigor of the Jewish battle for survival in a hostile world is mirrored in the population statistics already referred to in another connection. In the year 70 the Jewish population of the world is estimated by Adolf Harnack at four and a half million. Eleven hundred years later, in 1170, when Benjamin of Tudela began his travels, there were only 1,500,000 Jews. By 1300 the number had risen to two million, but two hundred years later it had fallen to 1,500,000, where it remained practically constant for 150 years more. The full extent of defection and loss during the Middle Ages may be gauged by the fact that not until 1840 did the figure attain to the level of the year 70, while in the century between 1840 and 1940 the number increased almost fourfold, from four and a half million to sixteen million. German Nazism brutally destroyed six of the seven million Jews in Europe, and thus brought the world Jewish population down to ten million. Faced by these perils, medieval Jewry saw its preservation dependent on a high birth rate without restriction or qualification. The imperious demand for group survival showed no consideration for individual desires or family welfare. Only through children and more children could the Jew hope to overcome the tragic mortality rate. Thus the instinctive wish for progeny was intensified by overpowering religio-national motives.

Hence the view of the Halakhah that the birth of two children fulfills the requirements of the Law was ignored. Parents were encouraged to bring as many children

16. M.T. *Hilkhot Ishut* 15:16.

into the world as possible, with the hope that many, if not most of them, might survive the rigors of malnutrition, disease and persecution and attain to maturity. The Baraita (see Yebamoth 12b) permitting family limitation, which has been quoted above [see Robert Gordis, *Judaism for the Modern Age*, p. 252], was also interpreted in as strict a manner as possible. Its clear-cut provisions for the protection of the life and health of the mother and child were often disregarded. A deep-seated opposition to birth control became dominant among traditionally minded Jews, in spite of Jewish tradition. Nevertheless, in the Rabbinic Responsa of the eighteenth and nineteenth centuries, more liberal viewpoints are met with, side by side with more rigorous ones. Today, modern Judaism unequivocally reaffirms the obligation to perpetuate the human race through the medium of the family as a basic and general goal, but it also recognizes that family planning is a basic necessity of modern life, in view of complex moral, hygienic, and economic factors.¹⁷

Dr Gordis documents the development through the ages. He points to the fact that the basic halakhic requirement is to have two children. Later Rabbinic interpretation, seeking to meet the loss of large numbers of Jews due to persecution and disease, put an Halakhic obligation on the husband to have more children, as many children as he could, to make up for the losses. Dr Gordis concludes that conditions have changed and “family planning is a basic necessity of modern life, in view of complex moral, hygienic, and economic factors.” We would add that nowadays, with safe Caesarian sections and with many other medical advances, most couples need not have six or seven children to ensure that at least two will survive to adulthood. If the couple is going to use birth control techniques in the effort to time when they are going to have children and determine how many children they will try to have, the decision is clearly the responsibility of both the husband and wife. However, both members of the couple, when they discuss how many children they hope to have, should take into consideration the growing threat to the future of the Jewish people due to the declining Jewish population.

The Situation Today

The world Jewish community has not recovered numerically from the devastating losses during the Nazi era. There were over 18 million Jews in the world before World War II, we lost six million in the Holocaust, and now, counting everyone who identifies as a Jew, we are somewhere between 13 and 14 million. (Compare that to the approximately two billion Christians in the world and 1.2 billion Moslems.) Jews constitute less than one-quarter of one percent (0.25%) of the world’s population, in comparison to Christians who are 33% and Moslems who are 20%. The Jewish population of the United States is estimated to be around 5.5 million. Despite the influx in the past 50 years of at least a half-million Jewish immigrants, that number has remained static because Jews living here are not reproducing themselves. Furthermore, the median age of Jews is approximately seven years older than other Americans, and at least half of all marriages involving a Jew are to non-Jews, with few of the resulting children being raised as Jews. Among all segments of the American population, moreover, Jews have the fewest number of siblings, the smallest household size, and the second lowest number of children under eighteen at home. Jewish women marry later and are therefore less fertile than their gentile counterparts. Jewish families have fewer children than needed to replace

17. Robert Gordis, *Judaism for the Modern Age* (New York: Farrar, Straus, and Cudahy, 1955), pp. 254-255. Gordis dealt primarily with the question of family planning, but his analysis applies to family size as well.

themselves.¹⁸

In part, this can be explained by the high rates of achievement in education and jobs among Jewish men and women, who spend more time than most other subsets of the American population in universities and then in advancing their careers before marrying and trying to have children. Marrying at a later age, however, unfortunately means more risk of infertility and of birth defects. This is a problem for the couple personally, causing much heartache and tension within the marriage. It also creates a major demographic problem for the Jewish people. The effect of these demographic trends is already being felt and, if current trends continue, will be more pronounced as time goes by. The total Jewish population of the United States will drop in numbers and in influence on the American scene. There will also be a drop in the number of Jewish children who will attend Jewish schools, camps and other institutions for the young, fewer Jews to belong to and to attend synagogues, and fewer Jews to engage in the acts of *tikkun olam* (fixing the world) that our tradition demands.¹⁹ As rabbis, we are surely well aware that substantial education is necessary to transform a child into a learned and practicing Jew, but one cannot educate someone who is not there. Thus *both* higher reproductive rates *and* deeper and wider Jewish educational efforts are necessary for Judaism and the Jewish people to survive, let alone thrive.

The Present Challenge

In the past, the challenge to Jewish survival was a result of persecution. Today the challenge is one of seduction into the general, secular culture through assimilation, intermarriage, and a commitment to work over family. This new challenge is no less a danger than persecution was to the future of the Jewish community in North America and around the world. How shall we meet this challenge?

Upholding the legal norm imposed by the later Rabbis on the male member of the couple of unlimited reproduction is neither practical nor desirable. Nor does it seem right or wise to say to the female member of the family, "Give up higher education and a career to have a large family." Rather, a reasonable course would be to encourage a fertile couple to have at least two

18. The estimated birthrate for Jewish families is 1.8, with non-Orthodox Jews between 1.6 and 1.7. These figures are well below the 2.2 or 2.3 rate needed to replace the present Jewish population. (The rate needs to be more than 2.0 because some people will not marry or procreate, and some will have only one child or will have two children who will not themselves procreate.) See Jack Wertheimer, "Jews and the Jewish Birthrate," *Commentary*, October 2005, p. 41. He cites the *National Jewish Population Study 2000-2001* (New York: United Jewish Communities, 2002), available at www.ujc.org/NJPS. The best estimates of the Jewish population of the world and the United States can be found in the latest edition of the *American Jewish Yearbook* (New York: American Jewish Committee). See, for example, David Singer and Lawrence Grossman, eds., *The American Jewish Yearbook 2001*, where the estimate of the world's Jewish population is 13,254,100; see p. 101:540. All of these figures depend, of course, on how the demographer is defining who is a Jew, and so those like Gary Tobin who use a more expansive definition maintain that there are as many as a million more Jews in the United States. That is only temporary comfort, however, because the chances are slim that people who are only marginally Jewish will raise Jewish children. For more on the critical need for Jews to reproduce, and for strategies to increase the Jewish birth rate and make raising children Jewishly possible for people educationally and financially, see Elliot N. Dorff, *Love Your Neighbor and Yourself* (at note 1 above), pp. 98-104, 143-154.

19. Wertheimer, *ibid.*, pp. 39-44. This article spells out in greater detail the evidence for the drop in the birthrate and points out that the Orthodox community has managed to maintain a higher birthrate and will be a larger part of the American Jewish community in the future.

children in compliance with the early Halakhah and at least one additional child to help the Jewish people replace those lost in the Holocaust and maintain its numbers in the modern world. **The first two children that a couple produces are *mitzvah* children in the sense that they enable the couple (specifically, the man) to fulfill the command to procreate. We would like to suggest that the third child (and any further children) also be designated “*mitzvah* children,” not only in the sense that classical Jewish law requires us to have as many children as we can, but also in the sense that having three or more children helps the Jewish people maintain its numbers and even regain a bit of the numbers we lost in the Holocaust. Another way to think of this is that the couple should have, if possible, at least one more child than they were planning for the sake of the Jewish people, with a minimum of three.**²⁰

Are there any limits to this? Yes, the limits that Jewish law’s ongoing concern for health and safety would impose. Thus if the couple is already in their late thirties or beyond, when the probability of both infertility and genetic defects rises, they may decide, in consultation with their doctor, that they have had as many children as it is safe for them to have. In that case, they should take precautions against having any more children. On the other hand, if they are young and healthy enough to have more than three children, then any further children would also be *mitzvah* children in the sense we are developing here. Even then, concerns for the physical and psychological health of the parents (especially the woman) and the other children should play an important role in determining the limit of the number of children a couple should have. The practice in some parts of the Orthodox community of having ten or twelve children is clearly done in violation of these concerns. At the same time, the Orthodox community can be a model for us in another way -- namely, that once the norm we are proposing becomes entrenched within the Conservative/Masorti community, it will be easier for all to observe it, both because the community will be more attuned to the practical needs that families require and also because there will be more social acceptance of having three or more children.

The Meaning of *Mitzvah*

The term “*mitzvah*” has two meanings. Its original and primary meaning is a commandment of God and therefore an obligation of ours.²¹ In calling all children that a couple has beyond two “*mitzvah* children,” we are using that primary meaning of the term, for Jewish law requires us to have as many children as we can. We are also, though, using the term “*mitzvah*” in its broader sense. In both Rabbinic and modern terminology, the term “*mitzvah*” is also used by Jews to describe not only the commanded acts explicitly found in the tradition, but also the “good deeds” that they do. In using the term “*mitzvah*” in this latter sense, both the Talmud and contemporary Jews are saying that they feel commanded by God to do the right thing, and they are trying to carry out what they believe God would want them to do in this

20. This is also a critical part of the program for Jewish thriving suggested by Scott Shay. See Scott Shay, *Getting Our Groove Back: How to Energize American Jewry* (Jerusalem and New York: Devora Publishing Company, 2007), chap. 2. He also suggests there that after college women have children first and then go to graduate school and work to diminish the likelihood of infertility problems and to avoid any break between graduate school and work.

21. Elliot Dorff discusses what “*mitzvah*” means in our day and the rationales for obeying them in his book, *Mitzvah Means Commandment* (New York: United Synagogue of America, 1989).

situation, even if that is not legally required.²² This is the sense of “*mitzvah*” that asks us to do something ideal, beyond the minimal requirements of the law. It is a praiseworthy act, along the lines of the talmudic expression, *וכל המרבה הרי זה משובח*, “And all who do this more are to be praised.”²³ It is *מצוה מן המובחר*, fulfilling a commandment in the best way.²⁴ It involves elements of, but is stronger than, the Rabbinic concept of *הדור מצוה*, of fulfilling a commandment in an especially beautiful way.²⁵ The opposite of “*mitzvah*” in this sense is not *aveirah*, a sin, a conscious and active transgression, but a *het*, a missing of the mark, a missed opportunity to do something good.²⁶ As J. O. Urmson pointed out,²⁷ morality includes not only what we must do or refrain from doing in order to be minimally decent; it also includes what we should *aspire* to do to be “Saints and Heroes” -- or, in the Torah’s terms, to be holy: “You shall be holy, for I the Lord your God am holy” (Leviticus 19:2). At the same time, we are not declaring this a *gezeirah*, a new decree of a positive obligation, and we are not reaffirming the *mitzvah d’rabbanan*, the Rabbinic commandment that a couple have as many children as possible, for that would impose too much of a duty and too much of a burden of guilt on couples who may not be able, physically or financially, to have more than two children. As discussed earlier, we also think that it is not wise, for either the couple (especially the mother) or the other children to have ten or twelve children. We therefore are establishing this as a *mitzvah* in this second sense of being an ideal, an act that, though not legally commanded, is desirable and, as such, something that we should strive for within the limits of what is physically and psychologically good for the couple and the other children.

Especially in the demographic crisis in which we Jews find ourselves, helping to keep the Jewish people alive and numerically strong is a *mitzvah* in both senses of the term. **Every couple who has a third child (or more) should feel that that child is a *mitzvah* child both in the legal sense described above and also in the sense of “a good deed,” for he or she is (they are) a contribution to helping to make the world better by assuring that Judaism and the**

22. The Talmud also uses the word *Mitzvah* in the sense of performing a good deed as in the quote from Abaye *לשמוע דברי חכמים מצוה* “It is a *Mitzvah*, ‘a good deed’ to hearken to the words of the Sages” (B. *Hullin* 106a).

23. M. *Sanhedrin* 5:2; B. *Sanhedrin* 41a; and, of course, the Haggadah’s assertion that *וכל המרבה לספר ביציאת מצרים זה משובח*, “All who expand their telling about the Exodus from Egypt have done a praiseworthy thing.” Other examples of acts being classified as praiseworthy include B. *Berakhot* 34b, 45b; B. *Yoma* 84b; B. *Rosh Hashanah* 32b; B. *Mo’ed Katan* 22a. In the topic of this responsum, however, it is *not* the case that a woman should have ten or twelve children, as some in the Orthodox community do, on the grounds that “All who do more are to be praised.” Concerns about the physical and psychological health of both the parents (especially the woman) and the children should play an important role in determining the limit of the number of children that a couple should have. We discussed this later in the preceding paragraph of this responsum.

24. That expression appears ten times in the Talmud; for example, B. *Berakhot* 39b, 50b; B. *Pesachim* 8a, 103b; B. *Bava Kamma* 78b; B. *Horayot* 10b, in the last two of which the distinction is explicitly made between what is minimally acceptable and what is a preferable way of doing things.

25. For some examples of use of that expression, see S. A. *Orah Hayyim* 654, gloss; 656. The Talmud roots the concept in “This is my God, and I will glorify Him” (Exodus 15:2): B. *Shabbat* 133b; B. *Sukkah* 11b, 33a; B. *Nazir* 2b; etc.

26. Thus the High Holy Day prayer, *al het shehatanu*, “for the sins that we have sinned,” includes acts of omission as well as acts of commission.

27. J. O. Urmson, “Saints and Heroes,” in *Essays in Moral Philosophy*, A. I. Meldon, ed. (Seattle: University of Washington Press, 1958); reprinted in *Moral Philosophy: A Comprehensive Introduction*, Brooke Noel Moore and Richard Michael Stewart, eds. (Mountain View, CA: Mayfield Publishing Company, 1994), pp. 519-526.

Jewish people will survive to help to fulfill God’s plan for the world.²⁸

Of course, this all presumes that it is important to maintain the Jewish tradition and the Jewish community in the first place. There are many reasons why this is so. Some understand it to be a duty to God to maintain the Covenant that God created with the Jewish people so that there can be a people on earth that strives to be holy (Exodus 19:6), “a light to the nations” (Isaiah 49:6, 51:4). Others understand this duty to be one toward one’s ancestors and the Jewish community today, requiring us to maintain at least a critical mass of Jews today so that the tradition does not stop with us. Others think that it is important to maintain Judaism because of its inherent wisdom and morality. Still others would look to the mission that Judaism sets for Jews and, by extension, for all other people to fix the world (*tikkun olam*). Others focus on sustaining and broadening Jewish culture, whose riches need to be maintained, enhanced, and conveyed to the next generation and, through us and them, to the rest of the world. Others want Judaism and the Jewish community to continue and thrive simply because this is our own faith and extended family. Others have yet other reasons to prize Judaism and the Jewish community, and many Jews are interested in maintaining and enriching Judaism and the Jewish community for all of the reasons listed above, and more.

The Responsibilities of the Jewish Community in Encouraging Larger Families

In accord with the Rabbinical Assembly’s *Rabbinic Letter on Human Intimacy*, the Jewish community’s interest in enabling Jewish young people to find Jewish mates “requires energetic communal planning and action to help Jews meet each other when college will no longer provide a convenient place for that to happen.”²⁹ So, for example, synagogues and other Jewish institutions might fund the efforts of the young Jews in their midst to meet through online Jewish dating services, and they may and should create social, intellectual, religious, and social action program specifically designated for that age group, not only for the programs themselves but also so that young people have a comfortable venue in which to meet each other.

Every rabbi who meets with a young couple should include in his/her premarital counselling a discussion of family planning that warns the couple not to wait too long to begin having children to avoid problems of infertility as much as possible and that stresses that having a third child or more is a *mitzvah* that each fertile couple should feel responsible to fulfill.

It is also a responsibility of grandparents, the synagogue, and the Jewish community to ease the financial cost of raising Jewish children and educating them Jewishly.³⁰ Grandparents,

28. The parents choose to have a a third, child, whom they consider a *Mitzvah* child. It is also interesting to note that the term *Mitzvah* child could be a gender free translation of *Bar (Bat) Mitzvah*.. In Rabbi Abelson’s premarital interviews with young couples, beginning in the 1950’s, he always discussed the number of children the couple should plan on having and always stressed the concept of the *Mitzvah* child and the reasons to have such children. He also discussed it from the pulpit on the High Holidays. Several visiting Rabbis -- including Rabbi Dorff -- have told him that congregants proudly introduce themselves or their children as “One of Rabbi Abelson’s *Mitzvah* children.”

29. Dorff, “*This Is My Beloved, This Is My Friend*” (see note 1 above), p. 35. This theme is expanded in Dorff, *Love Your Neighbor and Yourself* (at note 1 above), pp. 150-154.

30. This is a problem not only among Jews living in the Diaspora. President Putin of Russia in his “State of the

who often have more discretionary income than young couples do, should understand that it is their halakhic duty to contribute to the Jewish education of their grandchildren:

דַּתְנִיָּא וּלְמַדְתֵּם אוֹתָם אֵת בְּנֵיכֶם אִין לִי אֵלָא בְּנֵיכֶם בְּנֵי בְּנֵיכֶם מִנִּין ת"ל וְהוֹדַעְתֶּם לְבָנֶיךָ וּלְבְנֵי בָנֶיךָ

As the Rabbis taught: “And you shall teach your children” (Deuteronomy 11:19), from this I know only [that you should teach] your children. How do I know [that you should teach] your children’s children? Because the Torah says: And you shall inform your children and your children’s children” (Deuteronomy 4:9).³¹

Indeed, grandparents should do this not only as their Jewish legal obligation, but as their distinct privilege and an act of love. If they live close by, grandparents should also help with child care and babysitting, not only as a duty but as a joy.

Keeping the cost of tuition reasonable in Jewish nursery schools, in Hebrew schools, and in Jewish day schools is also an obligation of our synagogues and of our community federations. Raising funds for scholarships to help young families send their children to Jewish schools and to Jewish camps is a critical part of reversing our diminishing birthrate, for couples will produce more than two children and educate them in Judaism only if they can manage financially to do that.³² Several Jewish communities (e.g., Spokane and Seattle, Washington) have undertaken to do just that, and others should follow their example.

Furthermore, many of us live far away from our extended families, and it is difficult to raise children in an isolated family unit. To ease the burden on young parents and to encourage them to have three or more children, Jewish institutions should provide work environments with flexible hours for their employees, day care options, reasonable school schedules that do not leave parents without day care for any more days during the school year than absolutely necessary, and volunteer networks to help with babysitting and day care. All of these are all the more necessary for the many single parents in our midst.

Summary

Judaism sees children as a blessing and an obligation. The duty to procreate does not apply to couples who cannot have them through their conjugal relations, but infertile couples are encouraged to explore alternatives such as adoption and the assisted reproductive techniques that medicine has now made available. For fertile couples, The Talmud determines that the duty is fulfilled when one has produced two children. Although the Jewish tradition imposes the duty to procreate on the man alone, and although we want to maintain that aspect of the law to permit women to use contraceptive devices to preserve their health and to permit them and their

Union talk” in May of 2006, dealt with the danger that a low birth rate posed to the future of Russia. He proposed subsidies to encourage families to have more children, an idea that Diaspora Jews can use as well in the form of financial support given by grandparents and the community for day care and tuition in Jewish schools, youth groups, and camps. The French and Canadian governments have expressed similar concerns. The comparatively low birthrate among Jews in Israel, in comparison to that of Israel’s Arab population, poses a real dilemma for the future of Israel as both a Jewish and a democratic state.

31. B. *Kiddushin* 30a; see M.T. *Laws of Study (Talmud Torah)* 1:2; S.A. *Yoreh De’ah* 245:3.

32. See Dorff, *Love Your Neighbor and Yourself* (at note 1 above), pp. 143-154, and Gerald Bubis, *The Costs of Jewish Living: Revisiting Jewish Involvements and Barriers* (New York: American Jewish Committee, 2002).

husbands to engage in family planning, our knowledge of the genetic contribution that women make to the creation of babies as well as our more egalitarian views require that the husband and wife together should decide the number of children they would like to have, as long as they fulfill the command to have at least two.

The Mishnah (*Yevamot* 6:6) tells us that the House of Shammai say two boys are required, while the House of Hillel say a boy and a girl. The *Bait Shmuel* quotes a *tosefta* (B.*Yevamot* 62b) that maintains that having two males or two females fulfills the command to procreate. It seems reasonable to say that the offspring of the broader population will balance the male-female numbers and that the important thing is to replace ourselves numerically. Therefore, the gender of the children need not be a consideration. A couple ready to start a family should seek to have at least two children.

Two children are the minimum, but the Talmud (B. *Yevamot* 62b) asserts that Jews should continue to have as many children that they can, and Maimonides codifies this as law. Rabbi Robert Gordis explained that parents were encouraged to have as many children as possible so that some might survive the rigors of malnutrition, disease and persecution. Opposition to birth control became dominant. However family planning is not contrary to Jewish tradition.

The world's Jewish community has not recovered numerically from the devastating losses during the Nazi era. Demographic studies point to a Jewish birthrate that will not maintain the Jewish population in the United States, with serious implications for the future of the American Jewish community, the Jewish people as a whole, and Judaism itself. It is essential that we encourage fertile Jewish couples to have at least two children in compliance with the early Halakhah, and one or more additional children, who are *mitzvah* children in the additional sense that they help the Jewish people replace those lost in the Holocaust and maintain our numbers now. Adopting children, converting them to Judaism, if necessary, and raising them as Jews helps in this effort as well.

Why the term “*mitzvah* children”? Both because having more than two children is mandated by later Jewish law and also because in our day the term *mitzvah* is used by Jews to describe “good deeds.” In a sense, Jews are saying that they feel commanded by God to do the right thing, that which they feel God would want them to do in the situation. Every couple who has at least a third child should feel that that child is a *mitzvah* child in this sense, for the parents are not only replacing themselves as minimally commanded, but making an additional contribution to assuring that the Jewish people will survive to help to fulfill God's plan for the world.

The Jewish community also has to do a number of *mitzvot* to make it possible for young couples to fulfill the *mitzvah* of having more than two children. The community has the responsibility to help young Jewish adults meet Jewish mates. It must also subsidize young families by raising funds to provide scholarships to send Jewish children to Jewish schools and Jewish camps. Furthermore, grandparents are required by Jewish law (B. *Kiddushin* 30a) to contribute to the Jewish education of their grandchildren, and, if they live close by, they should help with babysitting as well. They should see these duties not only as their obligations in

Jewish law, but also as their distinct privilege as well as an act of love for both their children and grandchildren.

Piskei Halakhah

- 1) Every couple who can produce children is commanded to have at least two children. If the couple is infertile, they are no longer bound by this commandment, but may explore alternative ways to have children such as adoption or assisted reproductive techniques.**
- 2) The gender of the children is not a consideration in the fulfillment of this commandment because over time the number of boys and girls will balance out in the Jewish population.**
- 3) Although the Jewish legal duty to produce at least two children technically applies to men alone, both men and women should see procreation as their duty (for men their Jewish legal duty, and for both men and women their moral duty to the Jewish people) and should participate together in the decision of how many children the couple will have beyond the minimum of two set by Jewish law.**
- 4) Rabbis should discuss the desirability of having more than two children with young couples as part of pre-marital counseling and in other settings. They should inform them that every couple who has a third child or more, whether through sexual intercourse, any of the artificial reproductive techniques, or adoption, may rightly feel that such children are *mitzvah* children not only in the sense that they fulfill the Jewish legal duty to have as many children as one can, but also in the sense that they have done a good deed in contributing, beyond replacement of themselves, to ensuring the future of Judaism and the Jewish people. The limit of this good deed -- this *mitzvah* in this second sense -- is the number of children that it is physically and psychologically safe for the couple (especially the woman) and the other children to have.**
- 5) Jewish institutions should take steps to encourage young adult Jews to have three or more children. They can do that through steps such as these: funding and programs to enable young Jewish singles to meet a Jewish mate; flexible work schedules for the institution's own employees who are parents of young children; pricing policies that award tuition relief for families with multiple children; day care options; school schedules that do not leave parents without day care for any more days during the school year than absolutely necessary; and volunteer networks to help with babysitting and day care.**