

## MEDICINE AND JUDAISM — AN OVERVIEW

### Introduction

*Historical antecedents.* In medical ethics two of the Jewish people's most notable contributions to human civilization converge: medicine and ethics. From the beginning Jews have shown a special concern with the healing art. Already the Hebrew Bible includes in its religious legislation some revolutionary concepts of preventive medicine and public health. In the Talmud (the authoritative body of Jewish law and lore composed between ca. 300 B.C.E. and 500 C.E.), among numerous medical references, are found the earliest mention of such innovations as artificial limbs, some of artificial insemination, oral contraceptives, and Caesarean operations on living mothers. Several of the Talmud's authors practiced medicine. They were succeeded by what became in the Middle Ages the common phenomenon of the rabbi-physician. Indeed, it has been estimated that over one-half of the best-known rabbinical scholars and authors in medieval times were physicians by occupation, including such notables as Maimonides (1135-1204), Nachmanides (1195-1270), the Ibn Ezras (1092-1167), the Ibn Tibbons (twelfth and thirteenth centuries), and Immanuel ben Solomon of Rome (ca. 1265-1330). The disproportionate predominance of Jews in medieval medicine was no doubt due in part to their exclusion from other professions, especially in Muslim countries.

These historical antecedents no doubt contributed significantly to the extraordinary predilection among Jews for a medical career in modern times. Only aptitudes conditioned by centuries of nurture could have produced such a disproportionate preoccupation with medicine as enabled Jews to receive some twenty percent of all Nobel prizes for medicine — a proportion more than forty times the ratio of Jews in the world. Likewise many leading medical historians were Jews, ranking authorities like Max Neuburger, Arturo Castiglioni, and Charles Singer.

Paramount throughout this long association between Judaism and medicine has been the emphasis on ethics as their common denominator. Building materials for the ever rising edifice of Jewish medical ethics came from all strata of Jewish religious literature, while the

architects were legal experts who, as already noted, themselves often combined rabbinical and medical experience. The Bible provided the foundations: the sanctity and dignity of human life, the duty to preserve health, an uncompromising opposition to superstition and irrational cures—including faith healing—, a rigid code of dietary restraints and sexual morality, and many basic definitions of moral imperatives in medical practice including the rights of the dead. The significance of the biblical contribution to the development of medical ethics in Western society may be appreciated when it is contrasted with the Code of Hammurabi and other ancient legislations, which provided, for instance, for the amputation of a doctor's arm if he proved unsuccessful in an operation on his patient.

On these biblical foundations, the Talmud established the legal framework in virtually all fields of medical ethics, setting forth the main principles applicable to a wide variety of medico-moral issues, such as abortion, sterilization, contraception, euthanasia, malpractice claims, etc. The Talmud, followed by the great medieval codes of Jewish law, even enacted certain eugenic recommendations against marriages suspected to result in physically or morally defective children. Anyone who has read the famous Oath of Asaph Harofé (sixth century) or the medical writings of other early Jewish contributors to the history of medicine will recognize at once how profoundly the spirit of the Hebrew Bible and the Talmud suffused their ethical outlook. Little wonder that there was never a Jewish form of the Hippocratic Oath, though there were Christian and Muslim as well as pagan versions of it widely in use for centuries. Jews simply fell back on their own ethical heritage enshrined in their religious law.

It was left to the voluminous rabbinical "responsa" accumulated over the past thousand years to interpret these principles in the light of contemporary conditions and in response to new problems created by the advance of medical knowledge and techniques. The Responsa serve as case Law in the evolution of Jewish Law. Now being published annually, notably in Israel and America, are hundreds of such rabbinical Responsa or decisions, usually given in reply to personal inquiries by individual questioners. The latest of these often massive works ranges over the entire gamut of ethical problems in medicine, from transplants to artificial insemination, and from experimentation on humans or animals to autopsies.

*Recent sources and developments.* Despite the rich profusion of literary material scattered over a period in excess of three thousand years of continuous productivity, Jewish medical ethics featured neither in the vocabulary of Jewish literature nor as a distinct rubric within it until quite recently. (The very term "Jewish medical ethics" was first used as a title of a doctoral thesis submitted in 1955 and subsequently of a book first published in 1959 by the present writer.) Previously the large number of religious rulings on medical practice found in the sources of Jewish law were accessible only to Hebrew scholars, and only a few monographs on specialized subjects existed in various periodicals or occasionally as separate publications, written in the vernacular.

In the past two decades this field, seeded by these diverse grains and roots and fertilized by the constantly increasing output of new Responsa, has begun to yield an ever-growing harvest. Stimulated partly by the rising worldwide concern with medicomoral problems and partly by the contemporary search for relevance in the presentation of Jewish values, Jewish medical ethics is now an established and popular discipline of Judaism that begins to command its own experts and literature. The subject is now featured in several books as well as in numerous articles dispersed in a wide range of rabbinical, scientific, professional, and popular journals. Striking testimony to the belated literary "recognition" of Jewish medical ethics is furnished by a comparison between the old Jewish *Encyclopedia*, published in 1901, which contained no entries on the subject at all, and the new *Encyclopaedia Judaica* of 1972, which has fairly extensive entries under abortion, artificial insemination, autopsies, birth control, euthanasia, homosexuality, and transplants. In Jerusalem two institutes are exclusively devoted to various projects of research, publications, and lectures on medicine in Jewish law.

### **General principles**

Jewish law operates and develops on the basis of ancient authority and precedent, founded primarily on the Bible and the Talmud, and ultimately codified as authentic Law in such legal codes as Maimonides' twelfth century *Yad Ha-Hazakah* (The Strong Hand) and Joseph Karo's *Shulhan Arukh* (The Prepared Table). Its subsequent evolution is entirely determined by the opinions expressed in the commentaries on these works and especially in the Responsa issued

to the present day by the leading masters of Jewish law, usually communal rabbis or deans of rabbinical academies of outstanding scholarship. In dealing with new situations and problems, they must invariably relate their decisions to the rulings of earlier authorities, or arrive at them by a process of deduction and logical argumentation from broad principles previously established.

This process is dynamic enough to allow for a certain diversity of interpretation, particularly since the original sources themselves, notably the Talmud, embrace many divergent views that may, within some well-defined limits, all be regarded as authentic. Consequently, on many modern medicomoral issues some more stringent and some more permissive opinions continue to divide leading rabbis, though the basic attitudes are fairly uniform. To give but two examples in anticipation of the details to be presented later: on euthanasia all rulings are agreed in condemning any active hastening of death as homicide, but opinions differ on whether, under certain circumstances, medical treatment may be withdrawn and resuscitation efforts be suspended. Similarly, on abortion, while there is general agreement on requiring the operation to save the mother's life and on forbidding it for purely social or economic reasons, its legality to prevent the birth of defective children is still subject to conflicting verdicts.

Beyond this limited diversity of interpretation, there are differences between Traditional and Progressive Judaism. These differences concern not so much the definition of Jewish law as the degree to which one is to regard its provisions as binding. (This article, while written from an orthodox point of view, broadly reflects the diverse views found in the traditional sources of Jewish law and ethics. On some specific issues Reform and Conservative Jewish opinions may be less definitive and/or more permissive.)

Virtually the entire corpus of Jewish medical ethics owes its countless rulings to certain fundamental principles. The most important among these may be listed as the religious obligation to protect life and health, the absolute sanctity of human life from birth to the definitive establishment of death, the reliance on competent medical opinion and skills, and the dignity of man in death as in life.

*The duty to preserve life and health.* Judaism, like other religious faiths, recognizes the inner conflict between the essentially divine (and therefore providential) character of disease on the one hand,

and on the other hand human efforts to control disease. The Talmud (Berakhot 60a) resolved this conflict by resorting to the "Divine sanction". G'd expressly permitted recourse to doctors in the biblical provision, among the liabilities for the infliction of injuries, that "he shall surely cause him to be healed" (Exodus 21:19). The problem of "flying in the face of Providence" therefore never troubled the rabbis as it for long troubled Christian theologians, whether in opposing the flight from plagues in the Middle Ages or in objecting to the use of chloroform to ease the pangs of childbirth in the nineteenth century. Jewish thinkers regarded the conquest of pain and disease as no less mandatory than the application of water to the thirsty throat or of the plow to the uncultivated soil in man's striving for survival and prosperity, to use an analogy first mentioned by Maimonides.

Indeed, in the words of the *Shulhan Arukh* "The Torah [the law in the first five books of the Bible] gave permission to the physician to heal, moreover, this is a religious precept, and it is included in the category of saving life". Accordingly, a doctor is considered to be fulfilling a religious obligation, and if he withholds his services, "he is deemed as if he were shedding blood" unless a more competent doctor is available. The duty to protect life and health devolves upon others, too. Based on the law "You shall not stand upon your neighbor's blood" (Leviticus 19:16), anyone in a position to rescue another person from any danger to life or limb who refuses to do so, is guilty of a serious offense. Even in respect of one's own body, the law rules emphatically: "It is forbidden to rely on miracles or to endanger one's life." Likewise, any mutilation of the body is strictly prohibited, and the codes list several detailed instructions for the protection of one's life and health. In fact, regulations concerning health must be observed more stringently than ritual laws.

From these principles is derived the general rule that all religious laws are automatically suspended in the face of any risk of life, however remote, the only exceptions being the three cardinal transgressions of idolatry, immorality (i.e. incest and adultery) and murder. Thus the circumstances under which the Sabbath and other laws, including circumcision, are completely suspended in cases of the slightest danger to life or modified for reasons of health, are stipulated in great detail in the codes and commentaries. They insist with every emphasis: "It is a religious precept to desecrate the Sabbath for any person afflicted with an illness which may prove

dangerous; he who is zealous [in such desecration] is praiseworthy, while he who asks [questions] sheds blood" (*Shulhan Arukh*).

*The sanctity of human life.* The sanctity of life has a very special connotation in Jewish law. It regards every human life as absolute and infinite in value. By mathematical definition, infinity can no more be increased by multiplication than it can be reduced by division. Hence, a physically or mentally handicapped life, in whatever state of debility, is worth no less than a full and healthy life. And, by the same token, one person has exactly the same value as a million people.

This reasoning is governed above all by moral considerations, for it is the indispensable foundation for the sanctity and equality of all human life and thus for the moral order itself. The argument is as simple as it is compelling. If a person who has only another hour to live would lose his absolute title to life—presumably because it is all but worthless—it would follow that a patient expected to live for two more hours would enjoy twice this infinitesimal value. As the expectancy of life increases to, say, a week, or a year, or five years, so would its worth appreciate accordingly. Consequently, no two human beings would have the same value. The worth of all would become relative, relative to their expectancy of life, or their state of health, or their usefulness to society, or any other arbitrary criterion.

This would be the thin end of the wedge dividing mankind into people of superior and inferior worth, into those who have a greater and others who have a smaller claim to life. In the Jewish view, there can be no defensible line drawn between the Nazi horror of liquidating so-called inferior members of society by the million and the advocates of euthanasia for individuals who have become "worthless".

Jewish law expresses this cardinal principle in both legal and moral terms. Implicitly following the Talmud (*B. Kamma* 26b), a person who killed a child while falling from a high roof would in principle be guilty of a capital offense like any ordinary murderer, even though he hastened the child's certain death by only a few moments. Or, in the more general formulation of the law by Maimonides: "He who kills, whether [the victim be] a healthy person or a sick person approaching death, or even a patient already in his death-throes, is treated as a capital criminal".

Nowhere is the supreme value of human life more impressively presented than in the stern warning that, according to the Talmud (*Sanhedrin* 4:5), had to be given to witnesses in a capital trial. Admonishing them that they were "answerable for the blood of him [who might be wrongfully condemned if their testimony was unreliable] and the blood of his [potential] offspring to the end of the world", the courts solemnly declared, inter alia: "Therefore was but a single person [originally] created in the world, to teach that if any man has caused a single soul to perish, Scripture imputes it to him as if he caused the whole world to perish; and if any man saves a single life, Scripture imputes it to him as if he saved the whole world."

However much Judaism cares about the mitigation of human pain, often even at the expense of modifying its own most sacred observances, what it cannot do is to purchase relief from suffering at the cost of life itself. Here, as in other cases, affecting priceless public stakes such as national defense or freedom, the individual may be required to subordinate his interests to those of society at large. For any sanction of euthanasia could not but cheapen life generally by making its preservation contingent upon considerations of expediency or relative merit.

By the same token of life's infinite value, the deliberate sacrifice of one human being can never be sanctioned for the purpose of saving another or any number of others. The reasoning given in the Talmud (*Sanhedrin* 74 a) is significant. While the exclusion of idolatry and immorality from the usual rule of suspending all laws when they might conflict with life requires scriptural proof, the unconditional prohibition of bloodshed (except in self-defense or war) is based simply on the "logical argument" of "How do you know that your blood is redder than his?"—that is, what makes your life worth preserving more than another's. Later authorities extend this reasoning also to deny the right of voluntary self-sacrifice for the sake of saving other lives, by reversing the argument: "How do you know that his blood is redder than yours?"

On the strength of the analogy of infinity's being unaffected by multiplication, this principle is then extended to the rescue of any number of lives at the deliberate expense of a single life. To use the Talmud's illustration: if a hundred innocent people were taken hostage and their lives would be spared only if they delivered one

of them to the oppressor for execution, they must not surrender that one life, even if the others would thereby be saved (*Tosefta, Terumat*, 7:23).

These principles clearly affect the rulings on euthanasia, on organ transplants, where these might hasten the donor's demise, and on hazardous experiments on humans, whether with or without the subject's consent.

*The limits of life.* The inviolability of life, founded on the aforementioned considerations, extends from birth to the establishment of death. It is modified in respect to prenatal life.

This exclusion derives from the exegesis of the verse "He that smites a man, so that he dies, shall surely be put to death" (Exodus 21:12), which the rabbis construed to mean "a man, but not a fetus". The same conclusion is also indicated in the only (albeit somewhat indirect) reference to abortion in the Bible: "And if men strive together, and hurt a woman with child, so that her fruit depart, and yet no harm follow, he shall be surely fined... but if any harm follow, then you give life for life" (Exodus 21:22-23). This passage, by a curious twist of literary fortunes, eventually marked the parting of the ways between the Jewish and the Christian rulings on abortion. The Christian tradition, following the *Septuagint* mistranslation of the Hebrew for "no harm follow" by the Greek for "[the child be born] imperfectly formed", distinguished between a formed and an unformed fetus, branding the killing of the former as murder ("life for life"). Since 1588 (by a decree of Pope Sixtus V) the distinction was finally eliminated and the killing of any human fruit from the moment of conception was considered murder. According to the Jewish interpretation, however, if "no harm follows" refers to the mother's survival following her miscarriage. There is then no capital guilt and the attacker is merely liable to pay compensation for the loss of her fruit. "But is any harm follow", i.e. has to "give life for life", and the capital charge of murder exempts him from any monetary liability.

Accordingly, in Jewish law the infinite value of life sets in only from birth, legally defined as the moment when the head or the greater part of the child's body emerges from the birth canal. Until that moment the child enjoys some very sacred rights that may not be violated except on the most urgent medical grounds. But its title



to life is distinctly inferior to that of the mother, so that, in any mortal conflict between them, it is mandatory to destroy the unborn child if there is no other way to save the mother. But it should be added that Judaism recognizes the Catholic position as being compatible with the obligations imposed upon non-Jews by the Noachide code (a Jewish talmudic designation for the seven biblical laws given to Adam and to Noah and binding on all mankind).

*The generation of life.* The Jewish attitude toward moral problems raised in the generation of life stems above all from the positive precept of procreation. In the absence of any valid medical indications, procedures like abortion, sterilization, and contraception do, to be sure, constitute intrinsically immoral practices. But the objection to them is rooted less in their destruction of potential life per se, or in their defiance of the "natural law" (as held in Christian thought)—which can be quite legitimate, e.g. in acts of healing—than in the deliberate refusal to participate with the Creator in the propagation of the race.

Judaism lists the duty to "be fruitful and multiply" as the first of its 613 biblical commandments (Genesis 1:28). The Jewish code of law, *Shulhan Arukh*, opens the code on marital legislation: "Every man is obliged to marry a woman in order to be fruitful and to multiply, and whoever does not engage in procreation is as if he shed blood, he reduces the Divine image and causes the Presence of G'd to depart from Israel." Technically, the commandment is fulfilled by having at least a son and a daughter, i.e. by perpetuating life through the reproduction of those responsible for one's own birth. In the Jewish view, therefore, it is an offense (or a transgression of a "positive precept") to abstain from marriage, or from conjugal intercourse within marriage, no less than to prevent or interrupt pregnancies.

This approach is reflected in the peculiar slants and omissions of the relevant biblical legislative text. While the injunction to propagate the race is specific and explicit, references to interfering with the generation of life are only of the vaguest kind. Abortion, as already noted, is not expressly mentioned at all, though it was widely practiced in ancient times. Birth control, also not unknown in antiquity, occurs only incidentally in the condemnation of Onan for refusing to consummate the levirate bond in succession to his deceased brother by resorting to *coitus interruptus* (Genesis 38:9-10). Some-

what more explicit, but still rather indirect, is the prohibition of sterilization, or rather castration; but even this is forbidden only in the context of banning animals so maimed from serving as sacrifices on the altar (Leviticus 22:24).

Except in carefully defined cases, the Jewish tradition has always regarded these acts as strictly proscribed by biblical law. On sterilization in particular, Judaism pioneered a religious attitude otherwise unknown until millennia later. The Hebrews were the only nation of Antiquity to ban the emasculation of men and animals alike—a ban not endorsed by Buddha, Confucius, Jesus, or Muhammad. One recalls the widespread use of eunuchs in ancient courts and the early Christian self-emasculation “for the sake of holiness”, followed until the later Middle Ages by the practice of castrating children in order to preserve their soprano voices as church choristers. By contrast, the Law of Moses excluded a man who “has his stones crushed” from the Temple service (Leviticus 21:20) and him “that is crushed or maimed in his privy parts” from “entering into the congregation of the Lord” (Deuteronomy 23:2), that is, from Jewish marriage.

According to later sources, these operations may be performed only for pressing health reasons. On birth control, for instance, the Talmud (*Yevamot* 12b) permits (or requires, according to one view) the use of a contraceptive tampon by minor, pregnant, or lactating women to prevent any danger to their own or their offspring’s life that might result from a conception under those circumstances.

The law proscribes sexual relations among spouses in times of famine, but not on economic grounds. The restriction—from which childless couples are in any case exempted—is meant simply to curb pleasures and comforts equally forbidden on days of national or private mourning. More characteristic of the spirit, if not the letter, of Jewish law is the story related in a famous thirteenth-century moralistic work: A poor person complained that he could not afford to support any more children and he asked a sage for permission to prevent his wife from becoming pregnant again. Said the sage: “When a child is born, the Holy One, blessed be He, provides the milk beforehand in the mother’s breast; therefore do not worry!” But the man continued to fret. Then a son was born to him. After a while the child became ill and the father turned to the sage: “Pray for my son that he shall live!” “To you applies the verse,” exclaimed the

sage, "Suffer not thy mouth to bring thy flesh into guilt" (Ecclesiastes 5:5).

Even less relevant in a Jewish context is the fear of "population explosion". For many overpopulated and underdeveloped countries this fear may be realistic enough. Where human lives are in jeopardy, the moral sensibilities of Judaism, applying the general rule of placing life above law, would in any case not be unsympathetic to certain population control measures designed to counter any threat of widespread starvation. Moreover, most rabbinic authorities doubt if the precept to "be fruitful and multiply" is altogether incumbent on the "Sons of Noah", i.e. on non-Jews. The precept, it should also be noted, followed as it is by the command "and fill the earth and conquer it" (Genesis 1:28), is expressly linked with man's conquest of nature; only by harnessing the world's resources can man fulfil the first part of the verse.

But the specter of "population explosion" would hardly haunt a people that for most of its history has been threatened with annihilation and is currently agitated by acute "population shrinkage". To Jews, suffering from a gross imbalance between a disproportionately low natural increase and an alarmingly high artificial decrease through drift, assimilation, and intermarriage, a restrictive attitude to birth control and abortion is of vital demographic as well as moral concern to assure continued physical no less than spiritual survival.

A further cardinal principle governing the rules of Jewish law on the generation of life is the strict limitation of the right and duty of procreation, and indeed of sexual intimacies, to personal relations sanctified by marriage. Any pre- or extramarital sexual adventures are utterly abhorrent to Judaism, as a betrayal of a divine trust, a debasement of human dignity, a surrender to self-indulgence, and an erosion of the family bond as the basic unit of society. The free availability of contraceptives and abortions, particularly before or outside marriage, would also remove the most powerful deterrent to promiscuity.

A similar distinction between the purely legal and wider moral concerns is applied to artificial insemination. Anticipating by about seventeen centuries the first baby so conceived, born in 1866 ("Symposium", p. 227), the Talmud (*Hagigah* 15a) considered the feasibility of an artificial (albeit accidental) impregnation, concluding that a virgin would not lose her status if she had become pregnant by

bathing in water previously fertilized by a male. Based on this passage, most modern Responsa hold that a married woman's conception *sine concubito*, even if the sperm donor were a close relative, does not constitute adultery or incest. Yet, despite this leniency, and however great the benefits in individual cases, the numerous rabbinical verdicts of recent years are virtually unanimous in utterly condemning the practice as incompatible with the sanctity of marriage and undermining the moral fabric of society. Judaism, they aver, recoils from reducing human generation to stud-farming methods, leading to a mechanization of life whereby a father is replaced by test tubes and syringes, and his responsibility to care for his natural offspring by a payment for the sample he supplied, and whereby the decision on who is to sire a mother's child is left to the arbitrary whims of a doctor, a laboratory technician, or a computer. Equally repugnant is the essentially clandestine character of the operation, without any proper records or other safeguards, which conceals the donor's identity and deceives the public by a fraudulent entry in the child's birth certificate. This in turn deprives such children of the inalienable right to a father and other relatives who can be identified, and exposes them to the risk of incestuous marriages among siblings, whose paternity, unknown to each other, is identical. None of these objections apply, of course, to insemination from the husband.

Underlying the often highly technical discussions on the subject is the fundamental recognition of man's incomparable dignity. As the delicately balanced fusion of body, mind, and soul, created in the image of their Creator, humans must be generated out of the intimate love joining husband and wife together, out of identifiable parents who care for their progeny, and out of a home that provides affectionate warmth and compassion.

*The conclusion of life.* The inalienable rights conferred on man by his Creator extend to and beyond his death. Indeed, in the Jewish scale of values, rights figure in death even more prominently than in life. While a person lives, the emphasis is on the obligations he owes to others rather than on the privileges he may claim. The moral imperatives of the Bible are enshrined in Ten Commandments—or, for the conscientious Jew, in 613 positive and negative precepts—not in a Bill of Rights. The dead, on the other hand, “are free from any religious duties” (*Niddah* 61b). In life, man's ineluctable assignment

is work and struggle: "for man is born unto toil" (Job 5:7). In death, the key-word is peace: "for the latter end of man is peace" (Psalms 37:37).

Jewish ethics therefore rank as the noblest form of charity "loving-kindness of truth" in the language of the rabbis—services rendered to those who can no longer fend for themselves including the utmost consideration for the dignity of the dying.

Their ordeal usually poses an ethical dilemma to which Judaism is particularly sensible. All too often there is a tragic conflict between the sanctity of life and the relief of human suffering, especially in the terminal stage of life. While, as has been explained, in any direct confrontation between the two life must prevail because of its supreme and absolute value, the anxiety to mitigate pain and misery nevertheless invokes the most far-reaching concessions, short only of an actual attack on life itself.

The leading principles that determine the relevant rules of Jewish law can be illustrated by two examples.

Although the term "euthanasia" to denote "the action of inducing gentle and easy death" was first used by the British moral historian William E.H. Lecky only in 1869 and is now applied to a practice severely condemned in Jewish law, the term itself is by no means alien to students of the Talmud. In fact, the precise Hebrew equivalent ("mīthah yafah") for the Greek "euthanatos" is used to demand efforts to ensure an "easy [literally: pleasant] death" even for capital criminals. Thus, in the hypothetical case of a death sentence (in practice capital punishment had been abolished), the Talmud interprets the precept "love your neighbour as yourself" (Leviticus 19:18) to mean "chose an easy death for him", for instance, by ensuring the swiftest possible form of execution and by drugging the convict with an intoxicating drink beforehand (*Sanhedrin* 43a, 45a, 52b). This extreme concern to remove all avoidable pain from the agony of death even when judicially imposed on the most heinous offenders applies, of course, a fortiori to innocent sufferers as they approach the end.

A medical illustration of this principle occurs in the story of the Syrian king Ben Hadad, whose messenger Hazael, sent to inquire from the prophet Elisha whether the king would survive his sickness, was told: "Go, say unto him 'you shall surely recover': howbeit the Lord has shown me that he shall surely die" (2 Kings 8:10). Jewish ethics in some respects regards peace as an even greater virtue than

truth; hence it rates the patient's peace of mind higher than the doctor's truthfulness if this might undermine the patient's hope or mental tranquility.

Once death has set in, the mortal remains must be "returned to the earth as it was" (Ecclesiastes 12:7) by interment with the minimum delay. Significantly, the right of the dead to speedy burial and to respectful treatment generally are again explicitly stated only in regard to capital criminals; even the most depraved humans are created in the divine image and deserving of reverence in death (Deuteronomy 21:23). It is only from this biblical reference that the Talmud derives the strict laws against "disgracing the dead" in general, by undue exposure, unwarranted exhumation, and especially incisions or disfigurement of any kind.

Another category of bodies enjoying the special protection of the law, again because they are more defenseless than others, is that of persons who die without leaving any family to care for their funerals. The obligation of burial then devolves on any Jew, including the High Priest, who otherwise must not defile himself by contact with the dead even for his own father or mother (Leviticus 21:11).

These provisions are in striking contrast to the attitude of modern civil legislation (such as the English Warburton Anatomy Act of 1832) which remove any legal protection against dissection from bodies of executed prisoners and of "unclaimed persons", treating such bodies as *res nullus* (i.e. an impersonal ownerless object).

Altogether, Jewish law regards the human body as divine property and therefore as inviolable. Its custody and care are the responsibility of the person himself in his lifetime, and after death of his next of kin or, in their absence, of the community at large. Neither the state nor any other agency can ever claim the right of possession of a human body.

These considerations explain the restrictive Jewish attitude to autopsies and anatomical dissection as well as to the utilization of cadaver tissue for organ transplants. The Talmud mentions some anatomical experiments, though never in a medical context. The problem of using bodies for teaching and research purposes was first raised by a Jewish medical student at the University of Goettingen (Germany) in 1737, but it was not until several decades later that Rabbi Ezekiel Landau of Prague, the leading rabbinical scholar of his time, in a celebrated Responsum, laid down the guidelines that inform

the Jewish religious view on autopsies to the present day. While affirming the strict law against "disgracing the dead" by any violation of the corpse's integrity, he held that this law, like any other, was superseded by the saving of life. Hence, a postmortem could be sanctioned only if another patient with similar symptoms was "at hand" who might directly benefit from the findings of the operation.

Several later authorities extended the sanction to the bodies of persons who had freely given their consent in their lifetime. Some other limited extensions were also gradually added. But the hiatus between the doctors' ever-growing demand for bodies to meet research needs and the rabbis' fierce determination to defend the rights of the dead, remained wide enough to engender much bitterness. In Israel, in the continued absence of any legal requirement of family consent for autopsies, this conflict occasionally led to street riots and cabinet crises, as it prevented the Hebrew University, founded in 1925, from establishing a medical school until 1948.

### **Summary of ethical directives**

#### **General**

*Sick visitation.* Judaism ranks the visitation of the sick among the finest expressions of true charity and the *imitatio Dei* ideal, as G'd himself, in the imagery of the rabbis, visited Abraham following his circumcision (Genesis 18:1). The *Shulhan Arukh* devotes an entire chapter to detailed instructions on this precept. The principal object includes the caller's being moved to pray for the patient's recovery and rendering any service required for his comfort. The duty devolves on all, even the great must visit their juniors. Hence, the functions of the local sick-visitation societies, which were very active in Jewish communities since the Middle Ages, were performed mainly by lay people. Rabbis merely contributed their share like others.

The sick enjoy a special claim to private and public assistance. Contributions toward their needs take precedence even over the erection of a synagogue, and it is morally indefensible to refuse such aid.

*The physician.* The physician's duties, rights, and liabilities are also regulated in considerable detail. Since he is engaged in the supreme service of the life and health of others, Jewish law treats the physician as a quasi-religious official. For instance, the *Shulhan Arukh* bars

doctors—like rabbis before the professionalization of the rabbinate in the Middle Ages—from accepting payment except “for loss of time and for the trouble taken”, since religious duties are to be performed gratuitously. Yet the patient is liable to honor any prior agreement even if it stipulated an excessive fee, since the physician “sold him his expert knowledge which is beyond price”. On the other hand, the charges of apothecaries are more strictly controlled: the price of drugs must not be raised above their proper level, and an agreement enacted in an emergency to pay an extortionate charge need not afterwards be kept.

Also like rabbis, physicians are exempt from liability for damages caused by errors of judgement, provided they were duly licensed (in talmudic times, by the ecclesiastical courts). This was enacted “for the social order”; for although ordinarily a person is always liable to payment of damages even if caused unwittingly, an exception is made in this case “so that doctors will be found to heal”.

In Jewish sources professional secrecy was never enjoined on physicians with the zeal with which it is now guarded by the medical fraternity under the influence of the Hippocratic Oath. It was covered simply by the general injunctions against any kind of gossip: “You shall not go . . . as a talebearer” (Leviticus 19:16) and “reveal not the secret of another” (Proverbs 25:9). In fact, confidentiality should be disregarded when the public or some other overriding interest is at stake, such as in cases of medical evidence in court actions to secure justice for another party, or to prevent the deliberate concealment of a hereditary defect in matrimonial arrangements.

Jewish law raises no objection to the treatment of women by males. But it urges the utmost chastity to avoid any lewdness in thought or deed. Patients, however, should not be subjected by their own children to any act that causes a loss of blood (including injections) except in emergencies when no one else is available.

*Consent, risky operations, and experiments.* Since one may endanger one's life no more than anyone else's, Jewish law requires no consent for operations deemed essential by competent medical opinion.

Any chance to save life, however remote, must be pursued at all costs. Hence, untried cures and even possibly fatal operations may be sanctioned (with the informed consent of the patient) in a desperate



gamble to save or prolong life, if no safe treatment is available. But since one may never sacrifice one's own or any other person's life however many lives might thereby be saved, possibly hazardous experiments must not be carried out except on sick subjects who would themselves be the beneficiaries if the experiment succeeded. Some authorities, however, permit a person to expose himself to an uncertain risk of life in an effort to save another from certain death; but this is an act of charity, not of obligation. On the other hand, the duty to volunteer for experiments that involve no risk of life or health devolves on anyone who may thereby directly promote the health interests of others, and it may not be unethical to perform such tests even without the subject's consent, provided they are in fact completely harmless.

Tests of new medications and surgical procedures should first be performed on animals, but every care must be taken to protect them from avoidable pain.

### **Surgery**

*Organ transplants.* There is no firm objection to organ transplants and to the utilization of cadaver tissue, provided 1) this is done for life-saving purposes; 2) the death of the donor has been definitely established; and 3) the anticipated benefit to the recipient is substantially greater than the risk.

Included in this sanction, according to most authorities, are corneal grafts, since the restoration or preservation of eyesight is to be regarded as a life-saving act (as blind people may more easily be liable to fatal accidents). Hence, some require that a donor should stipulate in his bequest that his eyes be used only for patients suffering from, or threatened with, complete blindness, but others waive this condition. In any event, the prior consent of the donor or his family should be obtained, and the unused part of the eye after the removal of the cornea should not be disposed of except by burial.

Similarly, kidney transplants, because of their relatively high success rate, have generally been permitted. The prevailing rabbinic view on kidney donations from living donors, too, is permissive, though such donations are to be regarded as acts of supreme charity, not as an obligation.

But the fairly numerous Responsa on heart transplants show a good deal more hesitation and disquiet. In view of the very high rate

of failures leading to the death of most recipients, compounded by grave doubts as to whether the donors were in fact truly (not just "clinically") dead when the vital organ was excised, several rabbis have condemned the operation as "double murder". The whole procedure is clearly still in an early experimental stage, and the risks involved cannot be justified as long as it is carried out for general research purposes rather than for the primary objective of saving the life of the patient at hand. On the definition of death and the right to stop resuscitation efforts, see below.

*Cosmetic surgery.* There are four possible counterindications to plastic surgery for cosmetic ends: the theological implication of "defying Providence"; the possible risks involved in any operation; the objection to any mutilation of the body; and the ethical censure of human vanity, especially among males. In the sparse rabbinic writings on the subject, these reservations could be discounted, provided the danger is minimal; and especially 1) if the operation is medically indicated, e.g. following an accident, or for grave psychological reasons; 2) if the correction of the deformity is designed to facilitate or maintain a happy marriage; or 3) if it will enable a person to play a constructive role in society and to earn a decent livelihood.

## **THE BEGINNINGS OF LIFE**

*Artificial Insemination.* Artificial insemination from the husband is generally permitted, as is semen sampling for fertility tests, if deemed necessary to promote the prospects of a conception within marriage. But the semen should preferably be obtained through normal intercourse.

But for the reasons already given, Jewish jurists object strongly to donor insemination, counseling adoption instead. Nevertheless, most authorities do not regard artificial insemination by donor (AID) as constituting an adulterous relationship or a child so conceived as suffering the serious disabilities of bastardy, though some marriage restrictions may apply, since the true father is unknown. The mutual legal bonds and obligations between him and his child—whether in matters of care, incest, or inheritance—cannot be revoked or transferred.

*Contraception and sterilization.* The voluminous literature on contraception and sterilization can hardly be summarized in a few lines. All the sources insist that in these capital judgements, literally determining whether a life is "to be or not to be", every case must be judged individually on its merits by rabbinical experts based on the most competent medical opinion.

While the current views among leading rabbis are by no means uniform, they broadly agree that contraceptive precautions should be taken only on medical grounds. Where the danger resulting from a pregnancy is not acute, sanction for certain types of contraceptive devices will more readily be given for a limited period, usually of two years, and if the precept of procreation (i.e., the birth of a son and a daughter) has already been fulfilled.

In a recent volume of Responsa, the various methods of birth control have been graded, from the most to the least favored, according to their degree of direct interference with the generative act and organs, as follows: 1) oral contraceptives ("the pill") and intra-uterine devices (IUD), provided they do not have an abortifacient effect, to be used so long as there is some sound medical indication; 2) female sterilization, if the danger of a pregnancy is permanent; 3) postcoital removal of semen by tampon or douche; 4) cervical rubber cap to close the mouth of the uterus; 5) spermicides; 6) tampon or diaphragm inserted before coitus; 7) IUD, if the effect is to abort the impregnated egg; and 8) male condom, to be used only in extreme cases of acute danger and if other means are unavailable or unacceptable. The "safe period" method is always legitimate, but Jewish law would counsel a divorce rather than permanent abstention, since it regards the regular payment of the conjugal dues as mandatory in every marriage.

The sterilization of males is a more serious offense than of females; it is never permitted except if urgently necessary as a therapeutic measure. According to some authorities, therefore, prostectomies should avoid severing the seminal ducts, if at all possible.

*Abortion.* Generally the view prevails limiting the sanction to cases involving a hazard to the life of the mother, whether physical or psychological (e.g., by violence or suicide). While some rabbis brand the destruction of a fetus under any circumstances as "an appurtenance to murder", others have recently extended the sanction

to 1) mothers whose health is seriously at risk; 2) substantial fears that the child may be born with grave defects; and 3) cases of rape or incest. But such pregnancies should be terminated preferably within the first forty days or at least within the first three months.

## **THE END OF LIFE**

*Preparation for death.* The predominantly "this-worldly" character of Judaism is reflected in the relative sparsity of regulations on the inevitable passage from life to death and in the absence of any sacramental rites. The concern for the patient's physical and mental welfare remains supreme to the end, and every caution is urged to ensure that nothing shall aggravate his condition or compromise his will or ability to live. He should never be informed that his affliction is terminal, unless one can reasonably assume that such information will come as a relief rather than as a shock to him.

If he is aware of his condition, he should be encouraged to order his temporal affairs and to recite his confession before G'd, but even then he should be reassured: "Words can cause neither life nor death". However, if he suffers undue pain, analgesics may be administered, even if by inducing sleep or unconsciousness they deprive him of the opportunity to make these preparations or even if there is some risk of thereby unwittingly hastening the end, so long as this is done genuinely for the sole purpose of rendering him insensitive to acute pain.

Once death is believed to be imminent, any movement of the body or parts of it should be avoided. For "the matter can be compared with a flickering flame: as soon as one touches it, the light is extinguished." But one is permitted to "remove an impediment" to death, e.g., by stopping a clattering noise near the patient that delays his demise. No preparations for burial or mourning should be made before death has set in. Indeed, until then the patient is deemed 'a living person in all respects'.

*Resuscitation and the definition of death.* The classic talmudic definition of death, i.e., the definite cessation of breathing and pulsation, remains essentially valid for most practical purposes. Such criteria as 'clinical death', irreversible brain damage, or a flat EEG reading cannot be recognized in Jewish law, not merely because the

diagnosis may be mistaken, but because any fraction of life, in whatever state of animation, is still infinite in value. Even after all signs of life have disappeared, especially in cases of sudden death, a period of twenty to thirty minutes should elapse before treating the patient as dead, "lest he was merely in a swoon".

However, in view of modern resuscitation methods, which can restore respiration to eighty percent of unconscious patients, this definition now requires some modification, and death must not be presumed, even after the heart and lung action have stopped, so long as there is any hope of revival. Hence, resuscitation efforts must not be left untried, nor may any incision be made on the body (for autopsies or the removal of an organ) until both criteria are satisfied: the complete stoppage of all spontaneous life functions, and the certainty that artificial revival will prove unavailing. There may be conditions (see below) under which artificial respiration may be suspended in hopeless cases. But whether and when to apply or withdraw a respirator must be determined by the interest of the patient himself, not by the concern to obtain a viable organ for transplant purposes, since it would be wrong to manipulate one life for the sake of another.

*Euthanasia.* Euthanasia proper is opposed without qualification in Jewish law. It condemns any active or deliberate hastening of death as sheer murder, whether the physician acts with or without the patient's consent. Judaism rates suicide as even worse than murder in some respects, since there can be no atonement by repentance for self-destruction.

On "passive euthanasia" in the final phase of lingering life, however, contemporary rabbinic views diverge. Some will not allow any relaxation of efforts, however artificial and ultimately hopeless, to prolong life. But others do not require the physician to resort to "heroic methods": they sanction the removal of medication or machines that serve only to draw out the dying patient's agony, provided no natural means of subsistence (e.g. food) are withdrawn.

*Autopsies and dissection.* Upon death, the bodies of Jews, following purification by ritual washing, must be buried with the minimum delay. Their integrity must not be violated in any way, whether by incisions, embalming, or cremation. Some authorities permit the

use of the body for anatomical research and study, if the deceased expressly so directed in his lifetime, thus renouncing the honor due to him. But most make an exception only for autopsise required to save life, with the additional safeguard of family consent and rabbinical sanction being obtained. While no blanket permission for indiscriminate postmortem examinations can therefore be given, it is usually granted when there is some reasonable prospect that the findings may help to save another existing patient's life, especially if the course of death was completely obscure or due to suspected hereditary traits. Recently it has been suggested to broaden the sanction to include controlled tests of new medications and cases of suspicion that mistakes occurred in the diagnosis or treatment. But any permission would be subject to reducing the operation to a minimum, performing it with the greatest dispatch and utmost reverence, and returning all parts of the body for burial.