The Bioethics of Responsa: The Writings of Rabbi Moshe Feinstein

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The field of Jewish medical ethics has traditionally been thought to have begun with the publication of the seminal work of the same name by Lord Rabbi Immnanuel Jakobovits.[1] But in reality Jewish scholars for centuries have been debating and analyzing complex bioethical dilemmas through the use of responsa literature. Responsa are answers to queries addressed to rabbinic authorities on all aspects of Jewish law. Many authors use them not only to answer the specific questions raised, but as forums for explaining the reasons behind the decisions and for detailed explorations of the issues. Even though many responsa allude to universal ethical principles, they differ in many ways from essays found in contemporary bioethical discourse. They are meant to answer a specific question, and in a sense are more akin to a written clinical ethics consultation. The method of analysis also differs sharply. Traditional Jewish ethics develops its principles from cases found primarily in the Talmud and relies heavily on legal precedent. The development of ethical theory is not a primary focus of this literature and the vocabulary is not one of ethics or philosophy. The reponsa are meant to be studied, debated, perhaps refuted or used as precedent by subsequent scholars. In the words of one "I have recorded the reasoning for my rulings so that everyone may review my rationale. In doing so I assume the role of teacher rather than that of *posek*… Other Torah scholars can analyze my reasoning and decide whether they concur with my opinions… I ask all who study my rulings likewise to critically analyze my writings."[2]

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[1] Jakobovits I., *Jewish Medical Ethics*, New York: Bloch Publishing, 1959.
[2] Tendler M.D., *Responsa of Rabbi Moshe Feinstein*, New York: Ktav, 1996, pp. 31-32.

Notwithstanding the above, a close reading of the responsa can shed light on the author's opinions regarding the major theoretical controversies of contemporary bioethical discourse. Rabbi Moshe Feinstein, the leading Jewish *halachic* authority of the last century, has in his responsa addressed questions relating to artificial insemination, transplantation and brain death and was well aware of the conceptual basis of modern bioethics. The purpose of this essay is to elucidate Rabbi Feinstein's approach to the major dilemmas in bioethics through a close reading of his classic responsa on the care of the critically ill patient, which have been translated into English by his son-in-law and student Rabbi Dr. Moshe Tendler.

One of the fundamental principles of modern bioethics is the concept of patient autonomy and informed consent. Based on the theory of natural human rights, autonomy serves as the basis of the Helsinki ethical code, and also as one of the cardinal principles of the physician charter on medical professionalism which has been accepted by over 90 medical societies worldwide.[3] Rabbi Feinstein reacts to these ideas in his responsa.

In response to two questions posed to him Rabbi Feinstein rules that the patients' decision is paramount. The first question refers to a case where a patient is terminally ill, but then acquires a second illness for which there is a cure. Should he be treated for the second illness? He rules that this is a decision the patient must make.[4] The second case is where there is a great risk associated with trying to obtain a cure. For example, undergoing dangerous surgery. He answers that "patient autonomy is significant in a case where there is great risk, and physicians are hesitant as to whether a specific treatment modality should or should not be attempted."[5]

Apparently, the theoretical basis for these rulings is based on three principles. Rabbi Feinstein, like other Jewish authorities, is of the opinion that there are times where physicians may coerce patients to accept treatment. For example, one may force-feed a patient on a hunger strike.[6] Simply put, in Jewish law beneficence

3 Medical professionalism in the new millennium: a physician charter, *Annals of Internal Medicine* 2002;136:243-246.
4 *Responsa of Rabbi Moshe Feinstein*, *ibid.*, p. 57.
5 *Ibid*, p 61.
6 Glick S. "Unlimited human autonomy – a cultural bias", *NEJM*, 1997;336:954-956.

trumps autonomy, but in an important caveat to this law he writes that the decision to "disregard a patient's wishes must be taken only after very serious consideration. Disregarding a patient's wishes so that he is put under stress is itself harmful to the patient."[7] In addition, Jewish law in other contexts recognizes that sometimes a patient is more aware of the risks and benefits to his own body than other observers, even physicians. For example, on Yom Kippur a person may eat if he feels it is necessary, even if doctors do not agree with his assessment.[8]

Besides these utilitarian arguments there is another reason why Rabbi Feinstein would consider the patient as the primary decision-maker. Benjamin Freedman has argued cogently that in Jewish law, even though the patient is not considered to be the owner of his body, he is primarily responsible for safeguarding it.[9] This duty-based ethic requires him to do whatever is necessary to cure himself and also requires him to prevent illness.

Rabbi Feinstein clearly concurs with this formulation. He explains that the family assumes the role of surrogate decision-maker when the patient is incompetent, because "the commandment to heal initially falls upon the family"[10] It follows that when a patient is competent, he or she becomes the primary decision-maker because of their normative obligation to guard and protect one's own body. For these reasons Rabbi Feinstein would subscribe to the doctrine of patient autonomy in a limited manner.

Rabbi Feinstein also gives another reason why Jewish Law would defer to the family in the case of an incompetent patient, which is closer to the doctrine of substituted judgment. He writes "that the patient would normally rely on the opinion of close relatives and hence by doing so now, even though he is incompetent, we are following his presumed wishes."[11] He gives great value to the notion of following even an incompetent patient's wishes and presumably would also rely on the patients relatives, if they were aware what the patient himself would want in the current situation. For these two reasons Rabbi Feinstein would agree that the patient's family assumes primary decision-making

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7 *Responsa of Rabbi Moshe Feinstein*, *ibid.*

8 Maimonides, *Mishne Torah*, Laws of *Shevitat Asor* 2:8.

9 Freedman B. *Duty and healing: foundations of a Jewish bioethic*, New York: Routledge, 1999.

10 *Responsa of Rabbi Moshe Feinstein*, *ibid.*, p. 57.

11 *Ibid*, p. 62.

capacity if the patient is incapacitated. We are aware that there is somewhat of a contradiction between these two reasons and are unsure how to resolve it.

Quality and Sanctity of Life

Rabbi Feinstein explicitly endorses the concept of the sanctity of life by stating "it is, or should be, absolutely clear, without any doubt, to anyone who has studied our holy Torah and who fears God, that one must heal or save every individual without any differentiation based upon his intelligence or physical stamina,"[12] but in other contexts he relates to the concept of quality of life. In answer to a question of whether there are patients who should not be treated? He responds, "this question obviously refers to a terminally ill patient who can live for only several weeks or months at most. Such patients often should not be treated. The key concern is their quality of life."[13] Given the value of life in Rabbi Feinstein's thinking, we must understand why in this situation quality of life, particularly the burden of pain, becomes the deciding factor. Based on the above-mentioned duty principle, we think Rabbi Feinstein himself provides the answer: "It may very well be that there is no biblical obligation to cure such a patient, or rather attempt to prolong his life. The commandment "And he may heal" may not apply to a [physican treating a] patient for whom there is no potential for healing."[14] Quality of life becomes a dominant factor when there is no hope to cure the patient and hence no normative obligation. Rabbi Feinstein is also very concerned about the quality of life of a dying patient in concert with the modern hospice movement, and rules that regarding a dying patient "it is certainly forbidden to cause any unnecessary pain to the patient. If no medical care is indicated, there is no rational reason why routine blood chemistry should be done on the patient… Only that which is clearly for the patient's benefit should be done… The imminence of death does not relieve the physician from the obligation to do everything for the comfort of the patient."[15] It is clear to Rabbi Feinstein that for the duty-bound physician other normative

[12] *Ibid*, p. 56.
[13] *Ibid*, p. 39.
[14] *Ibid*, p. 55.
[15] *Ibid*, p. 66.

obligations such as "Love your neighbor as yourself" certainly apply to dying patients, and there is still much a doctor can do for these patients, such as relieving suffering. However, he fervently opposes any form of active euthanasia.[16]

Triage

Rabbi Feinstein also addresses the ethical issues relating to triage. Contemporary bioethics bases triage decisions on either the utilitarian model summed by: "Do the greatest good for the greatest number" or take a comparative social worth approach.[17] Rabbi Feinstein uses a different model. In response to a question about two patients brought to the emergency room. One of them has a good possibility of being cured but it is not absolutely certain that he needs intensive care, although this would be the preferred method of treatment. However, the second patient for whom intensive care could only provide a postponement of death cannot live at all without ICU care. Which patient should be given the only bed available? He answers "If both arrive at the same time the decision should be made on the basis of medical suitability… However if the one who can only live a short time has already begun treatment… it is forbidden to interrupt the treatment of the first patient… Once he has taken possession of the hospital facility, even if his life be of but short duration, his claim takes precedence over all other claims. I see this as a contractual relationship with the hospital and physicians."[18] The duty principle also applies to the physician, and once he has begun treating this critically ill patient he is obligated to continue and cannot abrogate his responsibility to the individual patient. According to Rabbi Feinstein the doctor-patient relationship is as legally binding as a signed contract, and with this model anticipates current efforts to ethically obligate physicians with such documents as the Physician Charter. Based on the previous discussion one could infer that if the patient is truly terminal one could stop treating the first patient as there no longer exists a commandment to heal, but what remains unclear is how this

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16 *Ibid*, p. 60.

17 Beauchamp TL., and JF. Childress, *Principles of Biomedical Ethics*, New York and Oxford: Oxford University Press, 1994.

18 *Responsa of Rabbi Moshe Feinstein*, *ibid.*

would abrogate the existing contractual relationship between physician and patient as postulated by Rabbi Feinstein.

In this essay we have shown briefly how one of the leading *halachic* authorities of the last century related to certain concepts in modern bioethics. Both systems value such universal principles as patient autonomy and quality of life to a different degree, but what distinguishes an *halachic* framework as reflected in the writings of Rabbi Feinstein are the duty-bound and normative obligations of both the physician and patient. We look forward to other inquiries of the relationship of *halachic* responsa to modern bioethics which reaffirm the teachings of Rabbi Joseph B. Soloveitchik that a genuine Jewish ethic is rooted in a *halachic* perspective.[19]

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[19] Joseph B. Soloveitchik, *The Halachic Mind*, New York: Simon and Schuster, 1986.