The modernity of milk kinship*

In Islamic law, breastfeeding institutes a type of kinship relation (ridā‘, ‘milk kinship’), historically a medium for complex social and political networks in the Middle East, although of diminished frequency in modern times. My research focuses on Islamic Middle Eastern reactions to new reproductive technologies such as in vitro fertilisation: for Muslim religious specialists, milk kinship provides a way of thinking through and resolving the ethical dilemmas of the use of donor eggs and surrogacy arrangements. Rather than disappearing under modernity, then, milk kinship endures as a resource for the mediation of social relations and intellectual challenges.

Key words  kinship, substance, breastfeeding, Islam, Middle East

Introduction

She left me with three kids, one of them just a baby. I tried to find him a wet nurse. I went through a hundred families to find one. As a result he’s drunk the milk of many women, even cows. He looks like a hundred different women. He’s got the eyes of one, the ears of another.

From Blackboards, dir. Samira Makhmalbaf (2000)

The nurture of a child at a woman’s breast is ‘the subject of considerable cultural elaboration in most societies’ (Maher 1992: 9), inspiring theories as to the transmission of the nurse’s physical or moral qualities to the nursling, as in the quote above from Makhmalbaf’s celebrated film set in Iranian Kurdistan, or creating enduring social ties other than those of birth, as in Islamic law, where breastfeeding institutes a

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type of kinship relation (ridā’) that entails a prohibition of marriage between nurse, nursling and a further, defined set of relatives. This institution of ‘milk kinship’ has attracted anthropological attention, following Soraya Altorki’s (1980) pioneering article: Françoise Héritier (1994, 1999) has incorporated Islamic milk kinship into her bold cross-cultural theories of incest that centre on notions of the contact of bodily substances (and cf. e.g. Fortier 2001); Édouard Conte (e.g. 1991, 1994, 2000a, 2000b) has written extensively on milk kinship in the context of his wider interest in Arab kinship, especially its elective and uterine forms; most recently, Peter Parkes (2001, 2003, 2004a, 2004b, 2005) has identified a pre-modern history of cliental relations established and expressed through the medium of milk kinship in Eurasia. Parkes, following Mintz and Wolf’s (1950) analysis of godparenthood, maintains that the uses made of and social structures created by these relations vary according to social and political circumstances. Indeed, institutions of ‘elective’ kinship such as milk kinship and godparenthood provide a resource for mediating social and political change.¹

Such elective and non-biogenetic kinship relations have been the focus of interest in recent anthropological studies of kinship more generally (e.g. Carsten 2000). I have myself pursued another prominent theme of these ‘new kinship studies’ (cf. Clarke 2008), that of reactions to new reproductive technologies (NRT) such as in vitro fertilisation (IVF), in the Middle East and, in particular, in Lebanon.² My research has been carried out through analysis of contemporary Islamic legal texts, Sunni and Shiite, and fieldwork (2003–4) principally carried out in Lebanon with religious specialists, as well as doctors and lawyers. Limited fieldwork was also carried out in Syria and Iran during the same time period. In the course of this research, I have frequently found reference to milk kinship as a means of thinking through the problematic implications of these new medical developments. That is, in Islamic legal discussions of NRT, milk kinship becomes an important consideration, with regard especially to cases involving two women – one providing an egg, then fertilised with a man’s sperm and then implanted in the womb of another woman. The latter woman, the ‘gestational carrier’, may be seen as analogous to a ‘milk mother’; commercial surrogacy arrangements can be seen to parallel those of mercenary wet-nursing, the subject of classical Islamic legal debate. In the context of treatments involving donor sperm and eggs, allowed by a minority of Islamic jurists, milk kinship and fosterage become mechanisms for the legitimisation of relations between a resulting child and the recipients, the ‘social’ parents (in anthropological, if not Islamic, terms). The mediating possibilities of milk kinship thus endure in the face of new challenges, both in the context of the rich history of Islamic jurisprudence and as part of the cultural arsenal that Muslims deploy in attempting to realise their social projects. Milk kinship is an eminently flexible institution, as will, I hope, become apparent from the various examples of its contemporary uses across the Middle East that I present here, as a contribution to the broader comparative projects of scholars such as Héritier, Conte, Parkes and Carsten.

¹ Of course milk kinship need not necessarily be chosen (see below), and the category of ‘elective’ kinship bears closer examination (cf. Clarke 2008).

² Rather, that is, than in the more usual setting of Euro-America, where the work of Marilyn Strathern (e.g. 1992) has been followed by many others. Édouard Conte’s (2000b) use of Islamic legal discussions of IVF was inspirational for me here.
Milk kinship in Islamic law

Islamic legal handbooks treat relations of kinship and alliance under the heading of ‘closeness’ (qarābah). This is then divided into three subtypes: nasab (relations of filiation, both agnatic and uterine);
musābarah (relations by marriage); and rida’ (relations by breastfeeding, ‘milk kinship’). Rida’ relations are like those of nasab in many but not all ways: affection is due to one’s milk kin, but one does not inherit from them. Rida’ relations are thus of lesser standing than those of filiation. However, most importantly, they institute a marriage prohibition. This prohibition is stipulated in a well-known verse of the Quran (4: 23), which lists various categories of women prohibited in marriage to a male ego:

Forbidden to you are your mothers, your daughters, your sisters, your paternal and maternal aunts, the daughters of your brothers and sisters, your milk mothers, your milk sisters, the mothers of your wives, your stepdaughters who are in your charge, born of the wives with whom you have lain (it is no offence for you to marry your stepdaughters if you have not consummated your marriage with their mothers), and the wives of your own begotten sons. You are also forbidden to take in marriage two sisters at one and the same time: all previous marriages excepted.5

Milk sisters, one should note, are women suckled at the same breast as fed ego: you could not marry someone suckled by the same woman that suckled you. It is also worth noting at this point the prohibition on a man marrying his ward (rabibah), or ‘stepdaughter’: his wife’s daughter by a previous marriage. This relatively restricted set of explicit prohibitions was expanded analogically by later jurisprudence (8th/9th century AD onwards, as against the 7th century Quran), to include women standing in the same relation but in higher and lower generations: so grandmothers and granddaughters, for instance, were also prohibited in marriage. The bounds of milk kinship were similarly expanded in accordance with a saying of the Prophet, ‘what is prohibited by nasab [consanguinity] is prohibited by rida’’: thus milk nieces, milk aunts, milk daughters, milk grandmothers and milk granddaughters are all also forbidden in marriage, as are the milk mother of one’s wife, and simultaneous marriage to two women who are milk

3 The agnatic element is stressed in many contexts. Outside of legal discourse, the use of the term nasab tends to be restricted to the (overwhelmingly agnatic) ‘genealogies’ of ‘tribesmen’ and elites. On qarābah and its three sub-divisions see Conte (1991, 1994).

4 One encounters a number of Arabic terms in the secondary literature. I have followed Hans Wehr’s Dictionary of modern written Arabic (Wehr 1979) in using rida’ for the category of kinship-like relations, as is used in all the Islamic legal sources I have consulted, and radā’ah for the act of suckling. Milk kinship terminology is then frequently derived from the latter: e.g. akh fi-l-radā’ah (‘milk brother’). Various other vowellings are well attested (e.g. radā’ and radā’ah). ‘Milk kinship’ (French parenté de lait) is a long-standing, conventional translation, and I use it here. It is not, however, wholly satisfactory, predating the relation as it does on the substance of milk (compare English ‘blood relation’) rather than the act of suckling. This has analytical temptations in the context of anthropological studies of kinship that have to be considered carefully. The alternative ‘fosterage’ is, however, inexact, as one can foster without breastfeeding (Khatib-Chahidi 1992), and where I use ‘fosterage’ here it is to refer to guardianship of children and not milk kinship.

5 The translation is Dawood’s (1990), with the modification of ‘milk mother’ and ‘milk sister’ for his ‘foster-mother’ and ‘foster-sister’ (ummahatukumu ‘lāti ardā’nakum wa akhaswātukum mina ‘l-radā’at, lit. ‘your mothers who suckled you and your sisters from suckling’).
sisters (Giladi 1999: 24–5; Benkheira 2001: 13). These restrictions on marriage were further extended to include the milk mother’s husband and his consanguines, a move rationalised by jurists as due to the husband being in some way the source or cause of his wife’s breast milk. The Sunni and Shiite legal traditions vary somewhat with regard to these complex ramifications of milk kinship (Khatib-Chahidi 1992; Conte 2000a), which have provoked anthropological comment that need not, however, concern us here.

Further debate centred on what constituted a proper incidence of suckling, such that milk kinship be instituted (Giladi 1999: 81 ff.). One needed to consider first the mode of transmission of the milk: must it be received from the breast direct, or could it be taken from a bottle, or mixed in food? Must it be taken through the mouth, or would its insertion into the nose, ear, eye or rectum suffice? How many sessions of breastfeeding are required? Is there an upper limit on the age at which the breastfeeding can take place? A principle derived from a saying of the Prophet provided a rule of thumb: it is human milk which ‘stills a baby’s hunger’ and ‘raises the bones and makes the flesh grow’ that creates a marriage prohibition (ibid.: 82). Would animal milk that did the same then have the same effect? The renowned scholar al-Bukhari (d. AD 870) was indeed expelled from Bukhara for suggesting that babes who drink the milk of the same, individual animal become milk relatives through sharing that milk and thus cannot marry (ibid.: 69). Milk kinship is, then, in the context of Islamic jurisprudence, a complex and elaborate legal institution, the subject of considerable debate and varied opinion.

While much of this legal debate may seem abstruse, milk kinship had, and continues to have, a social reality outside the scholastic domain. It was common, in the pre-modern Middle East, for women living in the same household or locale to breastfeed each other’s infants as need and convenience required. Urban, upper-class women frequently had recourse to the services of professional wet nurses (Giladi 1999: 106 ff.). Milk relations were thus also perforce common, although it seems hard to believe that the full ramifications of the jurisprudential schemes were followed through: certainly contemporary ethnographic accounts suggest that popular conceptions of the extent of milk relations are often at odds with those of jurisprudence. In modern times, residence patterns have changed, with a decline in large, mixed households (Altorki 1980: 240); and the advent of artificial baby milks has rendered wet-nursing an option rather than a necessity (ibid.; cf. Khatib-Chahidi 1992: 118 and Granqvist’s 1947 account of Palestine, cited Parkes 2003: 750 n. 12). A doctor in the South of Lebanon told me in the course of my own fieldwork that:


7 Besides the work of Altorki (1980) and Conte (2000a), see especially the theoretical speculations of Héritier (1994, 1999) and Parkes’ (2005) comments thereon.

8 Being much more limited (cf. e.g. the testimony of Long and Delaney on Turkey cited by Parkes [2005: 315]), or even more extensive (cf. Altorki 1980: 238 on Saudi Arabia). Local notions may themselves vary (Altorki ibid.; Ensel 1999: 118 [on Morocco]). As Conte (2000a: 163) says, the realm of popular conceptions of milk kinship is ‘a huge grey area’.

9 Parkes (e.g. 2003: 750–1) sees further structural reasons for the decline in the incidence of milk kinship in the shift in political organisation away from patrimonial dynasties towards modern state formations.
Before, people depended on breastfeeding. If two neighbours delivered at the same time, and one had milk and the other little, then one would breastfeed the other’s child. This habit is finished: nobody is breastfeeding other people’s babies nowadays. But it used to be very important. A hundred years ago it was a great issue. Now people don’t like it. It’s no longer socially acceptable. It was due to poverty. Now there are 100,000 types of milk available.

However, despite this undoubted decline, milk kinship is far from a dead letter. It remains a prominent section within contemporary Islamic legal handbooks, and a field in which Islamic scholars can parade their erudition. Shaykh Dr Wahbah al-Zuhayli, a professor of Islamic law at the university of Damascus and author of a recent, comprehensive and authoritative legal treatise (Zuhayli 2002/1422), in an exposition of Islamic family values in the contemporary world affirms that ‘the family’ (al-usrah), the ‘nucleus of society’ (although perhaps a relatively recent phenomenon in Islamic discourse), stands ‘on the foundation of stock [’irq], blood and nasab, and affinity and milk kinship’ (Zuhayli 2000/1420: 20). And, in the course of fieldwork in Lebanon and Syria, I came across a number of contemporary examples in the pages of glossy magazines read across the Arab world. Many such magazines feature fatwā columns, where religious specialists give fatwās, that is ‘opinions’, in response to readers’ questions. In a recent issue of women’s magazine Sayyidat, Shaykh Abdallah bin Jibrin of the Saudi Arabian Fatwa Issuing Department is asked: ‘Is it possible for me to marry a girl whose older sister is the milk sister of my younger brother?’ He answers:

There is no problem with marrying the milk sister of your brother if your brother was the one who suckled from her mother and you did not, and likewise if the suckling one, that is the sister of the girl in question, suckled from your mother. So the girl is permitted in marriage to you, and neither the suckling of her sister by your mother nor the suckling of your brother by her mother affects you in this regard. God knows best.

And, in the same issue, he faces another milk kinship query:

I am a boy of sixteen and want to marry the daughter of my uncle [’ammı, father’s brother], but I have discovered that her younger sister suckled with my older sister. So is it possible for me to marry her, bearing in mind that she did not suckle from my mother?

His reply:

It is not a problem that you marry her, and the suckling of her younger sister with your sister does not affect you. That is, she is considered marriageable [ajnabīyah,

11 In this example and the next, one perhaps sees confirmation of Altorki’s (1980: 238) report that some Arabian reckonings of milk kinship are more extensive than those of jurisprudence (I am venturing that the petitioners, as the shaykh and the magazine, are Saudis): ‘Some assumed that a milk bond between two persons precludes marriage between any of their respective siblings; others asserted that only those siblings who were born after the child nursed by a woman not his mother were forbidden to marry the latter’s children.’ This latter consideration would explain the careful stipulation of the relative ages of the siblings involved here.

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‘a non-relative’], in as much as she did not suckle from your mother and you did not suckle from her mother nor from one of her sisters, so there is no kinship [qarābāb] between you.\textsuperscript{12} As for her younger sister she is not permissible for you or your brothers, as she suckled from your mother and became a sister to all of you.\textsuperscript{13}

\textbf{Uses and abuses}

Such nursing relations do not always simply arise casually, without thought: milk kinship can be employed in pursuance of individual and social projects. In a series of articles, Peter Parkes (2001, 2003, 2004a, 2004b, 2005) has drawn on historical materials demonstrating for Eurasia

a recurrent dynastic strategy, employing fosterage as a political alliance mechanism between rulers and powerful but subordinate tribes, clans, social strata, or distinct ethnic groups, whose hereditary fostering services often entailed their collective elevation to nobility or quasi-royalty in a corporate idiom of milk kinship. (2001: 6)

Such cliental uses of milk kinship had previously been suggested for pre-modern Iran by Jane Khatib-Chahidi (1992), and Parkes (2001) provides a historical ethnography of the 19th century Hindu Kush that details networks of interdomestic allegiance and tributary patronage instituted through fosterage in the form of milk kinship.\textsuperscript{14} Subsequent articles have provided a breadth of comparative material from the Islamic world and beyond to warrant his assertion that ‘Current ethnographies of Islamic milk kinship therefore give an impoverished impression of its former political significance as a structure of cliental allegiances instituted through fosterage’ (Parkes 2003: 750). Further, ‘its intrinsic relationship with institutional fosterage (Arabic \textit{rabba}, \textit{rabīb}) seems scarcely recognized elsewhere’ (ibid.: 746). Although I have not, in the course of my own researches, encountered discussion of the male ward (\textit{rabīb}), I have already had cause here to mention the female ward (\textit{rabībah}), and will do so again.

However, my interest here is rather in what Parkes (2001: 5) refers to as the ‘tactical’ uses made of milk kinship, as opposed to the cliental. In the Hindu Kush, for instance, milk kinship, albeit often instituted in a symbolic manner such as by a grown man putting his lips to a woman’s breast, was used for the purposes of ‘forestalling undesired marital propositions, and for justifying marital separation’ (2003: 746); if a man and woman were milk kin, then they could not be married. It is such tactical uses that are prominent in Soraya Altorki’s (1980) pioneering account of milk kinship

\textsuperscript{12} Although, of course, there is kinship between them in other respects, as cousins. That degree of ‘closeness’ is not, however, an obstacle to marriage in Islamic law, and the patrilinear cousin is indeed a commonly preferred marriage partner in the region, as has been much discussed within anthropology (cf. e.g. Holy 1989; Clarke 2007b).

\textsuperscript{13} See further Giladi’s (1999: 125 ff.) contemporary Egyptian examples, from Al-Azhar University’s periodical. One should still note, however, that such examples are no doubt less frequent than they were: the Mufti of North Lebanon, Taha al-Sabunji, told me in an interview at his offices in Tripoli that ‘Milk kinship is rare. People do come with such questions, but they are most uncommon nowadays with the advent of artificial milk.’

\textsuperscript{14} And compare Ensel’s (1999) ethnography of southern Morocco.
as she found it remembered and practised in Saudi Arabia in the 1970s. She reports that culturally favoured marriages between the children of relatives could be avoided by an unwilling parent through ensuring the breastfeeding of the children together (ibid.: 240–1). A further tactical use, important for our purposes here, turns on the principle in Islamic law and practice that interactions between men and women are regulated according to the intimacy of their relationship. Women should veil, and practise other modes of avoidance, before men that they could marry. Kinsmen who they may not marry, mahārim (sing. mahram) may meet with them on more intimate terms, without the restrictions of full veiling. Within the household, then, milk kinship could be used ‘to make domestic life more convenient’: ‘Frequently, therefore, a man would ask a slave woman [in earlier times, one understands] who had children herself to nurse his daughters, so that they would not have to veil to her son(s)’ (ibid.: 240); by instituting relations of milk kinship, and hence marriage prohibition, between servants and members of the house, the religious necessity for veiling between them would be removed.

It is worth noting here that while Jane Khatib-Chahidi (1992: 119) in her investigation of milk kinship in modern Iran found no such examples – ‘In fact my informants found the suggestion that [milk kinship] could be made use of for such purposes highly bizarre’ – she suggests that this is because there is an easier way of making domestic life more convenient, namely contracting ‘fictitious’, temporary marriages between, say, servants and their masters or the children of the house (cf. Khatib-Chahidi 1981). Such temporary marriages are an exclusively Shiite Islamic institution. Shahla Haeri (1989: 83 ff.), in her ethnography of temporary marriage in predominantly Shiite Iran, describes a number of such uses of temporary marriage contracts, contracted, for instance, to make travelling more convenient for a party of mixed sex, or for rendering the shared life of a residential quarter more convenient. Rather than seeing this tactical device as excluding or replacing milk kinship, I would like both to be seen together, as Islamic legal institutions that provide resources for ensuring the propriety of inter-sex relations. We will come across Shiite temporary marriages again in our examination of assisted reproduction below.

To return to the Arabian Peninsula, Dresch (2005: 266 n. 19) reports that, in the Arab Gulf, milk kinship ‘appeared almost a dead issue for a generation, but suddenly reappeared as a means to annul inconvenient marriages or avoid adultery charges’. Such was the popularity of these ruses that the courts proposed not to recognise milk kinship any more (Dresch, personal comment). While the incidence of milk kinship may be declining, then, its possibilities as a legal mechanism for manipulating the social landscape endure, although the fact that the courts could conceivably ignore the institution does admittedly show milk kinship’s relatively marginal and secondary status.

**Milk kinship and adoption**

Let me turn now to another, contemporary, ‘tactical’ use of milk kinship, somewhat different from those we have considered so far, in an example from fieldwork in

15 Milk kinship would serve the latter purpose, one assumes, by rendering suspicious intimacy between a man and a woman, such as being in a room together alone, licit as between relatives.
 Damascus. I was introduced through a mutual friend to a Muslim man, ‘Ahmed’, who had ‘adopted’ a child from an orphanage. It should be explained here that adoption (tabannı) in its fullest sense of the complete incorporation of an unrelated child into a family, to be treated as a child in every way, from taking the father’s name to the institution of inheritance rights, is prohibited by Islamic law as involving a ‘falsification’ of ‘the truth’. The fostering of orphaned children while preserving their original kinship identity, on the other hand, is considered a highly meritorious action. Full adoption is thus prohibited under Syria’s Islamically inspired personal status laws. Ahmed and his wife had been unable to have children; medical tests revealed that Ahmed was infertile. Fertility treatment, as available in Syria, would have been fruitless. He suggested to his wife that they adopt a child; she agreed, and they found a suitable orphan girl at an orphanage in Damascus.¹⁶ It then took much bureaucratic wrangling and manipulation of ‘connections’ first to ensure custody of the child, and then to have her identity records altered so as to change her family name to that of Ahmed.

I asked Ahmed about the religious implications of this adoption, in particular, if there would be any problems with veiling later, since, as we have already noted, girls, once they show signs of sexual maturity, have to veil before unrelated men: if she were not his daughter then she would be a source of sexual temptation and would have to veil before him, a common theme in Islamic discussions of adoption. He misunderstood me: ‘Yes, of course there could be problems. With others do you mean? Outside the house?’ ‘No, inside the house’, I clarified. ‘Well, I feel like, whatever one might say, I am the father. I don’t have any feeling like that [i.e. sexual] because I raised her, I am her rabb [guardian, see above], I bathed her on my knee.’ Nevertheless, despite this, and despite – or perhaps because of – the dubious status of adoption itself, he and his wife had tried to persuade his brother’s wife, who was breastfeeding at the time, to breastfeed the girl. This would have made a milk relation between the girl and Ahmed’s brother through his brother’s wife.¹⁷ Thus, Ahmed would have been her ‘uncle’ (‘amm, father’s brother); he would have had ‘kinship’ (qarābah) with her, would have been ‘close’, ‘a relative’ (qarīb); ‘it would have been better’. But his brother’s wife refused. From what our mutual friend told me subsequently, it seems that Ahmed won his brother over, but the wife was adamant in her refusal, perhaps simply through an aversion to suckling another’s child or perhaps because she would have been suckling a ‘bastard’: such foundling orphans are popularly considered as most likely the children of illicit sex, and, as such, are heavily stigmatised (Sonbol 1995). Or, he speculated, perhaps there had been worries over claims to the family’s wealth: not that milk kinship would institute inheritance rights, strictly speaking, although this example shows the blurred, complicated nature of real practice as opposed to the neat categories of legal debate.

Milk kinship, then, is an elaborate and enduring Islamic legal institution, that finds varied expression in the lives of Muslims in the Middle East. While its ‘cliental uses’ may have declined with the emergence of modern political structures, milk kinship’s

¹⁶ It is interesting that a girl was chosen: were the aim of the adoption a perpetuation of the family line or preservation of the patrimony, a boy would have been more suitable. Rather, it was a question of the parents’ desire to have a child. Then, as I was told by several informants, to have ‘a strange man’ in the house would be much more problematic; a girl can be ‘enjoyed’ as a child, but will then marry and leave the home, entailing far fewer complications.

¹⁷ Compare this account given to me by a Sunni judge in Lebanon: ‘I know of a family who did not have any children. There was a laqītab [foundling girl], and they took her in. Then the wife became pregnant, and they breastfed the laqītab.’
utility as a ‘tactical’ device for making and breaking kinship, and thus ensuring the propriety of gendered social relations is still apparent. Such tactical uses, as well as the very existence of this form of kinship per se in Islamic law, led milk kinship to become a feature of the medical ethical debates that we turn to now.

Islamic medical ethics

Modern scientific and medical advances have offered Islamic religious specialists both a challenge and an opportunity. Governments and patients alike in the Islamic Middle East have turned to Islamic authorities for guidance with regard to issues such as organ transplantation, euthanasia and abortion (Rispler-Chaim 1993). Lively debates, symposia and a considerable literature have emerged on the ‘fiqh [jurisprudence] of medicine’. One example directly concerning our interests here, which will serve to introduce some of the issues pertinent to the discussion of assisted reproduction to come, is that of ‘human milk banks’. These comprise a store of fresh human milk donated by lactating women for dispensation to prematurely delivered babies whose own mothers fail to produce any milk. Despite their comparative rarity, they have been a focus of concern for Islamic scholars (Giladi 1999: appendix 2; Conte 2000b): might not complicated chains of milk kinship be instituted? Might there not be a risk of subsequent, inadvertent milk incest?

Doctor and expert on Islamic medical ethics, Hassan Hathout (2005, section “The human-milk bank”), describes the discussion at the 1983 symposium on ‘Islam and reproduction’ held by the Islamic Organization of Medical Sciences in Kuwait, where ‘Ultraconservatives suggested that there should be a detailed milk registry and that every donor and the family of every recipient should be given a complete record of who received the milk of whom.’ As Hathout comments, this would render such milk banks ‘practically impossible’. However, other scholars, such as the renowned Sunni jurist Yusuf al-Qaradawi (according to Anon. 1997), cited rulings within the Islamic legal tradition that milk kinship could only be instituted by suckling at the breast to argue that milk from milk banks would not institute milk kinship. The ‘ultraconservative’ position seems to have carried the day: the Islamic Fiqh Council (Majma‘ al-Fiqh al-Islāmi) of the Organisation of the Islamic Conference (OIC) based in Jeddah, Saudi Arabia, whose opinion carries great weight in the Sunni Muslim world, passed a resolution along these lines (cited in Zuhayli 2002/1422: 5085–6) in 1985. Entitled ‘Milk banks’ (bunā‘ al-halīb), it argues that milk banks lead to confusion (ikhtilāt) and doubt (ri‘bah). The system of social relationships in the Islamic world, it proposes, offers a premature or underweight child that needs human milk its requirements through natural nursing, clearly harking back to the communal nursing of pre-modern times, not obviously applicable to the needs of premature babies. The council concludes by prohibiting the spread of milk banks in the Islamic world, and the use of milk from them. It is this worry over kinship ‘confusion’ that is echoed in discussions of medically assisted reproduction, as well as the large dose of moral outrage common to many of these discussions, at this

18 This is also a source of concern for non-specialist Muslims. Khatib-Chahidi (1992: 128) reports that a ‘Muslim couple in Oxford, for example, refused adamantly to allow their premature baby to be fed with the “mixed” mother’s milk from the milk bank’.

19 The IOMS’s report can be found on the internet (http://www.islamset.com).
Western innovation that would undermine the sound moral underpinnings of Islamic society, corrupting its genealogies and spreading adultery (cf. e.g. Rispler-Chaim 1993: 122–6; Giladi 1999: 142).

**Assisted reproduction and Islamic law**

The many possibilities extended by new reproductive technologies such as *in vitro* fertilisation have also been keenly debated by Islamic legal specialists. While such thinkers are keen to stress that Islam favours scientific and medical advance, certain ethical boundaries should, they maintain, be preserved. Assisted conception between husband and wife, including artificial insemination and *in vitro* fertilisation, is, broadly speaking, deemed unobjectionable. Where techniques might involve further parties, controversy arises: a parallel is often drawn here with ‘adultery’ (*zinâ*),\(^{20}\) nominally subject to the harshest of punishments under Islamic law, and its results, the ‘confounding of kinship relations’ (*ikhtilât al-ansâb* [pl. of *nasab*]). Sunni Islam has reached a broad consensus that such techniques are prohibited: resulting children are to be treated like ‘bastards’, ‘children of *zinâ*’, with no paternal relation, although they are still related to their mothers. The possibility of polygyny in Islamic law somewhat complicates matters: some early opinions did not rule out using an egg from one wife, fertilising it with the husband’s sperm, and implanting it in another wife’s womb. Such a scenario has, however, come to be deemed unacceptable according to the current, broad Sunni consensus. Shiite opinion, on the other hand, is more diverse, and some authorities allow some controversial procedures, as we will see shortly.\(^{21}\)

Milk kinship comes into consideration in a number of ways. Most relevant are those possibilities involving one woman’s egg and another’s womb. Besides the ‘two wives’ scenario, these might take the form of the use of a donor egg, or that of a surrogacy arrangement, where another woman agrees to bear to term an embryo formed of a husband’s sperm and the egg of his wife, for whom pregnancy is impossible. With regard to the latter, such an arrangement could be a commercial one, and Muhammad Rida al-Sistani, son of Ayatollah ‘Ali al-Sistani, probably currently the most widely followed Shiite authority of all, considers in his own comprehensive treatise on NRT whether one could liken such arrangements to the mercenary wet-nursing contracts that posed such problems for classical jurisprudence (Sistani 2004/1425: 316). In such situations, whether permitted or not, the question arises as to who will be considered the mother: the genetic mother, the provider of the egg or the gestational carrier. The situation is complicated under Islamic law on the one hand, as we have seen, by the possibility of polygyny, and on the other by the extant existence of a secondary type of motherhood, milk motherhood. As leading Sunni jurist Yusuf al-Qaradawi (1990/1410: 563) puts it,

> We are familiar with the milk mother and the rulings concerning milk siblingship.

\(^{20}\) *Zinâ* is in fact a broader category than ‘adultery’, including all sexual relations between parties not united by a marriage contract, and thus also subsuming ‘incest’ and ‘fornication’.

\(^{21}\) On all the above see Clarke (2005). Jad al-Haqq (1997/1418 [1980]) and Zuhayli (2002/1422: 2649, 5099–100) are typical Sunni sources; on the polygyny debate cf. e.g. Tuhmaz (1987/1408: 72–3). Conte (2000b) was the first to my knowledge to use such debates as a diagnostic tool for the study of Middle Eastern kinship. See also Inhorn (2006).
Now we have realised that people have two ties to their mother, a tie of creation and inheritance whose origin is the ovary, and a tie of pregnancy and nurture whose origin is the womb. Until now, the tie of the womb was applied to both by extension. But what if now the two relations branch out, the creation from one woman and the nurture from another? Where does the tie of the womb stand vis-à-vis ovary filiation? What are the rights of the nurturer and what are the legal consequences?

Muhammad Rida Sistani considers every permutation for the attribution of maternity: ‘perhaps neither egg provider nor gestational carrier are the mother, as motherhood has, until now, entailed both; or perhaps both are, for “mother” is applied to the breastfeeding woman [murdī‘ah] and the foster-mother [murbiyah, a rare mention of fosterage as opposed to milk kinship] for their undertaking some of what the mother does usually, that is, breastfeeding and raising and nurture’ (Sistani 2004/1425: 424). Most Sunni authorities, and many Shiite, have argued for a third possibility, preferring to ascribe full maternity to the woman who bears and delivers the child. Syrian shaykh ‘Abd al-Hamid Tuhmaz, who in his own monograph on assisted reproduction finds little to commend it generally, holds this position, but admits the difficulties in cases of surrogate motherhood, a further example of the ‘social and moral chaos’ that these new technologies have brought to the ‘enervated societies of the West’ (1987/1408: 71). What if the surrogate refused to hand over the baby?

What then is the extent of the relation of the provider of the seed [nutfah, here the ovule] with the child? Is there not some type of relation of consubstantiality [lit. one of ‘part and whole’ (juz‘iyah)] between her and the child? If the swallowing of a little milk taken by a nurseling from the breast of any woman creates a relation of legal motherhood . . . then still more appropriate is it in this case that there be instituted a relation of motherhood and consubstantiality between the woman whose seed is sown [i.e. the genetic mother] and the child. Thus in the modern age the child could have three mothers: the deliverer, the seed-sower and the breastfeeder. (ibid.: 72)

22 Qaradawi perhaps reveals his own inclination in his choice of terms here: he seems to privilege the ovary by using bunwi‘ah, ‘filiation’, in connection with it rather than the vaguer silah, ‘tie’ or ‘relationship’, which he uses of the womb. Silat al-rahm, ‘the tie of the womb’, however, is a deeply evocative phrase, used in Islamic discourse of the tie of compassion and affection particular to kinship that must never be broken.

23 Sistani (2004/1425: 473 ff.) further wonders, where an egg from one woman and the womb of another are used, who would have the right to breastfeed the child (although surely the former would be incapable). In still more abstruse ponderings, he considers throughout the possibility of the involvement of animals in these procedures, for genetic material and for gestational purposes, shades, perhaps, of Bukhari’s controversial positions on the institution of milk kinship through animal’s milk (see above). Sistani is not alone here. Such discussions of the potential use of animal’s wombs and gametes form a prominent part of Shaykh al-Azhar ‘Ali Jad al-Haqq’s (1997/1418 [1980]) influential fatwa on IVF: the suspicion is perhaps that this will be the latest Western aberration to be inflicted upon the Islamic world.

The majority of Shiite authorities whose opinion I have consulted maintain the final possibility, that it is the genetic mother, the provider of the egg, who should be considered the mother. As briefly noted above, some Shiite authorities allow some of these controversial possibilities. Ayatollah ‘Ali Khamene’i (2003/1424: part 2 pp. 69–71), spiritual leader of the Islamic Revolution in Iran and widely followed in Lebanon, holds what has become the most notorious position of all with regard to assisted reproduction: he does not forbid donor treatments, surrogacy arrangements or the use of gametes after death (Clarke 2007a). In order to avoid kinship ‘confusion’, he makes clear that the principle of relation is that it is the originator of the sperm or egg that is to be considered the father or mother – that is, in donor procedures, the donor. The principle of maternity here, then, is the direct opposite to that considered above. What then of the woman who carries the child: does she have no relation of maternity, not even one on the lines of milk kinship? Or, as Muhammad Rida Sistani puts it, ‘is it possible to rule that marriage is prohibited between the child and the owner of the womb, and her daughters related to her through milk kinship?’ For, ‘if the breastfeeding woman is forbidden to the nurseling just through breastfeeding for a day and a night, or fifteen sucklings, because that entails the strengthening of his bones and building of his flesh, then what of one who is created inside her and all of whose flesh and bones comes from her?’ (Sistani 2004/1425: 480–1). The precedent of milk kinship is now being used to argue the opposite position from that taken by Tuhmaz above: Sistani is arguing that nurturing a child in one’s womb is at least analogous to the nurture afforded by a breast-feeding woman.

This seems an attractive line to take, although not a popular one. When I put the matter to Shaykh Muhammad Tawfiq al-Muqdad, Ayatollah Khamene’i’s representative in Beirut, he dismissed the possibility, holding that the gestational carrier ‘just provides a place for the foetus to grow in’. Another leading Shiite authority, Ayatollah Muhammad Sa’id al-Tabataba’i al-Hakim, based in Iraq, told me in correspondence by email that no milk relation applies, as milk kinship ‘has its own legal peculiarities as is well known’; that is, the conditions and consequences of milk kinship are well defined by the religious texts, and such scenarios do not fall within the textual precedents. However, Ayatollah Muhammad Husayn Fadlallah, Lebanon’s leading Shiite authority, has a different view. Ayatollah Fadlallah has his own distinct position with regard to assisted reproduction: he does not allow procedures using donor sperm; but procedures involving donor eggs and surrogacy arrangements may be permissible where the man who provides the sperm is married to both women, the source of the egg and the gestational carrier. Such a marriage to a surrogate mother could be a temporary one, temporary marriage, again, being a characteristically Shiite institution (cf. e.g. Fadlallah 2003/1424: 523). The same might apply in cases of egg donation: the husband of the woman who was to receive the eggs should also marry, even if temporarily, the egg donor; and this is in fact a position held by a number of Shiite authorities. From doctors’ accounts, it was clear that recourse to such a marriage to an egg donor was a common means of legitimating such procedures in Lebanon in the past; and Soraya Tremayne (2007)

25 Although Sistani notes that, in Shiite law at least, the institution of a milk relation is conditional upon the legitimacy of the pregnancy that gave rise to the nurse’s milk: considerations of propriety are prior to those of substance.
26 E.g. Ayatollahs Khomeini, Khu’i (of Iraq, d. 1992), Ha’iri and Tabrizi (Iran both) (Salamah 1998: 102; Hajj 2006: 33).
reports exactly such strategies occurring in largely Shiite Iran: we might recall here the tactical uses made of temporary marriage cited above. I have some reason to think that Ayatollah Fadlallah may have since dispensed with the condition of marriage to the donor in cases of egg donation (cf. Hajj 2006: 32); Ayatollah Khamene’i, on the other hand, specifically remarks in his fatwa that such a marriage is not a condition for egg donation. The relaxation of this restriction has important consequences, as it allows sisters to donate eggs to their siblings: this is a common scenario that would otherwise be ruled out, since, as we saw above, a man may not be married to two sisters simultaneously.

For Ayatollah Fadlallah, as Ayatollah Khamene’i, the principle of paternity and maternity follows genetic lines. I was interested in his view of the possibility of a milk relation, or something analogous to it, with the gestational carrier. When I discussed the matter with him in the course of an interview, he remarked that the basis of the milk relation is the constitution (takwîn) of the child, its flesh and bone being generated from the nourishment provided by the breast milk, as in the Prophetic tradition cited above. This process is also present in pregnancy, and so, he told me, there is a school of thought, which he holds to be correct, that a relation of marriage prohibition is instituted in this case also. In the course of a subsequent interview, Shaykh Muhsin ‘Atwi, the head of Ayatollah Fadlallah’s fatwa-issuing department, checked with the Ayatollah and confirmed for me that ‘The mother is the egg producer, but the gestational carrier resembles those women prohibited in marriage through breastfeeding. Her legal ruling becomes that of the milk mother; through the nurture in the womb she becomes the nurture mother [umm al-hadânah].’ While this view may perhaps be a minority one, doctors working in one of Shiite Iran’s most important centres for fertility treatment (the Royan Institute, Tehran) have been trying to persuade Iranian religious authorities to elevate the status of the gestational carrier by taking this line of argument even further, in order to render the use of donor oocytes less inconvenient for recipients: as it is, under the opinion of influential Shiite authorities such as Ayatollah Khamene’i that awards maternity along genetic lines, it is the donors and not the recipients who are to be considered the mothers of resulting children. These doctors have prepared presentations including video footage of the embryo growing in the womb in order to convince the shaykhs that the carrying mother does indeed ‘make the flesh and bone grow’, and that the foetus is constituted from her body cells, albeit not those carrying genetic information, and thus some legally recognisable form of maternity should be given to her. As one doctor said to me, ‘When a woman gives her milk to a baby for six months [perhaps more his own formulation than a legal position], it’s her child.’ So compare the nine months feeding the baby with blood.

Assisted reproduction in practice

As with the classical debates over milk kinship, then, these abstruse and complex jurisprudential wrangles have important real life consequences. Fertility is a matter of great concern across the Middle East (Inhorn 2003), and certainly in Lebanon where I carried out the bulk of my research. There is a great deal of social pressure on newly-weds to produce children, and doctors in Lebanon told me of couples coming for
treatment within months of marriage, some even coming for tests and advice before. This pressure comes to bear especially upon the wife, and this pressure is especially acute for Muslim women: divorce is easily effected by a Muslim man, who may also in any case take another wife. Fertility treatment is correspondingly in high demand. This includes controversial procedures such as those using donor gametes, which may be the only solution to many instances of infertility, although they are of course the exception rather than the norm. While the importance of donor sperm has decreased with the introduction of ICSI (intracytoplasmic sperm injection), a highly effective treatment for male infertility, donor egg treatments are an important resource for treating female infertility. Lebanon has a relatively relaxed regulatory climate, and such techniques are available, if a matter of intense confidentiality. Nevertheless, many, if not most, Lebanese Muslims, and Christians, take the demands of religion seriously; doctors reported that people came well informed as to the religious precepts here, although were clear that not everybody followed them by any means.

The permission given to donor sperm and egg procedures by Ayatollah Khamene’i and that given to donor egg procedures by Ayatollah Fadlallah are thus important for Lebanese Shiites, a great many of whom take most seriously the advice of their religious specialists. Doctors reported patients coming with the relevant fatwās giving them ‘permission’ to undertake donor procedures. However, in the opinion of both Ayatollah Khamene’i and Ayatollah Fadlallah, kinship relation (nasab) here is nominally supposed to follow ‘genetic’ lines, hardly convenient for the recipient of donor gametes, as we have just remarked. As may be deduced from the discussion of milk kinship above, this stipulation that nasab should follow genetic lines has potentially complicating consequences for family life. Given that such a child would be related to the genetic parents, one (or possibly even both) of whom would be the donor, attention would have to be paid to the concomitant rulings of kinship under Islamic law: the child and their genetic parents would have mutual inheritance rights, although this problem could to some extent be obviated through gifts and bequests; also, care would have to be taken with regard to the regulation of conduct between the child and the couple who have sought treatment. As we have seen, relatedness entails marriage prohibitions, and marriage prohibition determines rules of seclusion, bodily concealment and comportment. Where such a relation is absent, as it would be for couples using donor gametes on Khamene’i’s position, for instance, the usual intimacy of domestic life would be severely disturbed.

It is hard to imagine people following these stipulations to the letter, and I challenged a Shiite doctor, a follower of Khamene’i who provided donor gamete procedures for his Shiite patients, on this point. Clearly keen to demonstrate that these complexities are not a practical barrier to undertaking such procedures, he pointed out that there are other legal rulings that would serve to alleviate such problems, first and foremost, milk kinship: ‘If the child were male, then there’s no problem because the mother suckles.’ That is, if the child is male then there is a potential problem for the wife: she would have to veil in front of him when he reached puberty. But if she carries the child, in the instance of the use of a donor egg where she is not the mother one understands, thus having breast milk, and then suckles the child, then a milk kinship relation will

28 Some Sunnis are also taking advantage of this permission (cf. Inhorn 2003: 114–15). Shiite (or ‘Ja’farite’) law is, one might note, formally recognised by the influential al-Azhar University in Cairo as a valid school within Sunnism.
be established which institutes a marriage prohibition, thus removing the problems of intimacy. I then challenged him as to the situation were the child female. He thought for a moment: ‘There’s a way... Yes, you can’t marry your wife’s daughter.’ If the child is female then there is potentially a problem between her and the husband: in the case of the use of donor sperm where he is not considered the father, we understand.29 But here the girl will be in the position of a rabibah, ‘foster-daughter’ or ‘ward’, that is one’s wife’s daughter by another man: the rabibah is forbidden to the husband so long as he has had sex with her mother, as noted above.30 Although these may seem rather scholastic responses, the doctor was clear that ‘people are religious; they follow all the rules’. It is by no means certain that this doctor really knows whether such rulings are applied within the private sphere, and in any case one would have thought that most children born of such procedures would still be too young for many of the issues to be pressing. Certainly he was equally clear that, in public, use of donor procedures is denied, and resulting children are being presented as having arrived in the conventional manner. But here again, the precedent of milk kinship, along with guardianship, provides a resource for Muslims to take advantage of the possibilities for remedying childlessness that the new reproductive technologies offer.

**Final remarks**

The characteristically Islamic legal institution of milk kinship lives on then, despite a steep decline in shared breastfeeding in modern times. It provides a useful (if perhaps complicating) and unique way of thinking through some of the ethical dilemmas that NRT pose. Furthermore, it allows couples to take advantage of such techniques while maintaining the propriety and convenience of their domestic lives, in keeping with its longstanding ‘tactical’ uses. But while milk kinship offers a way of mediating the intellectual challenges that modern science offers to revealed religion, there is surely another sense in which Western, ‘scientific’ understandings of kinship relatedness offer milk kinship itself an existential challenge. There is no ready ‘scientific’ reason why one should not be able to marry one’s milk sister. Contemporary Islamic thinkers expend much intellectual energy in attempts to demonstrate the congruence of Quranic statements and scientific propositions, regarding embryology and astronomy, for example. But those whom I asked for an explanation of the ‘logic’ of milk kinship would only reply as Ayatollah Hakim did in the course of my correspondence with him: ‘It is not possible to define the reason for this legislation. One must work with the legal rulings as they arise in the legal texts’. Nevertheless, Shaykh Taha Sabunji, Mufti of North Lebanon, expressed to me in interview the conviction that one day science

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29 Nobody, doctor or religious specialist, has, to my knowledge, considered the question as to whether it is the sperm donor or the husband who is to be considered the ‘originator’ of the woman’s milk here. If it were the husband, then he would be milk-related to the child (following the principle of laban al-fahl, described above).

30 This consideration is also relevant for those Shiite authorities that see all artificial interventions in reproduction illicit. Muhammad Rida Sistani (2004/1425: 411) cites the late Ayatollah Muhsein al-Hakim of Iraq as one such, who further held that no kinship relation is instituted by such techniques. If one were to perform artificial insemination, then the provider of the sperm could in his opinion marry a resulting girl, as a non-relative. If it were a case of artificial insemination by husband, on the other hand, then he could not because the girl would be his rabibah.
would find that there was indeed some bond created by breastfeeding which would explain God’s injunction. I leave the last word to him:

There are religious domains where we cannot see everything. We see the wisdom of the legislation but cannot understand it – it is divine. Human reason can guess: there is an emotional link, and milk helps constitute the child – the flesh and bone. So a part of it is part of the mother. Human milk is special. One day, no doubt, they will discover scientifically a source of nasab in the milk.

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Abstracts

La Modernité de la Parenté de Lait

Dans la loi islamique, l’allaitement instaure un type de relation de parenté (ridā’, parenté de lait). S’il est de moins en moins fréquent, historiquement, au Moyen Orient, ce type de relation permettait de cimenter des réseaux sociaux et politiques complexes. Ma recherche se concentre sur les réactions islamiques au Moyen Orient concernant les nouvelles technologies reproductives telles que la fécondation in vitro: pour les spécialistes religieux musulmans, la parenté de lait offre le moyen d’une réflexion profonde et d’une résolution des dilemmes éthiques posés par l’utilisation d’œufs provenant de donneurs et la pratique des mères porteuses. Du coup, loin de disparaître sous l’effet de la modernité, la parenté de lait persiste en tant que ressource pour la médiation des relations sociales et des défis intellectuels.

Die Modernität der Milchverwandtschaft

Nach islamischem Recht entsteht durch das Stillen eines Kindes eine besondere Verwandtschaftsbeziehung (ridā’, ”milk kinship”), auf der historisch betrachtet im Mittleren Osten komplexe soziale und politische Netzwerke beruhen, die heutzutage jedoch weniger Bedeutung haben als früher. Im Zentrum meiner Forschung stehen Reaktionen im islamischen Mittleren Osten auf neue Fortpflanzungstechnologien, wie die In-Vitro-Befruchtung: Für muslimische religiöse Spezialisten bietet das Konzept der Milchverwandtschaft Möglichkeiten, ethische Dilemmata, die durch die Nutzung von Ei-Spenden und ähnlichen Techniken entstehen, zu durchdenken und zu lösen. Statt in der Moderne zu verschwinden, bleibt das Konzept der Milchverwandtschaft sozial relevant und bietet intellektuelle Denkanstöße.

La Modernidad del Parentezco de Leche

El la ley islámica, el amamantamiento instituye un especie de relación de parentezco (ridā’, parentezco de leche), históricamente un dispositivo de mediación para las complejas redes sociales y políticas en el Medio Oriente, aunque en los tiempos modernos de menor frecuencia. Mi investigación enfoca las reacciones islámicas en el Medio Oriente frente a nuevas tecnologías reproductivas como por ejemplo la fertilización in vitro: para los musulmanes especialistas religiosos el parentezco de leche proporciona una manera de pensar y resolver los dilemas éticos del uso de óvulos donantes y arreglos para el alquiler de úteros. Más que desaparecer con la modernidad, entonces, el parentezco de leche perdura como un recurso de mediación de las relaciones sociales y los desafíos intelectuales.