

On the Fiftieth Anniversary of the Publication of “Jewish Medical Ethics”

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Introduction

In the second half of the twentieth century there was an explosion of progress in the medical sciences fueled by new technologies and remarkable achievements in the laboratories. Using mechanical ventilation and dialysis, physicians could keep patients alive that certainly would have died quickly in the past. Patients with failing hearts, kidneys and lungs could be saved by transplanting organs from the newly dead. For couples unable to conceive naturally, life could be created outside the body and inserted into the women's uterus mimicking a normal pregnancy and gestation. All these advances were the pipedreams of visionary scientists just a few short decades ago. However, notwithstanding the amazing success of these new developments it is imperative to address the ethical questions that arise in their wake. Should physicians strive to extend life with new technologies available to them in all instances? How about the terminal cancer patient racked with pain or the elderly Alzheimer patient with pneumonia? Is it moral to create life by artificial means? How do we define death, in order to know when it is ethical to harvest the organs for the benefit of another human being who needs them desperately? Do we even have to wait until the patient is clinically dead? When, if ever, is it acceptable to abort a fetus? Whose rights should be paramount the mother's or the fetus'? Partly in response to these burning questions the field of medical ethics was born and many theologians and philosophers as well as physicians turned their attention to these

difficult issues. Questions previously thought of as only purely theoretical had become relevant to the survival and death of patients in our hospitals, clinics and waiting rooms. It has been suggested that medical ethics made moral philosophy relevant once again by focusing it on relevant questions in search of practical answers.

In this turbulent time the field of Jewish Medical ethics was inaugurated with the publication in 1959 of the seminal study *Jewish Medical Ethics* by Lord Rabbi Immanuel Jakobovits.¹ In a comprehensive manner he reviewed over two thousand years of teaching on the subject in an attempt to make them relevant to modern medicine. From Talmudic times, rabbinic Judaism has addressed such vital issues as defining death, the status of the fetus and the treatment of the terminally ill. Rabbi Jakobovits painstakingly organized the relevant sources and presented them in a coherent manner to the modern reader. He surveyed general ethical topics such as abortion and the obligation to heal but also discussed the interaction of medicine with Jewish ritual law, issues that are obviously peculiar to Judaism.

Parallel to Rabbi Jakobovits' work other respected religious authorities began working in the field and Daniel Callahan has pointed out that religious thought and theologians played a crucial role in the renewed interest in medical ethics in

¹ Immanuel Jakobovits, *Jewish Medical Ethics: a comparative and historical study of the Jewish religious attitude to medicine and its practice*, New York: Bloch Publishers, 1959.

the 1950's and 1960's.² Starting with the publication of Joseph Fletcher's *Morals and Medicine* in 1954, Paul Ramsey's *The Patient as Person* in 1970 and the works of James Gustafson and Richard McCormick these thinkers used the wisdom of ancient traditions to answer ethical dilemmas posed by technological advances in medicine and their impact on the doctor-patient relationship.

Jewish Medical Ethics

Rabbi Jakobovits' masterpiece was a reworking of his doctoral thesis, which he received in 1955 from the University of London. Among the significant achievements of the work are:

1. It was not only the founding work of the discipline of Jewish medical ethics but also one of the pioneering works of general medical ethics. In the 1950's there was a renewed interest in the discipline possibly as a result of the gross violations of accepted standards of ethical practice by Nazi physicians. This revulsion led to the adoption of the Nuremberg Code whose first principle states: "The voluntary consent of the human subject is absolutely essential" for any research involving human subjects. This attention and interest originally given to research ethics was naturally extended to other moral dilemmas in medicine.
2. The defining principle of modern medical ethics is unlimited human autonomy. Joseph Fletcher, a contemporary of Rabbi Jakobovits and a Protestant theologian, was the first to develop this theme in his classic work *Morals and Medicine*.³ The book presents medical ethics as essentially a collection of human rights. He argues for the rights of humans to decide how they want to die – endorsing euthanasia; and for the rights of humans to

decide how they want to procreate thereby endorsing all forms of artificial reproduction. Rabbi Jakobovits was very much against this 'rights' based philosophy and writes: "Now in Judaism we know of no intrinsic rights. Indeed there is no word for rights in the very language of the Hebrew Bible and of the classic sources of Jewish law. In the moral vocabulary of the Jewish discipline of life we speak of human duties, not of human rights, of obligations not entitlement. The Decalogue is a list of Ten Commandments not a bill of human rights. In the charity legislation of the Bible, for instance, it is the rich man who is commanded to support the poor, not the poor man who has the right to demand support from the rich. In Jewish law a doctor is obligated to come to the rescue of his stricken fellowman and to perform any operation he considers essential for the life of the patient, even if the patient refuses his consent or prefers to die. Once again, the emphasis is on the physician's responsibility to heal, to offer service, more than on the patient's right to be treated".⁴ Following in Jakobovits' footsteps, Freedman pointed out that what distinguishes a Jewish approach to moral dilemmas is its emphasis on a duty based ethic as opposed to a secular ethic based on rights.⁵

3. Much of modern bioethics is built on a principle-based approach famously championed by Beauchamp and Childress.⁶ They identified four cardinal principles of bioethics (autonomy, non-maleficence, beneficence and justice) and pioneered a methodology in which bioethical dilemmas are resolved by applying the principles to the case at hand. Rabbi Jakobovits championed another model: "Secular medical ethics is the effort to

² Callahan, Daniel, "Religion and the Secularization of Bioethics" *Hastings Center Report, Special Supplement: Theology, Religious traditions and Bioethics* 20, no 4. (July-August 1990), pp. 2-4.

³ Joseph Fletcher, *Morals and Medicine*, Princeton; Princeton University Press, 1954.

⁴ Immanuel Jakobovits, *The Timely and the Timeless – Jews, Judaism and Society in a Storm-tossed Decade*, New York: Bloch Publishing, 1989.

⁵ Freedman B., *Duty and healing: foundations of a Jewish Bioethic*, New York: Routledge, 1989.

⁶ Tom Beauchamp and James Childress, *Principles of Biomedical Ethics*, Oxford: Oxford University Press, 1986³.

turn ethical guidelines or rules of conscience into law i.e. into legislation. Attempts are made constantly to choose ethical insights and then to gradually distill these into legislative laws adopted by different legislatures, Jewish medical ethics does the reverse. We determine law or legislation, distill it, and then come to the conclusion that it contains certain ethical guidelines. Thus Jewish medical ethics derives from legislation. It does not lead to legislation. We look at legislation as rulings of law that have been given i.e. *halacha* which means law or legislation and then try and extrapolate ethical rules from the legislation. Therefore the Jewish concept of medical ethics is the very reverse of that commonly accepted in civilized countries of the world.⁷ According to this model how then do we determine the law? Throughout his book Rabbi Jakobovits uses the methodology of casuistry. In this method new dilemmas are compared to existing previously adjudicated cases in order to reach an acceptable conclusion. This method is very familiar to students of Talmud and Rabbi Jakobovits uses it extensively in his book. In a critique of Jakobovits' work Gellman writes that there is a theory that "modern problems are too great a challenge for an ancient faith and legal corpus to confront".⁸ Implicit in the work is that the answers to modern dilemmas in bioethics can be found by extensive analysis of the Talmudic sources and the responsa literature. There exist ample rabbinical sources for legal conclusions to be reached regarding such important issues as abortion and artificial reproduction. Admittedly, there are modern dilemmas such as reproductive cloning and allocation of scarce resources in which it is difficult to find precedent cases. In these circumstances other accepted Jewish legal

methodologies beyond casuistry need to be used.

4. Rabbi Jakobovits' work is not limited to the Jewish sources but as reflected in its full title, *Jewish Medical Ethics: a comparative and historical study of the Jewish religious attitude to medicine and its practice*, it was also a comparative study of other theological approaches to medical ethics. At the time of its writing, the most fully developed competing system was the approach of the Catholic Church grounded in natural law and Rabbi Jakobovits frequently compares and contrasts it to the Jewish model. He is also not hesitant about taking an historical approach and compares the Jewish system with Greek and Roman law. This comparative approach is missing among many modern scholars in Jewish medical ethics but it is found in the works of Avraham Steinberg and J. D. Bleich. Rabbi Jakobovits also believed strongly that Jewish medical ethics can contribute "to the solution of some of the most crucial moral and social problems of our own day" implying it has universal ethical relevance.
5. Rabbi Jakobovits was obviously, not only a highly published academic but an esteemed rabbinical figure rising to become Chief Rabbi of the British Empire, after serving distinguished congregations in Dublin and New York, and as such was also a highly regarded *halachic* decisor, particularly in the field of Jewish medical ethics. However, he comments "With the decline of the professional rabbinate and the ascendancy of rabbinical deans as the arbiters of Jewish law and religious policies, the present tendency is increasingly in favor of the latter group. This development is not without considerable consequence to current trends in *halacha*. Practicing rabbis are of necessity exposed to the problems, thinking and pressures of the often religiously alienated masses in the communities they serve, much more than scholars and teachers ensconced in the rarified atmosphere of learning together

⁷ Immanuel Jakobovits, "The role of Jewish medical ethics in shaping legislation", in Fred Rosner, ed., *Medicine and Jewish Law*, Northvale, N.J.: Jason Aronson, 1990, pp. 1-18.

⁸ Marc Gellman, 1993 "On Immanuel Jakobovits" in Allen Verhey and Stephen E. Lammers, eds., *Theological Voices in Medical Ethics*, Grand Rapids, Mich: Wm. B. Eerdmans Publishers, 1993.

with disciples who, these days, frequently exceed the zeal of their masters. This factor naturally contributes to the distinctly conservative orientation in the rabbinic law today".⁹ It is not clear if Rabbi Jakobovits is lamenting this turn of events or simply making a sociological observation on the current *halachic* environment.

6. In the preface to *Jewish Medical Ethics* Rabbi Jakobovits writes:

"When the quest for knowledge and power is unhemmed by moral considerations and the fundamental rights of man, as conferred and defined by his creator, are swept aside in the blind march to mechanical perfection, the ramparts protecting mankind from self destruction are bound to crumble. Today the contest between science and religion is no longer a competitive search for truth as in the former times. It is a struggle between excesses and controls, between the supremacy of man's creations and man himself".¹⁰

In this paragraph written in 1959 Rabbi Jakobovits anticipates some of the concerns of the bioconservatives such as Paul Ramsey and Leon Kass, who were also inspired by religious sentiments. Like Rabbi Jakobovits, they were wary of the repercussions of human technological achievements unchecked by moral discernment.

Conclusions

Despite its publication fifty years ago *Jewish Medical Ethics* remains an indispensable source for study in the field. It set the standard for an approach to Jewish ethics grounded in the rabbinic tradition and develops a comprehensive Jewish theology towards bioethics. Rabbi Jakobovits was able to make technical Talmudic concepts

accessible to the non-rabbinically trained scholars and the educated layman. New works in the field should follow this model and show the relevance of the ancient tradition to modern dilemmas in bioethics.

International Responsa Project

When a medical procedure raises ethical, moral, or halachic questions, advice from a reliable source is needed. The International Responsa Project provides this service to people all over the world who send their questions – some general and theoretical, some specific and technical – via e-mail (irp@medethics.org.il), website (www.medethics.org.il), telephone, fax, and post. The questions are answered as quickly as possible by one of the rabbi-doctors at the Institute. The following are samples of recent questions and their answers. Please note that these are answers to specific questions and no general halachic conclusions should be drawn. A competent halachic authority should always be consulted.

Subject: reconstruction (involving medical tattooing) after mastectomy

Answered by: Rabbi Mordechai Halperin, M.D.

I am a 46-year-old single (but looking) woman who had a mastectomy and breast reconstruction after having been diagnosed with breast cancer a little less than two years ago. The second stage of the reconstruction involves creating a new nipple and then tattooing the skin around to match the areola of the other breast using micropigmentation/medical tattooing. Is such a procedure halachically permissible?

What are the halachic issues involved? Is there a heter available for such a procedure?

thank you very much

⁹ Jakobovits (see note 1, *supra*), p. 259.

¹⁰ See n. 1 *supra*.

You are allowed to go through the tattoo procedure for the nipple reconstruction.

See *Nishmat Avraham*, vol. II (*Yoreh De'ah*) 180:a3 (pp. 132-133) [Hebrew – new edition – 2007]; In the English translation of *Nishmat Avraham* (ArtScroll) vol. 3, p. 302.

See also *ASSIA* vol. 87-88 pp. 35-42 (2010) For more references, please see *ASSIA Book* vol. VII (Hebrew) pp. 273-303.

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