

Some Modern Responsa* on Fertility, Infertility & Abortion

Lord Immanuel Jakobovits

Experimentation on Embryos

Selections from my submission were published in The Times. Among the many letters warmly applauding my stand was a particularly enthusiastic one from the Master of the Guild of Catholic Doctors.

But it took exception to my less-than-absolute condemnation on experiments on embryos. I had stated: “Of far graver consequence (than the recommendation approving experiments on in vitro embryos under certain conditions) are the recommendations which would legalize and encourage disregard for the sanctity of marriage as the sole legitimate agency for the procreation of human life...” This seemed to conflict with my assertion later in the article: “In the Jewish scale of values, every innocent human life is of infinite worth. Infinity cannot be multiplied. Hence, one human being is worth no more and no less than a million others, and we are never more justified in sacrificing a single life on the altar of science, even with the prospect that we might thereby save millions in the future.”

I replied to this challenge as follows:

When I put the disregard for the sanctity of marriage as of “far graver consequence” than the experimentation on embryos at the earliest stage, I based this statement on two considerations. In the Jewish view, an embryo does not yet have the full human status of an existing person, so that its destruction, while a heinous offence except to prevent a grave hazard to the mother, is not deemed an act of murder...

But more importantly, experimentation on embryos, whatever the technical offense involved, can hardly compare to the impact on

* See Introduction by Lord Jakobovitz, *Jewish Medical Ethics* vol. I, p. 77, The Schlesinger Institute, Jerusalem 2004.

the moral standards and social stability of society at large resulting from legislation which would undermine the sanctity of all marriages by sanctioning third-party intrusion and public deception, as explained in my submission. The damage already done by the weakening of marital bonds, and the resultant toll of misery and crime, is, I believe, appreciably more widespread and more devastating than the moral erosion which would be caused by experimentation on embryos. I am not here comparing the immorality of the respective acts, but their social effects.

This correspondence was followed by further exchanges, in which I responded to the charge that treating any living being as "subhuman" would lead to the Nazi justification of the Holocaust, by arguing that in Jewish law, as derived from biblical injunctions, we regard the embryo as "prehuman," but certainly not as "subhuman."

Birth Control for Newlyweds

Pursuant to any enquiry from a medical consultant, the Jewish Marriage Council asked about the use of contraceptive precautions for several months following marriage until an inoculation could take effect to prevent the birth of an abnormal child in the event of German measles being contracted early during pregnancy. (The chances of an abnormal birth vary considerably. It is now possible to detect an affected embryo by an amniotic fluid test during pregnancy. Some rabbinic authorities, against the view of others, are inclined to permit an abortion once the test has revealed a definite abnormality, particularly if the mental health of the mother may otherwise be seriously affected.)

I answered as follows:

... clearly no blanket permission can be given for newlywed couples to practice birth control for the first six months simply because the wife has had neither rubella nor an inoculation against it.

Where medical or psychological indications so dictate, it would be easier to contemplate an amniocentesis test in the event of pregnancy than simply to defer the raising of a family on such an indiscriminate basis on what are bound to be rather remote fears (which to some extent affect every pregnancy, whatever the circumstances).

Hence, it would certainly be improper to give an impersonal permissive ruling of such a sweeping nature. But individual couples who are seriously agitated over the risk should by all means be

advised to consult a competent Rabbi on the strength of whatever medical advice they receive.

Down's Syndrome Infanticide Acquittal

This celebrated case, which aroused much public debate, prompted me to issue a statement which was publicized in part in The Times and in full in The Jewish Chronicle. In explaining the Jewish attitude, I had argued, inter alia, that "the tragedy of a defective child may open up otherwise inaccessible resources of selfless love and other spiritual virtues and a supreme objective value of a cruelly afflicted may well lie in the refining influence such as a life exercises on those charged tenderly to protect it." This elicited various responses drawn from personal experience, some wholeheartedly in agreement and others highly critical. An irate doctor altogether questioned my right to interfere with the prerogatives of his profession and strongly disputed other assertions I had made.

I answered him:

I am with you in principle when you dispute my right, as a Rabbi, "to tell doctors what their functions and duties should be when caring for their patients." But where surely religion has a right and a duty to speak up is when there is a public debate not on caring for patients but on killing them (or deliberately causing them to die). This clearly is a moral rather than a purely medical issue, and religious leaders would betray their faith – especially a pioneer of the moral law as acutely concerned with the sanctity of life as Judaism – if they abdicated their responsibility to proclaim and explain their teachings.

Of course I recognize that doctors are "human beings with minds and feelings," but that does not necessarily qualify them as moral experts to decide who is to live or to die, which is a purely moral issue. As for your claim that the medical practice which I am counseling is "bad medical practice," I can only tell you that I know of numerous doctors of the highest repute and distinction who strictly abide by the rules of Jewish ethics as I try to present them. As for your question on relieving suffering in a terminally ill patient with drugs which may possibly shorten life, Jewish law does view this sympathetically and with compassion, provided the drug is not calculated to induce death but simply to relieve pain, even if this may unintentionally have fatal results.

No, I do not advocate “some official medical Sanhedrin.” These grave life-and-death judgments cannot be made by some blanket ruling, however eminent the tribunal. Each situation must be individually judged on its merits, and all I urged was that completely disinterested judicial and/or moral experts be consulted in reaching such capital verdicts, at least for such doctors and patients as wish to be guided by the moral dictates of their faith.

Finally, you inform me, having practiced medicine for forty years, you have looked on a great deal of suffering. I can assure you that as a practicing Rabbi for exactly the same period, I too have witnessed much suffering, whether in hospital wards, institutions for the severely handicapped (which I have visited all too frequently) or in broken homes and broken spirits revealed in the privacy of my office and home. It is out of these constant encounters with suffering, often of the most acute nature, that I can testify that there are people who are ennobled by the ordeal, though I readily grant that there are others who are degraded by it. I too seek to pursue “a noble art,” and in this capacity it is my duty and my privilege to search out and enhance what is noble in man. Moreover, I believe I am heir and spokesman of a religious tradition which has not acquitted itself too badly in promoting nobility of spirit and compassion of heart over the ages.

Another critical letter came from a mother in Switzerland, herself stricken with a seriously handicapped child.

I wrote her:

Your letter touched me deeply, and I wish I could offer you more than mere words of sympathy and understanding.

Let me concede at once that I know your sentiments are shared by many others in similar circumstances. But by the same token, you must believe me when I assert that many parents have told me they have found “sublime happiness being generated out of the ordeal of caring for an incapacitated child.” Indeed, the correspondence columns of our national press, lately filled with letters on this subject, also affirmed numerous personal examples of such ennoblement of life, though admittedly others dispute this.

Hence, I think I was justified in stating as a fact that such tragedies *may* open up otherwise inaccessible resources of spiritual virtues. I obviously did not compose my carefully worded statement

for readers who, as you write, “may well overlook the all-important little word *may*.”

More importantly, my charge as a Rabbi, in an intense public debate on a profoundly moral issue of the most acute concern to Judaism, is to present Jewish teachings as I find them, and then to explain them as best as I can ...

What distressed me most in your letter was your bitterness in the face of the indifference of the community of which you write. It was precisely in answer to your plea that I should “appeal for understanding, acceptance of the way of God, kindness and unprejudiced help for the families concerned,” that I insisted on “the duty of society to provide financial or institutional help” where this was needed, adding the words which I hoped would bring comfort to those affected: “Where there is life, there may not always be hope; but there is always the spark of a uniquely precious soul radiating warmth and compassion by its very existence.”

But realizing now how my words may be misread, “overlooked” or otherwise create a false impression of my true feelings, I will certainly bear your comments in mind in any future public reference to this immensely tragic subject, and I thank you for communicating your perfectly justified sensitivities to me. The last thing I would want to do is to add pain instead of providing some balm of comfort. It is this balm which, I assure you, I wish to extend to you and your family from the depths of my heart.

Abortion after Rape

Following a speaking tour in America earlier in the year, which included lectures on Jewish medical ethics at a leading Jewish hospital in Los Angeles and at a Massachusetts Institute of Technology in Boston, some professional member of the large audiences addressed several specific enquiries to me. One was on the attitude to abortion in cases of rape.

I replied:

On your question regarding abortion after rape, you will find some references in my book *Jewish Medical Ethics* on differences of opinion in rabbinic responsa going back to Rabbi Yaakov Emden (who dealt permissively with a *mamzer* conception some two hundred years ago). Present views still differ, though several leading authorities incline towards a lenient verdict, particularly when the mental health of the mother might be seriously affected.

Also a consideration in favor of an abortion would be a rape committed on a married woman or involving other forms of capital immorality (i.e. adultery or incest). What I have written is for your general guidance. It should under no circumstances be used for practical decisions on such life-and-death issues without consulting a competent Rabbi on the precise circumstances in each individual case.

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