Obstetrics and the Curse of Eve [1]

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For the student of *halakhah*, one of the most fascinating areas of research is the way in which *halakhah* adapts to modern realities. Some decry the slow pace of halakhic change, while others applaud the ability of *halakhah* to come to grips with modernity. Still others denounce the way in which groups to their left change *halakhah* without sufficient compunctions.

In this article we analyze an area of *halakhah* where radical changes have occurred. In all branches of Judaism, the *halakhot* of obstetrics are quite different today from those that were in practice just one hundred years ago. How and why have these *halakhot* changed?

I. Birth on the Sabbath

Halakhic literature has always recognized that the rules of Sabbath can be transgressed to aid a birthing woman. Nevertheless, medieval halakhic codes made a clear distinction between the birthing woman and the standard critically ill patient (*holeh she-yesh bo sakkanah*), since "the birthing woman's pains and strain are natural and less than one in a thousand die

[1] This article is not meant in any way as advice about health issues, including the question of home versus hospital births. This article is only about the reaction of *halakhah* to contemporary changes in birth practices. We have relied on many studies by doctors and midwives, and we encourage readers of our article to read these studies too. Individuals have to consider many risk factors before making decisions about the best place for a birth to take place. Our only advice is that individuals should consult a qualified health professional, such as a doctor or a midwife, before deciding.

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in childbirth."[2] Whenever possible an act of transgressing the Sabbath for the sake of a laboring woman was to be done *beshinnui*, in a different manner than it would have been done on a weekday.[3] In fact, before the final stage of labor, no transgressions of the Sabbath were permitted,[4] except for summoning the midwife.[5]

Such *halakhot* could be easily implemented in a society where midwife-attended home births were the rule. The only person who, under normal circumstances, had to transgress the Sabbath was the midwife. From a global perspective, home birth is still the norm and hospital birth the alternative. In middle- and high-income countries the opposite is true: the home birth rate in these countries is very low, for example, less than 1 percent in the United States.[6] Where hospital births are the norm, the traditional *halakhot* about Sabbath observance have quickly become inoperative.

Even a brief examination of a respected 1979 halakhic compendium will show how much these laws have changed. According to Rabbi Joshua Neuwirth, a woman should travel to the hospital at the onset of the slightest sign of labor. She may carry her possessions with her to the hospital, even through an area without a permitting enclosure (*'eruv*) and can be accompanied by an "escort" (presumably her husband), who may also transgress the Sabbath.[7] She may even, under certain circumstances, travel home from the hospital on the Sabbath if in fact she had been mistaken about being in labor.[8]

What sources does Rabbi Neuwirth quote when allowing wholesale transgression of the Sabbath before the final stages of labor? Almost invariably he says, "So I have heard from rabbinic authorities" or refers his readers to the general rule of life-threatening situations (*piqquaḥ nefesh*).[9] There is no attempt to justify these radical changes; *piqquaḥ nefesh* apparently speaks for itself.

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2 Maimonides, *Mishneh Torah*, Shabbat 2:11 and *Maggid Mishnah* ad loc.

3 Maimonides, *ibid*.; Karo, *Shulḥan Arukh* OH 330:1.

4 Maimonides, *ibid*.; Karo, *ibid*., 3.

5 *Mishnah Berurah* ad Karo, *ibid*. Cf. however Maimonides who clearly disagrees.

6 See the World Health Organization's *Care in Normal Birth: A Practice Guide*. Report of the Technical Working Group (Geneva, 1996).

7 *Shemirat Shabbat Kehilkhatah* (Jerusalem, 1979), pp. 489-490.

8 *Ibid.,* p. 491.

9 See his footnotes, 11, 12, 13, 16, 17, 18, 20 and 21.

II. Male Birth Attendants

Twentieth- and twenty-first-century obstetrics has not only moved births from the home to the hospital but has also transferred most of the control over the birthing process from women (midwives) to men (general practitioners and obstetricians). Until the 1940s most American women gave birth at home under the care of midwives. As the specialty of medical obstetrics grew, so did the percentage of hospital births. In 1940, 56% of births took place in the hospital. By 1950 this percentage had increased to 88%. By 1969 it was 99% and it remains 99% to this day.[10] The halakhic ramifications of such a move are truly significant.

Julius Preuss, the renowned scholar of Judaism and medicine, has argued quite convincingly that, in classical Judaism, "it seems hardly likely that the genitalia of even a sick woman were explored by a physician."[11] Obstetricians in the modern sense of the word did not exist.[12] It seems that deliveries, even multiple births, were supervised by women midwives.[13] This state of affairs does not simply represent a sociological reality; the law also severely limited the access of male physicians to women. The *Shulḥan Arukh* expressly states: "In the case of a digestive ailment, a man should not tend to a woman patient…"[14] for reasons of modesty.

One small voice of protest was raised just over one hundred and fifty years ago in Germany by Rabbi Jacob Ettlinger against the then new practice of male physicians attending births.[15] Rabbi Ettlinger's hesitations seem to have found no further echoes in halakhic literature. Today the most Orthodox women standardly have their babies delivered by male physicians who conduct numerous vaginal examinations during prenatal visits and during labor itself.

The halakhic authorities may have allowed this dramatic change of law to take place but, ironically, they have attempted to discourage the current phenomenon of husbands attending their own wives' births. Based in part on Rabbi Joseph Karo's ruling that a man should not look

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10 See Tim Cassidy, *Birth: The Surprising History of How We Are Born* (New York, 2006); William Sears and Martha Sears, *The Birth Book* (Boston, 1994); and Joyce A. Martin, Brady E. Hamilton, Paul D. Sutton, et al. "Births: Final Data for 2005." *National Vital Statistics Reports*, 56 (2007), pp. 1–103.

11 *Biblical and Talmudic Medicine*, translated by Fred Rosner (New York, 1978), p. 13.

12 *Ibid.*

13 Rabbi Immanuel Jakobovits, *Jewish Medical Ethics* (New York, 1975), p. 116, on the basis of Karo, OH 330:1 and HM 277:12.

14 YD 335:10.

15 Responsa *Binyan Tsiyyon* 75.

at female genitalia, even those of his own wife,[16] some halakhic authorities have banished husbands, if not entirely from the delivery room, then at least from standing in a position where they could see the birth.[17] The male physician is exempted from this rule, presumably for reasons of *piqquaḥ nefesh*.

III. Obstetrical Drugs

A third major change in modern obstetrics involves the widespread use of analgesia and anesthesia to comfort the laboring woman. It has often been noted that in the mid-nineteenth century some Christian theologians attempted to denounce the use of such pain killers.[18] Women, they claimed, were supposed to suffer pain in childbirth because of the curse of Eve (Genesis 3:16). Attempting to alleviate this pain was considered a heretical action.

The absence of any halakhic qualms about obstetric analgesia and anesthesia, as Jakobovits and Zimmels have claimed,[19] is interesting. In a responsum dated 1972, Rabbi Moshe Feinstein wrote that he personally would suggest to all women that they not be "awake" during childbirth.[20] Zimmels claims that "prohibition of analgesics would contradict Jewish ideology according to which the ways of the Torah 'are of pleasantness and all her paths are peace' (Proverbs 3:17)."[21] Truly the fact that Jews do not see the curse of Eve as irrevocable[22] is an occasion for self-congratulation. Nevertheless, not all objections to obstetric analgesia and anesthesia can be dismissed as mistaken religious obscurantism based on the Genesis narrative.

As Rabbi Immanuel Jakobovits outlines, Christian objection to the use of drugs during childbirth was two-pronged. While some cited the curse of Eve as their source, others objected for medical reasons. Rabbi Jakobovits writes that, "towards the end of the last century, a Catholic

16 OH 240:4. Cf. however Isserles, EH 25:2 and *Be'ur Hagra'* there.

17 See, e.g., Rabbi Moshe Feinstein, *Iggerot Moshe*, YD part 2 (New York, 1973), p. 140 and Rabbi Moses Tendler, *Pardes Rimonim* (New York, 1979), pp. 89-90.

18 See Jakobovits, *ibid.*, pp. 103-104 and Suzanne Arms, *Immaculate Deception* (New York, 1979), pp. 24-25.

19 H. J. Zimmels, *Magicians, Theologians and Doctors* (London, 1952), p. 7 and Jakobovits, *ibid.*

20 See *Iggerot Moshe*, *ibid.*

21 Zimmels, *ibid.*

22 See *Sotah* 12a: *nashim tsidqaniyyot lo hayu befitqah shel ḥavva*.

medical moralist still forbade the use of chloroform at normal births because it might endanger the mother and the child…" Jakobovits then praises Judaism for being above any such considerations.[23]

IV. Conclusions

To sum up, modern obstetrical practices have affected *halakhah*. The laws of the Sabbath are now more easily and frequently broken, men are now allowed to deliver babies and no halakhic authority that we have seen has expressed any qualms about obstetric anesthesia and analgesia. It is commonly assumed that all these changes are necessary for the sake of *piqquaḥ nefesh*. Is this really the case?

To begin with the third example, the dangers of drugs during pregnancy, including obstetric analgesia and anesthesia, are well documented today. In fact, they have been well documented since at least the 1980s.[24] Both the mother and child can suffer side effects ranging from sluggishness to brain damage and death.[25] The fact that no Jewish authority has restricted or discouraged the use of drugs during labor may not be an occasion for self-congratulation; it may call for some serious halakhic soul-searching.

Similarly it is commonly believed that the twentieth-century transfer of births from the home to the hospital has aided the cause of *piqquaḥ nefesh* by lowering infant mortality. Statistics, however, do not support such a belief. Western countries with more home births than in the United States have lower maternal mortality rates and lower infant mortality rates than ours.[26] Australia, New Zealand, Japan, and all Western and Central European countries all have lower mortality rates than the U.S.'s, yet more than one-third of all of their births are planned home births attended by

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23 Jakobovits, *ibid.*, p. 104.

24 See Yvonne Brackbill, PhD, "Drugs, Disclosure and Decision Making," in David Stewart's *The Five Standards for Safe Childbearing* (NAPSAC Press; Marble Hill, Missouri, 1981), pp. 191–200. See especially pages 199-200 where Dr. Brackbill cites 41 different scholarly articles on the dangers of obstetric medication. See also *Malepractice: How Doctors Manipulate Women* (Chicago, 1981), pp. 166–171, by my [= MIL's] father-in-law and mentor, Robert S. Mendelsohn, M.D.

25 See Marsden Wagner, M.D., *Born in the USA: How a Broken Maternity System Must Be Fixed to Put Mothers and Infants First* (Berkley and Los Angeles, 2006). See also Beverley Lawrence Beech, "Drugs in Labor: What Effects Do They Have 20 Years Hence?" in *Midwifery Today* 50 (Summer 1999), pp. 31–34.

26 See Wagner, *ibid.*, p. 254, n. 20.

a midwife.[27] Whether a hospital birth adds to the causes of *piqquaḥ nefesh* may also depend on the time of day at which a woman delivers her baby. According to Marsden Wagner, for example, "a recent study shows a 12% increase in neonatal mortality in babies born between 7 P.M. and midnight and a 16% increase in neonatal mortality for babies born between 1 A.M. and 6 A.M."[28]

Within the United States, studies also show that for normal pregnancies, home births are at least as safe as hospital births and that births attended by midwives are safer than births attended by physicians.[29] Certain procedures such as multiple vaginal examinations and routine premature rupture of membranes are commonly performed by obstetricians, but not by midwives. Rather than promoting *piqquaḥ nefesh*, these interventive procedures, which naturally necessitate viewing of and contact with female genitalia, have actually been shown to be dangerous to the birthing woman and to her child.[30] There is also growing concern—even among some obstetricians—that other interventions typical of doctors and not midwives, such as a high Cesarian section rate, diagnosis of "failure to progress" during labor, and prevalent use of drugs to hasten labor all have few health benefits and may indeed harm the baby.[31]

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27 See *Safe Motherhood: Preventing Pregnancy-Related Illness and Death* (Atlanta: Centers for Disease Control and Prevention, 2002). See also M. MacDorman and G. Singh, "Midwifery Care, Social and Medical Risk Factors, and Birth Outcomes in the USA," *Journal of Epidemiology and Community Health* 52 (1998), pp. 310–317. Data on the number of U.S. births attended by midwives and doctors can be found at <www.cdc.gov/nchs>.

28 Wagner, *ibid*., p. 5, citing J. B. Gould, C. Qin, and G. Chavez, "Time of Birth and the Risk of Neonatal Death," *Obstetrics and Gynecology* 106 (2005), pp. 352–58.

29 Kenneth Johnson, M.D. and Betty-Anne Daviss, R.M., "A Prospective Study of Planned Home Births by Certified Professional Midwives in North America," *British Medical Journal* 330 (2005): 1416. Wagner (*ibid*., p. 143) says of the Johnson and Daviss study: "This study is by far the largest scientifically valid study of planned home birth ever conducted. We now have good, solid scientific evidence that makes clear that planned home birth attended by a midwife is a perfectly safe option for the 80 to 90 percent of women who have had normal pregnancies."

30 See Wagner, *ibid*., pp. 53, 93-94. See also Henci Goer, *Obstetric Myths Versus Research Realities: A Guide to the Medical Literature* (Westport, 1995), pp. 203–219, 239–247 and 249–273. See also Frederic M. Ettner, M.D., "Comparative Study of Obstetrics with Data and Details of a Working Physician's Home OB Service," in *Safe Alternatives in Childbirth* (NAPSAC, 1976), ed. by D. Stewart, pp. 37–66. See especially p. 40.

31 See Goer, *ibid*., pp. 83–105.

These changes in the *halakhot* of obstetrics are then clearly not leading to more *piqquaḥ nefesh*. Why then were they made? Apparently the only reason is that medical doctors claim that when they attend births in hospitals more lives will be saved, a claim that it not statistically proven.

It is the responsibility of halakhic authorities to analyze those claims rationally. They must ask themselves whether hospital births attended by men are in fact safer, thus justifying the above-mentioned halakhic changes.[32] Opinions of doctors are important in determining *halakhot*; still, there is ample halakhic precedent for skepticism, even cynicism, about the trustworthiness of doctors.[33]

While Rabbi Jakobovits may feel that Judaism has "saved" women from the curse of Eve, it is our fear that twentieth- and twenty-first-century obstetrics has given new meanings to that curse. Eve, one recalls, was cursed not only with difficult childbirth but with being dominated by men. Only in the twentieth century did medicine, with the tacit approval of halakhic authorities, manage to combine these two curses into one, giving women difficult and dangerous childbirths, orchestrated and controlled by men. ☙

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32 A useful reference is Henci Goer, *Obstetric Myths Versus Research Realities: A Guide to the Medical Literature* (Westport, 1995). In the forward, Don Creevy, M.D., points out (p. x): "Obstetricians… adopt clinical practices, many of which have no scientific basis whatever. These practices are passed down from doctor to doctor as being scientifically valid, yet there is little or no proof of their validity in the peer-reviewed obstetric literature."

33 The best-known early modern authority who doubts the trustworthiness of doctors is Rabbi Moses Sofer in his *Responsa Hatam Sofer* YD 175 and EH 1. His is neither the only nor the strongest anti-doctor halakhic opinion. For an impressive collection of rabbinic aspersions about and animadversions against physicians and their credibility, see Zimmels, pp. 20–25 and 178–181. See also Jakobovits, pp. 232–237 and I. Z. Kahana, "Medicine in Halakhic Literature After the Editing of the Talmud," (Heb.) *Sinai* 27 (1950), pp. 62–79 and 221–241.