

PGD: Preimplantation Genetic Diagnosis – An Ideological Dissent

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This paper was submitted to the CJLS as dissent to Rabbi Mark Popovsky's responsum "Preimplantation Genetic Diagnosis"

We cannot leave our significant dissent from this responsum unexpressed, though it is more in the realm of approach than it is in the realm of specific conclusions. Rabbi Popovsky begins his discussion with and evidences throughout a basic cautionary approach and distaste for meddling with natural childbirth. He asserts that PGD is inconsistent with the "core teachings of the Jewish tradition," (p. 4) but fails to prove that to be the case.

He is careful to set out a series of these 'underlying values,' and we will briefly go through them. The first is 'Beneficence.' He argues that Judaism posits the obligation to heal the sick, then states, "Arguing... that we have an obligation to heal the sick does not necessarily imply that we have an obligation (or even permission) to actively intervene with the intention of preventing sick people from coming into existence" (p. 5). But he fails to make a case that we do not have such permission, leaving this point unresolved.

The second value he cites is 'reproductive freedom.' Despite its commitment to reproductive freedom, "Judaism," he writes, "has always placed some limits on an individual's reproductive freedom," citing the traditional interpretation of "be fruitful and multiply" as demanding that "Jews must attempt to have children in all but the most rare of circumstances." "With regard to PGD," he concludes, a parent's desire to have a child of a certain genetic makeup may be restricted..." (p. 5-6). But that is not obvious at all. A case can be made that PGD is utilized precisely in the fulfillment of the mitzvah of "pru u-r'vu," not in opposition to it.

The third core value he identifies is 'coping with uncertainty,' and here lies the ideological heart of his concern. We should explore science, he tells us, but should not fool ourselves that we have "more control over ... God's creation than we really do" (p. 6). He cites the Talmud's imagined conversation (on Berakhot 10a) wherein Isaiah rebukes King Hezekiah for remaining childless out of fear of a prophecy that his children would bring evil upon Israel. "Why do you concern yourself with the hidden things of the Merciful One," Isaiah asks. Rabbi Popovsky advises that "attempting to 'improve' divine creation by substituting our judgment for God's is destined to be a fruitless effort... We must remain vigilant not to lose the humility to acknowledge that God's creation is not open to whatever purposes we contrive" (p. 7-8).

Now this is an old debate. We are on the other end of the spectrum of thought in this regard, but think that far from that cautionary approach being a primary value of the Jewish tradition, it is quite the reverse. To illustrate this debate one can point to dueling midrashim in Bereshit Rabbah. The first, in 12:1, sees it as ingratitude to seek to change the natural universe, implying thereby that God's creation is not perfect. But the other, in 11:6, defends circumcision with the broad statement that God made the world unfinished

for humans to perfect it. The latter seems to me more normative. Indeed, Rabbi Popovsky concedes that PGD is appropriate if it is undertaken to avoid a “very likely” catastrophic illness, but his fundamental approach calls him to “demand severe halakhic restrictions” (p. 29).

The fourth underlying value that Rabbi Popovsky finds is acceptance of difference and disability. Here he considers the possible use of PGD to select against anything less than such a catastrophic illness as sharing “the moral logic... [of] the Final Solution” (p. 8). The issue of eugenics and genetic technologies is a very complex one, but he correctly characterizes the Nazi eugenic program as coercive, and could have gone further and commented also on its murderousness. What distinguishes PGD from Nazi eugenics is that it is voluntary and seeks to choose life. It should be seen as an attempt to opt for a healthy embryo rather than against a disability. In every instance of PGD there are many potential embryos in vitro from which to choose. To select illness is untenable. To select health is reasonable. Not to select when facing a petrie dish of embryos is not possible.

At this point Rabbi Popovsky moves to identify the possible harmful consequences of PGD. For instance, “We run the risk of the child feeling like a commodity.” Conclusion: “While the reality of harmful psychological consequences to the child is not certain, the mere possibility... obligates us to approach PGD with extreme caution” (p.10-11). Or there might be social harms. For instance, “Some... claim that the use of PGD to select against certain disabilities might lead to greater discrimination against people living with those disabilities” (p.11). These concerns certainly require caution. It is not clear that they justify prohibition. Rabbi Popovsky warns correctly that we run the risk, given that our knowledge is in its infancy, that in choosing an embryo because it does not carry one undesirable trait of which we know, we might precisely be choosing another embryo with a worse condition that is not yet identified. But again, facing multiple fertilized embryos in a petrie dish, some choice is inevitable. Are we not morally bound to choose according to our best information? Is randomness morally better?

Rabbi Popovsky allows that “in extreme circumstances, when the mental anguish of the parents is overwhelming” PGD to avoid a risk of disease, as for instance to avoid a child carrying the BRCA 1 or 2 mutation might be considered, but that “PGD with the intention of bearing a child with a lowered disease risk (e.g. a child without BRCA 1 and 2 mutations) does not, as a rule, fall within the bounds of this teshuvah.” We can see no reason, when already undertaking IVF and faced with a number of embryos, not to employ PGD in order to assure that the child born does not have those heightened risks that we are able to foresee. One’s course prior to IVF is a different story.

Two hard halakhic dangers emerge in the continuing discussion, and they concern not PGD itself, but the process of harvesting eggs that is at the basis of any in vitro procedure. One of these is the medical risk to the mother in producing and taking those eggs and the other is the unfortunate byproduct of any in vitro procedures, the need to ultimately discard any unused embryos. These are not, properly, concerns about PGD, but concerns about any in vitro procedures. In fact, that might be a better place to address these issues. Undertaking in vitro procedures might be prohibited as a danger to the

mother and as creating unnecessary embryos except for cause. Infertility would be such a cause (despite the implications about rebelling against God's judgment). Avoiding disease would be such a cause. (Our inclination would not be to require the level of severity of disability that Rabbi Popovsky proposes based on his approach.) The intent to use PGD for sex and trait selection might then indeed not be considered sufficient reason to permit in vitro fertilization in the first place.

Mai beinaihu? What is the legal difference? Recognizing that once a petrie dish with multiple embryos is placed before you some method of choice is inevitable, this approach would preserve the freedom of those who find themselves in that situation for legitimate reasons, and who do not share Rabbi Popovsky's views, to opt for PGD and positive selection of the embryos to implant, in order to avoid known risks of disease, and yes, even to select a trait like gender, in preference to closing their eyes in order to let God's judgment prevail. Kakh nireh lanu.