

DONATIONS FOR SALE - RHETORICAL METHODS IN THE SERVICE OF COMPENSATED EGG RECRUITMENT IN ISRAEL

SHARON BASSAN, PhD JD*

ABSTRACT

Until 2010, egg donations in Israel could only be recruited from women undergoing fertility treatments for themselves. Donations did not meet the national demand for eggs. Until the policy changed in 2010 and allowed donations from healthy women undergoing egg retrieval process for the sole purpose of donation, there had been years of legislative efforts to increase the pool of eggs for childless people. This article tells the story of this change. It examines the change through the discourse involved in two governmental committees charged with discussing this issue in two distinguished generations of discourse concerning reproductive technologies. The discourse analysis exposes legal and ethical dilemmas that reflect a constant conflict between two constitutive narratives in Israeli society: “The procreation narrative” and the narrative regarding “the unique value of the human body.” Aside from telling the story, the article offers a typology of the rhetorical methods that served policy-makers settling this conflict. It shows how these methods shaped the nature of the debate and allowed a change in policy.

I.	INTRODUCTION	2
A.	THEORETICAL FRAMEWORK	4
B.	METHODOLOGY	6
II.	ISRAELI CONSTITUTIVE NARRATIVES IN A “JEWISH AND DEMOCRATIC” SOCIETY	8
II.	THE REPRODUCTION NARRATIVE IN ISRAEL – RELIGIOUS, CULTURAL AND SOCIAL IMPORTANCE	8
A.	THE UNIQUE VALUE OF THE HUMAN BODY - THE LIBERAL FOUNDATIONS OF A DEMOCRATIC STATE.	10
III.	FUNCTIONAL NARRATIVES: RHETORICAL TOOLS AS SERVING THE DESIRED POLICY.	11

* Postdoctoral Research Associate in Values and Public Policy at Princeton University, also affiliated with the Woodrow Wilson School’s Office of Population Research and the Law and Public Affairs Program (Graduate Associate). **Acknowledgements:** This article is part of my project as a Postdoctoral fellow at The Center for Gender, Law and Policy, University of Haifa, which was funded by the Israeli Ministry of Science, Technology & Space. I am grateful for the opportunity this funding has given me. I would also like to show my deep gratitude to Prof. Amnon Reicman, University of Haifa; Prof. Carol Stack, Berkeley University; Prof. James Trussell, Princeton University and Prof. Peter Singer, Princeton University for sharing their comments and insights with me on different stages of the process. © 2018, Sharon Bassan.

A.	BOUNDED NARRATIVES – SUPREMACY OF REPRODUCTION VS. POTENTIAL RISKS TO EGG-SOURCE WOMEN	12
IV.	THE RISKS: DOWN-PLAYING AND UP-PLAYING NARRATIVE	18
V.	THE EXCHANGE OF MONEY - SOFTENED RHETORIC	24
A.	DONATION OR SALE?	24
B.	PAYMENT OR COMPENSATION?	30
C.	EXPLOITED OR AUTONOMOUS? PROTECTED OR ABANDONED? THE IMAGE OF EGG-SOURCE WOMEN IN THE DISCUSSIONS	33
VI.	CONFRONTING COUNTERARGUMENTS - RESPONDING METHODS	36
A.	CONSTRAINED NARRATIVES – SURRENDERED RHETORIC	36
B.	DIVERTING RHETORIC	40
VII.	MISSING VOICE	43
VIII.	CONCLUSION – EVOLVING TIMES, EVOLVING DISCOURSE	44

I. INTRODUCTION

This article tells the untold story of the politics and ethics behind the regulation of compensated egg donation in Israel. Until 2010, egg donations in Israel could have been recruited only from women undergoing fertility treatments themselves.¹ Donations from women undergoing egg retrieval process for the sole purpose of donation were illegal. This limitation aimed to prevent unnecessary risk to non-treated women. Altruistic donations were unlikely to meet the needs of infertile couples, since women undergoing treatments could save their fertilized eggs by cryopreservation for later use, and likely had little interest in donating their eggs to others after the complicated process that they had undergone. This situation created a shortage in available ova to confront an increasing demand.

Members of the Knesset, the legislative branch of Israeli government, proposed compensated egg donation to address the shortage in ova. Two committees were charged with discussing this option, each in a different generation of discourse addressing reproductive technologies.² The first-generation discourse refers to the period that followed the enactment of the National Health Insurance (NHI) Law in 1994, which included reproductive treatment as part of the services covered by the states (until around 2008).³ The second-generation discourse

1. The Public Health Regulations (Extra-Corporeal Fertilization), 5747-1987, 5035 KT 978, § 4, 978 as cited (Isr.)

2. For the difference between the two generations, see Shulamit Almog, Sharon Bassan, *The Politics of Pro and Non Reproduction Policies in Israel*, J. HEALTH & BIOMEDICAL L., Symposium Issue 27 (2018).

3. The foundation for the current Israeli legal framework of reproductive policy was laid in 1987 (See, The Public Health Regulations (In-Vitro Fertilization) 5747-1987, 5035 KT 978, Pincite – see fn 2 (Isr.) (addressing the accreditation of clinics, access to IVF, egg donations, embryo storage and disposal, as well as informed consent. To this day, there is no singular, coherent regulation, but rather piecemeal regulations touching upon many reproductive technologies, such as Intracytoplasmic Sperm Injection

scholarship refers to discussion from around 2008 to present, after the consequences of the first-generation discourse were analyzed and produced legislative efforts addressing different reproductive regulations.

In the first-generation of discourse, during both the 15th and 16th Knesset, a few proposed bills encouraged donations from women not undergoing fertility treatment by offering some kind of incentive.⁴ In the year 2000, following the public discussion, Rabbi Shlomo Benisri, Member of Knesset (MK) and Ministry of Health, formed a public professional committee led by Dr. Halperin (hereinafter “the Halperin Committee”). The committee was tasked with discussing social, ethical, halakhic and legal issues in treatment methods related to egg donations from women not undergoing fertility treatment and with examining the need for legislation that would regulate the rights and duties of all involved, including future children. The Halperin Committee recommended expanding egg donation to compensated recruitment, yet the discussion never matured to become a formal legislation.

Egg donation continued to occupy public discussion during the second-generation of discourse, when in 2007 the Ministry of Health and Ministry of Justice jointly submitted a bill that encouraged donations from women not undergoing fertility treatment by offering financial incentives.⁵ A special sub-committee of the Labor, Welfare and Health Committee in the Knesset (hereinafter “the Knesset Committee”) was created to discuss the bill and prepare it for the legislative process. Following these discussions, the egg donation act passed in 2010, enabling the procedure of compensated egg donation from an “egg donor.”⁶ The article uses the term “egg-source woman” instead as a more realistic and neutral description of these women.

This article focuses on analyzing the changing discourse between generations through the transcripts of both committees’ discussions in order to discuss the politics and ethics underlying the process of regulating compensated egg donation in Israel. The discourse analysis reveals conflicts, arguments, and strategy involved at a crucial point of change in existing policy concerning egg donation. These findings expose two central competing narratives that create constant conflict: (1) the cultural-social perception of reproduction and procreation in Israeli society, which constructs a duty to help childless people in light of a shortage in eggs and (2) the social notions of human rights, and particularly, the belief in the unique value of the body, which has inspired arguments against the trade in organs — arguments which in turn constrain the pro-natalist narrative and divert the discourse toward the prohibition of monetary exchange.

(ICSI), Donor Insemination (DI), surrogacy, egg donation, egg freezing, and Prenatal Genetic Diagnosis (PGD).

4. P/2204, P/15/1328, K/2985, P/16/1388, P/16/3459. Found through search engine: <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawSuggestionsSearch.aspx?t=LawSuggestionsSearch&st=CurrentKnesset>

5. Egg Donation Bill, 5767-2007, 289 HH (March 19, 2007) (Isr.).

6. Egg Donation Act 5770-2010, 2242 SH 520 (Isr.).

The article discusses legal and ethical dilemmas that reflect the constant conflict between these two narratives. It shows how rhetoric tools were(?) used by policy-makers to settle this conflict in a way that maintains the central cultural narrative about state support of procreation. Part I lays out the theoretical framework and the methodology used. It presents the concept of “constitutive narratives,” which describe the basic understanding and reading of the reality; and “functional narratives,” which facilitate daily activities by supporting a certain attitude within the reality created by constitutive narratives. Part II applies the concept of “constitutive narrative” to the egg donation discourse in the context of a “Jewish and democratic State.” Part III applies the concept of “functional narrative” to the legislative process. It offers a typology of the rhetorical methods that served policy-makers in the egg donation discussions to settle the ethical-cultural conflicts while bringing about the desired policy change and allow compensated egg donation.

A. THEORETICAL FRAMEWORK

The starting point of this article assumes that law is a language and a system of meanings and should be evaluated as such.⁷ Law relies on narrative to make sense of legal ideas, and needs narrative to quell opposition and justify the legitimacy of decisions made.⁸ Narratives shape our understanding of reality, creating conventions that determine what we are able to think, know, and believe, and, eventually, what we may allow or forbid in our societies.⁹ In court, different stories are told about the same events.¹⁰ These stories flow in different directions through narrative trails that form and design alternative perceptions and reflect competing interests.¹¹ The adversarial use of functional narrative in court has a similar use in the policy-making process. Since narratives give symbols ethical and pragmatic significance, they are highly important for any process of creating general or specific norms, such as legislation. Policy follows from narratives in public debates, and these narratives compete for the right to influence the chosen policy during the legislative process. Since legal activities depend on the ability to identify plots, manipulate stories, and process them, narratives can shape the way that we perceive law and establish our expectations of it.¹²

Usually, rhetorical commitments work to justify the existing legal order and enforce the rule of law. Such justifications reinforce the existing distribution of

7. Richard K. Sherwin, *A Matter of Voice and Plot: Belief and Suspicion in Legal Storytelling*, 87 MICH. L. REV. 543, 547 (1988).

8. Shulamit Almog, *From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative, and Law*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 1, 10 (2002).

9. Margaret. J. Radin, *Market Inalienability*, 100 HARV. L. REV. 1849, 1882 (1987).

10. Almog, *supra* note 9, at 12. For elaboration on the term “generative narrative” in a legal context, see Shulamit Almog, *Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times*, 32 RUTGERS COMPUTER & TECH. L.J. 183 (2005).

11. Jonathan Yovel, *Narrative Justice*, BAR-ILAN L. STUD. 283, 284 (2002).

12. Almog, *supra* note 9, at 7.

power and wealth, counter those who question the legitimacy or neutrality of the status quo, and marginalize the voices of the opposition.¹³ However, changing a status quo is a complicated mission, since it requires using the same tool – functional narratives — to undermine what has been crafted to justify a certain policy. This article therefore focuses on analyzing the narratives used at a crucial point of change in the status quo that previously prohibited compensated egg donation.

The article will focus on two types of narratives: (1) constitutive or formatting narratives and (2) functional narratives. Constitutive narratives describe reality, or the basic understanding and reading of the reality. In James Boyd White's work, "constitutive rhetoric" constructs the cultural basis on which a culture lives and changes.¹⁴ Constitutive narratives derive from the systematic structure and contain a set of resources that endow symbols with ethical meaning and pragmatic significance, which influence our perception of reality. White describes these resources as ways of asking and responding to questions; defining roles, positions, and voices from which to speak; creating and maintaining relations; and justifying and explaining action and inaction. Constitutive narratives are essential for the process of creating abiding norms, such as legislation and rulings.

Functional narratives are the stories that facilitate daily activities, and include an obvious intent to divert opinion towards a specific choice. They support a certain attitude or way of conduct within the reality created by constitutive narratives. Functionally, narratives create power and dynamics. A functional narrative establishes a certain ideology, thereby limiting the range of natural possible ruling or regulative options. The purpose of a functional legal narrative is to organize the facts - and the story that these facts tell - in a way that will convince the audience of an inevitable implied end to the story. Different functional narratives present in the legislative discourse advance competing interests, and may tilt the final ideological choice of policy-makers from one policy to another. Since there can be contradicting constitutive narratives, functional narratives are used to weigh which constitutive narrative will prevail.

Rhetorical methods are the fuel that feeds the narratives. Such methods are inherent to the legislative discourse and the process of policy-making. The choice of specific symbols through language constitutes potential ways of changing or reforming law. The chosen policy will be followed by society, and narratives presented to policy-makers may have an impact on different segments of the population. Rhetorical methods construct a reasoning that society follows, since narratives create useful expressions for claiming, resisting, and declaring significance.¹⁵ Policy-makers

13. See also, Gerald B. Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 76 VIRG. L. REV. 1545, 1596 (1990) ("If the rule of law is our client, then so is the status quo.").

14. James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 CHICAGO L. REV. 684, 688 (1985).

15. Sherwin, *supra* note 67, at 547.

must, therefore, be concerned with the possibilities of rhetoric and with the kind of persuasive discourse different types of rhetoric establish.

B. METHODOLOGY

The article is based on research inspired by Foucault, who describes discourse as specific way of engaging with the world and relating to it.¹⁶ Discourse is a site of struggle, constitutive of “reality” in that it physically shapes our perceptions. Foucault understands discourse as a “strategic situation” that determines the distribution of power between actors, both enabling and constraining them by shaping their field of opportunities and limiting their freedom.¹⁷

The research analyzes discourse involved in the egg donation discussions, using transcripts from discussions in the policy-making process in the first and second generations of egg donation discourse. From the first-generation discourse, sixteen transcripts were analyzed from Halperin committee meetings held during the year 2000.¹⁸ The Halperin committee’s work was followed by submission of a few supporting bills (including one proposed by the minister of health, MK Rabi Nisim Dahan). In March 2001, the Labor, Welfare and Health Committee and the Committee for Promotion of Women’s Status in the Knesset collaborated to propose another bill.¹⁹ Online transcripts from discussions about these bills are included in the discourse analysis of the first generation. In the second-generation discourse, there are ten discussions during 2008 and eight follow-up discussions, all available online and analyzed in this research.

The chosen texts are extremely valuable for several reasons. First, they were the main mechanism affecting the policy-makers’ decisions and thus had an immediate pragmatic effect on the overall outcome of the discussions. It is important to note that these materials should not be referred to as representative of public opinion. Since the egg donation discussions are part of the political process, many of the speakers involved sought to promote a specific agenda, and it follows that they raised certain arguments rather than others. Some arguments were construed as personal opinions and others as part of background material for the discussions. However, examples serve as anecdotal indications of the existence of certain narratives and rhetorical methods in the decision-making process as part of the political procedure. Second, the committees’ meetings served as the principal stage to listen to and to state opinions using functional narratives and

16. Peter H. Feindt & Angela Oels, *Does Discourse Matter? Discourse Analysis in Environmental Policy Making*, 7 J. EVTL. POL’Y & PLANNING 161, 164 (2005).

17. *Id.* at 165.

18. The transcripts of The Pub.-Prof. Committee Concerning Egg Donation (in Hebrew) are available at: Ministry of Health of Israel, Protocols, https://www.health.gov.il/Services/Committee/Egg_donation/Pages/%D7%A4%D7%A8%D7%95%D7%98%D7%95%D7%A7%D7%95%D7%9C%D7%99%D7%9D.aspx. (last visited Oct. 17, 2018).

19. P/15/1328, K/2985 (05.03.2001). These discussions addressed the identity of the egg-source women, the money given in exchange for the donation, information rights with regard to the donation, the purpose of donation (research or reproduction), and the import of eggs.

rhetorical methods. These discussions are valuable to, and indirectly affect, public opinion. The narratives and rhetorical methods are constructed by professionals and enter public communication, since media reporters and government websites rely on the committees' transcripts to inform the public about the activity of the state's authorities.²⁰ Studying two committees, each belonging to a different regulative generation of discourse, is essential to understanding the development of expressions of public opinions and professional positions in the policy-making process. Comparing the two committees enables us to investigate the cross-generational shift in attitude throughout this process.

Discourse analysis is a highly flexible research method. The main methodology used in this research is based on attention to the words, emotions, and nature of the arguments involved. I read through the data and scrutinized arguments closely to identify concepts and patterns that may answer the following research questions:²¹ What are the political tendencies regarding the regulation of egg recruitment? What are the main arguments in the discourses? Which actors are the most prominent? What are the main topics of agreement? What are the main issues in dispute? Did the issues change throughout the process and if so, when and how? By distinguishing key phrases or patterns of expressions quoted, I classified arguments that correspond to these questions and organized them into thematic units of analysis—the attitude toward reproduction in general, the risks, monetary exchange, and egg-source women.²²

I checked my interpretations against the transcripts and discussion notes, continually testing emerging patterns by comparing the phrases and patterns of expressions to the categories and constructs that emerged throughout this process.²³ While articulating the methods and relationships among these categories and constructs, I noted other arguments that seemed important but unexpected. This reading offers a diversity of ideas, alternative perspectives, oppositional forms of speech, and illustrates different uses of narratives by different groups.

I was especially aware of the processes by which policy arenas are constructed, and of the bias effects of dominant types of language and knowledge. The research examines the dynamics that form when interest groups promote a discourse that constantly defines interests, both their own and others.²⁴ The analysis of this research addresses various actors involved in the discussions: individuals, women's civil organizations, religious organizations, government agencies, etc.

20. See, e.g., Itay Gal, *The Knesset Approved: 10,000 NIS to an Egg Donor*, YNET, Nov. 1, 2011, <https://www.ynet.co.il/articles/0,7340,L-4142212,00.html> (illustrating how journalists rely on what has been said in the committee to inform the public through the media).

21. MARILYN DOMAS WHITE & EMILY E. MARSH, *Content Analysis: A Flexible Methodology*, 55 LIBRARY TRENDS 22, 34 (2006).

22. For elaboration on unitizing units of analysis, see *id.* at 29.

23. *Id.* at 37.

24. See e.g., BRUNO LATOUR, *REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY* (2005); see also Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L. J. 805, 834 (1986).

Such analytic framework provides a detailed description of the mechanisms at work while treating actors impartially.

Citations in each chapter will be used to demonstrate two aspects: first, the internal dynamic of each method present in the Halperin committee; second, the differences in use of those methods between the Halperin and the Knesset committees, including changes in existing arguments, the emergence of new speakers with new arguments (or new actors with known arguments), missing actors, etc. The overall picture adds context, which includes roles, professions, and situations of actors involved.²⁵

II. ISRAELI CONSTITUTIVE NARRATIVES IN A “JEWISH AND DEMOCRATIC” SOCIETY

The texts and their contexts are logically independent. As the researcher, I drew conclusions from one independent domain (the transcripts’ texts) to the other (the cultural context) by positioning the egg donation discourse in the general context of a “Jewish and democratic State.”²⁶ Part II applies the concept of “constitutive narrative” to the context of a “Jewish and democratic State” and shows the cultural basis on which the discussion relies. Israel defines itself as a democratic and a Jewish state, as stated in its basic laws.²⁷ Accordingly, the status and protection of human rights, including women’s rights, is shaped by this two-sided definition.²⁸ On the one hand, historical, religious, political, cultural and social references to Israel’s unique status as a Jewish state generate a clear pronatalist vision. On the other hand, inspired by its democratic and liberal values, Israel recognizes autonomous choices, including human and women’s reproductive rights, as foundational principles of its legal system. This section reviews the cultural basis for these constitutive narratives.

II. THE REPRODUCTION NARRATIVE IN ISRAEL – RELIGIOUS, CULTURAL AND SOCIAL IMPORTANCE

The Israeli constitutive narrative of reproduction stems from different cultural sources that I elaborated in another article,²⁹ and these sources still resonate with and play a major role in the Israeli collective consciousness. The biblical dictate “be fruitful and multiply”³⁰ echoes throughout various religious stories, such as Rachel’s cry “give me children or else I die,” or Sarah’s barrenness that leads her to use her handmaid to produce a child.³¹ These stories are still charged with

25. White & Marsh, *supra* note 19, at 39.

26. *See id.* at 27.

27. This article does not purport to speak to interpretations of Judaism outside of Israel. Any commentary on interpretations of Judaism is limited to Israel and does not extend to the Jewish diaspora.

28. Almog & Bassan, *supra* note 2, at 77.

29. *Id.*

30. *Genesis* 1:28 (King James). For other religious approaches to reproduction see, Almog & Bassan, *supra* note 2.

31. Waldman, *supra* note 21, at 70 (describing biblical stories illustrating essential nature of child-bearing). *See Genesis* 30:1 (King James) (describing biblical story of distraught Rachel coming to

contemporary meaning. Furthermore, given the swing-vote power they enjoy in the Israeli parliamentary system, religious parties exert domination, and religious values are highly visible within and influential to legislative debates.³² Hence, those Israelis who may not accept or agree with every aspect of Jewish law are still subjected to a powerful cultural and historic directive expressing pro-childbirth messages as general societal values.³³ The religious emphasis on procreation is juxtaposed with lingering trauma from the Holocaust and a fear of being outnumbered by non-Jews on Israeli soil.³⁴ As a result, since the establishment of the country, many national incentives and policies have sought to promote a hegemonic pro-natalist regime, and encouraging procreation is still the formal policy of the state of Israel.³⁵

Continuous cultural exposure to this formative narrative creates an enthusiastic acceptance of assisted reproduction in Israeli society that may explain the support and prioritization of reproductive technologies in Israel as part of the National Health Insurance [NHI].³⁶ In 1982, Israel's Supreme Court judge addressed the right to use assisted reproductive technologies to birth a biological child connected to at least one of the parents as part of the right to personal development.³⁷ This right was later acknowledged in many court rulings.³⁸ While reproductive freedoms are usually interpreted as negative rights with regard to the role of government (i.e., freedom from state intervention is frequently sought in individual reproductive decisions, such as whether to have children, how many, and when), the use of medical reproductive health care requires intervention from the

realization she cannot have children). *See also Genesis 16:2* (King James) (depicting biblical story of a barren Sara, illustrating importance of having children).

32. Waldman, *supra* note 28, at 84.

33. CARMEL SHALEV & SIGAL GOOLDIN, *The Uses and Misuses of In Vitro Fertilization in Israel: Some Sociological and Ethical Considerations*, NASHIM: A JOURNAL OF JEWISH WOMEN'S STUDIES & GENDER ISSUES 151, 166 (2006); Ellen Waldman, *Cultural Priorities Revealed: The Development and Regulation of Assisted Reproduction in the United States and Israel*, 16 HEALTH MATRIX 65, 71 (2006).

34. *See*, RHODA ANN KANAANEH, *Birthing the Nation: Strategies of Palestinian Women in Israel* 45, (2002); D. Birenbaum-Carmeli & M. Dirnfeld, *In Vitro Fertilisation Policy in Israel and Women's Perspectives: The More the Better?* 16 REPRODUCTIVE HEALTH MATTERS, 1, 2 (2008); Sigal Gooldin, *Cultural Competence and Ethical Incompetence: Notes from a Study of the new reproductive technologies in Israel*, 8 DIVERSITY IN HEALTH & CARE 45, 50 (2011); Shalev & Gooldin, *supra* note 28, at 166; Rebecca Steinfeld, *Wars of the Wombs: Struggles over Abortion Policies in Israel*, 20 ISRAEL STUD. 1, 2 (2015); Waldman, *supra* note 28, at 71.

35. Almog & Bassan, *supra* note 2, at 8–9.

36. Joseph G. Schenker, *Human Reproduction: Jewish Perspectives* 29 GYNECOLOGICAL ENDOCRINOLOGY 945, 945–48 (2013).

37. Meir Shamgar, *Issues Concerning Reproduction and Birth*, 39 HAPRAKLIT, 21, 31 (1982) (in Hebrew) (“The right to Assisted Reproductive Technology, egg or sperm donation, or even volunteering to carry the child of another deserves protection by the law within the right of every individual to free personal development.”).

38. *See e.g.*, H CJ 2458/01 Mishpaha Hadasha vs. The Authorizing Comm. of Embryo Carrying Agreements, Ministry of Health PD 57(1) 419 (2002) (Isr.); 2401/95 Nahmani vs. Nahmani 50(4) PD 661 (1996) (Isr.).

government.³⁹ IVF has been covered in Israel by the NHI since the bill establishing NHI passed in 1994; prior to that, IVF had been part of the basic basket of services provided by HMOs.⁴⁰ When the national health system funds expensive and complicated reproductive treatments, the state turns reproductive freedoms into positive legal rights. This context of state approach to assisted reproduction becomes significant when policy-makers are faced with childless people advocating for a change in policy supporting compensated egg recruitment, because it provides a natural background support for their claim. The classification of the right as positive implicates a government's role in allowing citizens to fulfill this right.

A. THE UNIQUE VALUE OF THE HUMAN BODY - THE LIBERAL FOUNDATIONS OF A DEMOCRATIC STATE

The second constitutive narrative prominent in the ethical-legal-social discourse concerns recognition of the unique value of the human body. In various religions, including Judaism, the body has symbolic meaning.⁴¹ Some religions embrace the notion that one does not own one's own body; others see the body as an expression of the individual, and hence, self-harming or excessive risk-taking is mostly prohibited.⁴² This narrative is also reflected in the legal world, where the human right to bodily integrity is recognized and established in strong consensus:⁴³ torture, beatings, forced labor, slavery, etc., are all perceived as harming human integrity through bodily injury and are thus restricted in international and national laws and constitutions.⁴⁴

The State of Israel expresses the unique value of the human body in the Basic Law: Human Dignity and Liberty,⁴⁵ in which body and life are protected.

39. See generally *id.*; See also Rachele Fishman, *Israeli Fertilised-Egg Case to be Heard Again*, 345 LANCET, 1 (1995). Israeli Supreme Court President Meir Shamgar ordered a fertility case to undergo a second hearing after a panel of five justices ruled that a man, Dani Nahmani, had a right to prevent his ex-wife from using her eggs to produce "their" offspring. *Id.* Currently in the "over-age" group, she wanted to use the eggs fertilized five years earlier, but the judges decided that a man has a basic right not to be a parent, even if that means depriving a woman of her chance to be a parent. *Id.* The principal issue to be addressed on the second hearing is whether the original agreement to partake in the process validates its completion. *Id.*

40. CARMEL SHALEV & SIGAL GOOLDIN, *The Uses and Misuses of In Vitro Fertilization in Israel: Some Sociological and Ethical Considerations*, NASHIM: A JOURNAL OF JEWISH WOMEN'S STUDIES & GENDER ISSUES 151, 155 (2006).

41. ELI'EZER BEN DAVID, *Out of the Iron Furnace: The Jewish Redemption from Ancient Egypt and the Delivery from Spiritual Bondage*, 113 (1975).

42. *Id.*

43. See, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 §§7,8. U.S. Const. Amend. VIII, XIII; Japan Const. chap. III §18, 36 (1946); Phil. Const. art. III §18 (1987); Nicar. Const. chap. I §36 (1987); Uganda Const. chap. IV §24, 44 (1962).

44. *Id.*

45. Basic Law: Human Dignity and Freedom, 5752-1992 §§ 2, 4 (1992) (Isr.). Israel does not have a constitution, but only a few "basic laws" that are somewhat stronger than regular laws. They are the equivalent to a constitution.

However, to balance individual and collective rights, the Basic Law can be compromised by a law that corresponds to the values of the State of Israel and intends to fulfill a specific purpose, per the principle of proportionality.⁴⁶ In addition to the Basic Law, several provisions concerning the preservation of the body and its integrity can be found both in the Penal Code and in the Tort Law. The Tort Law addresses assault (Article 23), entitles special protections for a person who has tried to protect his body (Article 24), and compensates for bodily injury (Article 76).⁴⁷ The Penal Code devotes an entire chapter to bodily harm (Chapter 10), as well as other provisions that involve the value of the human body, including punishments for various sexual offenses.⁴⁸ Finally, in a medical context, a demand to protect bodily integrity is stated in the Hippocratic Oath, where the doctor swears to do no harm.⁴⁹ The Hippocratic Oath functions as the foundation of the Israeli Patient's Rights Act. The constitutive narrative about the unique value of the human body is therefore founded and embedded in the Jewish and international sources and percolates into contemporary Israeli culture and life. It is likely to affect policy-makers when deciding about compensated eggs recruitment.

This "Jewish and democratic" duality is perceived through the collection of narratives that shape and determine the identity of Israeli society and its understanding of reproductive technologies. While this duality implies competing policies, in the Israeli context, the national priority on procreation is usually positioned as the top priority in comparison to other alternative.; thus, the article does not mean to deny the existence of this priority. In the case of egg donation as well, rhetorical methods created power dynamics that worked to settle these conflicting narratives and construct palatable and acceptable policies supporting compensated egg donation. Therefore, rather than asking which narrative prevails and why, this article focuses on the conflict between the two constitutive narratives to answer (1) how does the chronicling of a predictable solution take place? and (2) what are the hidden burdens embedded in the chosen solution for egg-source women?

III. FUNCTIONAL NARRATIVES: RHETORICAL TOOLS AS SERVING THE DESIRED POLICY

One of the main questions facing the committees was whether to allow risking the health of women assisting in the reproduction of others.⁵⁰ Moreover, policy-makers assumed that a risky medical procedure was unlikely to be undertaken altruistically, and monetary exchange would likely be involved. Committees therefore had to address the issue of a potential "trade in organs" as well. An

46. *Id.* § 8.

47. Tort Law [New Version], 5728-1968 54 SH 226 (Isr.).

48. Penal Code, 5737-1977, 864 SH 226 (Isr.)

49. See, LUDWIG EDELSTEIN, *The Hippocratic Oath: Text, Translation, and Interpretation* (1943); Patient's Rights Act, 5756-1996, 1591 SH 327 (Isr.).

50. Mordechai Halperin, *Egg Donation in Israel - Dilemmas and Recommendations, On the Public Professional Committee Concerning Egg Donation*, in REFUA UMISHPAT: JUBILEE BOOK, 165, 167 (Shlomo Meiri ed., 2001).

analysis of committee discussions, through the lens of functional narratives, offers a typology of the rhetorical methods that served policy-makers to settle the ethical-cultural conflicts while attempting to bring about the desired policy change and allow compensated egg donation. This section exposes rhetorical methods used in the policy discourse to bridge the gap between negative conceptions of bodily harm and commodification, and the desire to expand the pool of eggs for reproduction. The six main methods identified and addressed in this section (bounded narratives, constrained narratives, down-playing, up-playing, softened rhetoric, diverting rhetoric, and missing voice) are original tools developed from the analysis done within this research.

A. BOUNDED NARRATIVES – SUPREMACY OF REPRODUCTION VS. POTENTIAL RISKS TO EGG-SOURCE WOMEN

A bounded narrative ties the same justifications that lie at the core of the opposite narrative to the narrative it wishes to promote. At the core of the narrative concerning the unique value of the body there is a presumption that the body is connected to human integrity and that harming it diminishes this integrity and violates human rights. Functionally bounding the narrative promoting procreation to the paradigm of human rights positions both narratives in the human rights sphere, where elementary rights are required to support self-fulfillment.

The transcripts show how, in both generations of discourse, health professionals and politicians voiced the agony and despair faced by childless women and couples unable to start families. Even prior to the appointment of the Halperin committee—and perhaps a factor that catalysed its establishment—biblical citations repeatedly established parenthood as a sacred right, a commandment (a “Mitzvah”): “The commandment ‘be fruitful and multiply’ is one of the most important commandments given to the people of Israel by its God.”⁵¹ “According to the Torah, there is a duty to help childless parents to bring a child into the world, and this is an important ‘Mitzvah.’”⁵²

Statements from the Halperin Committee transcripts that construct desire for children as part of the purpose of mankind—in terms of existential human needs, values, or rights, all of which are beyond personal wishes—belong to the bounded narrative. “Parenthood is an elementary thing, almost sacred.”⁵³ “There is no right more sacred than this.”⁵⁴ “This is an elementary natural right of every creature to

51. MK Raffi Elul, The 14th Knesset, 28 (Nov. 18, 1998) (transcript 252) (transcript available at <https://m.knesset.gov.il/Activity/plenum/Pages/Sessions.aspx>) (Isr.).

52. Committee Chair, Dr. Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 1 (Sept. 27, 2000) (transcript 15) (Isr.).

53. MK Achmed Tibi, The 15th Knesset, 47 (July 19, 2000) (transcript 134) (transcript available at <https://m.knesset.gov.il/Activity/plenum/Pages/Sessions.aspx>) (Isr.).

54. Professor Shlomo Masiah, a prominent fertility expert, The Comm. for the Promotion of Women’s Status, transcript 48, 3 (Sept. 16, 2003) (transcript available at <https://m.knesset.gov.il/Activity/committees/Pages/AllCommitteeProtocols.aspx>) (Isr.).

be a mother or a father.”⁵⁵ “Even if a woman remarries and wants a child, it is her elementary right to get this child.”⁵⁶ Parenthood is described as the embodiment of self-fulfillment, self-realization, and the essence of femininity.⁵⁷ Infertility is therefore an obstacle that comes between a woman and her self-fulfillment. “Women repeatedly say: if I have no child I am compared to an imperfect woman.”⁵⁸ If parenthood is an elementary or sacred right required to support self-fulfillment, “the right to become pregnant” is not positioned as a matter of personal choice, but rather as similar in nature to other natural rights.⁵⁹

Another use of the bounded narrative method in the first-generation discourse is presenting the creation of life as a value, equal to the value of life itself: “the value and *sanctity of life*, and the value of being a parent, have been defined in the state of Israel as a superior values like no others, not because of other cultures, but because this is our culture, and we are proud of it.”⁶⁰ This value appears stronger when it is presented as a cultural value. “Why is it in Israel, where the sanctity of life, *the value of life and life giving is the most important value*, someone can stand up and say, ‘I will not be a mother?’”⁶¹

If creating life is a human value equivalent to the lives of the living, inability to procreate becomes equivalent to health problems.

To create life is no less important than to preserve life in any form, even in the medical aspect. . . . *The disease of barrenness* or infertility is no less fatal than cancer. It spreads around the whole body and the childless family: the woman is outcast, the man cannot mingle in the crowd, and the family ceases to exist.⁶²

55. Moshe Shlezinger, fertility counselor, at the Committee for the Promotion of Women’s Status, 7 (Sept. 16, 2003) (transcript 48) (Isr.).

56. Shlomo Masiah, Pub.-Prof. Comm. Concerning Egg Donation, 28 (July 12, 2000) (transcript 8) (Isr.).

57. See Larissa Remennick, *Contested Motherhood in the Ethnic State: Voices from an Israeli Postpartum Ward*, 8 ETHNICITIES 199, 200 (2008); see generally Piotr Jedrzejczak et al., *Feelings and Emotions in Women Treated for Infertility*, 61 PRZEGLAD LEKARSKI, 1334, 1334–1337 (2004).

58. Yehoshua Dor, a prominent fertility expert, at the Pub.-Prof. Comm. Concerning Egg Donation, 20 (July 12, 2000) (transcript 8) (Isr.).

59. Dan Michaeli, board of director in Clalit HMO, at the Pub.-Prof. Comm. Concerning Egg Donation, 3 (June 28, 2000) (transcript 7) (Isr.).

60. Emphasis added. Moshe Polak at the Comm. for the Promotion of Women’s Status, 7 (Sept. 16, 2003) (transcript 48).

61. Emphasis added. Words of an anonymous speaker going through IVF treatment at the Comm. for the Promotion of Women’s Status, 6 (Sept. 16, 2003) (transcript 48) (Isr.).

62. Professor Masiah, at the Comm. for the Promotion of Women’s Status, transcript 48, 3 (Sept. 16, 2003) (transcript 48) (Isr.).

The specific choice of words here presents infertility as an illness that has to be treated.⁶³ By presenting childlessness as an illness, assisted reproductive technologies are perceived as tools to promote health. These statements posit that the only true solution for childlessness is turning to reproductive technologies that function as health-promoting implements, ending the sorrow: “. . .to do everything possible in *the professional aspect* to reach maximal realization in bringing children into the world, to any family in Israel that wants them.”⁶⁴ “If we have surrogacy, which is radical right wing, when the need exists and *medicine is called to response*, there should also be egg donations from volunteers in order to enable many more women to get the treatment they long for so badly.”⁶⁵ When the reproduction narrative binds children-rearing to human rights, values, and dignity, the narrative has a distributive role, and it makes it harder to object to doing whatever is required to find a solution to the egg shortage.

The state’s role in supporting citizens to obtain this right depends on either a narrow or wide perception of rights people hold. The state could either ‘not interfere’ with its citizens’ action to obtain eggs (probably through the market), or take a more active action to incentivize compensated egg recruitment. In Israel, where national health insurance covers medical treatments, this narrative constructs the idea that a *national* drastic action is needed to help childless patients: “A state, a central government, has to do almost anything to allow couples to become parents and bring a girl or a boy to the world.”⁶⁶ “In my opinion, it is a ‘Mitzvah,’ a moral human duty to help them as much as we can.”⁶⁷ Alternatively, some interpreted a lack of national support as the active genocide of children. One of the most drastic responses was that of a prominent fertility expert, who declared: “it [not providing access to eggs] is similar to shooting around 1,000 or 1,500 children,”⁶⁸ referring to the children that would have been born had access to therapy not been restricted.

Once the narratives regarding the unique value of the body and the support of procreation were both part of the same discourse (that of basic human rights), the procreation narrative came to overpower the opposing narrative of the body’s unique value. While the author has no wish to understate the impact of barrenness on women and families, the duty of the state to prevent potential harm to citizens’ bodies, and the duty of the state to help childless people to obtain egg donations are far from equivalent. The right to bodily integrity requires a positive duty from

63. See Aline H. Kalbian, *Narrative Artifice and Women’s Agency*, 19 *BIOETHICS* 93 (2005) (For illness narratives in the context of IVF).

64. MK Gila Gamliel Comm. Chair, at the Comm. for the Promotion of Women’s Status, 14 (Sept. 16, 2003) (transcript 48) (Isr.).

65. Yehoshua Dor at the Pub.-Prof. Comm. Concerning Egg Donation 16 (July 12, 2000) (transcript 8) (Isr.) (emphasis added).

66. MK Achmed Tibi, The 15th Knesset, 47 (July 19, 2000) (transcript 134) (Isr.).

67. Dr. Halperin, At the Public-Professional Committee Concerning Egg Donation 10 (Sept. 6, 2000) (transcript 13) (Isr.).

68. Shlomo Masiah, *The Comm. for the Promotion of Women’s Status*, 4 (Sept. 16, 2003) (transcript 48) (Isr.).

the state to prevent the degradation of dignity caused by intentional bodily harm, such as torture or physical assault, which threatens the unique value of the human body. Society has no parallel duty to alleviate barrenness to support the right to procreation.⁶⁹ Certain reproductive rights are anchored in general human rights as part of the right to reproductive health, such as personal decisions regarding having children (when to do so, how many, etc.), safe, effective, affordable, and acceptable methods of family planning, and safe pregnancy and childbirth,⁷⁰ but it is uncertain whether these extend to the right to receive eggs from volunteers or compensated egg-source women.⁷¹ While citizens may expect that the state will not prevent them from becoming a parent (when parenthood would be possible if the state did not prohibit consenting adults from providing eggs), the state does not have a direct positive duty to help them. While the government may choose to help, the state's options in this aspect do not belong to the realm of human rights, but rather, to the political realm.

Similar forms of the bounded narrative were present in the second-generation discourse as well, reflecting the "indisputable" right to parenthood: "The right to parenthood is something that you cannot argue with."⁷² Also evident in the second-generation discourse is that childless people were characterized as ill, while egg donation was described as "life-saving" in nature: "I see more resemblance to donating bone marrow for a dying patient than to organ trade. If I knew that my bone marrow donation would save the life of someone, despite the risk and preparation, I would do it."⁷³ The starting point in both first and second generations of discourse was thus that childlessness requires treatment, in the same way that diseases require treatment.

69. See, Muireann Quigley, *A Right to reproduce?* 24 *BIOETHICS* 403 (2010) (discussing the scope of the right to reproduce).

70. Clarified at the Fourth World Conference on Women, Beijing Declaration and Platform for Action, Beijing Declaration and Platform for Action, Fourth World Conference on Women, Sept. 15, 1995, Beijing, A/CONF. 177/20 and A/CONF. 177/20/Add. 1 §94-96, 98, 107(e) ("Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Implicit in this last condition are the rights of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choice. Implicit in this are the rights of men and women to be informed of and to have access to safe, effective, affordable, and acceptable methods of fertility regulation of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.").

71. CARMEL SHALEV & SIGAL GOOLDIN, *The Uses and Misuses of In Vitro Fertilization in Israel: Some Sociological and Ethical Considerations*, *NASHIM: A JOURNAL OF JEWISH WOMEN'S STUDIES & GENDER ISSUES* 151, 171 (2006); see cf. Daniel Statman, *The Right to Parenthood: An Argument for a Narrow Interpretation*, 10 *Ethical Perspectives* 224 (2003).

72. Dr. Arie Herman, Chair of the Gynecology Association, at the Labor, Welfare and Health Comm., 6 (transcript 90, July 27, 2009) (Isr.) (concerning egg trade cases).

73. A.D., spokesman of Egg Donation Forum in "Tapuz," *The Labor, Welfare and Health Comm.*, 13 (Feb. 18, 2008) (transcript 380)(Isr.).

However, while this rhetoric was accepted in the Halperin committee, the scope of the right to procreation and the method binding it with other human rights were challenged in the second-generation discourse when Knesset members confronted and criticized the hegemonic narrative encouraging procreation:

Adv. Mira Hibner (the legal consultant of The Ministry of Health): The realization of parenthood is a divine value in the State of Israel. The Ministry of Health, the Ministry of Justice and the entire government thought that the value of parenthood had a price, let us call it compensation . . . We have to understand that when the Israeli government approved this bill, it saw parenthood for women who could not become parents without egg donation.

MK Zehava Gal-On (one of the few MK opposing compensated egg recruitment): This is an important value, but *there are conflicting values*. When you bring an overall proposal, you need to consider conflicting values and find the point of balance. *This law is unbalanced*.

Adv. Mira Hibner: I am willing to accept the criticism, but I am saying that the idea of this bill is a central idea that leads the State of Israel through many laws, and this is the realization of parenthood. Once we decided that this was the value, we tried as much as possible not to compromise other values. If we did not succeed 100 percent, I accept the criticism, but this is the main axis of this bill. We may be able to find a different balance. I would like to emphasize that the central axis of this law is the realization of parenthood for those who are unable to do so today.⁷⁴

Another quote also calls to reconsider the balance between conflicting rights: the rights of infertile patients to procreate and the right of women to bodily integrity:

As members of the Knesset, we have a responsibility to find balance between the desire for a child that you expressed in such a moving way, between the starting point that speaks to the realization of the right to parenthood — which in my opinion is a right, but I have to look at the overall picture — and other rights. When we think about how we can help women realize this right, we need to take into account other rights that are on the agenda. We need to think about how to solve one injustice without causing another injustice.⁷⁵

74. The Labor, Welfare and Health Comm., 5 (transcript 380, Feb. 18, 2008) (Isr.). (Emphasis added).

75. MK Zehava Gal-On, The Labor, Welfare and Health Comm., 7 (transcript 380, Feb. 18, 2008) (Isr.).

Despite stated opposition and the call for balance, this dialogue was followed by the testimony of a barren woman who shared her experience. The first-hand testimony naturally has a meaningful emotional effect on the audience, further strengthening the procreation narrative and the commitment to help infertile people.

The social-cultural importance given to procreation in Israel creates supremacy for the “Sanctity of Procreation” constitutive narrative over many other narratives.⁷⁶ Pro-natal arguments overcome alternative narratives, which could have been chosen to criticize the extensive use of reproductive technology and to discover a narrower interpretation of the right to parenthood. But other narratives that serve as contrast to the voice of childless couples yearning for a child were either absent from the discussion or insufficiently addressed. For example, the position of egg-source women undergoing egg retrieval processes for the sole purpose of donation could not have been expressed because there had not been such recruitments in Israel prior to this discussion. A narrative favoring social parenthood (e.g., adoption rather than genetic parenthood) could have benefitted both the women and existing children who need families, but was absent from the discussion.⁷⁷ Similarly, a narrative suggesting to limit the allocation of financial resources to support procreation could have compared fertility services to other medicines and treatments in need that could have been covered by national health resources. Such narratives could justify discouraging extensive use of fertility services as part of national health resource, but this strategy was not used. Alternatively, options such as women undergoing treatments as sources for eggs,⁷⁸ or undergoing altruistic crossed-donation (in which two people seeking separate donations each enlist a friend who altruistically and anonymously donates to the other person) could have been better explored and incentivized.⁷⁹ Eventually, the bounded narrative method succeeds in obscuring differences due

76. On the supremacy of the reproduction narrative, *see generally*, Almog & Bassan, *supra* note 2.

77. Some say that the right to parenthood does not insist on biological parenthood and can be channeled toward social parenthood. Limiting practices that can help produce biological children could lead society back to adoption, which could benefit existing children in need of help. *See* LISA S. CAHILL, *Moral Concerns About Institutionalized Gamete Donation*, in *NEW WAYS OF MAKING BABIES : THE CASE OF EGG DONATION* 70, 81 (Cynthia B. Cohen ed., 1996); SUZANNE HOLLAND, *Contested Commodities at Both Ends of Life: Buying and Selling Gametes, Embryos, and Body Tissue*, in KENNEDY INST. ETHICS J. 263, 281 (2001); Radin, *supra* note 8, at 1931; SUZANNE RUBIN, *A Sperm donor Baby Grows Up*, in *THE TECHNOLOGICAL WOMAN: INTERFACING WITH TOMORROW*, 211, 215 (Jan Zimmerman, 1983). In Israel, the option of adoption as a replacement to biological parenthood was declined by the court in H.C 2401/95 Nahmani v. Nahman, 50(4) 661, 758 (1996) and was not a dominant narrative in the discussions.

78. *See, e.g.*, Dr. Gad Potashnik, fertility counselor Clalit HMO, and Dr. Jacob Segal, Head of Women’s Health Dept., Macabbi HMO, The Labor, Welfare and Health Comm., 8, 10 (July 15, 2013) (transcript 57) (Isr.) (regarding the amendment of the egg donation regulations and compensation for egg recruitment).

79. *E.g.*, Nili Eyal’s suggestion at the Sub-comm. of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 15-18 (June 24, 2008) (transcript 3) (Isr.).

to cultural conventions in the State of Israel, which frame public perception regarding procreation.

IV. THE RISKS: DOWN-PLAYING AND UP-PLAYING NARRATIVE

The egg recruitment procedure poses a physical risk on the body of the egg-source woman. First, an egg provider must undergo hormone stimulation to increase the number of eggs that can be harvested.⁸⁰ Hormone treatment may cause side effects such as: nausea and headaches.⁸¹ Some women suffer hyper stimulation syndrome, a potentially life-threatening reaction.⁸² The process has also been claimed to expose women to a higher risk of contracting cancer later in life, although there are opposing views on this matters.⁸³ Second, the egg provider undergoes trans-vaginal ultrasound aspiration, a surgical procedure in which the doctor removes the mature eggs from the woman's body while she is under conscious sedation.⁸⁴

Policymakers, then, had to justify risking the health of the egg-source woman, and to decide what is the legitimate price of a policy that acknowledges parenthood as something that individuals must obtain, and the state is obligated to provide. Such justification requires estimating what the risks are, minimizing them, and protecting egg providers as much as possible as part of the policy. Some participants in the Halperin committee argued that the use of healthy women's bodies should not be considered legitimate for the purpose of fulfilling someone else's reproductive right, and that healthy women should not be exposed to physical risk unless they are saving other lives.⁸⁵ Since there was a profound awareness of the egg recruitment risks taken by women not undergoing fertility treatment, in several meetings in the Halperin committee, the discussion focused on the questions:

[S]hould society and the Ministry of Health as a regulator allow any medical activity in a person's body, even if she is healthy and even if it endangers her, just because she has an interest and a will to do it? Or do we still think that society should limit medical activity involving the body of a healthy person when she is not treated herself?⁸⁶

80. *See How Egg Donation Works*, CTR. FOR HUMAN REPRO., <https://www.centerforhumanreprod.com/eggdonation/how-it-works/>. (last updated Jan. 8, 2015) [hereinafter Center for Human Reproduction].

81. *See Donor Egg Risks & Complications*, EGG DONOR AM., <https://www.eggdonoramerica.com/become-egg-donor/donor-egg-risks-complications>. (last visited Jan. 20, 2018).

82. *Ovarian Hyperstimulation Syndrome*, ScienceDirect, <https://www.sciencedirect.com/topics/medicine-and-dentistry/ovarian-hyperstimulation-syndrome>. (last visited Mar. 14, 2018).

83. Robert G. Brzyski, *Putting Risk in Perspective*, 1 AM. J. BIOETHICS 25, 25 (2001).

84. *The Medical Procedure of Egg Donation*, EGG DONOR INFO.PROJECT, <http://www.stanford.edu/class/siw198q/websites/eggdonor/procedures.html>. (last visited Aug. 23, 2016).

85. Professor Michaeli at the Pub.-Prof. Comm. Concerning Egg Donation 1-3 (transcript 7, June 28, 2000) (Isr.).

86. Mordechai Halperin at the Pub.-Prof. Comm. Concerning Egg Donation 4 (June 7, 2000) (transcript 5) (Isr.).

Dr. Halperin's formal position (expressed retrospectively) was that there is no justification to compromise moral values, even in light of growing social pressure for eggs.⁸⁷ However, risking egg-source women did not seem to be such a compromise. During discussions, when dealing with concerns, the risks were compared to socially accepted and legally permitted policies, such as surrogacy or organ donation: "The level of risk for an egg donor, even if she is not undergoing fertility treatment herself, is smaller than the risk of a woman giving birth or a surrogate mother."⁸⁸ "Our question is whether he [the last speaker] is right that it is truly immoral to risk one woman for another woman's fertility when it comes down to a risk that is at least of a smaller magnitude than the risk involved in surrogacy, or he is wrong, and there are risks that are accepted for others?"⁸⁹ "The risk involved in kidney donation is far greater. So we are not talking about a substantial risk to women's lives, and I do not think that there is a substantial risk to her health."⁹⁰ These narratives aim to minimize the risks entailed in egg recruitment in comparison to greater risks that are widely accepted, such as the risks entailed in surrogacy. "Since the Surrogacy Act allows women to take risks for another woman, we have some sort of indication of what the legislator saw as socially acceptable, voluntary, informed risk-taking for the sake of one woman's ideal to raise a child."⁹¹ The understanding was that there is no justification to allow one type of risk and not the other.⁹²

Moreover, speakers used practices in other countries to downplay the risk of egg recruitment: "It is impossible to ignore the fact that in all the countries that surround us and in all the advanced countries, egg donation is permitted, and if the risk was great, at least in the advanced countries it would not have been permitted."⁹³ "Once you compare the status of the surrogacy law to the law of egg donation, it makes it very easy to decide about egg donation because the surrogacy law is perhaps the most difficult and unapproved law in most countries of the world."⁹⁴ This method shows that if such risky practices are acceptable elsewhere, they should not be an impediment to compensated egg recruitment.

87. Mordechai Halperin, REFUA UMISHPAT: JUBILEE BOOK, *Egg Donation in Israel - Dilemmas and Recommendations, On the Public Professional Committee Concerning Egg Donation*, 165, 168 (Shlomo Meiri ed., 2001).

88. See Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 13 (June 7, 2000) (transcript 5) (Isr.).

89. Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 21 (June 28, 2000) (transcript 7) (Isr.).

90. Shlomo Masiah, Pub.-Prof. Comm. Concerning Egg Donation, 3 (July 12, 2000) (transcript 8) (Isr.).

91. Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 23 (May 24, 2000) (transcript 4) (Isr.).

92. Mordechai Halperin, *supra* note 71, at 168.

93. Shlomo Masiah, Pub.-Prof. Comm. Concerning Egg Donation, Donation 4 (July 12, 2000) (transcript 8) (Isr.).

94. Ben Rafael, a prominent fertility expert, Pub.-Prof. Comm. Concerning Egg Donation, 9 (July 12, 2000) (transcript 8) (Isr.).

Once a relatively small risk of egg recruitment was established, it is not surprising that the chosen narrative to describe the risk in the Halperin committee was that of negligible risk to the egg source.⁹⁵ “The risk of a person in Israel dying in a car accident is pretty close to one in ten thousand a year. One in ten thousand is a higher risk than dying from an egg donation.”⁹⁶ The justification for this evaluation is the need to help promote procreation. “The risk is minimal at the end of the day, and you can work with it. Otherwise we have nothing to do, and we have no reason to sit here. We have to solve a very difficult problem, and the only way to do so, in my opinion, is to approve the donation of eggs, but to do everything so that it will be done in a legal framework, so that it will be done in a controlled framework, in a way that will have laws and restrictions that will minimally endanger people.”⁹⁷

One noteworthy view of the egg-source woman’s image concerns her medical status as a patient within the practice. While childless women are considered “patients who want to have a child,”⁹⁸ an egg-source woman is “nobody’s patient.” She is “a healthy woman who wants to give eggs.”⁹⁹ An underlying perception exposed here is that for the speaker, the egg provider is not a patient from the beginning; rather, she becomes a patient only once she has consented to donate and begins the process. As another speaker put it: “the moment she lies on the treating table, she becomes a patient.”¹⁰⁰ However, if she is a potential egg source she should be considered a patient before she lies on the table. She should receive information in order to give informed consent and be examined to make sure that she can physically go through the procedure. The idea that she is not yet a patient is especially troubling, since this characterization was expressed in the context of informed consent that may indicate that the speaker is not taking the bioethical concept of informed consent seriously.¹⁰¹

95. Ben Rafael (minimal risk), Pub.-Prof. Comm. Concerning Egg Donation, 11 (July 12, 2000) (transcript 8) (Isr.); Dor (very low), *id.* at 18; Dr. Halperin (low risk) at the Pub.-Prof. Comm. Concerning Egg Donation, 35 (Sept. 6, 2000) (transcript 8) (Isr.); *see generally* Summary of the Pub.-Prof. Comm. Concerning Egg Donation, 1 (Sept. 13, 2000) (transcript 14) (Isr.). *But see* more than a year later. Adv. Hibner-Harel (the legal consultant of the Ministry of Health) at the Labor, Welfare and Health Comm. addressing fertility treatments and egg donation, 4 (Feb. 11, 2002) (transcript 469) (Isr.) (“In any invasive action there is a risk, even if and when we are told by the greatest experts that the risk is minimal, it still exists.”).

96. Mordechai Halperin at the Pub.-Prof. Comm. Concerning Egg Donation, 21 (June 28, 2000) (transcript 7) (Isr.).

97. Chaim Yafe, Pub.-Prof. Comm. Concerning Egg Donation, 19 (June 28, 2000) (transcript 7) (Isr.).

98. Joseph Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 24 (Aug. 9, 2000) (transcript 10) (Isr.).

99. Joseph Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 42 (Aug. 9, 2000) (transcript 12) (Isr.); Inslar, *id.* at 46.

100. Mira Hibner-Hare, Pub.-Prof. Comm. Concerning Egg Donation, 23 (Sept. 27, 2000) (transcript 15) (Isr.) (“...but since she is not a patient, it is different”).

101. *See* Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 23 (Isr.) (Sept. 27, 2000) (transcript 15) (“but since she is not a patient, it is different.”).

The implication of this underlying assumption is that some fertility problems were treated more lightly than others based on who bore the risk: the childless woman or the egg-source woman. The most radical example involved members discussing a specific risk: the possibility that the egg-source women may not be able to bear children themselves because of complications that might follow the process of donation. The language used for childless women seeking eggs frames them as miserable and desperate. Barrenness is described as “agony,” or “no less severe than cancer,” a condition that causes childless women “distress and suffering.” The same condition suffered by the egg-source women was surprisingly termed “not barrenness”: “Excuse me, a woman whose uterus and two ovaries have been removed *is not barren*. She can be given surrogacy services and another woman’s eggs.”¹⁰² While a “minimal risk to the egg-source woman” narrative functionally promotes the constitutive narrative of procreation, there is clear moral uncertainty in a practice that creates potential risks of infertility for women while treating the same problem for other women. The unconcerned attitude towards potential complications from egg recruitment, including removal of the uterus and ovaries, might be attributed to a lack of understanding of the volume of these risks. Nevertheless, in light of the terms used to describe infertility, it is doubtful whether a solution that may cause infertility in egg-source women is a truly ethical solution to a shortage of eggs. It may simply transfer the problem from one woman to another.

The way to protect egg-source women was the prevention of unnecessary risk. “As a state system, we need to be strict regarding a few things which we can’t do without. There is no organ trade, no risking women above and beyond so that afterward there is irreversible damage.”¹⁰³ “When we talk about a woman entering a process that is not in her best interests—and I emphasize, it is not in her best interest—it is different from the case in which a woman undergoes fertility treatments for herself and in some cases donate. There, treatment for fertilization is really in her best interest. Therefore, the ‘volunteer’ should undergo several tests.”¹⁰⁴

But the state’s commitment to women is unsatisfactory since egg-source women were often under-addressed in terms of precautionary policy: “There is something troubling here: all the tests in the position paper are meant to prevent risk to those receiving the eggs. None of these tests are associated with the risks to the donor.”¹⁰⁵ Moreover, when committee members discussed mandatory tests for the egg-source woman and the costs of these tests were quantified, committee

102. Joseph Shenkar at the Pub.-Prof. Comm. Concerning Egg Donation, 8 (June 7, 2000) (transcript 5) (Isr.).

103. Mira Hibner-Harel at the Labor, Welfare and Health Committee, 15 (Aug. 17, 2000) (transcript 197) (Isr.).

104. Mira Hibner-Harel at the Pub.-Prof. Comm. Concerning Egg Donation, 11 (Oct. 4, 2000) (transcript 16)(Isr.).

105. Vaclav Insler, Pub.-Prof. Comm. Concerning Egg Donation, 18, (Oct. 4, 2000) (transcript 16) (Isr.).

members seemed to support lower levels of state-assured protections for egg-source women.

I want to warn you that the more money is loaded on this issue, the more money you should be putting into the basket [of covered health services by the NHI]. It is very liberal to say maybe the family [will pay], and we'll do most tests. As soon as it gets to the bottom line, the HMO will see how much it costs, which will determine whether to cover donation within the basket or not.¹⁰⁶

This prioritization of childless people and the money allocated to their problem over those of egg-source women is consistent with the view of the different medical status attributed to each one of the stakeholders.

While the professional Halperin Committee succeeded in maintaining the reproduction narrative by downplaying the risks involved in the procedure, similar intentions in the Knesset Committee faced resistance. In the second-generation discourse, many citations repeated the same methods of the Halperin Committee, stating that the “the risk is minimal, very small,”¹⁰⁷ or that “there are fewer health risks than in surrogacy.”¹⁰⁸ “Today, it is possible to recruit eggs without any hormonal treatment. . . so all the side effects and the risks you have mentioned—they do not happen anymore.”¹⁰⁹ Nonetheless, this functional narrative was challenged by a few participants. Isha L’Isha, a feminist organization, decided to begin a public discourse, engaging with issues related to reproductive health. Its project “Women and Medical Technologies” focused on the interrelations between reproductive rights and technological developments and their social and economic implications for society, especially for women.¹¹⁰ Isha L’Isha’s representatives were present at the discussions and did not allow these risks to be downplayed, and thus, the minimal risk narrative was not unopposed. “There was no serious consideration of the risk to egg-source women, and the risks are many. Recent Israeli studies show an association between breast cancer and egg donation. There are problems involving ovarian hyper-stimulation, which might be the consequence of a conflict of interest for doctors who want to retrieve many oocytes in the absence of supervision.”¹¹¹

106. Rachel Adato, Pub.-Prof. Comm. Concerning Egg Donation, 21 (Oct. 4, 2000) (transcript 16) (Isr.).

107. MK Nisim Zeev, Labor, Welfare and Health Comm., 20 (Aug. 17, 2000) (transcript 197) (Isr.).

108. Mordechai Halperin, Labor, Welfare and Health Comm., 16 (Aug. 17, 2000) (transcript 197) (Isr.).

109. Adrian Elenbogen, The Labor, Welfare and Health Committee Comm. 13 (Feb. 18, 2008) (transcript 380) (Isr.).

110. *Women and Medical Technologies*, ISHA L’ISHA FEMINIST CTR., <http://isha2isha.com/english/> (last visited, June 28, 2013).

111. Yali Hashash, The Labor, Welfare and Health Committee Comm. 11 (Feb. 18, 2008) (transcript 380) (Isr.).

Once counterarguments were put on the table, the field responded accordingly. Effectively, after the 2010 Egg Donation Bill passed, allowing compensated egg donation, women in Israeli society were hesitant to donate eggs. Between 2010 and 2014, there were only 4 women willing to donate. This lack of compliance with the law may suggest that potential egg-source women doubted the “minimal risk” narrative suggested by policy-makers, and may validate the power and influence of the conflicted discourse concerning risks in egg donation on women’s assessment of these risks. After the reimbursement rate doubled, raised from 10,000 to 20,000 NIS, there were 17 more egg-source women who found the payment worth the risk, though this was still not enough to meet the demand.¹¹² The fact that the number of egg-source women quadrupled after prices increased suggests that for most women, this sort of risk was not worth taking for lower compensation. If the public perceived the risk in egg donation a “minimal risk,” women may be more willing to pursue this option for a small reimbursement. Egg donation was only considered by the target population after larger sums of money were involved, compatible with how this population evaluated the risk.

Unlike the Halperin committee, the bill in front of the Knesset committee included egg donation both for reproduction and for use in research (e.g., in genetic or stem cell research).¹¹³ The issue of eggs used for research purposes is not based on the constitutive narrative supporting procreation. Addressing egg use for research, therefore, created many different conflicts, balances, and justifications, which diverted arguments and points of balance, and tainted the coherence of the arguments and understandings involved. In the second-generation discourse women representatives doubted whether research was a purpose that justified potential risks to egg-source women.¹¹⁴ While the cultural perception of reproduction in Israel was strong enough to outweigh the interests of egg-source women, the social perception of research promotion was not as strong. Risks caused by egg recruitment were weighed differently and considered by many unjustifiable. Nevertheless, despite concerns regarding the exposure of healthy women (not undergoing egg retrieval as part of their personal treatment) to medical risks in exchange for reimbursement, the Knesset discussions resulted in a law supporting a compensated egg donation for the purpose of reproduction, but limited the allocation of eggs for research purposed to twenty percent of retrieved eggs or two eggs (the lower).

112. The Labor, Welfare and Health Comm., 2 (June 25, 2014) (transcript 258) (Isr.).

113. Egg Donation Bill, 5767-2007, 289 HH (Mar. 19, 2007) (Isr.)

114. *See, e.g.*, Dr. Talya Geva, a doctor and researcher in the IVF unit at Shaare Zedek Hospital at the Sub-committee of the Labor, Welfare and Health Committee Comm. to follow up after the egg donation bill 2007, 7 (transcript 5, Oct. 28, 2008) (Isr.).

V. THE EXCHANGE OF MONEY - SOFTENED RHETORIC

Each narrative has a certain intensity, constructed in different ways and stemming from the meanings of words used and their contexts.¹¹⁵ A “soft” narrative can weaken an opposing narrative by showing it in a softer light and lower its volume in a way that provides an advantage to the desired narrative.¹¹⁶ A process in which a “softened” opposing narrative is discussed is stronger than a process in which the narrative is entirely missing or unaddressed. In this way, the opposing narrative does not disappear. On the contrary, it is formally presented, though in practice it appears in a weaker format that makes it dismissible. In the same way, softened rhetoric can introduce a new, less conventional concept in a more palatable light. Such presentation avoids provoking resistance and allows for the acceptance of new ideas—without majorly destabilizing existing conventions.

In the Halperin committee, this strategy has been used to address two leading issues that demonstrate a conflict between the negative organ trade narrative and the welcome altruistic gift narrative: (1) whether compensated recruitment is a donation or a sale; and (2) whether the reimbursement is payment or compensation?

A. DONATION OR SALE?

The discourse in the first generation (the Halperin Committee) implicates a dual approach to the market. On one hand, market terminology is consistently used to show that a shortage in the egg supply exists, countered by high demand: “There is a problem in the market – that there are insufficient women who are egg donors, and you do not have enough supply to offer women who want eggs.”¹¹⁷ “Two places that were ‘in the business’ [of egg donation] closed their businesses.”¹¹⁸ “We are interested in increasing the supply.”¹¹⁹ “At present, there is a shortage of eggs in the country, where thousands of women need egg donations.”¹²⁰ Supply, demand, and shortage are legitimate terms in commercial or legal relationships and functionally lead the listener toward the market sphere. This discourse is not only limited to the discourse regarding egg donation, but also appears in other contexts, such as organ donation or surrogacy. The description of a great demand for eggs serves the reproduction narrative and its derivative narrative of a reimbursed egg donation, because it encourages action to

115. Yovel, *supra* note 10, at 295.

116. Regarding prostitution, some terms can camouflage oppression: for example, calling the pimp a “boyfriend” or “manager.” See Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 *YALE J. L. & FEMINISM* 109, 123 (2006).

117. Ben Rafael, Pub.-Prof. Comm. Concerning Egg Donation, 34 (July 12, 2000) (transcript 8) (Isr.).

118. Joseph Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 2 (Aug. 2, 2000) (transcript 9) (Isr.).

119. Hanna Katan, Pub.-Prof. Comm. Concerning Egg Donation, 15 (Sept. 6, 2000) (transcript 13) (Isr.).

120. Halperin, Sub-committee of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 17 (June 24, 2008) (transcript 3) (Isr.).

reduce the shortage, and thus enforces the natalist narrative. The use of “hard” market rhetoric highlights the need to expand sources for ova in light of an existing shortage and the misery felt by childless couples. Using the concept of “the awful scarcity in eggs,”¹²¹ which involves an economic term (“scarcity”), serves the procreation narrative and the derivative narrative of reimbursed egg donation because demand encourages action to reduce the shortage and thus enforces the natalist narrative. Describing the great demand for eggs implies a potential field where solutions can be found: the market.

On the other hand, such a conclusion contradicts the perception that selling organs is a negative phenomenon, which may compromise the unique value of the human body, and thus, violate bodily integrity either because egg donation imposes a risk on a healthy woman or because it involves monetary compensation.¹²² Statements stemming from the constitutive narrative concerning the body view commodification of the body negatively: “Organ trafficking, organ trade, is a terrible phenomenon, a disgusting thing.”¹²³ In the discussions, there are concerns about “ugly commodification,”¹²⁴ or “commodification of eggs, *black*, between one woman and another.”¹²⁵ Discussions in both committees show an awareness of potential exploitation in egg recruitment process, which could impact the body and its unique value. “When a person does something that includes risk and suffering, the financial incentive might increase the exploitation.”¹²⁶ In a similar context, potential risks of hyper-stimulation are described with powerful, violent words, such as “squeezing,” “abuse,” and “stealing:” “The attempt to ‘squeeze’ women’s bodies by extracting an egg quantity which is almost ten times what is acceptable . . . [a]fter all, these doctors know the enormous health risks that could result from recruiting 100 eggs instead of ten eggs.”¹²⁷ These words are often used in the context of bad ethics, or trade in organ and thus they raise a negative connotation.

When Israel’s potential involvement in egg trade is depicted, this involvement is clearly condemned: “It [cross-border practices used by Israeli citizens] has become *anti-Semitic*. Who is stealing and trading in eggs? The Jews;”¹²⁸ “We

121. MK Dalia Rabin-Philosoph, The 15th Knesset, 102 (Feb 16, 2000) (transcript 86) (Isr.).

122. For philosophical discussions regarding the moral basis of each ideology, see David B Resnik, *Regulating the Market for Human Eggs*, 15 *BIOETHICS* 1 (2001) with Allen Verhey, *Commodification, Commercialization, and Embodiment*, 7(3) *WOMEN’S HEALTH ISSUES* 140 (1997); see generally Education and debate, *An ethical dilemma: Should egg donors be paid?* *BMJ* 1400-1403 (1997); Ruth Macklin, *What Is Wrong With Commodification*, *NEW WAYS OF MAKING BABIES: THE CASE OF EGG DONATION* 106 (Cynthia B. Cohen ed., 1996).

123. MK Nissim Ze’ev, The 16th Knesset, 114 (July 15, 2003) (transcript 45) (Isr.).

124. Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 9 (Aug. 2, 2000) (transcript 9) (Isr.).

125. Insler, Pub.-Prof. Comm. Concerning Egg Donation, 15 (May 17, 2000) (transcript 3) (Isr.).

126. Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation 27 (May 24, 2000) (transcript 4) (Isr.).

127. MK Eliyahu Ben Menachem, The 15th Knesset, 102 (Feb 16, 2000) (transcript 86) (Isr.) (regarding suspect for trade in eggs taken from women undergoing fertility procedures).

128. *Id.*, Halperin’s words are in page 3. (Emphasis added).

cannot turn this country into an *egg trade center* and bring all types of people here, and *women will be exploited for 50 Shekels;*¹²⁹ “It [the egg recruitment practice] has become commercial.”¹³⁰ These sorts of arguments were also prominent in the second-generation discourse: “Socially, we do not want to get to the situation where people trade organs from their bodies. We do not want to get to this situation.”¹³¹ “We, as a state, are against organ trade.”¹³² The anti-trade narrative intends to oppose competing narratives that might involve diminishing the unique value of the body. These examples imply that, unlike objects that are sold, organs are perceived as something with unique value, and therefore, trading the body often raises objections. The expressed attitude toward organ trade may indicate that had the term “egg sale” been used, this phrasing could have discouraged compensated egg donation and diverted the discussion towards prohibition of financial compensations, rather than encouraging it.¹³³

Nevertheless, the possibility of voluntary donation, without any financial reimbursement and purely stemming from women’s desire to help patients who need ova, was dismissed.¹³⁴ Before the Halperin committee’s formation and throughout the committee discussions, it was widely believed that “without adequate compensation, women will not donate. Period. Even today, many of the women who undergo fertility treatments do not donate unless they receive adequate compensation.”¹³⁵ As other participants put it: “I don’t think that tomorrow women will stand in line to donate unless we pay them;”¹³⁶ “most of the women will be those needing money, there will not be women dreaming of donating eggs, of getting the treatment and of going through anesthesia. . . In Israel, the financial element will be the central motivation;”¹³⁷ “the name of the game, let’s face it, is

129. Shenkar, Pub.-Prof. Comm. Concerning Egg Donation 13 (May 17, 2000) (transcript 3) (Isr.). (Emphasis added)

130. Hibner-Harel, Pub.-Prof. Comm. Concerning Egg Donation 8 (Sept. 27, 2000) (transcript 15) (Isr.).

131. MK Dov Hanin, Labor, Welfare and Health Comm.9 (Feb. 18, 2008) (transcript 380).

132. Mira Hibner-Harel at the Labor, Welfare and Health Comm. addressing fertility treatments and egg donation 4 (Feb. 11, 2002) (transcript 469) (Isr.).

133. Cf. with regard to single mothers selling kidneys, MK Reshef Chen at the Comm. for the Promotion of Women’s Status concerning the requests of single mothers to sell their kidneys, 2 (transcript 14, May 20, 2003) (“This is a red light that indicates that we have crossed a red line that was absolutely forbidden to pass.”); *Id.* at 5 (“There is a consensus that the sale of kidneys is not a solution. This is a red light and unacceptable.”); *Id.* at 5 (“It should be a red light for all of us: for society, for the legislator as the representative of society, and for the government as a decision maker.”); *Id.* at 12 (“All these moves, not only are they illegal – but also inhuman and immoral, they are also unhealthy . . . This is a scandal that must be prevented.”).

134. Cf. Ruth Macklin, *What Is Wrong With Commodification?* NEW WAYS OF MAKING BABIES: THE CASE OF EGG DONATION, 106, 110 (Cynthia B. Cohen ed., 1996) (shows how different committees worldwide confronted this dilemma and enabled a policy that allows reimbursement).

135. Mordechai Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 11 (May 17, 2000) (transcript 3) (Isr.).

136. MK Nissim Ze’ev, The 15th Knesset, 70 (March 5, 2001) (transcript 181) (Isr.).

137. Dor, Pub.-Prof. Comm. Concerning Egg Donation, 40–41 (July 12, 2000) (transcript 8) (Isr.).

money;”¹³⁸ “there are altruistic aspects, but I think that the financial consideration will be the most significant.”¹³⁹ These examples acknowledge that women’s motives are not solely altruistic and that financial compensation is an incentive for women who seek to provide eggs out of economic need. Most likely, these women are from economically disadvantaged populations (e.g., single mothers, etc.).

After constructing a vision of the market as a possible sphere where solutions to the egg shortage crisis could be discovered, the egg donation bill was designed to provide incentives to women who agreed to donate. Forfeiting the language of trade by using a soft term “donation” rather than “sale” to describe the exchange of money involved, the bill diminished the discomfort of addressing the body as a tradable object and diverted from the narrative of potential exploitation of vulnerable women seeking to earn money. This softened rhetoric also bridged the gap between an anti-trade narrative and the understanding that women not undergoing fertility treatment may consent to a risky donation procedure because of financial need and created the idea that a gift is being given.

The procedure, eventually, came to be perceived as an appreciated donation. Egg-source women not undergoing fertility treatments were therefore called “volunteer donors:”¹⁴⁰ “the criteria is volunteering to donate eggs;”¹⁴¹ “in the public service donors will be only volunteers, paid volunteers.”¹⁴² This rhetoric may camouflage market terms that should describe the actual meaning of the transaction: money in exchange for the eggs, in other words, buying and selling eggs.¹⁴³ Such obscuring may indicate that the public views payment for eggs as immoral. This article uses the more neutral expression “egg-source women” in order to avoid softened rhetoric, such as “donors” or “volunteers.”

In the second-generation of discourse (the Knesset committee), all the steps that had helped maintain the dynamic of the softened narrative in the Halperin committee were challenged: the risks involved, the perception of women as “donors,” their motivations, and the real meaning of the procedure. Decision-makers were faced with “hard” rhetoric and strong challenges to the policies they wanted to justify. For example, the gender researcher Yofi Tirosh challenged the term “donor.”¹⁴⁴ The “hard” narrative she used to replace the “soft” one profoundly disturbed and impacted her audience, but Tirosh insisted to use the word “supplier” or “seller” instead of “donor”:

138. Yafe, Pub.-Prof. Comm. Concerning Egg Donation, 40 (Aug. 30, 2000) (transcript 12) (Isr.).

139. Katan, Pub.-Prof. Comm. Concerning Egg Donation, 36 (Aug. 16, 2000) (transcript 11) (Isr.).

140. Halperin, *supra* note 71, proposed bill, art. 1.

141. Dr. Halperin at the Pub.-Prof. Comm. Concerning Egg Donation, 19 (Sept. 6, 2000) (transcript 13) (Isr.).

142. Professor Ben Rafael at the Pub.-Prof. Comm. Concerning Egg Donation, 37 (July 12, 2000) (transcript 8) (Isr.).

143. Suzanne Holland, *Contested Commodities at Both Ends of Life: Buying and Selling Gametes, Embryos, and Body Tissue*, 1(3) KENNEDY INST. ETHICS J. 263, 281 (2001).

144. Sub-comm. of the Labor, Welfare and Health Comm. to Follow Up After The Egg Donation Bill 2007, 16-17 (Oct. 28, 2008) (transcript 5) (Isr.).

I do not understand much about biology, but I want to talk about the interests of women. [...] There are patients, potential donors, or suppliers, which is the correct word.

Mira Hibner: I do not like the word.

Zehava Gal-On: That's a terrible word.

Mira Hibner: That's really an irrelevant word.

Nurit Babnik: The terminology is very important.

Zehava Gal-On: It's important, but it's awful.

Mira Huebner: It's terrible.

Yofi Tirosh: I want to call a spade a spade, because I think it's unethical. We need to call a spade a spade in order to understand that this is unethical. I do not know of a woman who has consented to go through a tormenting course of hormonal therapy, which is paralyzing, dangerous, invasive, under full anesthesia, out of altruism. Maybe if she was donating to her sister, I could have understood. We should not allow the independent course of women who will allegedly provide eggs altruistically, out of love for science and progress. They will not *provide* eggs but *sell* eggs. Those who sell eggs do so for reasons of severe distress, and their consent is not always informed . . . There is a conspiracy of silence around this issue, especially in Israel. Women do not talk about the side effects. They [women] are grateful for the possibility, so they do not talk about the side effects or the damage, and their doctors are not willing to talk either because of the tremendous value in motherhood: each equation of cost-benefit is completely silenced. This is regarding the "supplier", or the "seller", whom I think should be removed from the discussion."¹⁴⁵

In the Knesset committee, the bill was not perceived as positively as it had been in the Halperin committee. Many citations pointed out that the suggested policy is practically egg trade: "you incentivize trade;"¹⁴⁶ "this is the most commercialized phrasing;"¹⁴⁷ "I think that we are dealing with organ trade."¹⁴⁸ Resistance was so strong that there were calls to undermine the starting point of the bill, and to forbid women not undergoing fertility treatment to be paid in exchange for eggs, as elucidated in this example:

145. *Id.* (emphasis added).

146. MK Zehava Gal-On, The Labor, Welfare and Health Comm., 4 (Feb. 18, 2008) (transcript 380) (Isr.).

147. MK Ran Cohen, The Labor, Welfare and Health Comm., 5 (Feb. 18, 2008) (transcript 380) (Isr.).

148. Jacob Segal, The Labor, Welfare and Health Comm. regarding the amendment of the egg donation regulations (compensation for egg recruitment), 99 (July 15, 2013) (transcript 57) (Isr.).

Dr. Ze'ev Aronson: The alternatives exist. On the contrary - we are doing what the minority, not the majority [of states] does, and I think we are on a slippery slope. We inappropriately over-interfere. . . . We actually open the door for the use of eggs, the trade of eggs, and by egg screening, the creation of a superior race, someone without problems. We push into things that we should have avoided. We enter unsafe ground that not many people would like to step onto.

Spokesman: So what is your suggestion?

Dr. Ze'ev Aronson: I suggest not to do [. . .] At this stage, do not allow imports. . . and egg donations. One woman should not risk her life for the other one to get pregnant, and organ trade should be prohibited.

Acting Chairman Yair Peretz: To trade I agree with you.

Dr. Ze'ev Aronson: This is to trade.

Acting Chairman Yair Peretz: This is not trade, this is to donate.

Dr. Ze'ev Aronson: Sir, risking the life of one woman — even if only minimally — to cure another woman, is to trade. There is no difference. There is no difference whether it is an egg or a kidney that you bought from her — all in the name of saving human life. On the contrary — a kidney donor is saving lives when this [egg donation] is only meant to create new life [. . .] Life-threatening risk is minimal, but it exists. Women die of these actions [. . .] If it is forbidden to give a kidney, it is forbidden to give eggs. I cannot see how we are sitting here and so righteously saying, It is permitted because of the pressure, because women are suffering.” Isn't there pressure on behalf of those who want a kidney? What happened? How can you separate these things? Is not it a part of a person's organs? Because this is an egg, it is not an organ? Sorry. It's the highest level of hypocrisy and it is present throughout this whole discussion. You have to at least be honest and say — that's the way it is, we trade in organs.¹⁴⁹

Even after the law had passed and suggestions for amendments had been discussed, discussants were still challenging the arrangements: “I think this is indeed organ trade. I think this is a business law for hospitals, a source for additional income. Are we aware of the fact that we are taking a healthy girl and pumping her full of many drugs with side effects that can cause ovarian hyper-stimulation, thromboembolic processes, and even death?”¹⁵⁰ The softened rhetoric of

149. The Labor, Welfare and Health Comm. addressing fertility treatments and egg donation, 11–13 (Feb. 11, 2002) 469 (Isr.).

150. Dr. Jacob Segal at the Labor, Welfare and Health Comm. regarding the amendment of the egg donation regulations (compensation for egg recruitment), 9 (July 15, 2013) (transcript 57) (Isr.).

“donation” in the second-generation discourse neither covered up for a sale in organs nor for its price, the risk on healthy young women’s bodies for the benefit of another woman.

B. PAYMENT OR COMPENSATION?

The perception of women receiving money for eggs forced the Halperin committee to address the meaning of the payment that egg-source women obtained, and to make understandable the concept of monetary exchange related to the? practice. There was an understanding that women should be paid.¹⁵¹ However, to avoid the difficulties surrounding organ trade, many speakers retreated from the idea that the suggested policy involved a trade in body parts: “This is not a commercial activity. Rather, this is an activity that is meant to help poor women who want children to call themselves ‘mom.’”¹⁵² “. . . As I understand, the payment compensates the woman. We are not paying her for selling part of her body; these things are prohibited by law, so I understand [. . .] that there is no intention of setting a price to sell a property. There never was, and I don’t believe it ever will exist; I don’t go into ethical matters, but I don’t believe that the state of Israel will allow selling organs.”¹⁵³ “We are not dealing with trade, we are giving some kind of compensation for suffering.”¹⁵⁴ It is clear that egg trade is an undesirable narrative that policy-makers try to avoid.

The quotes imply an understanding that the egg recruitment process either involves suffering and/or expenses that should be compensated: “Actually, we are paying her for medical expenses she might have, for the need to go through these medical treatments, for suffering, for distress, I really don’t know, but I guess this is what it would be like.”¹⁵⁵ “She is not compensated for eggs, she does not sell eggs, she gets compensation for the treatment, punctures, suffering, and so on.”¹⁵⁶ “The compensation will prevent suffering and losses from impeding women to donate.”¹⁵⁷

The function of the softer term “compensation” is to avoid the concept of eggs as the commodity paid for, which may be considered ‘trade.’ Speakers explicitly differentiated between compensation for egg donation and organ trade: “As a state, we have etched on our flag that there is no organ trade, and since we have done so, one does not pay for the donation, but for the fact that a person has

151. Dr. Yafe, Dr. Katan, and Dr. Adato at the Pub.-Prof. Comm. Concerning Egg Donation, 26–27 (May 24, 2000) (transcript 4) (Isr.).

152. Minister of Health Danny Nave, The 16th Knesset, 50 (June 24, 2003) (transcript 36) (Isr.).

153. Chaya Vitelson’s, IRS, Pub.-Prof. Comm. Concerning Egg Donation, 2 (Aug. 16, 2000) (transcript 11) (Isr.) (clarifying what was explained to her about the situation).

154. Mira Hibner-Harel, Pub.-Prof. Comm. Concerning Egg Donation, 34 (Aug. 16, 2000) (transcript 11) (Isr.).

155. Chaya Vitelson, Vitelson’s, IRS, Pub.-Prof. Comm. Concerning Egg Donation, Donation 2 (Aug. 16, 2000) (transcript 11) (Isr.).

156. Professor Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, Donation 37 (Aug. 16, 2000) (transcript 11) (Isr.).

157. Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 45 (Aug. 30, 2000) (transcript 12) (Isr.).

suffered inconvenience, something like that. You are not paying her out of gratitude for her donation, because then we are in the niche called organ trade.”¹⁵⁸ “Nobody is talking about buying, but about a certain compensation for what she lost and suffered for the donation.”¹⁵⁹ Through the help of softened rhetoric, a more delicate narrative was constructed that dismissed the trade narrative and emphasized that the payment is considered compensation, often for inconvenience or suffering stemming from the egg recruitment process.

The method of softened rhetoric uses gentle language, presenting the narrative in a weaker light to camouflage potentially concerning perceptions about market in eggs, and shifting the conversation away from the organ trade. Since the process involves expenses, the chosen narrative was that women should be reimbursed for their losses: “She will have to get paid for loss of time and money.”¹⁶⁰ “You give her the compensation, or you cover for expenses she will not have to bear. This is the difference between giving her compensation and having her pay for the process she is undergoing.”¹⁶¹ Moreover, taking a risk without compensation is perceived as unfair, and thus, payment is appropriate: “How do you respond to those who claim that in fact, if we do not compensate her, we exploit her? The doctor, the nurse, the hospital – all of them get paid but the [egg-source] woman, who is also in pain, she is the only one prohibited from receiving compensation for her suffering. How do we respond to the claim that we are actually exploiting this woman?”¹⁶² “She shouldn’t suffer because she had expenses and maybe lost income during this period.”¹⁶³

The softened concept of compensation as a form of reimbursement for expenses counters the claim that the practice is exploitative and enables compensated egg donation, which promotes the constitutive reproduction narrative. Yet this concept is not without problems. Under the definition of “expenses,” it is unclear which expenses should be reimbursed and according to what rate. If we consider the diverse lifestyles and salaries of women, time is not equally valuable, and salaries are varied, so different women have different expenses. Moreover, expenses involved in the practice should be taxed. To confront this problem, policymakers needed a new concept in

158. Hibner-Harel, Pub.-Prof. Comm. Concerning Egg Donation, 10 (Aug. 16, 2000) (transcript 11) (Isr.).

159. Hibner-Harel, Pub.-Prof. Comm. Concerning Egg Donation, 22 (Aug. 30, 2000) (transcript 12) (Isr.).

160. Ben Rafael, Pub.-Prof. Comm. Concerning Egg Donation, 34 (July 12, 2000) (transcript 8) (Isr.).

161. Gabi Bar Zakai, Pub.-Prof. Comm. Concerning Egg Donation, 25 (Aug. 30, 2000) (transcript 12) (Isr.).

162. Halperin to the representative of “The Israel Women’s Network” at the Pub.-Prof. Comm. Concerning Egg Donation, 21 (Aug. 30, 2000) (transcript 12) (Isr.).

163. Chaya Vitelson, Pub.-Prof. Comm. Concerning Egg Donation, 4 (Aug. 16, 2000) (transcript 11) (Isr.).

which payment was not intended to compensate for expenses but was a “payment for her consent and the fact that she is undergoing the procedure.”¹⁶⁴

However, some indications expose the real meaning behind “compensation” and raise ethical challenges involved in the suggested policy: first, if a woman had undergone the procedure, including suffering and time loss, but changed her mind, she is not entitled to the “compensation.” “. . . Obviously, if she changes her mind, she should pay back the expenses. . . She got paid for expenses, since she donated for someone else. If she wants them [eggs] for herself, there is no justification to pay her for them.”¹⁶⁵ The “no eggs – no compensation” approach implies that the compensation is given in exchange for the tissue itself.

Second, committee members were well aware that changing the name of the payment is a rhetorical trick and the rhetoric itself does not change the meaning of the payment: “Everybody who sits here clearly understands that there would be payment. The question is whether the payment will be made with the help of ‘the name’ [HaShem] or without the help of ‘the name.’ By ‘the name,’ I mean the name of the payment. Will payment be allowed if we change its name from ‘payment’ to ‘compensation,’ meaning, payment with the help of changing the name, or, we do not prohibit receiving payment, and it will be allowed without needing to change its name.”¹⁶⁶ “We can make a decision that the payment will not be called ‘payment’ for eggs, but rather, overall ‘compensation’ for all the suffering and the losses . . . [t]he payment will be an overall ‘payment’ for the sorrow, suffering, and bodily damages involved in egg donation.”¹⁶⁷ Similarly, decision-makers used softened rhetoric to overcome political obstacles: “I think it is much better to call it compensation; it sounds better, and we will not get into problems related to organ donations, etc.”¹⁶⁸

Either the use of the term “compensation” camouflages an unethical payment or if the only difference between “payment” and “compensation” is the name, both terms are interchangeable. If the difference between acceptable “compensation” and “payment” is arbitrary, decision-makers should not have minded using the term “payment,” which should be considered acceptable. Alternatively, there is something wrong with the word “payment” and simply changing the name does not change the problematic meaning. Given the effort policy-makers made to soften this term, they do not seem convinced that this term is arbitrary. It is therefore unlikely that changing the name to a “softer,” more palatable term changes the real meaning behind the payment.

164. Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 33 (May 24, 2000) (transcript 4) (Isr.).

165. *Id.*

166. Halperin, Pub.-Prof. Comm. Concerning Egg Donation 28 (May 24, 2000) (transcript 4) (Isr.) (“HaShem” means “God” in Hebrew but can also be translated as “the name.” Ironically, this expression has a double meaning: either “with the help of the name (of the payment),” or “with the help of God.”)

167. Halperin, Pub.-Prof. Comm. Concerning Egg Donation 31 (Aug. 16, 2000) (transcript 11) (Isr.).

168. Rabbi Menachem Bornstein, Pub.-Prof. Comm. Concerning Egg Donation 36 (May 24, 2000) (transcript 4) (Isr.).

C. EXPLOITED OR AUTONOMOUS? PROTECTED OR ABANDONED? THE IMAGE OF EGG-SOURCE WOMEN IN THE DISCUSSIONS

The image of women involved in egg donation can affect the perception of the practice and its acceptableness. A narrative that involves “weak” women exposing themselves to risk for money might paint a negative depiction of the practice and lead to policy that prohibits women from undergoing procedures that might be exploitative, such as egg donation. A narrative that involves “strong” women who can protect themselves (or be protected by the law) and autonomously choose to donate their eggs can serve as a basis for policy that will allow women to provide eggs in exchange for money.

In the Halperin committee, several uses of the constitutive narrative imply a dual perception of women, framing them as both vulnerable and autonomous individuals. On the one hand, speakers did not perceive the egg-source women as particularly “strong,” but rather as individuals who required protection from potentially harmful commercialization. Sources show severe concerns and address the issue of protecting the health and bodies of the egg-source women, since the process of egg donation is not risk-free:¹⁶⁹ “We should take care of the donors,”¹⁷⁰ “I must protect the volunteer;”¹⁷¹ “We come with an offer to women here. They are healthy, whole, and fine; there is nothing wrong with them. Now I tell them: I will offer you some financial compensation. Donate your eggs for other women. From that moment on, I think we should treat them extra carefully.”¹⁷² “We will emphasize protecting women. Women will not be an endless source of egg recruitment – neither for reproduction nor for research purposes. Not only does it hurt, it is also dangerous. Egg trade should be avoided.”¹⁷³ Policy-makers emphasized that they are not disregarding egg-source women:

It is precisely out of the anxiety that we have after hearing from the woman who wants to receive a donation, and out of ethical considerations that we are being asked to deal with [with regard to the prohibition of organ trade], precisely to defend the dignity of women, the sanctity of life, and out of the belief that women should give birth to their own children—we cannot afford that in the end, the considerations that guide us would be improper.¹⁷⁴

169. For the risks involved in egg donation (relevant around the time of these debates), see Robert Steinbrook, *Egg Donation and Human Embryonic Stem-Cell Research*, 354 *NEW ENG. J. MED.* 324, 326 (2006).

170. Inslar, Pub.-Prof. Comm. Concerning Egg Donation, 4 (May 17, 2000) (transcript 3) (Isr.).

171. Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 37 (Aug. 16, 2000) (transcript 11) (Isr.); see also Eliyahu Ben Menachem, The 15th Knesset, 101 (Feb. 16, 2000) (transcript 86) (Isr.). (“The theft of eggs is like the theft of any other organ from the body. If the suspicions are correct, we have turned into a third world country, where it is dangerous to go in for the simplest operation, since doctors may steal—by mistake maybe—your kidney, your lung, and sell it for money.”)

172. Hibner-Harel, Pub.-Prof. Comm. Concerning Egg Donation, 10 (Oct. 4, 2000) (transcript 16) (Isr.).

173. MK Mel Polishuk Bloch, The 16th Knesset, 60 (Dec 29, 2003) (transcript 88) (Isr.).

174. MK Arie Eldad, Labor, Welfare and Health Comm., 7 (Feb. 18, 2008) (transcript 380) (Isr.).

They also address the argument that impoverished women would provide eggs only because they need the money. They want them to do that, but not because of financial pressure. “We do not want to reach a situation in which as a result of [financial] pressure, women will go and volunteer to donate for the [financial] benefit they will receive. We want to prevent this.”¹⁷⁵

On the other hand, a softened rhetoric that emphasizes “donation,” accompanied by the positive vision of an altruistic choice to help, leads to the concept of egg-source women as strong, autonomous women “who wish to donate eggs.”¹⁷⁶ “I saw an article on a television news magazine; she [the egg-source woman] says that she is doing it with all her heart, and she feels good about it, and she donates, and it makes her feel good.”¹⁷⁷ The narrative manipulates feminists’ arguments, partially using them to highlight women’s autonomy to donate. It was easier to accept that “the donation itself is because the donor wants to help others.”¹⁷⁸ The “autonomous women” functional narrative helped to promote the constitutive narrative of procreation. If women are strong, they are not exploited.¹⁷⁹ This way, the practice is perceived as a positive expression of the woman’s freedom over her body.

In the second-generation discourse, while speakers justified compensated recruitment by stressing women’s autonomy to choose to sell their eggs, they posed limits on this presumed autonomy. In several contexts, narratives showed a lack of confidence in women’s autonomy. First, when suspicion arose that women might prefer to donate their eggs for research purposes rather than for reproduction, the right to bodily autonomy was doubted: “We feared that there would be many more women willing to donate for research rather than for reproduction. According to the psychological structure of a woman—as opposed to a man who donates sperm—she prefers to donate for research, motivated by Zionism rather than by money.”¹⁸⁰ If autonomy is a necessary condition and justifies compensated recruitment, women’s autonomous-will should not be a reason for “fear.” Rather, women’s preferences should be supported and informed.

Second, to ensure fully-informed consent, Isha L’Isha demanded that medical expenses related to egg donation *not* covered by the National Health Insurance should be nationally covered. When this suggestion was declined, the organization’s representative insisted that the possibility of uninsured or uncovered expenses should be clearly articulated in the informed consent form. Despite

175. Gabi Bar Zakai, Pub.-Prof.Comm. Concerning Egg Donation, 26 (Aug. 30, 2000) (transcript 12) (Isr.).

176. MK Ahmed Tibi, The 15th Knesset, 104 (Feb 16, 2000) (transcript 86) (Isr.).

177. Pub.-Prof. Comm. Concerning Egg Donation, 13 (Aug. 9, 2000) (transcript 10) (Isr.).

178. Inslar, Pub.-Prof. Comm. Concerning Egg Donation, 31 (Aug. 16, 2000) (transcript 11) (Isr.).

179. See also Gregory Stock, *Eggs for Sale: How Much Is Too Much?*, 1 AM. J. BIOETH. 26, 27 (2001) (comparing the vulnerability of childless people and that of donors in) (“Surely a childless couple inquiring about the possibilities of IVF and yearning for a child is no less vulnerable than a young intelligent college student being offered money to donate eggs.”).

180. Hibner-Harel at the Sub-comm. of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 5 (transcript 5, Oct. 28, 2008) (Isr.).

growing confidence in women's desire to use their autonomy to help childless women, the fear of losing potential egg providers failed Isha L'Isha's proposal: "We will not write that there is no insurance, or else we are losing our time here, because no one will show up. . . we inform them what is included: there is the National Health Insurance Act, medical malpractice, doctor visits – make your decision within the shekels that you get. But let's make it clear. I will not write in the informed consent form that there is no insurance."¹⁸¹ Not only did this decision to omit information about uninsured expenses endanger the possibility of creating fully-informed consent—a basic demand involved in every medical treatment and even more important in elective treatments—the state representative (Ministry of Health) revealed a problematic position regarding protection provided by the state:

Nathan Samoch: "The state's starting point is that it does not accept responsibility it has nowhere else: to be completely accountable for a woman undergoing treatments.

[. . .]

Hedva Eyal: Your justification became exploitative once we reach the domain of basic health rights. After the donation, it is the woman who will have to deal with hospitals and lawyers.

Zehava Gal-On: When she comes to donate, you treat her as someone who is undertaking a heroic action, by donating to research and to other women; but if something happens to her, the state says it is not accountable.

Nathan Samoch: A person who is being treated in Israel today should not do heroic deeds. . . What a person deserves within the covered medicines and treatments, she will receive, but if she cannot prove medical malpractice, she will not get more than that.

Zehava Gal-On: But it's not the same.

Nathan Samoch: Why is it not the same?

Zehava Gal-On: Because you expect me [a woman] to donate.

Nathan Samoch: Even if it is a voluntary action, and a person did not invite it [the harm], a person does not get things beyond that."¹⁸²

181. Hibner-Harel, *The Labor, Welfare and Health Comm.*, 28 (Nov. 5, 2008) (transcript 548) (Isr.).

182. *The Labor, Welfare and Health Comm.*, 40 (transcript 548, Nov. 5, 2008) (Isr.).

The choice of narrative sheds light on the status of egg-source women within the practice. Narratives demonstrate that egg-source women are considered less worthy, thus used and discarded. While the state's duty toward the childless was to help at any price, sources for women do not portray the same devotion. The egg-source woman metamorphoses into national values, religious Mitzvahs, or the personal realizations of others' goals. The women's bodies were fragmented into organs to be paid for. Risking the body becomes a tool that serves this value, Mitzva or realization. It is important to note, though, that the commodified body is that of the egg-source woman. The woman who becomes a mother, fulfilling her dream of parenthood, is not commodified. As a result, the bodies of egg-source women are excluded from the generative narrative of the unique value of the human body and become replaceable: "It's easier for me to deal with donors, it's hard for me to deal with recipients. It's hard for me to say no to a woman. It's easy for me to deal with donors. Donors do this either for altruistic motives or for money, and I can take her or another; it is not the same for the recipient."¹⁸³

Throughout the discussion, softer narratives helped to create a more positive vision of procedures that may lead to a compensated egg donation. A sale becomes donation, payment becomes compensation, rather than potential exploitation – women's autonomous-will to donate is emphasized (although exploitation can happen in spite of autonomous will). Softened rhetoric failed to prevent the bill from becoming a law, and this article does not claim that it necessarily should have. However, it assisted in making this reality more palatable.

VI. CONFRONTING COUNTERARGUMENTS - RESPONDING METHODS

Rhetoric methods are used not only to convince the audience in an argument, but also to repel criticism and present the wishful policy as the only possible option the speaker has, while its shortcomings are out of the scope of discussion or the responsibility of others (at time the criticizing body). Speakers use "surrendered rhetoric" to justify their actions as if they are positioned in a reality that binds them to one desirable option to which they must adhere, or surrender. Or, they use diverting rhetoric to present some alternatives as being out of the scope of discussion or of the speaker's responsibility.

A. CONSTRAINED NARRATIVES – SURRENDERED RHETORIC

Surrendered rhetoric accepts this status quo as something that is indisputable and offers the decision-maker only one option for action. Socially and economically, the cries of childless women put pressure on policy-makers to expand the egg supply. Selective word choice throughout the discussions builds a strong foundation for empathy and compassion toward childless patients. In fact, "Many women [have] turned to the committee and to me personally and simply begged to become pregnant. They have fertility problems and need egg

183. Professor Masiah, The Pub.-Prof. Comm. Concerning Egg Donation, 24 (transcript 8, July 12, 2000) (Isr.).

donation.”¹⁸⁴ Professor Mashiah expressed the pressure he is under: “There are 400 women on the list who call me every day, begging, and I do not want to receive them, because I have no answer for them.”¹⁸⁵ Discussions took place in an atmosphere, Israeli society, in which the socio-cultural supremacy of the narrative of reproduction was established, and it was obvious that “the right to receive fertility treatment is given to any person.”¹⁸⁶

Compensated egg donation was a practical tool to face the political pressure. The “no other choice” narrative was present in both discourse generations and used as a functional narrative to indicate a lack of alternatives to permitting compensated egg donation, despite the ethical concerns involved. This tool was often used as an answer to arguments either pointing out problems with reimbursed recruitment (such as exposing healthy women to unnecessary risks) or with potential organ trade. The narrative usually demonstrates how such problems are less important than meeting the needs of childless people:

With regard to the value of the law and the issue of trade in organs: this is not trade in organs. The value of the law here is very high. We know that there are many women who reach a situation where there is no solution for them, and we, as a country, cannot tell them: go transgress in foreign fields. We need to give them a solution within the State of Israel.¹⁸⁷

I am against trade in organs and organs should not be traded. But gentlemen, let’s not ignore the fact — at least in my previous job as a social worker for many years — this phenomenon of a woman who cannot get pregnant entails a lot of emotions, a lot of suffering.¹⁸⁸

As Dr. Halperin retrospectively explained the rationales of the recommendations raised in the committee he chaired, he states, “The committee heard the objections and decided that the level of risk is very low, so the risks for the volunteering donors can be balanced with the needs of the recipient to have children. This was the idea of the Halperin committee. *We all acknowledge the value of having offspring, so there was no problem in balancing them [the risk and the needs].*”¹⁸⁹ These quotes show that the reproduction narrative, compared to any

184. MK David Tal, The Labor, Welfare and Health Comm. addressing fertility treatments and egg donation 2 (Feb. 11, 2002) (transcript 469) (Isr.).

185. Masiah, The Labor, Welfare and Health Comm., 18 (Aug. 17, 2000) (transcript 197) (Isr.).

186. Halperin, Pub.-Prof. Comm. Concerning Egg Donation, 34 (May 3, 2000) (transcript 2) (Isr.).

187. Roni Gamzu, Director General, Ministry of Health, Labor, Welfare and Health Comm., 13 (July 15, 2013) (transcript 57) (Isr.) (regarding the amendment of the egg donation regulations and compensation for egg recruitment).

188. MK Yair Peretz, Labor, Welfare and Health Comm., 20 (Feb. 11, 2002) (transcript 469) (Isr.) (addressing fertility treatments and egg donation).

189. Sub-committee of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 14 (Oct. 28, 2008) (transcript 5) (Isr.) (emphasis added).

other narrative, is emotionally intense and rationally hard to argue with. As one speaker noted, “All these arguments, as heavy as they are, are negligible compared to the possible final result in these cases: parenthood and bringing a child into this world.”¹⁹⁰

By choosing the “no choice” method, policy-makers can allow themselves to admit the ethical problems created by the policy that they support, but justify it on “practical” grounds. “She rightly said that it [compensated egg donation] was to go and exploit the lower strata in the country, to which I naturally objected, because it starts from eggs and will continue to other things. The only compromise is that you have to be practical about this.”¹⁹¹ “We have no choice; this is the situation we are in; we must do it.”¹⁹² “There are no eggs for transplantation. To encourage donation, we have made this bill.”¹⁹³ “If you take a woman and you give her money in exchange for her donation, it is an unethical act; it is an ethical problem, ethical dilemma. . . Either to allow or to prevent is bad; one is bad for the donor and one is bad for the recipient of the donation, but this is how things are.”¹⁹⁴

Another version of this method is comparing the desired policy to worse alternatives, thereby framing the desired policy as the lesser of two evils. In doing so, other significant arguments are easily dismissed. For example, by the second-generation of discourse, the practice of cross-border egg purchase (from foreign women in other countries) was much more prominent. Some women complained about the difficulties faced by HMOs in covering costs of implementations of imported eggs (because the National Health Insurance Law does not include in the basket of covered services fertility-related services undergone abroad).¹⁹⁵ In 2005, the Ministry of Health’s director reacted by issuing a directive to the HMOs stating that implementation procedures done in Israel—even of imported fertilized ova—must be included in the basket of services covered by the state.¹⁹⁶ The health funds had to pay for the part of the procedure performed in Israel, but not for the component of obtaining, producing, and fertilizing the eggs abroad. Since egg donation abroad affected the continuation of IVF treatments in Israel, the HMOs had to include at least one service provider prepared to carry out such treatments abroad. Once the standard of care abroad was the same as the standard in Israel, the practice became common in Israel. Many of these arrangements were conducted by Israeli doctors, some of whom had attended the discussions.

190. MK Achmad Tibi, the 15th Knesset, 47 (July 19, 2000) (transcript 134) (Isr.).

191. Joseph Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 29 (Aug. 9, 2000) (transcript 12) (Isr.).

192. Joseph Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 14 (June 7, 2000) (transcript 5) (Isr.).

193. Mira Hibner, Sub-Comm. of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 9 (Nov. 4, 2008) (transcript 7) (Isr.).

194. Ben Rafael, Pub.-Prof. Comm. Concerning Egg Donation, 42 (July 12, 2000) (transcript 8) (Isr.).

195. ORLY LOTAN, *Egg Donation in Israel*, THE DEPARTMENT OF INFORMATION AND RESEARCH, THE KNESSET 7, 6 (July 30, 2006).

196. Ministry of Health, Directive 39/2005, *Egg Donation from Abroad*, (Oct. 27, 2005).

In Knesset committee discussions (the second-generation discourse), the “no choice” narrative appeared in another version: this narrative suggested that if Israel did not choose the proposed solution of compensated recruitment, people would seek egg donations abroad, where the medical and ethical implications would be worse.¹⁹⁷ “The alternative to not accepting this law will be the continuation of the existing situation, in which donors and recipients go abroad and there is no supervision.”¹⁹⁸ “Is going abroad better?”¹⁹⁹ “This child is the peak of a couple’s aspirations in most cases, especially in the State of Israel. This problem should not be ignored and adding to it more trouble is a pity. You have to find the solution and pass it right away. The case in Romania is just one. Romania, Ukraine, Prague, Cyprus, in all these places there are [dubious practices]. They have not been caught yet, they have not been found yet, but there are all these places. Therefore, there is no choice. We should address this issue and solve it because we must find a solution for all those people who justifiably want children.”²⁰⁰ This method allows the speakers to justify the policy on “practical” grounds that cross-border markets flourish, and that problems can be better monitored when they are taking place nationally. “The suggested bill responds to our concerns regarding the donor and the recipient. This [concern] does not exist today, when women have to go abroad”;²⁰¹ “We can control what is happening in Israel; we cannot control what goes on abroad.”;²⁰² “What happens in Israel is controllable. What happens abroad — we cannot control.”²⁰³ These arguments leave “no choice” but to accept the “desirable” option: nationally supervised commodification.

In another example, a speaker brought up the idea that there may be worse forms of trade in response to a different model of donation, crossed-egg-donation (in which two people seeking separate donations each enlists a friend who altruistically and anonymously donates to the other person), expressing concern that money would be secretly paid to women who agree to be enlisted as donors. This speaker argued that

197. See Masiah, Labor, Welfare and Health Comm., 16 (transcript 197, Aug. 17, 2000). (“In the meanwhile, people are buying eggs from Romania, Russia, and Cyprus.”); Professor Mashiach at the Pub.-Prof. Committee Concerning Egg Donation 4 (transcript 8, July 12, 2000) (“If this business will not happen in the State of Israel, it will be in the neighboring countries, only at greater risk to the patients. And if she is a foreign patient, my concern for her is as great as for the Israeli woman.”).

198. MK Galanti, The Labor, Welfare and Health Comm. 17 (Nov. 5, 2008) (transcript 548) (Isr.).

199. MK Marina Slodokin, The Labor, Welfare and Health Comm., 7 (Feb. 18, 2008) (transcript 380) (Isr.).

200. Rachel Adato, The Labor, Welfare and Health Comm., 3 (July 27, 2009) (transcript 90) (Isr.) (concerning the egg trade case).

201. Adrian Elenbogen, The Labor, Welfare and Health Comm., 15 (March 4, 2008) (transcript 393) (Isr.).

202. Isaac Galanti, The Labor, Welfare and Health Comm. 13 (Feb. 18, 2008) (transcript 380) (Isr.).

203. See *id.* Galanti, Committee Chair, at the Labor, Welfare and Health Comm., 13 (Feb. 18, 2008) (transcript 380) (Isr.).

such an arrangement could be more exploitative than directly compensating volunteers, so there is no choice but to allow compensated egg donation.²⁰⁴

In few cases, the “no choice” method was used to respond to flaws in the suggested bill, pointed out by participants. In these cases, the narrative took on an accusatory tone: “That’s right, it is not ideal, not nice, not good, but if you consider what is good and bad, the help, the risk - if we do not allow it, women will go abroad and get eggs from people who haven’t been checked sufficiently, and these women will be exposed to a bigger risk. Then we will have moral responsibility for allowing it [egg donation abroad].”²⁰⁵ “If our goal is not to have a law, then we can die ‘right.’ If we want to be smart and give hope to those people whose age we have extended, we need to close our eyes a little. There is no perfection. None.”²⁰⁶ The surrendered narrative in this case offers only two options: failing the entire legislation effort or accepting compensated egg donation.

B. DIVERTING RHETORIC

The diverting rhetoric method usually acts in tandem with the constrained narrative, positioning certain alternatives out of the scope of discussion or the responsibility of the speaker. The functional value of diverting rhetoric is that it limits the Committee’s authority to discuss certain matters and not others, even though related issues might have direct implications for the topic in question. For example, in the Halperin committee: “we, in medicine, do not treat the child, we treat the woman. The child has society and social workers”²⁰⁷; “If human resources, or commodities, are cheaper somewhere else, he [a person] goes where he can get it cheaper. This is not our concern; we do not discuss this. It is also none of our business how it is conducted. . . . Officially, in this committee, we do not deal with it.”²⁰⁸ “We are responsible for the Israeli population. . . . If an Israeli woman goes there [abroad] without me sending her, and I am not treating her, this is every person’s right.”²⁰⁹

This strategy was also noticeable in the Knesset committee discussions. The following two quotes from the second-generation discourse show how key actors in the committee (Dr. Halperin and the Chair of the Committee, Eldad) prefer not to address burning issues that rise from the scheme of the propose bill.

I am convinced that, at the moment, we must approve this without the [insurance] clause, and regarding insurance, the Knesset has to do

204. Mira Hibner, Sub-comm. of the Labor, Welfare and Health Comm. 2007, 16 (June 24, 2008) (transcript 3) (Isr.) (to follow up after the egg donation bill) (“The idea of crossed egg donation and using a close friend as a donor might provoke greater trade.”).

205. Insler, Pub.-Prof. Comm. Concerning Egg Donation, 15 (June 28, 2000) (transcript 7) (Isr.).

206. MK Haim Katz, The Labor, Welfare and Health Comm., 15 (Oct. 31, 2011) (transcript 545) (Isr.).

207. Dor, Pub.-Prof. Comm. Concerning Egg Donation, 21 (July 12, 2000) (transcript 8) (Isr.).

208. Insler, Pub.-Prof. Comm. Concerning Egg Donation, 9 (Sept. 27, 2000) (transcript 15) (Isr.).

209. Shenkar, Pub.-Prof. Comm. Concerning Egg Donation, 11 (Sept. 27, 2000) (transcript 15) (Isr.).

something about it, not only here. Surrogacy is a much more serious problem, organ transplantation is a much more serious problem, medical experiments are a much more serious problem. There must be an integral law for all those cases where, for altruistic reasons, a person goes through a medical procedure, not for himself, but so that he could be compensated . . . but this law should not include it, even though on a moral level, I have no argument [why not to insist on insurance].²¹⁰

Sharon Bassan: “In the current legal arrangement, there is a clause addressing eggs that were fertilized outside of Israel. The proposed arrangement does not prohibit this procedure, and there is a high chance that this practice will continue. Therefore, either the current legal arrangement should apply, or a new legal arrangement should be decided on [rather than leave a legal void].”

[. . .]

Chairman Arieh Eldad: “It is a fascinating subject, but it is not in this law.”²¹¹

The chairman prefers not to address the prominent practice of cross-border markets, which externalize the risks to other countries. The discussion regarding the risks that the national legislation aims to prevent for Israeli women is dismissed when such risks are taken by foreign women.

Another function of diverting rhetoric is to change the focus of attention from the responsibility of the speaker to other participants or bodies, which can be called “throwing responsibility.” This is evident in the first-generation discourse. “I do not know many women who will run to donate, and you, who are concerned with women’s rights, you need to make sure that in no situation women will have to sell eggs due to personal distress, God forbid.”²¹² This method in the second-generation discourse was often used to incite those who had insisted on adding specific clauses regarding protective arrangements by, for instance, insisting on covering insurance costs for egg-source women not undergoing fertility services,²¹³ or discussing distributive justice considerations when allocating eggs for research purpose.²¹⁴ Diverting rhetoric framed the parties insisting on protective arrangements as responsible for failings of the entire legislative process.

210. Halperin at The Labor, Welfare and Health Comm., 30 (Nov. 5, 2008 (transcript 548)). (Isr.).

211. Sub-comm. of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 15 (Nov. 4, 2008) (transcript 7) (Isr.). (The quote addresses the Public Health Regulations. In-Vitro Fertilization 5747-1987, art 2A 5035 KT 978 (Isr.), which address the procedure whereby eggs were recruited and fertilized outside Israel.)

212. Shlomo Benizri, The 15th Knesset, 112 (Feb 16, 2000) (transcript 86) (Isr.).

213. See discussion at The Labor, Welfare and Health Comm., 25–30 (Nov. 5, 2008) (transcript 548) (Isr.).

214. See discussion at Sub-committee of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 11–12 (transcript 6, Nov. 3, 2008) (Isr.).

Diverting responsibility for the failure of legislation to those voicing concerns is meant to minimize, if not silence, resistance or opposition.

Chairman Arieh Eldad (to the representative of Isha L'Isha): "The desire to delay the discussion in each and every section — you simply do not want this law. Admit that you do not want the law.

Yali Hashash: On the contrary, we were hoping to rush this law forward and allow it to proceed by discussing research purposes in another law. It is in our interest that this law be advanced.

Chairman Arieh Eldad: By the nature of the discussion you are holding here, you prevent progress. I may start hushing you systematically.

Yali Hashash: Do not treat us as hostile witnesses. We represent a very, very wide population and very diverse bodies. To treat us as a factor that has come to block the law and to ask us to struggle outside this law. . . .²¹⁵

"Do you want to have egg donation in Israel?"²¹⁶

While speakers often used diverting rhetoric, in both committees, some committee members did take responsibility as policy-makers, especially in the context of a "slippery slope" argument: "We are creating new social problems, beyond the issue of divorce: the fragmentation of the family unit, fatherhood and motherhood problems. We are encouraging the decline of the family unit. We are also sitting here thinking about whether we are benefitting this woman, and society, since we have some power in our hands: it may be limited, but we have some."²¹⁷ "We know that women from Israel travel to receive egg donations outside of Israel without us having any control over where the eggs come from, what eggs, and so on. We certainly do not have ethical control over how the donors are being convinced or how much danger they are in. True, we are not exclusively responsible for it because it is done elsewhere . . . [b]ut this risk must be weighed against the reality that is being created, and it is created before our own eyes."²¹⁸ It is interesting to see that though the speaker of this preceding quote does not deny responsibility, he does not wish to restrict compensated recruitment but rather supports it, given what he perceives as worse options that need to be prevented. Responsibility was also a key issue in the call to empirically investigate

215. Sub-comm. of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 25–26 (transcript 2, May 26, 2008) (Isr.).

216. Ofra Balaban Kashtalansky, Head of fertility association to promote egg donation, Sub-committee of the Labor, Welfare and Health Comm. to follow up after the egg donation bill 2007, 30 (June 24, 2008) (transcript 3) (Isr.).

217. Katan, Pub.-Prof. Comm. Concerning Egg Donation, 19 (June 28, 2000) (transcript 7) (Isr.).

218. Insler, Pub.-Prof. Comm. Concerning Egg Donation, 7 (June 28, 2000) (transcript 7) (Isr.).

and monitor concerns with regard to egg provision.²¹⁹ For example: “We are legislating a law that is supposed to address future technological developments. Therefore, monitoring and protecting is required here.”²²⁰

VII. MISSING VOICE

A narrative may include or exclude people or ideas that are present in the audience or not. The choice of who to include in the policy making process is driven by the following questions: What is to be gained? And, Who will benefit?²²¹ A missing voice is the result of the intentional or unintentional exclusion of an interested group. The power of the missing voice is the unbalanced weight or intensity given to alternate narratives. Obviously, the scarcity of certain voices in the discussion discourages certain narratives and helps to promote desirable ones. For example, the Halperin committee showed overrepresentation of some sectors, and hence, overrepresentation of some narratives, as well as underrepresentation or no representation of other narratives. Committee members included six physicians, two Rabbis, and one legal counselor. Additionally, the committee heard from the following specialists: childless patients, fertility doctors, tax specialists, information specialists, religious and academics professionals concerned with children’s interests, and other Rabbis, in addition to those in the committee, who testified about religious aspects. While personal stories that represented women’s yearning for children elicited sympathy and served a pro-natalist strategy, in the closed meetings of the Halperin committee, alternative or opposing narratives were not always represented. The committee heard firsthand, emotional descriptions of childless patients and considered the importance of egg donation. Egg-source women’s interests, on the other hand, were not represented unless addressed by one of the committee members. These were secondhand accounts, described in an informative way, without any superlatives or personal aspects. It is evident that the lack of balanced representation for potential egg-source women or their advocates paved the way toward the committee’s final decisions. Different individuals could have provided competing narratives.

Through the limited lens of the first-generation discourse, it is easy to underestimate and fail to notice the importance of the missing voice method. Since there were no volunteer egg source women at the time, there were no concrete examples in which these women voiced their opinion. It was only in the discussions in the Knesset committee that the power and force of this method became clear: the Isha L’Isha Feminist Center attended all meetings and served as one of the leading voices for women’s rights in the country, voicing the unheard interests of

219. See MK Orly Levi-Abekasis, questions at the Labor, Welfare and Health Comm., 6 (July 15, 2013) (transcript 57) (Isr.) (regarding the amendment of the egg donation regulations and compensation for egg recruitment).

220. MK Nadia Hilo, The Labor, Welfare and Health Comm., 14 (Feb. 18, 2008) (transcript 380) (Isr.).

221. Wetlaufer, *supra* note 12, at 1572.

women egg sources. Though unsuccessful in changing the hegemonic narrative, the discussion of the Egg Donation Bill in the Knesset Committee was the main stage for challenging many of the rhetorical methods and suggesting alternative voices and reconsiderations for decision makers to address. In the process, the work of the Isha L'Isha organization and the alternative narratives they voiced gradually undermined the hegemonic power of the constitutive reproduction narrative, creating a key difference between the dynamics of the discourse in the Halperin and the Knesset committees.

VIII. CONCLUSION – EVOLVING TIMES, EVOLVING DISCOURSE

Although the Halperin committee's work never yielded a law, the concepts constructed as socially acceptable through its discussions—compensated egg donation from women not undergoing fertility treatment—served as a starting point to enable a change in the status quo in the second-generation discourse. Citations from both committees reflect constant contradictions between two constitutive narratives founded in the Israeli society: the narrative of the unique value of the body and the narrative supporting procreation. Functional narratives promote those narratives in questions such as whether to allow or prevent healthy women to risk their bodies for the purposes of other women's procreation, and whether to allow or forbid the commodification of body parts, etc. Language and rhetorical methods, conscious and unconscious, play a leading role in social constructions related to the positive right to procreate—despite the negative perception toward the trade in human organs and other contradicting values. Consequently, rhetorical methods created power dynamics and shaped the way policy makers see the duty of the State.

The strength of discourse analysis is that it involves a particular awareness of the role of language in constituting policies and the way that conflicts are woven into language. This analysis problematizes what conventional policy analysts take for granted: through the linguistic, identity, and knowledge-related aspects of policy-making, discourse analysis exposes why and how contingent concepts and practices came into effect.²²² Language is not a neutral messenger of given interests and preferences, rather, language influences their very formation. Choosing one type of discourse over another is an activity that is charged with ethical significance.²²³ Understanding meanings and significances of narratives may explain what motivates people in any given society and sheds light upon specific choices that society makes. Rational arguments and political powers helped structure the discussions and shape outcomes. By drawing attention to discourses and the ways that actors relate to them, discourse analysis validates the claim that language and knowledge need to be understood as an aspect of power and as a

222. Feindt & Oels, *supra* note 15, at 163.

223. Sherwin, *supra* note 67, at 564.

form of exerting power.²²⁴ In this sense, discourse analysis is a tool for democratizing policy-making, complementary to theories of deliberative democracy.²²⁵

Foucault used textual analysis of books, laws, and art when he sought to create a comprehensive structure of knowledge, but this process was not without pitfalls. His work was methodologically criticized for lack of consistency in the materials he chose to analyze.²²⁶ I believe that the chosen materials that serve the textual analysis in this article are consistent, since they are all transcripts of formal governmental discussions, albeit different kinds of discussions. Nevertheless, these materials may warrant similar criticism. An independent professional committee such as the Halperin committee is different from a political Knesset committee in that committees like the Knesset committee are part of the routine function of the parliament, both in terms of participants and methods of work. This difference has several implications that should be taken into consideration.

First, the Halperin committee held meetings dedicated to verifying medical facts and epidemiological data, discussing ethical and legal aspects, and looking for technological possibilities. Its work was divided into three levels: the learning level, in which it received information and heard from about twenty expert witnesses in different relevant areas²²⁷; the discussion level, seeking consensus on several social, ethical, and religious issues concerning egg donation; and the framing level, in which the committee took it upon itself to help advance general principles as well as legislation based on the committee's discussions. While the discussions in the professional committee are independent from the legislative process, the Knesset committees meet for a variety of cases, not just for this one. The Knesset committee discussions are intended to discuss bill drafts and to prepare them for three readings in the Knesset plenum (bills passed on the third reading become the laws of the State of Israel). Discussions in the Knesset committee addressed the text of the bill and its topics. Topics that did not make it to the draft of the bill were not discussed.

Second, ten experts were nominated for the Halperin committee: six doctors, two Rabbis, one legal expert and one public representative.²²⁸ Although some of

224. Feindt & Oels, *supra* note 15, at 169–70.

225. *Id.* at 166.

226. See e.g., RUTH A. WALLACE & ALISON WOLF, *CONTEMPORARY SOCIOLOGICAL THEORY – CONTINUING THE CLASSICAL TRADITION*, 327–28 (3rd edition, 1991).

227. The topics of discussion were decided in the first meeting and covered many issues, including the right to receive fertility treatments, the right to information and counseling, the definition of parenthood (personal status, motherhood), registration, egg donation (including the risk to the donor, volunteer donor, payment, anonymity), enlarging the donation pool (compensated and alternative sources for recruitments, including egg freezing, eggs from deceased, fetal ovaries, ontological freezing of ovary tissues), special issues (including cross-religious donation, cross-country donation, children's rights, age limit, limitations concerned with ovary hyper-stimulation, medical confidentiality, medical insurance, and legislation recommendation).

228. The members were: Dr. Mordechai Halperin (chair), Adv. Mira Hibner – Harel (legal counselor, ministry of health), Dr. Rachel Adatto (counselor for women's health to the minister of Health), two Rabbis: Rabi Menachem Burstein, Rabi Samuel Rabinowits, three prominent fertility experts: Professor Josef Shenkar, Professor Veslav Insler, Dr. Chaim Yafe, Dr. Hanna Katan, and Mr. Amos Danieli.

the members were female, all women spoke as representatives of their profession or political function, rather than as representatives of all women. Unlike the fixed nominees in the Halperin committee, in the Knesset committee most participants are typically coalition members who are not always knowledgeable or educated in the topic at hand. Members of the Knesset Legal Department accompany the legislative process from the point at which the Knesset member raises an idea for a bill, in committee discussions, and up to the final text of the bill for a vote in the plenum. The committee conducts an open and democratic policy-making procedure. Experts and officials (e.g., jurists and economists) might be invited to the professional discussions of the committees to provide information about their activities and to present their positions on the issues in question.²²⁹ Many interested bodies could ask to be invited, attend, and participate in the meeting. Discussions about egg donation were infused with the interests and agendas of such participants. Although they often spoke on behalf of groups who did not democratically chose them as representatives, their narratives were influential. The Knesset members who voted on the final version of the bill could easily be convinced by multiple narratives nurtured by these diverse cultural symbols and interests.

While the difference between the two committees is relevant, both committees used similar rhetorical methods in settling conflicts between the competing narratives: “bounded narratives” that tied the basic liberal thought supporting an opposing narrative (protection of human rights) to the idea of assisted reproduction; downplaying incompatible views (about the risks and benefits of egg donation) that did not align with the desired policy; “softened rhetoric” that expressed the idea of donation in exchange for payment in a more palatable and “socially acceptable” way; “surrendered rhetoric” that described the situation as if speakers were forced to support a certain decision; “diverting rhetoric” that redirected attention from policy-makers’ responsibility to other potentially responsible parties; and “missing voice” rhetoric, which reflected an unbalanced picture of the interested bodies in the discussion room. A typology of these methods, first developed in this research, is significant not only to this project but also to any other project focused on the ways policy-makers, as well as leaders in other sectors, use language and rhetoric.

These methods reflect political realities and socially-structured conceptions concerning reproduction and procreation. In practice, the necessity to promote procreation was presented as an established duty of the state, while the interests of egg-source women not undergoing fertility treatment were underplayed. Given the pro-natalist cultural milieu, Israel’s choice seems obvious. However, while policy-makers supported the hegemonic constitutive reproductive narrative throughout policy discussions, alternative narratives have emerged in recent

229. *Knesset committees*, KNESSET, <http://main.knesset.gov.il/About/KnessetWork/Pages/CommitteeWork.aspx>.

years that oppose the constitutive procreation narrative.²³⁰ So far, criticism cannot thwart the expansion of the constitutive narrative, but up to now the second-generation discourse continuously undermines and erodes traditional attitudes toward reproductive practices.²³¹

This article sets the groundwork for several directions for future research. First, the data implies certain correlations between different interest groups and the chosen policy regarding egg donations in Israel. Although these correlations may explain some of the findings in this article, they were not empirically verified in this research and should be further explored. Second, my research shows that feminism has the potential to exert influence and provoke change in political procedure by promoting alternative narratives that gradually undermine hegemonic narratives and create different dynamics in the policy-making discourse. Other applications of feminist participation in policy-making processes should be researched.

230. See Almog & Bassan, *supra* note 2, at 3.

231. See *id.* at 48–49.