THE OXFORD HANDBOOK OF

RELIGIOUS PERSPECTIVES ON REPRODUCTIVE ETHICS

Edited by

DENA S. DAVIS

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide. Oxford is a registered trade mark of Oxford University Press in the UK and certain other countries.

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America.

Library of Congress Cataloging-in-Publication Data
Names: Davis, Dena S., 1947– editor.
Title: The Oxford handbook of religious perspectives on reproductive ethics/ Dena S. Davis.
Description: New York, NY : Oxford University Press, [2024] | Includes bibliographical references and index.
Identifiers: LCCN 2023041601 (print) | LCCN 2023041602 (ebook) | ISBN 9780190633202 (hardback) | ISBN 9780190633219 | ISBN 9780190633233 (epub)
Subjects: LCSH: Human reproduction—Moral and ethical aspects. | Human reproduction—Religious aspects.
Classification: LCC QP251 .O928 2023 (print) | LCC QP251 (ebook) | DDC 176—dc23/eng/20231122
LC record available at https://lccn.loc.gov/2023041601
LC ebook record available at https://lccn.loc.gov/2023041602

DOI: 10.1093/oxfordhb/9780190633202.001.0001

Printed by Sheridan Books, Inc., United States of America

For B.K.H.

CONTENTS

CHAPTER 13

ADOPTION, PERSONAL STATUS, AND JEWISH LAW

MICHAEL J. BROYDE

Judaism did not recognize the Roman institution of adoption since the Roman concept is directed toward substituting a legal fiction for a biological fact and thus creating the illusion of a natural relationship between the foster parents and the adopted son. Judaism stated its case in no uncertain terms: . . . the natural relationship must not be altered. Any intervention on the part of some legal authority would amount to interference with the omniscience and original plan of the Maker. The childless mother and father must reconcile themselves with the fact of natural barrenness and sterility. Yet they may attain the full covenantal experience of parenthood, exercise the fundamental right to have a child and be united within a community of I-thou-he. There is no need to withhold from the adopted child information concerning his or her natural parents. The new form of parenthood does not conflict with the biological relation. It manifests itself in a new dimension which may be separated from the natural one.

—Rabbi Joseph B. Soloveitchik[1]

THERE are two basic models of adoption found in legal systems. One framework has a full legal category of adoption, by which children become—as a matter of law—as if they were born to the adoptive parents and the original biological relationship is severed. The other construct has no legal category of adoption at all and denies that children become as a matter of law as if they were born to the adoptive parents, but instead views such situations as a form of raising the children of another, or long-term foster care. Jewish law (like Islamic law[2] and the ancient common law[3]) does not have a category of full adoption,[4] but merely of long-term foster care.[5] Modern American law[6]—like the Code of Hammurabi,[7] Roman law,[8] and the Napoleonic code[9]—has a

policy of full legal adoptions. The differences between these two approaches are quite dramatic. This article will focus on Jewish law, and will allow the reader to see how Jewish law—with no legal category of adoption—addresses situations where children need a new home.

Why Is There No Adoption in Jewish Law?

Jewish law (*halakha*) did not and does not have a court system with juridical authority to change people's most basic family law status. When disputes arise in family matters, they are treated as factual disputes under the law—but basic status issues cannot be changed by the legal system or judicial decree. Mother and father (and, by extension, brothers and sisters), once determined at birth, remain parents (and blood relatives), and cannot have that status removed. Indeed, the inability of the court system to change personal status is a general theme of all of Jewish family law.

Four examples—from dramatically different areas and eras of Jewish family law, but all sharing the underlying model of family law as governing issues of status—make this clear within Jewish law. The first example is from the most basic area of family law, namely marriage and divorce. As the Talmud explains, marriage and divorce are essentially private acts—or contracts—which do not require a court system, permission from a judge, or a license from government.[10] Courts cannot create marriages or end them. Annulments or divorce are essentially beyond the reach of Jewish law or a Jewish court.[11] A Jewish court can, in exceptional situations, order a husband to give a Jewish divorce, and a wife to accept one (and it even use physical force in a small set of cases[12]), but it cannot grant the writ of divorce itself. Marriage and divorce are private status issues and fundamentally beyond the reach of the Jewish court systems.[13]

A second example is in the modern Jewish law discussion of artificial insemination.[14] Although there is a wide-ranging debate within Jewish law about the propriety of such conduct, no one proposes that a husband who consents to the artificial insemination of his wife with sperm other than his own is the legal father of the resulting baby as a matter of Jewish law, as he is not such as a matter of biological fact.[15] A similar discussion takes place in the area of surrogate motherhood and cloning.[16] Jewish legal scholars were forced to come to grips with some of the religious challenges in vitro poses, which other traditions are now finding out on their own as well.[17] Biological fatherhood and motherhood are status issues in Jewish law and beyond judicial reordering.

Yet another example is the discussion of child custody, which will be elaborated in Part IV of this article. Although there is a wide-ranging and intense dispute among various Jewish law decisors of the medieval era as to whether Jewish law can ever take

custody of children away from fit parents and give the children to more fit "strangers," such as grandparents, it is always made clear in the discussion that the basic issue is of "mere" custody, and not who is the parent. Fundamental notions of parenthood are immutable.[18]

A further example is sex change surgery. According to Jewish law, the removal of sexual organs is prohibited; hence, sex reassignment surgery is prohibited according to Biblical law for men,[19] and it is disputable whether the removal of sexual organs is a Biblical or rabbinic prohibition for women.[20] What is the status of a person who actually has such an operation? Jewish law is clear that a person who has a sex change operation does not, in fact change his or her gender according to Jewish law. Gender, too, is immutable. The earliest discussion concerning the sexual status of a transsexual is found in the twelfth-century commentary of Rabbi Abraham Ibn Ezra,[21] where he, quoting eleventh-century authority Rabbenu Hananel, states that intercourse between a man and another man, in whom the sexual organs of a woman have been fashioned, constitutes a violation of the Biblical prohibition of homosexuality, despite the presence of apparently female sexual organs. Thus, Ibn Ezra rules that sexual status cannot be changed surgically, for if this person were now legally a woman, no violations of the sodomy laws could occur. This view is, indeed, the view accepted by Jewish law authorities.[22] Primary sexual status cannot be changed.[23] For all religious traditions—Judaism included—it remains an easy answer to reach, but enormously complicated to put into practice.[24] Indeed, the contrary view—which has gained some currency in contemporary Jewish law—has been to reformulate the problem away from questions of gender status to question about presence or absence of particular sexual organs, in order to move away from the status issue, which is functionally uncontested.[25]

Thus, understanding how Jewish law has consistently viewed its own judicial and legal power in the area of family law allows adoption to be placed in context. Jewish law views status issues such as parenthood as matters of natural law, which can be adjudicated by a Jewish law court when in dispute,[26] but cannot be changed once established.[27]

The Theoretical Basis for Parental Custody: The Predicate to Adoption

The initial question in all adoption determinations is frequently unstated: by what "right" do natural parents have custody of their children?[28] Two very different theories, one called "parental rights" and one called "best interest of the child," exist in Jewish law. These two theories are somewhat in tension, but they lead to similar results in many cases, as the best interests of the child will often coincide with granting parents

rights. By what right parents have custody of their children is simply another way of considering when they should not.

There is a basic dispute within Jewish law as to why and through what legal claim parents have custody of their children. Indeed, this dispute is crucial to understanding why Jewish law accepts that a "fit" parent is entitled to child custody—even if it can be shown that others can raise the child in a better manner.[29] It also sets parameters for when adoption is proper.

Rabbi Asher ben Yehiel (R. Asher),[30] in the course of discussing the obligation to support one's natural children, advances what appears to be a naturalist theory of parental rights. R. Asher asserts two basic rules. First, there is an obligation (for a man)[31] to support one's children, and this obligation is, at least as a matter of theory, unrelated to one's custodial relationship (or lack thereof) with the child, with one's wife, or with any other party.[32] A man who has children is Biblically obligated to support them. Following logically from this rule, R. Asher further states[33] that, *as a matter of law*, the parents are always entitled to custody against all others.[34] Of course, R. Asher would agree that in circumstances in which the father or mother are factually incapable of raising the children—are legally unfit as parents—they would not remain the custodial parents.[35] However, R. Asher appears to adopt the theory that the father and mother are the presumptive custodial parents of their children based on their obligations and rights as natural parents, subject to the limitation that even natural parents cannot have custody of their children if they are factually unfit to raise them.[36] While this understanding of the parents' rights is not quite the same as a property right, it is far more a right (and duty) related to possession than a rule about the "best interest" of the child. The position of R. Asher seems to have a substantial foundation in the works of a number of authorities.[37]

There is a second theory of parental custody in Jewish law, the approach of Rabbi Solomon ben Aderet (Aderet).[38] Aderet indicates[39] that Jewish law always accepts—as a matter of law—that child custody matters be determined according to the "best interest of the child." Thus, Aderet rules that in a case where the father is deceased, the mother does not have an indisputable legal claim to custody of the children. Equitable factors which make up a determination of the best interest of the child, are the *sole* determinant of custody. This *responsum* is generally read as a theory for all child custody determinations.[40] Aderet maintains that all child custody determinations involve a single legal standard: *the best interest of the child*, regardless of the specific facts involved, and this is the standard to be used to place children in the custody of non-parents as well.[41] According to this approach, the "rules" that one encounters in the field of child custody are not really "rules of law" at all, but rather the presumptive assessment by the Talmudic Sages as to what generally is in the best interest of children.[42] Jewish law presumes that parents are the most fit guardians of the children.

An enormous theoretical difference exists between R. Asher and Aderet. According to R. Asher, parents[43] have an intrinsic right to raise their progeny, unless unfit. In order to remove children from parental custody, it must be shown that these

parents are unfit for that role and that some alternative arrangement to raise these children consistent with the parents' wishes and lifestyle, either through the use of relatives as agents or in some other manner,[44] cannot be arranged.[45] According to Aderet, the law allows the permanent transfer of custodial rights (quasi-adoption) in any situation where it can be shown that the children are not being raised in their best interests and that another would raise them in a manner more in line with those interests.[46]

This legal dispute is not merely theoretical: the particular *responsa* of Rabbis Asher and Aderet, elaborating on these principles, present vastly differing rulings as a result. Aderet rules that when the father is deceased, typically *it is in the best interest of the child to be placed in quasi-adoption with male relatives of the father rather than with the mother*; R. Asher rules that as a matter of Jewish law, *custody is always to be granted to a parent (unless he or she is unfit); quasi-adoption is a last resort*. To Aderet, the legal rule provides the answer; to Asher, equitable principles relating to best interest do.

These two competing approaches provide the relevant framework to analyze many of the theoretical disputes present in prototypical cases of child custody disputes that often form the predicate to quasi-adoption in the Jewish tradition. According to one theory, children are only taken from their parents in cases of categorical unfitness; according to the other approach, quasi-adoption is *always* proper in the "best interests of the child."

Jewish Law and Adoption

Although the institution of adoption, through its widespread use in Roman law,[47] was well known in Talmudic times, the redactors of Jewish law willfully refused to recognize such an institution within Jewish law. Rather, they created an institution which they called "A Person Who Raises Another's Child,"[48] which is quasi-adoption. Unlike either Roman law or current *civil* adoption law, this institution does not change the legal parents of the person whose custody has changed.[49] One who raises another's child is an agent of the natural parent; and like any agency rule in Jewish law,[50] if the agent fails to accomplish the task delegated, the obligation reverts to the principal. Thus, the Biblical obligations, duties, and prohibitions of parenthood still apply between the natural parents and the child whose custody they no longer have.[51]

This is not to diminish the value of this form of quasi-adoption. The same Talmudic statement that denies adoption posits that such conduct is meritorious, and thus encouraged. Rabbi Samuel Eliezer Edels,[52] in his commentary on this passage in the Talmud, notes that the value and importance of raising others' children is not limited to orphans, but applies also in situations where the children's parents are alive but cannot take care of the children.[53] However, those who raise the child of another are still obligated in the duty of procreation, and do not fulfill their obligation through

adoption. The rationale for this is clear: while raising the child of another is meritorious conduct, this is not an act of procreation, and these are not the natural children of the person caring for them and cannot take the place of one's obligation to procreate.[54]

In modern times, the erudite reflections of noted Talmudist and philosopher Rabbi Joseph B. Soloveitchik sum up the Jewish law view. He states:

> Judaism saw the teacher as the creator through love and commitment of the personality of the pupil. Both become *personae* because an I-Thou community is formed. That is why Judaism called disciples "sons" and masters "fathers." . . . Our Talmudic sages stated, "Whoever teaches his friend's son Torah acquires him as a natural child" (Sanhedrin 19b). . . . Judaism did not recognize the Roman institution of adoption since the Roman concept is directed toward substituting a legal fiction for a biological fact and thus creating the illusion of a natural relationship between the foster parents and the adopted son. Judaism stated its case in no uncertain terms: what the Creator granted one and the other should not be interfered with; the natural relationship must not be altered. Any intervention on the part of some legal authority would amount to interference with the omniscience and original plan of the Maker. The childless mother and father must reconcile themselves with the fact of natural barrenness and sterility. Yet they may attain the full covenantal experience of parenthood, exercise the fundamental right to have a child and be united within a community of I-thou-he. There is no need to withhold from the adopted child information concerning his or her natural parents. The new form of parenthood does not conflict with the biological relation. It manifests itself in a new dimension which may be separated from the natural one. In order to become Abraham, one does not necessarily have to live through the stage of Abram. The irrevocable in human existence is not the natural but the spiritual child; the threefold community is based upon existential, not biological, unity. The existence of I and thou can be inseparably bound with a third existence even though the latter is, biologically speaking, a stranger to them.[55]

Rabbi Soloveitchik's view—fully reflective of the Jewish legal tradition—is that the process of quasi-adoption is special, sacred, a manifestation of holiness, and covenantal. It is such precisely because it is one of choice, like a student-teacher relationship,[56] and thus different from—and not to be confused with—natural parenthood, which lacks these basic covenantal components. Biological relationships are less covenantal in nature—because of the absence of choice—than relationships of selection (such as husband and wife, student and teacher, or as Rabbi Soloveitchik highlights, adoptee and adoptor) precisely because the central characteristic of covenant is selection and choice.

Contrasting the view of Jewish law with American law is deeply illuminating of both systems. Between 1860 and the end of World War II, all states passed adoption and child welfare acts that closely scrutinized requests for adoption. Their basic theme and thrust was that "[a]doption laws were designed to imitate nature."[57] They were intended to put children in an environment where one could not determine that they had been adopted; even the children themselves many times did not know. The law reflected this, and severed all parental rights and duties with an adopted child's natural

parents and reestablished them in total with the adoptive parents, as per the Roman model of adoption law. Significant change in adoption practice has occurred in the last thirty years, the most important regarding the ability or propriety of a state to seal its adoption records—an issue which goes to the very heart of the current American approach to adoption. If adoption records cannot or should not be sealed, then it is beyond the state's power to create an adoption system which effectively mimics the creation of a new parental unit, since the children will become aware of the fact that they have biological parents separate from their adoptive parents. Historically, almost all states sealed adoption records and provided virtually no access. The original birth records were sealed, and if, by coincidence, the adopted child was to meet and marry a natural sibling, the state would permit such a marriage since the adopted child would have no legal relationship with his or her natural family. The "right to know" controversy has resulted in a number of states granting adoptees (upon attaining their majority) access to all the information collected. Once children have a right to know who their natural parents are, the adoption law must reflect the dichotomous relationship between one's natural parents and one's adoptive parents;[58] These tensions have not yet been resolved in American law. Most states still ascribe to adoption law the ability to totally recreate maternal and paternal relationships notwithstanding the knowledge of one's biological parents. Along with their ability to completely recreate parental relationships, states also maintain the ability to legally destroy any such relationships. It is well within the power of the state to not only create new parental rights and duties, but also to remove the rights of a parent towards a child and the duties of a parent to a child as well.

Quasi-Adoption as Granting Some Parental Rights

Even as the Jewish tradition does not have an institution of real adoption, certain nonbiblical aspects of parenthood established by the rabbis of the Talmudic era have been connected to custody rather than parenthood, and thus have been granted to adoptive parents. For example, in Talmudic times it was decreed that the possessions, earnings, and findings of a minor child belong to his or her father.[59] Although the wording of the Talmud refers only to *father*, it is clear from later discussions that this law applies to anyone who supports the child, i.e., adoptive parents.[60] The reason for the rabbinic decree is that it was equitable that one who supports a child should receive the income of that child.[61] Therefore, a financially independent minor does not transfer his or her earnings to his or her parents.[62] Similarly, the earnings of an adopted child go to his or her adoptive parents since the rationale for the decree applies equally well to biological and adopted children.[63] A similar line of reasoning

allows adoptive parents to perform the redemption of the firstborn ritual (*pidyon haben*, in Hebrew) described in Numbers 18:1 for their adopted son if he is a firstborn (to his natural parents).[64]

However, one who raises another's child does not assume the Biblical prohibitions or obligations associated with having a child of one's own. For example, regardless of who is currently raising the child, it is never permitted for a natural parent to marry his or her child; on the other hand, the assumption of custody cannot raise to a Biblical level the prohibition of incest between a parent and the adopted child.[65] Indeed, the Talmud explicitly discusses whether or not adopted children raised in the same home may marry each other, and concludes that such marriages are permitted.[66] One medieval authority, Rabbi Judah of Regensberg,[67] decreed that such marriages not be performed,[68] but this decree has not been generally accepted,[69] and in situations where there is a known, open[70] adoption, such marriages are permitted.[71]

Other examples of adoptive parents being treated as natural parents can be found in the areas of ritual law. For example, while the rabbis prohibited two unrelated unmarried people of the opposite sex from rooming together alone (in Hebrew, the laws of *yihud*),[72] it is widely held that these rules do not apply in the adoption scenario. Although some commentators disagree,[73] many maintain that it is permissible for an adopted child to room and live with his adopted family[74] notwithstanding the *prima facie* violations of the prohibition of isolation.[75] As one authority has noted, without this lenient rule, the institution of raising another's child would disappear.[76] The same is said for the general prohibition of people unrelated to each other engaging in kissing or hugging, which these same authorities permit in situations where the relationship between the adoptive parents and the child is functionally similar to a natural relationship.[77] The basic argument is simple: One's children are exempt from the general prohibitions of physical interactions with the opposite sex, as no erotic intent is generally present. The same is true for quasi-adopted children.

Another example of a change in Jewish ritual law due to the quasi-adoption of a child appears in the obligation of mourning. Adopted children are no longer obligated to, for instance, recite the mourner's prayer (*kaddish*) upon the death of their natural parents—instead, there is an incumbent obligation to mourn upon the death of their adoptive parents.[78] This is so because the institution of mourning as we know it is totally rabbinic in nature, and seems to be a proper reflection of the sadness one feels when one who raised a person passes on.[79] Numerous other examples exist of rabbinic institutions that are not strictly applied in the context of raising another's child, since Jewish law would like to encourage this activity.[80]

Notwithstanding the high praise Jewish law showers on a person who raises another's child,[81] it is critical to recognize that the institution of "adoption" in Jewish law is radically different from the adoption law of American jurisdictions. In Jewish law adoption operates on an agency theory. The natural parents are always the parents; the adoptive parents never are—they are merely agents of the birth parents (or the rabbinical courts). While a number of incidental areas of parental rights are associated with

custody and not natural parenthood, they are the exception and not the law. In the main, Jewish law focuses entirely on natural relationships to establish parental rights and duties. Jewish adoption looks much more like long-term foster care than like classic American adoption.

Open versus Closed Adoption

Secretive adoptions have always taken place in every society and every culture,[82] and there is a case history of such in the Jewish legal tradition as well.[83] Given the Jewish law view that adoption is really a misnomer, and that quasi-adoption or long-term foster care are better terms, the Jewish tradition favors "open" rather than "closed" adoptions: children always need to know that their current caretakers are not their parents. This point is first addressed directly by Rabbi Moses Sofer,[84] who notes that many different aspects of Jewish law are predicated on an awareness of who one's progeny are, and when people are raising other children in their home, they bear a duty to not hide that fact.[85] Similar views are expressed by many different authorities of the last century.

Rabbi Moses Feinstein, one of the leading decisors in America of the last century, notes in his *responsa*[86] that it is obvious that Jewish law mandates that the identity of the natural parents be shared with an adopted child, when the identity is known. Rabbi Feinstein posits that without this knowledge, such a child will never be certain of whom his or her natural siblings are and might[87] enter into an illicit marriage with a natural sibling. Indeed, a contemporary of Rabbi Feinstein, Rabbi Joseph Eliyahu Henkin, carries this view to its logical conclusion and posits that adoptive children should not call their parents by the term *mother* and *father* (since they are not, and using such titles would be deceptive) but should instead use the diminutive *aunt* and *uncle*, which more commonly denote in our society a respectful (but not biological) relationship.[88] Similar such views are posited by many other rabbinic decisors who have written on adoption, including Rabbi Gedalya Felder and Rabbi Mair Steinberg in their contemporary classic works, both of whom concur that adoptions in the Jewish tradition ought to be open adoptions.

Jewish law authorities generally posit that eight distinctly different pieces of information need to be provided:

1. Is the mother Jewish?
2. Is the mother eligible to marry in the Jewish community?
3. Is the mother single or married?
4. Who is the father, and is he eligible to marry in the Jewish community?
5. Is the child eligible to marry in the Jewish community?
6. Is the child a *kohein*, Levite, or Israelite?

7. Does the mother or father have other children (potential siblings) placed for adoption?
8. Is this child Jewish? May she marry a *kohein*?[89]

The purpose of these eight questions is to give a child a sense of who is the child's natural parents and to not allow the adoptive parents to pretend that they are the natural parents. Most authorities posit that closed adoptions are absolutely forbidden,[90] although Rabbi Feinstein is prepared to contemplate the possibility that if the identity of the biological parents cannot be determined, and yet one can ascertain that the children are Jewish, there may be no formal obligation to tell adopted children that they are adopted, although such is merely a good idea.[91] Rabbi Soloveitchick echoes this formulation when he states, "There is no need to withhold from the adopted child information concerning his or her natural parents."[92]

In those societies where secular law does not permit open adoption, Jewish law posits that the relevant information needs to be kept in some form of a communal central registrar that people have to check before they get married. Such registries were—and still are—kept in many communities in the United Kingdom, where for many years adoptions were closed.[93]

Conversion of Minor Children in the Course of Adoption

The ease with which adoption of Gentile children takes place within the community that adheres to Jewish law remains somewhat uncertain, and is fundamentally a question related to conversion law and not directly adoption. The crucial question is what are the proper standards for converting minors? Not surprisingly, that matter is in dispute.

In general, conversion to Judaism requires some form of acceptance of the commandments, (*kabbalat hamitzvot*), and without such acceptance, the conversion is widely considered void. **The conversion of a minor child is inherently different, since there clearly can be no obligation that the minor child accept mitzvot as he or she is without any legal ability to accept anything;** rather, his conversion is done with the consent of the rabbinical court. But, when ought a rabbinical court provide its consent?

No less than four views can be found on when a rabbinical court ought to consent.

- The first view is the view of Rabbis Kook and Elyashiv[94] that a bet din ought not to convert a child to Judaism unless it is nearly certain that the child will grow up to be religious. The consent of the rabbinical court is a substitute in this view

for the consent of the child, and no person would consent unless they expect to be observant in fact.

- The second school of thought is that of Rabbi Chaim Ozer Grodzinsky,[95] who advises not to perform such conversions unless the child will grow up to be religious, but recognizes that there will be situations where such a conversion can be validly done, even if the children will not grow up observant, as such a conversion is sometimes in the best interest of the child.
- The third view is the initial view of Rabbi Moshe Feinstein, which permits conversions when the child will attend an Orthodox school since in such a case it is likely that the child will be religious.[96] Rabbi Ovadiah Yosef indicates agreement with this view of Rabbi Moshe Feinstein.[97]
- The final view is the concluding view of Rabbi Feinstein, which is that it is always better for a person who is not obligated in mitzvot to be Jewish and thus the conversion of all minor children is possible.[98] Rabbi Joseph B. Soloveitchik adopted a view that reaches the same conclusion as the most liberal view of Rabbi Feinstein, albeit with a completely different mechanism (*kibosh*).[99]

At first blush, Rabbi Feinstein's final view is difficult to understand, but I think that the explanation is as follows. Rabbi Feinstein avers that every person is better off being Jewish if they can, but since conversion to Judaism generally requires acceptance of mitzvot, most people, even if they wanted to be Jewish, are not prepared to accept mitzvot in fact, and thus cannot convert. Indeed, the sinning associated with violating Jewish law makes conversion a bad idea (as a matter of Jewish law) for people who do not generally obey Jewish law. Minors, however, only benefit from being Jewish at the time of their conversion, since they cannot sin (as they are minors), whereas the theological benefits of Judaism accrue to them immediately even as they are not obligated in mitzvot. Thus, conversion is always of benefit to a minor at the time of conversion.

Obviously, the underpinning of Rabbi Feinstein's view is that the rabbinical court need only determine whether the conversion is of benefit to this child at this very moment without pondering into the uncertain future, a view which seems to be consistent with the general parameters of the rules of examining when something if of benefit to another.[100]

Conclusion

The Jewish tradition has no legal institution called "adoption," even as it recognized that there would be cases where people other than natural parents would care for children. Indeed, Jewish law denied itself the legal authority to authorize the transfer of parental status from the natural parents to the "adoptive" ones. This is consistent with the general rules of status in Jewish family law, where personal status and

private acts are beyond the jurisdiction of the legal system. The refusal of Jewish law to create the new legal fiction of an adoptive family stands in stark contrast to Roman and modern American law, both of which recognize the rights of the court system to recast parenthood to fit into the custodial arrangement. The divergence between these law codes on a policy level in fact reflects a fundamental difference between the American and Jewish legal systems in terms of the scope and reach of the law. Jewish law articulates the fundamental inability of a governing body to destroy essential parental relationships created at birth. American jurisprudence grants itself that power; the law can artificially create parental relationships in the best interest of the child. Jewish jurisprudence denies itself that power; families once naturally created cannot ever be destroyed. However, as Rabbi Soloveitchik observes, the relationship between children and their nonbiological custodial parents is one of greater moral, philosophical, and religious significance than a natural parental relationship, as the former is predicated on voluntary choice, which is the hallmark of all sacred covenantal relationships.

Notes

1. Rabbi Joseph B. Soloveitchik, *Family Redeemed: Essays on Family Relationships*, edited by David Shatz and Joel Wolowelsky, 60–61 (New York: Meorot Harav Foundation, 2002).
2. See Kulsoom K. Ijaz, "Shifting Paradigms: Promoting an American Adoption Campaign for Afghan Children," *Syracuse Journal of International Law and Commerce* 42 (Fall 2014): 233. For an excellent article on the situation in Israel through a Jewish lens, see Mark Goldfeder, "The Adoption of Children in Judaism and in Israel: A Conceptual and Practical Review," *Cardozo Journal of International and Comparative Law* 22 (2014): 321.
3. C. M. A. McLauliff, "The First English Adoption Law and Its American Precursors," *Seton Hall Law Review* 16 (1986): 659–660. It was not until the late 1920s that adoption became possible in England without a special act of Parliament.
4. Indeed, as noted by Rabbi Ben Tzion Uziel, 2 *Sha'arei Uziel* 185(7), the Hebrew term for adoption ("*imut*") (derived from Psalm 80:16) connotes the grafting of a branch onto a tree and is a misnomer in Jewish law. The classical term used in Jewish law ought to be *benai amunim*, which means "the children of people who raise them."
5. For a side-by-side comparison from the Jewish, Catholic, and Muslim perspectives, *see* Daniel Pollack, Moshe Bleich, Charles J. Reid, Jr., and Mohammad H. Fadel, "Classical Religious Perspectives of Adoption Law," *Notre Dame Law Review* 79 (February 2004): 693.
6. See Arielle Bardzell and Nicholas Bernard, "Adoption and Foster Care," *Georgetown Journal of Gender and the Law* 16 (2015): 3.
7. *The Code of Hammurabi, King of Babylon: About 2250 B.C.*, ed. Robert Francis Harper (Chicago: University of Chicago Press, 1904), §185–186.
8. See John Francis Brosnan, "The Law of Adoption," *Columbia Law Review* 22 (1922): 332–342; Leo Albert Huard, "The Law of Adoption: Ancient and Modern," *Vanderbilt Law Review* 9 (1956): 743–763 (summarizing various ancient adoption laws).
9. See Leo Albert Huard, "Law of Adoption: Ancient and Modern," *Vanderbilt Law Review* 9 (1955–1956).

10. For a discussion of this, see Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Hoboken, NJ: KTAV, 2001).
11. The Talmud recounts six cases of annulment, three of which were pre-consummation, and thus suspect, and three of which involved duress in the creation of the marriage, thus causing the marriage to be naturally void.
12. See Shulchan Aruch Even Haezer 154 in many places.
13. This stands in sharp contrast to American law.
14. For a discussion of artificial reproduction in the Jewish and Israeli law context, see Avishalom Westreich, "Changing Motherhood Paradigms: Jewish Law, Civil Law, and Society," *Hastings Women's Law Journal* 28 (Winter 2017): 97 . See also Karin Carmit Yefet, "Feminism and Hyper-masculinity in Israel: A Case Study in Deconstructing Legal Fatherhood," *Yale Journal of Law and Feminism* 27 (2015): 47 .
15. Four lines of argument have been advanced by different scholars of the years. See Moses Feinstein, *Iggrot Moshe*, 1 *Even Ha-Ezer* 10, 71; 2 *Even Ha-Ezer* 11; 3 *Even Ha-Ezer* 11; J. Teitelbaum, 2 *Divrei Yoel* 110, 140; E. Waldenberg, "Test Tube Infertilization," *Sefer Asya* 5 (1986): 84–92 and 9 *Tzitz Eliezer* 51:4; Jacob Breish, 3 *Helkat Yakov* 45–48. Each of these, however, is consistent with the basic model of Jewish law: fatherhood, once established, is unchangeable.
16. See Michael Broyde, "Cloning People: A Jewish View," *Connecticut Law Review* 30 (1998): 2503–2535 and "The Establishment of Maternity and Paternity in Jewish and American Law," *National Jewish Law Review* 3 (1988): 117–152.
17. Tyler L. Smith, "Kosher Babies: How Israel's Approach to IVF Can Guide the United States in Fighting Separation of Church and State Abuses," *Indiana International & Comparative Law Review* 26 (2016): 292 .
18. See Eliav Shochatman, "The Essence of the Principles Used in Child Custody in Jewish Law," *Shenaton LeMishpat HaIvri* 5, no. 5738 (1977): 285 (Hebrew), and Ronald Warburg, "Child Custody: A Comparative Analysis," *Israel Law Review* 14 (1978): 480–503.
19. See Leviticus 22:24 and Babylonian Talmud, *Shabbat* 110b.
20. Compare Tosaphot, commenting on Babylonian Talmud, *Shabbat* 110b, s.v. *v'Hatanya* (rabbinic violation) with Maimonides, *Mishneh Torah, Sefer Kedusha, Hilkhot Isurei Biah* 16:11 (Biblical prohibition).
21. Ibn Ezra (1089–1164) of Toledo, Spain, was a well-known Biblical commentator; see his commentary on Leviticus 18:22.
22. A contrary view is taken by Rabbi Eliezer Waldenberg, 10 *Tzitz Eliezer* 25:26, 6, but his view is widely disagreed with. See, e.g., F. Rosner and M. Tendler, *Practical Medical Halacha* (New York: Rephael Society, Medical-Dental Section of the Association of Orthodox Jewish Scientists, 1980), 44. When discussing transsexual surgery, it is important to note that the law concerning children born with ambiguous sex status is different from that of sex reassignment surgery in an adult. See Rosner and Tendler at pp. 43–45; Moshe Steinberg, "Change of Sex in Pseudo-hermaphroditism," *Assia* 1 (1976): 142–153.
23. In contrast, American law does allow for gender change.
24. See Shawn Markus Crincoli, "Religious Sex Status and the Implications for Transgender and Gender-Nonconforming People," *FIU Law Review* 11, 137 (Fall 2015) (discussing specific examples of issues within a Jewish and Catholic setting).
25. Of course, this formulation is not without a logical Jewish law foundation, exactly because it concedes that while status is immutable, physical reality can change. This is well explained

in the work by Rabbi Edan Ben-Ephraim (who argues strongly for the phenotype approach) in his 2004 monograph on transsexuality, *Sefer Dor Tahepuchot* ("The Generation of Perversions"), p. 112ff. Ben-Ephraim cites rabbinic opinions in support of phenotype, including a letter appended by Rabbi Asher Weiss. Ben-Ephraim also infers support for phenotypic gender assignment from R. Hayyim Greinman (*Sefer Hidushim u-Beurim*, Kiddushin EH 44, p. 104.3, s.v. *ve-hineh*), R. Shaul Breisch (*Sheilat Shaul*, EH 9.1–2), and R. Yehoshua Neuwirth (oral communication cited in *Nishmat Avraham*, expanded second edition, YD 262.11, p. 326). But see R. Neuwirth's objection to Waldenberg's reasoning on intersex assignment to female (*Nishmat Avraham* EH 44.2, p. 268). See also R. Meir Amsel, "On Sex Change Surgery [Heb.]," *Ha-Maor* 25, no. 2 (Kislev-Tevet 5733 1972): 14–21, who views surgery as a total change in gender, though he also adumbrates the opposing view. R. Klein elaborates on a position against genotype in *Mishneh Halakhot*, 16:47. See also Hillel Gray, "Not Judging by Appearances: The Role of Genotype in Jewish Law on Intersex Conditions," *Shofar: An Interdisciplinary Journal of Jewish Studies* 30, no. 4 (2012): 126–148.

26. Such as uncertain paternity; see *Shulhan Arukh, Even Ha-Ezer* 3:8.
27. This is not the model with which Jewish law views monetary matters, where a Jewish law court has the right of eminent domain to transfer property (thus providing a basis for regulating all financial matters), or ritual law, where decisors of Jewish law are allowed to add observances or suspend them.
28. The Jewish law answer to this question has changed over time. See Yehiel S. Kaplan, "Child Custody in Jewish Law: From Authority of the Father to the Best Interest of the Child," *Journal of Law and Religion* 24 (2008–2009): 89 .
29. This article will not address the extremely important question of *how* Jewish law determines parental fitness; for an excellent discussion of that topic, see Rabbi Gedalya Felder, 2 *Nahalat Tzvi* 282–287 (2nd ed.).
30. Known by the Hebrew acronym "Rosh," R. Asher (1250–1327) was a late (perhaps the last) Tosaphist who emigrated from Franco-Germany to Barcelona, then Toledo, Spain.
31. R. Asher might claim that the Talmudic rule which transferred custody of children (of certain ages) from the husband to the wife did so based on a rabbinic decree, and that this rabbinic decree gave the custodial mother the same rights (but not duties) as a custodial father; for a clear explication of this, see Rabbi Shemuel Alkalai, *Mishpatai Shemuel*, 90.
32. Rabbi Asher ben Yehiel, *Responsa of R. Asher (Rosh)* 17:7; see also Rabbi Judah ben Samuel Rosannes, *Mishnah Lemelekh, Hilkhot Ishut* 21:17.
33. *Responsa of R. Asher*, 82:2.
34. In any circumstance in which the marriage has ended and the mother is incapable of raising the children, the father is entitled to custody of his children, even if one were to agree that the children would be "better off" being raised by grandparents. Much of this basic dispute can be found in American law as well. See *Painter v. Bannister*, 140 N.W. 2d 152 (Iowa 1966).
35. This could reasonably be derived from the Babylonian Talmud, *Ketubot* 102b, which mandates terminating custodial rights in the face of life-threatening misconduct by a guardian.
36. In cases of divorce, in situations where the Talmudic rabbis assigned custody to the mother rather than the father, that custody is based on a rabbinically ordered transfer of rights, and the mother gets custody, even if the children are best served by another. For a longer discussion of this issue, see *responsa* of Rabbi Yehezkail Landau, *Nodah BeYehudah, Even Ha-Ezer* 2:89, and Rabbi Yitzhak Weiss, *Minhat Yitzhak* 7:113.

37. See, e.g., Rabbenu Yeruham ben Meshullam, *Toldot Adam veHava* 197a in the name of the *Geonim*, Rabbi Yitzhak deMolena, *Kiryat Sefer* 44:557 in the name of the *Geonim*, and Rabbi Yosef Gaon, *Ginzei Kedem* 3:62, where the theory of custodial parenthood seems to be based on an agency theory derived from the father's rights. R.
38. Known by the Hebrew acronym "Rashba," Rabbi Aderet (1235–1310) of Barcelona, Spain, was an eminent and prolific decisor.
39. *Responsa of Rashba Traditionally Assigned to Nahmanides*, 38. Throughout this chapter, the theory developed in the *responsa* is referred to as Rashba's, as most latter Jewish law authorities indicate that Rashba wrote these *responsa* and not Nahmanides; see Rabbi David Halevy, *Turei Zahav*, *Yoreh Deah* 228:50, and Rabbi Hayyim Hezkeyahu Medina, *Sedai Hemed*, *Klalai Haposkim* 10:9 (typically found in volume nine of that work).
40. For example, see *Otzar HaGaonim*, *Ketubot* 434, where this rule is applied even when the father is alive.
41. Perhaps this allows one to claim that this rule—custody is granted in the best interest of the child—is the rationale why, according to Rashba, Jewish law would not allow one to remove children from the home of their parents to be raised in the house of another who is better capable of raising the children unless the natural parents are unfit. See Sylvan Schaeffer, "Child Custody: Halacha and the Secular Approach," *Journal of Halacha and Contemporary Society* 6 (1983): 36–39.
42. See Warburg, "Child Custody," 496–498, and Shochatman, "Principles Used in Child Custody," 308–309.
43. It is this author's opinion that later authorities disagree as to the legal basis of the mother's claim. Most authorities indicate that the mother's claim to custody of the daughter is based on a transfer of rights from the father to the mother based on a specific rabbinic decree found in the Talmud. On the other hand, many other authorities understand the mother's claim to custody of boys under six to be much less clear as a matter of law and are inclined to view that claim based on an agency theory of some type, with the father's rights supreme should they conflict with the mother's.
44. For example, sending a child to a boarding school of the parent's choosing; see, e.g., 4 *P.D.R. (Piskai Din Rabbani)* 66 (1959), where the rabbinical court appears to sanction granting custody to the father, who wishes to send his child to a particular educational institution (a boarding school) which will directly supervise the child's day-to-day life.
45. It is possible that there is a third theory also. Rabbenu Nissim (Hebrew acronym "RaN," commenting on Babylonian Talmud *Ketubot* 65b), seems to accept a contractual framework for custodial arrangements. R. Nissim appears to understand that it is intrinsic in the marital contract (*ketubah*) that just as one is obligated to support one's wife, so too one is obligated to support one's children. This position does not explain why one supports children out of wedlock (as Jewish law certainly requires; see *Shulhan Arukh*, *Even Ha-Ezer* 82:1–7) or what principles control child custody determinations once the marriage terminates. *Mishnah LeMelekh*, *Hilkhot Ishut* 12:14 notes that R. Nissim's theory was not designed to be followed in practice.
46. As a matter of practice, this would not happen frequently. Indeed, this author has found no *responsa* which actually permit the removal of children from the custody of parents who are married to each other.
47. Frederick Parker Walton, *Historical Introduction to the Roman Law*, 4th ed. (Edinburgh: W. Green & Son, 1920), 72.

48. See Babylonian Talmud, *Sanhedrin* 19b. This is viewed as a righteous deed; see *Exodus Rabbah*, ch. 4.
49. Although it is true that there are four instances in the Bible in which adopted parents are called actual parents; see 1 Chronicles 4:18, Ruth 4:14, Psalm 77:16, 2 Samuel 21:8. These are assumed to be in a nonlegal context. See Babylonian Talmud, *Sanhedrin* 9b.
50. Israel Herbert Levinthal, *The Jewish Law of Agency, with Special Reference to the Roman and Common Law* (New York: [printed at the Conat Press, Philadelphia], 1923), 58–73.
51. J. Caro, *Shulhan Arukh, Even Ha-Ezer* 15:11.
52. Known by the Hebrew acronym "Maharsha," R. Edels (1555–1631) wrote his famous analytical commentary on the Talmud while an active communal leader of Eastern Europe (in what is now Poland). Interestingly, he adopted the surname Edels in tribute to his mother-in-law Edel, who covered all the expenses of his Yeshiva in Posen for some twenty years.
53. *Commentary of Maharsha*, Babylonian Talmud, *Sanhedrin* 19b.
54. *Shulhan Arukh, Even Ha-Ezer* 1:3–6. A contrary view is taken by Rabbi Shlomo Kluger in his commentary on *Shulhan Arukh, Even Ha-Ezer* 1:1. He posits that adoption is a form of procreation, since without the adult's actions these children would die. His opinion has been widely discredited.
55. Soloveitchik, *Family Redeemed*, 60–61.
56. Rabbi Soloveitchik quotes as a proof-text Maimonides, who states:

    > This obligation [of teaching Torah] is to be fulfilled not only towards one's son and grandson. A duty rests on every scholar in Israel to teach all disciples, even if they are not his children, as it is said, "and you shall teach them to your children" (Deuteronomy 6:7). The oral tradition teaches: "Your children" includes your disciples, for disciples are called children as it is said: "And the sons of the prophets came forth" (II Kings 2:3).
>
> *Hilkhot Talmud Torah* [The Laws of Torah Study] 1:2.

57. Sanford N. Katz, "Re-writing the Adoption Story," *Family Advocacy* 5 (1982): 9–10.
58. See, e.g., Carol Amadio and Stewart Deutsch, "Open Adoption: Allowing Adopted Children to 'Stay in Touch' with Blood Relatives," *Journal of Family Law* 22 (1983): 59 .
59. Babylonian Talmud, *Baba Metzia* 12b.
60. J. Caro, *Shulhan Arukh, Hoshen Mishpat* 370, 2.
61. J. Falk, *Meirat Einaim*, commenting on ibid.
62. J. Caro, *Shulhan Arukh, Yoreh Deah* 370, 2.
63. Ibid.; Z. Mendal, *Be'er Haytaiv*, §4, on J. Caro, *Shulhan Arukh, Yoreh Deah* 370:2.
64. David Tzvi Hoffman, *Melamed Lehoil, Yoreh Deah* 97–98.
65. By inference the same can be said of adoptive siblings; see Hoffman, *Melamed Lehoil, Yoreh Deah* 15, 11 ("It is permitted to marry one's adopted sister").
66. Babylonian Talmud, *Sotah* 43b.
67. Also known as Rabbi Judah HaHasid (the Pious). He was a renowned ethicist and scholar of the Rhineland Jewish community (1150–1217).
68. Judah of Regesberg, *Sefer Ha'Hasidim*, Comm. 29. See also Babylonian Talmud, *Sotah* 43b.
69. See Moses Sofer, *Responsa 2 Yoreh Deah* 125.
70. See the next section.
71. See *Minhat Yitzhak* 4:49. Although legally permitted, few such marriages are actually performed; however, there was a time when such was exactly the motive of people who raised children other than their own in their household.

72. J. Caro, *Shulhan Arukh, Even Ha-Ezer* 22:2. According to one commentator, this rabbinic prohibition even included the rooming together of a married woman with a man not her husband. See Maimonides, *Mishneh Torah, Sefer Kedushah, Hilkhot Isurai Biah* 22:2.
73. M. M. Shneerson, *Zikhron Akedat Yitzhak* 4:33–37. For a complete list of those authorities agreeing with this position, see Aryeh Berzon, "Contemporary Issues in the Laws of Yichud," *Journal of Halacha and Contemporary Society* 13 (1986): 108.
74. This, for example, occurs when a couple adopts a boy, and the boy's adoptive father later dies, leaving the adopted child living alone with a woman not his natural mother.
75. See E. Waldenberg, 6 *Tzitz Eliezer* 40:21; C. D. Halevi, *Aseh Lekha Rav* 194–201. Rabbi Joseph B. Soloveitchik has also been quoted as permitting this. See Melech Schacter, "Various Aspects of Adoption," *Journal of Halacha and Contemporary Society* 4 (1982): 96. Rabbi Feinstein has also commented on this issue; see M. Feinstein, *Iggrot Moshe* 4 *Even Ha-Ezer* 64:2.
76. E. Waldenberg, 6 *Tzitz Eliezer* 226–228.
77. This matter is conceptually easier in this writer's opinion, as nonsexual touching is arguably permitted anyway in Jewish law, and the essential characteristic of this touching is that it is nonsexual. For more on this topic, see Babylonian Talmud *Kiddushin* 81b, and Rashi, Tosaphot, Ritva, and Yam Shel Shlomo *ad locum*; *Shulhan Arukh, Even Ha-Ezer* 21, 4–7; Gr"a, *Even Ha-Ezer* 21:19; *Pit'hai Teshuva, Even Ha-Ezer* 21:3 and *Iggrot Moshe*, 2 *Even Ha-Ezer* 14. For an article on this topic in English, see Rabbi Yehuda Herzl Henkin, "The Significant Role of Habituation in Halakha," *Tradition: A Journal of Orthodox Jewish Thought* 34, no. 3 (2000): 40.
78. M. Sofer, *Responsa*, 1 *Orah Hayyim* 174. Rabbi Sofer also notes the praise Jewish law lavishes upon one who raises another's child.
79. This issue is in dispute. Compare J. Caro, *Shulhan Arukh, Yoreh Deah* 398:1 with M. Isserles, commenting on J. Caro, *Shulhan Arukh, Yoreh Deah* 399:13.
80. See generally J. Caro, *Shulhan Arukh, Orah Hayyim* 139:3. See also A. Auli, *Magen Avraham*, commenting on Caro's *Shulhan Arukh, Orah Hayyim* 139:3, and M. Feinstein, *Iggrot Moshe*, 1 *Yoreh Deah* 161. For a summary of various laws of adoption, see Schacter, "Various Aspects of Adoption."
81. See Babylonian Talmud, *Sanhedrin* 19b.
82. See for example, Lucy S. McGough and Annette Peltier Falahahwazi, "Secrets and Lies: A Model Statute for Cooperative Adoption," *Louisiana Law Review* 60 (1999): 13.
83. See Rabbi Hayyim Bachrach, *Havot Yair* 92–93. These *responsa*, from just before the dawn of the eighteenth century, recount the story of a couple who (it was claimed) switched children with their maid after one of their own children died. Needless to say, many difficulties and questions arose from these actions. The solution advocated by one of the rabbis in this *responsa* is second-guessed by Rabbi Moses Sofer in *Teshuvot Hatam Sofer*, 2 *Even Ha-Ezer* 125.
84. In *Teshuvot Hatam Sofer*, 2 *Even Ha-Ezer* 125. Rabbi Sofer (1762–1839) lived in Hungary.
85. There is a dispute as to whether adopted children inherit from their adoptive parents; see *Lekutai Mair* 18:2. However, all agree that such children do not inherit by operation of the intestacy rules of Jewish law. Those who argue that such children inherit, do so based on the presumptive will of the parents. For more on this, see Rabbi Moshe Findling, "Adoption of Children," *Noam* 4 (1961): 65–93 (Hebrew).
86. *Iggrot Moshe*, 1 *Yoreh Deah* 162.
87. See *Beit Shmuel, Even Ha-Ezer* 13:1, who notes that this is a rabbinic fear and not grounded in Torah Law.

88. See Y. E. Henkin, *Kol Kitvai Hagaon Rav Yosef Eliahayu Henkin* 2:98 (1989). This letter is undated, but appears to be from the 1950s.
89. See Rabbi Gedalya Felder, *Nahalat Tzvi* 35–40 (2nd ed.), and Rabbi Mair Steinberg, *Lekutai Mair*, 19–23. The correctness of the final question is discussed in my "May the Daughter of a Gentile Man and a Jewish Woman Marry a Kohein," *Journal of Halacha and Contemporary Society* 52 (2009): 97–126.
90. *Minhat Yitzhak* 4:49. See also Rabbi Menashe Klein, *Mishnah Halakha* 4:49.
91. Moses Feinstein, *Iggrot Moshe, Yoreh Deah* 161–162. See also *Yam Shel Shlomo, Ketubot* 1:35; but see Moshe Sternbuch, *Teshuvot veHanhagot* 2, 678.
92. Soloveitchik, *Family Redeemed*, 61.
93. Meyer Steinberg, *Responsum on Problems of Adoption in Jewish Law*, edited and translated by Maurice Rose (London: Office of the Chief Rabbi, 1969), 11–12. Although the issues of accidental brother/sister incest seem rare, such cases clearly do arise. Consider, for example, Bob Herbert, "A Family Tale," *New York Times*, December 31, 2001, sec. A, p. 11, which notes:

    > In 1979 Mr. Klahr met and began dating a woman named Micka Zeman. "One time her mother said to me, 'Gary, are you adopted?' I was dumbfounded. I said, 'No, I'm not.' She asked me that question because she knew her daughter was adopted and there were other kids around, but she didn't know which families had gotten them." Ms. Zeman was Mr. Klahr's sister. They dated for about six months. "My relationship with my sister is the kind of thing that could have you jumping out the window," said Mr. Klahr. "But we didn't know. Thank God we didn't get married."

    The reverse of this situation is discussed in *Israel v. Allen*, 195 Colo. 263; 577 P.2d 762; (Supreme Court of Colorado, 1978), which permitted adopted siblings to marry each other.
94. Rabbi Kook, Da'at Kohen, Milah veGerut 147–148 and Rabbi Shalom Yosef Elyashiv, Kovetz Teshuvot YD 2:55.
95. Achiezer 3:28.
96. See Igrot Moshe YD 1:158 and EH 4:26(3).
97. See Yabia Omer EH 2:3 and 2:4.
98. See Igrot Moshe EH 4:26(3) and see also Igrot Moshe YD 1:158.
99. See Rabbi Joseph B. Soloveitchik, "Community, Covenant and Commitment" at pages 21–22. (For an alternative explanation of Rabbi Soloveitchik's view, see Rabbi Tzi [Hershel] Schachter, Nefesh Harav, 245, in which Rabbi Soloveitchik's view is understood to be similar to the first view of Igrot Moshe.
100. *zachin le-adam shelo be-fanav*. For more on this issue, see "Zachin Le'adam shelo be-fanav," *Encylopedia Talmudit* 12:135–197. This issue is worthy of further analysis. It might well be that which view of the propriety of conversions to Judaism for minors who will not be religious one adopts depends on whether one thinks that such children can, in fact, reject the choice of Judaism made for them as children when they become adults. For more on this, see Shulchan Aruch Yoreh Deah 268:7 and commentaries ad locum.