

# From Folk Medicine to Bioethics

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This paper falls into two parts. In the first I shall indicate something of the range of approaches to medicine and healing to be found in traditional Jewish sources; in the second I shall illustrate how an issue in medical ethics might be decided, and why opinions might differ; and there will be a concluding reflection.

My title 'From Folk Medicine to Bioethics' suggests a progression, a diachronic survey of Jewish attitudes to healing from a primitive, 'folk' stage at some undetermined time in the distant past, to a sophisticated ethical system geared to advanced medical science and technology in the present.

But this is not at all what I have in mind. I wish to emphasise a synchronic rather than a diachronic perspective. There is continuity and also complexity within the Jewish tradition. Popular attitudes to health and sickness have existed and continue to exist side by side with strictly scientific approaches, and the two are bridged by theology. Three major trends – the popular, the scientific, and the religious – have persisted to the present.

## **Three Attitudes to Healing**

### Popular Medicine

The first trend is represented by the strong Jewish tradition of popular, folkloristic medicine, too easily dismissed as 'superstition'. The Babylonian Talmud, which is

the main repository of ancient Jewish wisdom after the Bible, contains several collections of remedies introduced by the third-century teacher Abbaye with the words ‘my mother told me’ – an attribution to be taken not at its face value but as editorial semantics for ‘popular tradition’. Some of the remedies are common sense, as for instance to turn the seam of a baby’s swaddling cloth outwards so as not to injure him (*Shabbat* 134a<sup>1</sup>); others concern the formulae and repetition of spells (*Shabbat* 66b); many are to do with diet (*Ketubot* 10b) or the correct use of plants and herbs. In recent years numerous Hebrew amulets and incantation bowls from the first to fifth centuries have been recovered and studied by archaeologists; many of them were written by non – Jews evidently hoping to capture the efficacy of the ‘Jewish magic’ which was held in such high repute in late antiquity.

Allied with this are the widespread belief in alleged phenomena such as demons, possession, and the evil eye. Many readers will know the play *The Dybbuk* by the Yiddish writer S. Ansky (1863–1920), on the theme of possession, or will have read the novels of Isaac Bashevis Singer which conjure up the atmosphere of the Jewish *stetl* (village) of pre-World War Two Eastern Europe and convey something of the vividness with which people imagined themselves surrounded by invisible beings and forces which controlled or at least influenced our destinies.

In the middle of the twelfth century Moses Maimonides (1135/8–1204), one of the profoundest of mediaeval Jewish thinkers, wrote:

And all these matters (sc. astrology, necromancy etc.) are falsehood and deceit, by means of which idolatrous priests in ancient times misled the people of the nations to follow them. It is not fitting that (the people of) Israel, who are wise and learned, should be attracted by such nonsense or entertain the possibility that there is any benefit in it; as it is said, ‘Surely there is no divination in Jacob, and no augury in Israel’ (Numbers 23:23), and ‘Those nations whose place you are taking

listen to soothsayers and augurs, but the Lord your God does not permit you to do this' (Deuteronomy 18:14). Whoever believes in such things, or anything like them, and thinks that they are true, though the Torah forbade them, is a fool, an ignoramus, and in the category of women and children whose comprehension is imperfect. But wise people, of perfect understanding, know through convincing proofs that all these things which the Torah forbade are not wisdom, but empty nonsense which attracts the ignorant and on account of which they abandon all the paths of truth; that is why the Torah states, in prohibiting this nonsense, 'You shall be perfect with the Lord your God' (Deuteronomy 18:13).<sup>2</sup>

Maimonides' enlightened view convinced few scholars in his time and had virtually no impact on popular belief. As late as the eighteenth century Elijah the Gaon of Vilna, a man of immense piety and vast erudition, sharply criticised the him for denying the existence of demons;<sup>3</sup> still today, many of the more reactionary orthodox leaders endorse such beliefs, as well as astrology, on the grounds that they were held by the rabbis of the Talmud.

### Scientific Medicine

On the other hand, a more scientific attitude to medicine and healing has always prevailed in some circles. Even with regard to amulets, the Talmud in its legal sections distinguishes between those regarded as tested and reliable and those not so regarded, a distinction which could only have been established by experiment and observation.<sup>4</sup>

Several scholars in modern times, following the pioneering work of Julius Preuss (1861–1913),<sup>5</sup> have discussed Talmudic anatomy and physiology. This is not an easy exercise, for there is no Talmudic treatise on either of these subjects. To assess Talmudic anatomy, for instance, one has to work with literary material such as a list of body parts compiled in connection with laws of ritual purity,<sup>6</sup> or lists of defects which

would render priests<sup>7</sup> or sacrificial animals<sup>8</sup> unacceptable for Temple service, or render an animal or bird impermissible for consumption;<sup>9</sup> such knowledge of physiology as is preserved in the Talmud has to do with matters such as childbirth and sexual relations which are regulated by the law, or is implied in random comments on nature, divine providence and the like. We know very little about the actual practice of medicine by Jews in the Talmudic era; the Talmud is concerned not with the art of medicine *per se*, but with the *halakha*, or law, and has preserved only those elements of medical science as are needed for correct interpretation and application of the law. Just as, today, one might learn quite a lot about issues in medical ethics from studying the law reports, but little of the relevant basic science, we are able to derive fundamental ethical principles from the Talmud though we are often in the dark as to the rabbis' finer understanding of anatomy and physiology.

A systematic scientific approach to medicine appears in Jewish sources only in the Middle Ages, when the influence of the Hippocratic School and of Galen is prominent; the earliest known medical works written by a Jew are the Arabic treatises of Isaac Israeli (c. 855–955). The *Book of Asaph* or *Book of Healing*, of which several versions exist, is the oldest Hebrew medical treatise, cited in some form perhaps as early as the tenth century.<sup>10</sup> Asaph ha-Rofé (Asaph the physician), the supposed author, to whom a version of the Hippocratic oath<sup>11</sup> subsequently in use by Jewish physicians is attributed, cannot be identified. The book – at least in one manuscript – contains ‘treatises on the Persian months, physiology, embryology, the four periods of man’s life, the four winds,<sup>12</sup> diseases of various organs, hygiene, medicinal plants, medical calendar, the practise of medicine, as well as an antidotarium, urinology, aphorisms, and the Hippocratic oath’.<sup>13</sup> It is interesting that it draws not on the ample

medical material in the Talmud but on ‘the books of the wise men of India’ and a ‘book of the ancients’; it ascribes the origin of medicine to Shem, son of Noah, who received it from angels. The contents clearly show dependence on Galen, Hippocrates and Dioscorides, indicating that the practice of Jewish physicians was modelled not on rabbinic sources but on ‘scientific’ medicine.

Many Greek medical works were translated into Hebrew, generally from Arabic rather than the original language, and often with the commentaries of leading mediaeval Muslim scholars. Opinions vary as to the originality of Jewish contributions to medicine, but there is no doubt that during the Renaissance Jews played a significant role in the transfer of ancient Greek medical knowledge, together with later Islamic insights, to the West. Sadly, the great European Universities which were formed at that time excluded Jews, so that although many individual Jews acquired medical knowledge and gained high reputations for their skills it was only converted Jews such as Amatus Lusitanus<sup>14</sup> who were able to play a full part in the development of the science before modern times.

But the systematic scientific approach created problems for traditionalists, since it implied the rejection of those folk elements and superstitions which had been included in the Talmud. Maimonides, in the short regimen of health he includes as a single chapter in his *Mishneh Torah*,<sup>15</sup> casts aside tradition in favour of Galen and his own contemporaries. The remark of the commentator *Migdal Oz* that ‘everything in the chapter is based on principles derived from the sages and scattered through the Talmud’ is wide of the mark. The truth of the matter is that Maimonides did not believe that the sages had an adequate knowledge of medicine, or that such knowledge could be obtained by the investigation of traditional texts; the Torah taught not the

details of medical science, but rather that one should seek the best advice obtainable from whatever source it might come.

### The Theological Approach

There is another trend, amply evident from the Bible onwards, in attitudes to healing. This third trend arises from the fundamental biblical concept that God is all-powerful, merciful and compassionate, and his providence extends to all his creatures. If this is so, then presumably individuals who are sick and suffer do so not by accident, but by God's design, whether on account of their sin or in some way to refine them. In this case, it is appropriate for us to pray to him, to seek his forgiveness, and if it is his will, he will heal us – 'for it is I, the Lord, who heal you' (Exodus 15:26). The Torah is the antidote to sickness; as the great Bible exegete Rashi (1040–1105) put it, commenting on that verse, ' . . . the plain meaning is, that he has given us the Torah and the commandments so that we may be saved from them (*sc.* the diseases he inflicted on the Egyptians)'.

If it is not his will to heal us, then by utilising the art of medicine to heal ourselves are we not thwarting his will? If, for instance, God had 'designed' some individual with a defective kidney would we not be circumventing God's will by replacing it with a healthy one or by offering dialysis?

There have indeed been Jewish sects, including some Karaites,<sup>16</sup> who objected on religious grounds to the practice of medicine. Such an attitude is not without echoes amongst the mainstream Rabbanites, including Nahmanides (1194–1270), who held that God would protect from sickness any individual who served Him in complete faith, and that ideally the sick person should turn to repentance, not to doctors, even though the Torah granted 'permission for the doctor to heal'.<sup>17</sup> There are today to my

knowledge, though I do not know whether they are documented, small orthodox groups who are reluctant to make use of mainstream medical expertise and, apart from prayer, rely either on ‘alternative’ therapies or on the regimens and specific remedies listed in the Talmud or mediaeval rabbinic sources. The justification for ‘alternative’ therapies is that they are considered, unlike mainstream medicine, to be in accordance with ‘nature’ and hence with spiritual principles.

The Talmud relates that Hezekiah, king of Judah, took six initiatives without consulting the sages;<sup>18</sup> *post factum* they approved of three but not of the others. Amongst those of which they did approve was his initiative in hiding away the *Sefer Refuot*, or ‘book of cures’. Most commentators assume that the book listed the herbs which God, in his infinite wisdom, had created to cure each and every human malady; he hid the book, explains Rashi, ‘because their heart was not humbled for the sick but they were healed immediately’, that is, because the certainty of cure led people to ignore God.

Maimonides, to whom it was inconceivable that the sages should approve of the deliberate suppression of beneficial medical information or resources, rejects this explanation. In his opinion, the *Sefer Refuot* was a book containing cures forbidden by Torah, such as astrological talismans; to leave it around would have been positively dangerous; moreover, the ‘cures’ were worthless.<sup>19</sup>

The predominant Jewish view is indeed that endorsed by Maimonides, namely that the practice of medicine is not only permissible but virtuous. That the art of medicine is licit is inferred in the Talmud from the rules of compensation for injury. The law of Torah is that the malefactor must compensate the victim for pain, injury, shame, loss of earnings, and medical care; this implies that doctors are allowed to practise.<sup>20</sup>

But ‘permission’ is not enough. There is a *positive obligation* for those who are able to do so to use their skills and resources to heal the sick. Joseph Karo (1488 – 1575), author of the *Shulhan Arukh*, the most authoritative Jewish Code of Law, bluntly states, ‘. . . [to heal] is a positive obligation, tantamount to the saving of life, and one who avoids doing it sheds blood, even though there is someone else available to [effect the cure], since the patient does not respond equally to every doctor.’ He goes on to formulate the principle that one may practice medicine only if duly authorised by a Jewish religious court.<sup>21</sup>

Even those unable to perform medical or nursing services are obliged to visit the sick and to pray for their welfare; and intercessions are made publicly in the Synagogue.<sup>22</sup>

David ben Shmuel haLevi (1586–1667) expressed theologically the relationship between ‘permission’ to heal and the ‘obligation’ to heal:

True healing is through prayer, for healing is from heaven, as it is written, ‘I have smitten, and I shall heal’ (Deuteronomy 32:39). But not everyone is worthy of this [special divine intervention], hence it is necessary to achieve healing by natural means. He, blessed be He, agreed to this, and gave healing through natural cures; this is what is meant by ‘He gave permission to heal’. Since human beings have got into this state [of having to rely on natural cures], doctors are obliged to effect cures [by natural means].<sup>23</sup>

By being subsumed within the *mitzvot*, or divine commandments, the practice of medicine becomes part of the spirituality of Judaism. Far from being an activity opposed to religion, it is an essential element within it. This is true even though the specific remedies used by the physician are not determined by the religious tradition itself, but by the science of medicine.



To the question, ‘Does the physician play God?’ we answer, yes. To aid the sick, it is our duty to ‘play’ – that is, imitate the ways of – God, to show mercy and kindness and to make our skills available to all in need.

### Theodicy

We have seen that the physician, in practising his art, is a ‘co-worker’ with God in alleviating human suffering and misery. But if God is all-powerful, just and merciful, why does he allow humans to suffer and be miserable at all, other than when they clearly deserve it? Why do bad things happen to good people?

From the Bible onwards Jews have wrestled with this problem. The Reformist Jewish philosopher Hermann Cohen (1842–1918) outdid the traditionalists in making suffering a central issue in his religious system; suffering, according to Cohen, is the turning point at which religion emerges out of ethics.<sup>24</sup> Recent Jewish theologians have tended to focus their discussion of apparent divine injustice on the Holocaust, for it seems inconceivable that every one of the six million victims, including one million children, ‘deserved’ his or her fate.

Despite its almost total absence from the Hebrew scriptures, the belief in life after death is central to rabbinic teaching, whether expressed as bodily resurrection, eternal life of the spirit, or some combination of the two. Kabbalists, indirectly influenced by Neoplatonist philosophy, adopted in addition the concept of reincarnation, though this was opposed by Saadia (*c.* 882–942)<sup>25</sup> and others and never achieved the status of a vital principle of faith.

Such beliefs simplify the theology of suffering, for (a) they diminish the significance of the vicissitudes of ‘this world’, and (b) they provide an opportunity for ‘compensation’ for the evils of this world in the next. The transmigration of souls

easily explains the suffering of innocent children – either they are being punished now for sins committed in a previous incarnation, or else they will be compensated for their present sufferings in a later one.

God exercises providence in respect of individuals as well as in respect of Israel collectively. ‘Collective providence’ enables even the Holocaust to be rationalised; the destruction of a third of the Jewish people may be viewed as part of God’s redemptive process, leading ultimately to Israel’s restoration, whether or not in terms of the Land. But this leaves unanswered the question why each individual suffered. Maimonides denied that God extended Providence to individuals in the sub-lunar sphere other than to those whose spiritual excellence raised them above sub-lunar materiality, but most other Jewish theologians have strongly upheld the doctrine of universal individual providence, which is hard to reconcile with the observed facts of life.

Few have forgotten or completely repudiated the simple biblical explanation of suffering, including sickness, as the consequence of sin: ‘. . . if you listen to the voice of the Lord your God and do what is upright in his eyes . . . all the sickness which I set upon Egypt I will not set upon you, for I the Lord am your healer’ (Exodus 15:26). But other concepts, both biblical and post-biblical, modify the picture.

The Talmud reflects on *yissurin shel ahava* (‘sufferings of love’) – ‘those whom he loves the Lord chastises’ (Proverbs 3:12) – which it sees as affording the suffering individual an opportunity for spiritual growth;<sup>26</sup> however, doubt is expressed as to whether suffering which distracts a person from Torah can be ‘suffering of love’. Amos taught that it was precisely God’s love for Israel that led Him to chastise them more than any other nation – ‘For you alone have I cared among all the nations of the

world; therefore will I punish you for all your iniquities' (Amos 3:2); suffering should thus be received as a token of God's special concern for Israel, or for the individual concerned.

Also familiar in Judaism are the concepts of redemptive suffering and of the vicarious atonement for sin. For instance, on Numbers 20, 'Why is the death of Miriam juxtaposed to the law of the red heifer? To teach you that just as the red heifer atones (for sin) so does the death of the righteous atone (for sin)'.<sup>27</sup>

God is constantly present with those who suffer – 'Though I walk through a valley dark as death I fear no evil, for thou art with me' (Psalm 23:4), and 'I am with him in his distress' (Psalm 91:15). In line with this, on the collective level, is a graphic image found in rabbinic Midrash – God, or rather the *Shekhina* (divine presence), is 'in exile' with Israel.

God is sometimes said to 'hide his face', a thought expressed agonisingly in Psalm 44:24. Amongst the moderns, Eliezer Berkovitz is in accord with tradition when he not merely finds the hiddenness of God compatible with God's existence, but discovers God's actual presence within His silence. He argues that the Jewish response to the Holocaust should be modelled on Job's response to suffering, questioning God yet accepting his superior wisdom.<sup>28</sup>

Few today echo Maimonides's view of evil as *privatio boni*, the absence of good,<sup>29</sup> not only the Holocaust, but the 'ordinary' suffering of much of humanity, give too strong a strong sense of the reality of evil for such a doctrine to be credible.

The existence of evil is a central issue for kabbalists, who uphold the idea that ultimately all is from the Creator and therefore good. According to Isaac the Blind (1160–1235) the origin of what appears to us as evil lies in the dominance of the

divine attribute, or emanation, of Justice, over that of Mercy. The Zohar (late thirteenth century) maintains that evil originates in the leftovers of previous, imperfect worlds which God destroyed; the *sitra ahara* ('other side') has ten *sefirot* (emanations) of its own, reflecting the direct emanations from God; good and evil are thus intermingled in our world, and it is our duty to separate them. Isaac Luria (1534–72) developed the concept of the *tzimtzum*, the concentration of the divine illumination in vessels not all of which were capable of containing it, and which therefore ruptured, causing the holy sparks to become associated with broken sherds and husks from which we must 'rescue' them by performing the commandments.

Richard Rubenstein is one of several non-orthodox Jewish theologians driven by reflection on the Holocaust to reject the traditional idea of God as the 'Lord of history'; God had simply failed to intervene to save his faithful.<sup>30</sup> 'Death of God' theologies have to be seen in a wider context, however; well before the Holocaust Jewish theologians such as Mordecai M. Kaplan were struggling to reinterpret the concept of God in the light of modern critical ideas.<sup>31</sup> A follower of Kaplan, the Jewish Reconstructionist theologian Harold Kushner, in his bestseller *When bad things happen to good people*, has explored the resulting attenuated view of God in the context of sickness and other forms of personal distress.<sup>32</sup>

Suffering brings redemption, whether for the individual, for Israel collectively, or for the world in its state of sin. Using imagery from the biblical *Song of Songs*, the late Joseph Dov Soloveitchik (1903–93), a leading Orthodox theologian, interpreted the revival of Jewish life after the Holocaust as a *tiqqun* ('restoration') which was the redemptive outcome of suffering: 'In the heart of the night of terror . . . a night of hiddenness . . . of doubts and apostasy . . . came a knock on the door, the knock of the

beloved . . . Seven great reversals in Jewish life, seven miracles, commenced – political, military, cultural, theological, life – value, citizenship, and the new fertility of the land of Israel’.<sup>33</sup>

But how does the justification of the ways of God relate to the actual practice of medicine? The doctor’s obligation to give treatment is not offset on the grounds that the patient has sinned and therefore deserves to suffer.<sup>34</sup> One only has to recall the example of Job’s ‘friends’ to realise that it is not acceptable to harangue the patient for the sin which has caused him to suffer. The mediaeval codes nevertheless state that when visiting the sick you should create an opportunity for the patient to reflect whether he has undischarged debts or obligations; if he is seriously ill you should prompt him to confess and repent, at the same time ‘reassuring’ him that ‘many have repented and not died’!<sup>35</sup>

Whatever is appropriate for the doctor or the visitor to say or do, the patient may interpret suffering as a ‘sign’ prompting him or her to prayer and penitence, and may request and receive pastoral help in that undertaking. Most important, though, is the strength that comes from the faith that God is with the sufferer in his distress; ‘One who visits the sick should not sit on the bed, nor [high up] on a chair, but sit [humbly] before him [respectfully] cloaked, for the *Shekhina* is above the head of the sick . . . the Holy One, blessed be he, sustains the sick’.<sup>36</sup>

## **How Questions in Medical Ethics are Decided**

We must now examine some examples of how questions in medical ethics might be tackled by someone working within the Jewish tradition. Modern advances in the biological sciences and medical technology have generated economic, legal, and

ethical questions, few of which were contemplated when the sources of Jewish law were formulated. To what extent can traditional *halakha* be extended to provide guidance in the contemporary situation? Further, is *halakha* the correct, or the only, available Jewish source on which to draw?

The topics selected are (a) Artificial Insemination by Donor and (b) Euthanasia. The choice of Euthanasia is obvious. A.I.D. has been chosen for three reasons:

1. Childlessness is regarded in most societies as an acute form of suffering. It is unlikely that anyone would attempt to justify A.I.D. other than as a method of relieving this form of suffering.
2. The discussion of A.I.D. illustrates the way a typical halakhic argument proceeds.
3. The discussion illustrates the divergent theological approaches of the main contemporary branches of Judaism.

#### Artificial Insemination by Donor (A.I.D.)

Halakha (Jewish law) faces three problems in considering the permissibility or otherwise of artificial insemination:

1. Is the child of a married woman who became pregnant from a man other than her husband, but without a normal act of intercourse, a *mamzer* (illegitimate)? Put another way, is the woman an adulteress?
2. Even if the woman's own husband was the donor, could the insemination take place when she is still *nidda* (technically in a state of menstruation, not having bathed in a *mikve* since her last period)?
3. Since masturbation is in other circumstances forbidden, how should sperm be obtained from the husband or donor?

Although artificial insemination appears to be a novel problem of the twentieth century, precedent was found in a Talmudic reference to the possibility of a virgin who had conceived ‘in a bath place’, that is, by accidentally absorbing sperm deposited there.<sup>37</sup> The case was much discussed in the Middle Ages; Simon ben Zemah Duran (1361–1444) reports that ‘a number of non-Jews’ as well as another rabbi had told him of virgins they knew of who had become pregnant in this manner.<sup>38</sup> Simon may have been unduly credulous, but even if the incidents were purely imaginary the legal precedents were set.

In the 1960s, when artificial insemination both by husband and by donor became widely available, Rabbi Moshe Feinstein (1895–1986) ruled that where there was no forbidden sexual act no adultery could be deemed to have taken place and therefore a child conceived in such a way would not be a *mamzer*.<sup>39</sup> Whilst not positively encouraging anyone to practise artificial insemination he argued that it was not actually forbidden.

Feinstein was bitterly attacked for his permissiveness by Rabbi Jacob Breisch (*Helqat Yaakov*), who castigated artificial insemination by a donor as abominable, forbidden, and disgusting, whilst conceding that the child could not be considered a *mamzer* nor its mother an adulteress, and that artificial insemination by the husband might be permitted. Breisch’s opposition seems to have been based more on a sort of Jewish public relations concern than on a specific halakha to do with insemination; he felt that Jews should not appear more permissive in moral issues than Christians, and as the Catholic Church had condemned artificial insemination it would degrade Judaism if Jews were to be more lax. Feinstein rejected this argument out of hand, possibly reflecting a difference between American and European attitudes.

Joel Teitelbaum, the Hasidic rabbi of Satmar, and Feinstein's sharpest opponent, took the position that adultery was constituted by the deposition, by whatever means, of a man's sperm in a woman married to someone else. Feinstein had no difficulty in demonstrating the absence of halakhic support for such a position.<sup>40</sup>

## Euthanasia

Three types of 'mercy killing' may be considered. Eugenic euthanasia, that is the killing of handicapped or 'socially undesirable' individuals, is in no way countenanced in Judaism. Debate centres on (a) active euthanasia, where a drug or other treatment is administered to hasten the patient's release from suffering, or (b) passive euthanasia, where therapy is withheld and the patient is allowed to die naturally.

An early rabbinic source unequivocally states:

One who is dying is regarded as a living person in all respects . . . one may not bind his jaws, stop up his openings . . . move him . . . One may not close the eyes of the dying person. If anyone touches or moves them it is as if he shed blood, as Rabbi Meir said, 'This is like a flickering flame; as soon as anyone touches it, it goes out.' Likewise, if anyone closes the eyes of the dying it is as if he had taken his life.<sup>41</sup>

Judah the Pious of Regensburg (c. 1150–1217) ruled that if something, for instance the noise of chopping wood, is preventing 'the soul from departing', one may cease the activity in order to ease death.<sup>42</sup>

These two rulings establish the distinction between active and passive euthanasia, and much subsequent halakha hinges on refining and applying the distinction to contemporary situations. Active euthanasia is generally regarded as murder; passive euthanasia may sometimes be permitted. Physicians are urged to do their utmost to



save and prolong life, even for a short time, and even if the patient is suffering great distress. Some authorities maintain that withdrawal of life-support is unlike ‘removing the noise of chopping wood’ referred to in the classical sources; life-support is positive therapy, whereas extraneous noise is simply an obstacle to death. Others are not so sure of the distinction.

Eliezer Yehuda Waldenburg (1912-), a leading Jerusalem *dayyan* (judge in a religious court), has permitted the use of narcotics and analgesics to relieve the pain of the dying even though these drugs might depress the activity of the respiratory system and hasten death, provided the intention of administering the drugs was solely to relieve pain. Moreover, one may not initiate artificial life-support for a patient who is incurably and irreversibly ill, though where artificial life-support apparatus has been connected it may not be disconnected until the patient is dead according to the criteria of halakha. To evade the harshness of the latter ruling Waldenburg made the novel suggestion that respirators be set with automatic time-clocks; since they would disconnect automatically after the set period, a positive decision would be required to continue their operation, and this would not be done unless there was now hope of cure.

The twelfth-century rabbi Jacob Tam seems to imply that it is permitted actively to take one’s own life to avoid excessive torture, though it is unclear whether he meant this only in those circumstances where the suicide was primarily intended to save the individual from worse sin, that is, apostasy.<sup>43</sup> Byron L. Sherwin has cited this and similar rulings as a basis for reconsidering the case for active euthanasia; such arguments have made little headway amongst the Orthodox, though Conservative and Reform Jews have been more amenable.

Even though one may not take active, or in many cases even passive, measures to hasten the death of one who is suffering, many halakhists argue that it is permissible to pray for his/her release; the Talmud itself records, apparently with approval, that the maidservant of the great second-century sage, Judah ha-Nasi, when she saw his agony, prayed ‘Those above (i.e. the angels) seek the master, and those below (i.e. the friends and disciples of Judah) seek him; may those above overcome those below’.<sup>44</sup> The nineteenth-century Turkish rabbi Hayyim Palaggi argued that this should only be done by persons who are not related to the sufferer; relatives might be improperly motivated.

#### Differences Amongst the Main Branches of Contemporary Judaism.

Traditional Orthodox belief is that the Torah, being of divine authorship, is comprehensive, and that if we search diligently God will help us to find answers even to those problems that could not be spelled out explicitly in earlier times. Many thousands of responsa have now been published, therefore, by leading halakhists such as Feinstein in New York, and Eliezer Yehuda Waldenburg in Jerusalem, in the attempt to give firm practical guidance in this area.

Daniel H. Gordis<sup>45</sup> has argued that there is not only a measure of intellectual dishonesty in the programme of applying the classic halakhic approach to problems not envisaged by the rabbis, but also a risk of compromising the values they sought to inculcate. If, for instance, adultery is to be regarded as a precedent to forbid artificial insemination by a donor, one is not only making an unjustified extrapolation to the case under consideration, but also undermining the seriousness of adultery as a social issue, and undermining confidence in the halakhic process itself. In fact, claims Gordis, the real of objections of Rosner, Bleich and others to A.I.D. arise not from a

genuine halakhic argument but from revulsion at the notion of a married woman being impregnated by another man's sperm; they are concerned, rightly, about issues of sexuality, parenthood, and the nature of marriage. 'But if these are the issues underlying our objection to A.I.D.' comments Gordis, 'we should say so clearly and discuss those issues on their own merits, rather than obscuring the salient halakhic issue by reference to secondary ones.' Gordis therefore favours using the resources of halakha not as a system of rules to be subjected to analysis, but as a stockpile to be scoured for its implicit concepts of humanness, of being made in the divine image; it is these concepts on which we should base our decisions in medical ethics.

Elliott Dorff,<sup>46</sup> focusing on issues at the end of life, writes 'This tension between continuity and change is probably most acutely felt in our day in the area of medical ethics'. He finds both the Orthodox and Reform resolutions of the tension unsatisfactory. The Orthodox are dominated by rules and precedents which they misapply or arbitrarily extrapolate because they do not allow sufficiently for the differences between the times in which the precedents were set and the radically different medical situation of our time; the Reform fail because their appeal to concepts such as 'covenantal responsibility' lacks the discipline of *halakha* and is ultimately indistinguishable from liberal secular ethics. His own preference, which he sees as that of Conservative Judaism in general, is for a three – stage approach. First, the Jewish conceptual and legal sources must be studied in their historical contexts. On this basis, one can identify the relevant differences between our own situation and that in which the texts were formulated. Then and only then can one apply the sources to the contemporary issue, using not only purely legal reasoning but 'theological

deliberations concerning our nature as human beings created by, and in the image of, God'.<sup>47</sup>

I do not find Dorff's approach significantly different from the Orthodox one; few Orthodox rabbis would take issue with his three-stage approach of contextual study, historical evaluation, and application of principles, and by no means all commit the errors with which Dorff reproaches them collectively. But the fact is that it is not always easy to articulate the 'theological deliberations concerning our nature as human beings created by, and in the image of, God'. What, for instance, are we to make of the principle so frequently invoked by ex-Chief Rabbi (now Lord) Jakobovits, Fred Rosner and others, that 'every human life is of infinite worth'? Is there a clear source for such a principle within the *halakha*? It is certainly not stated in so many words in the Talmud. Daniel B. Sinclair has indeed commented on 'the apparent deviation of the *halakhah* from the [halakhic] principle of the supremacy of human life in areas such as treatment of the dying and foeticide'.<sup>48</sup> Sinclair doubts whether the theological concept of the 'sanctity of life' used by Bleich, Jakobovits, *et alia* is appropriate in Judaism, for in Judaism 'human life per se is not endowed with intrinsic holiness: rather, holiness is a state to be achieved by dint of sustained effort'.<sup>49</sup> He feels that the adoption of something like a 'holiness of life' principle has led Bleich *et alia* into serious conflict with regard to abortion of defective fetuses<sup>50</sup> and with regard to cases like that of Karen Ann Quinlan.<sup>51</sup>

## Conclusion

A report to the central committee of the World Council of Churches in Moscow in July 1989 affirmed that health was not primarily medical. The causes of disease in the world were social, economic, political and spiritual, as well as bio-medical. Those in

loving harmony with God and neighbour not only stay healthier but survive tragedy or suffering best and grow stronger in the process. As persons come to trust in God's unconditional love, they come together in a healing community.<sup>52</sup>

From a Jewish point of view this statement seems innocuous enough, provided one ignores its hidden agendas and innuendoes. Undoubtedly, traditional Jewish sources recognise that ill health stems from many causes, amongst them social, economic and spiritual as well as 'bio-medical'; one would have thought, indeed, that any adequately trained physician would agree. Living 'in loving harmony with God and neighbour' would likewise be endorsed by traditional Jews, and if translated to 'emotional stability' any good physician would regard it as a factor predisposing to good health; but I do not know of hard evidence that emotionally stable, socially adjusted Christians or Jews enjoy better health than emotionally stable, socially adjusted agnostics or atheists, nor can I envisage how such a claim could be substantiated.

As for the Jewish scene today, all three aspects of 'From Folk Medicine to Bioethics' – the popular, the scientific, the theological – remain with us, and they are often intertwined.

The folk medicine traditions of European Jews are very different from, say, those of North African or Iraqi Jewry; all have been influenced by the surrounding cultures even more than by Talmudic tradition, and are distinctively Jewish only in the wording of amulets and charms and in the associated forms of prayer. The 'healer' is a familiar figure in these societies.<sup>53</sup> Perhaps the most noted of all Jewish 'healers' was Israel ben Eliezer (1700–1760), the founder of Hasidism, generally known as the Baal Shem Tov, the 'good Baal Shem', from his reputation as an itinerant healer; the title *Baal Shem* (Hebrew **בַּשֵּׁם** – 'master of the Name') was given to healers

who were thought to achieve miraculous cures by writing or uttering letters of the divine names, as well as by dispensing herbal remedies. Many Hasidic leaders have emulated the founder's example as healers of the physical as well as spiritual maladies of their flock, indeed, they rarely distinguish between the two. Similar roles have been fulfilled by personalities, including rabbis, in 'oriental' Jewry.

This 'spiritual' healing tradition persists today; Hasidim routinely appeal to their 'Rebbe' to intercede with prayer or advice to overcome their ills, though often enough this is done side by side with recourse to the latest bio – medical techniques. The distrustful attitude it tends to breed towards more scientific therapies has joined forces recently with 'alternative medicine' and New Age ideas, a process which is part of the anti-rational, anti-Enlightenment backlash in contemporary religious circles.<sup>54</sup>

At the same time Orthodox Jews, especially from the non-Hasidic traditions, are engaged not only in the practice of 'scientific' medicine at all levels but in the serious discussion of bio-medical and bio-ethical issues, confident that guidance in these areas is to be found in the divinely revealed Torah; we cited above a sample of the thousands of published responsa. Hospitals such as Shaare Zedek in Jerusalem have allowed the halakhic rulings to put to the test; academic institutions such as Ben Gurion University in Beer Sheva have chairs in Jewish Medical Ethics; rabbinic organisations such as the Rabbinical Council of America issue regular updates on medical halakha; and books and articles on the ethics and halakha of medicine are authored by experts from all Jewish denominations.<sup>55</sup> In parts of Europe and in North America Jews take an active role in public discussion and the development of policy in medical ethics; some, at least, of the participants have sufficient knowledge and commitment to introduce the resources of their own tradition to the debate.

The function of theology in all this is to provide a framework within which the activity of healing, whether through folk or scientific methods, can be interpreted as a spiritual vocation. Even if the specific remedies used by the physician are not determined by the religious tradition itself, but by folklore or independent science, the art of healing is of the essence of the life of faith. It would be pretentious for a healer – say, a doctor routinely prescribing antibiotics to control an infection, or a surgeon routinely replacing a hip – to claim to be restoring the patient to a wholeness which incorporates not only physical healing but reconciliation with God and society. But without doubt the healer is playing a humble part within that process, and the divine art of healing is enhanced by the awareness of what is at stake in even the most routine procedures.

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Note: in these notes, BT = 'Babylonian Talmud'; JT = 'Jerusalem Talmud'. Unless otherwise specified, Talmudic references are to the Babylonian Talmud.

1. This and other references in similar format are to tractates of the Babylonian Talmud.
2. Maimonides *Mishneh Torah* Laws of Idolatry 11:16. He argues the case against astrology at great length in the *Letter to the Congregation of Marseilles*, stressing that astrology was not a Greek science, but part of the religion of Chaldeans, Egyptians and Canaanites.
3. *Biur ha-Gra* note 13 on *Shulhan Arukh Yore Deah* 179.
4. BT *Shabbat* 53a/b.
5. Preuss, Julius, *Biblical and Talmudic Medicine* tr. Fred Rosner. New York: Hebrew Publishing Company, 1978.
6. Mishna *Oholot* 1:8.
7. *Bekhorot* 7.
8. *Bekhorot* 6.
9. *Hullin* 3. For a translation of the relevant parts of Karo's *Shulhan Arukh* (Code of Law), together with a discussion of Talmudic anatomy in the light of the science of its day and the present time, see Levin, S.I. and Boyden, Edward A., *The Kosher Code of the Orthodox Jew*. New York: Hermon Press, 1969 (originally published in 1940 by the University of Minnesota). Boyden writes that 'although the Mishnaic portion of the Talmud, when redacted, was contemporary with Galen, and the commentaries of the Gemara were post – Galenic, the stage of development of Talmudic medicine is nearer that of the Hippocratic school ...' (page vi).
10. Lieber, Elinor, 'Asaf's *Book of Medicines*: a Hebrew Encyclopedia of Greek and Jewish Medicine, possibly compiled in Byzantium on an Indian model', in *Dumbarton Oaks Papers* 38 (1984), 233–49. Lieber herself (p. 238) maintains that the earliest certain reference to Asaph is c. 1200 in Kimhi's commentary on Hosea 14:8. She thinks that parts of the *Book of Medicines* are a conflation of Greek and Jewish ideas, and makes out a strong case that the book presents a crude account of the circulation of the blood, anticipating Harvey by some centuries.
11. Lieber *loc. cit.* 244: 'While this shows many affinities with the Hippocratic Oath, it is not taken from it directly ... From the literary point of view it constitutes a remarkable mosaic of Biblical phrases.'
12. 'Humours' would be the correct translation of *ruhót* in this context.
13. Richard Gottheil, in *The Jewish Encyclopedia* (1905 edition).
14. See Friedenwald, H., *The Jews and Medicine*. Baltimore: Johns Hopkins Press, 1944 vol. 1 page 333.
15. Maimonides *Mishneh Torah: Hilkhot Deot* 4, and in his medical works generally.
16. The Karaites, said to have been founded by Anan ben David in the eighth century, rejected rabbinic tradition and accepted only the written text of Torah as authentic revelation. The term 'Rabbanites' is used to distinguish mainstream Jewry from them.
17. Nahmanides, *Commentary* on Leviticus 26:11.
18. There are versions of the story in BT *Berakhot* 10b and *Pesahim* 56a and JT *Pesahim* 64a *Nedarim* 22b and *Sanhedrin* 5b.
19. Commentary on Mishna *Pesahim* end of chapter 4.
20. BT *Bava Qama* 85a, based on Exodus 21:19.
21. *Shulhan Arukh Yore Deah* 236:1.
22. Isserles note on *Shulhan Arukh Yore Deah* 235:10.
23. Taz, on *Shulhan Arukh Yore Deah* 236:1. Note that 'natural means' here refers to normal medical practice based on scientific method, at least as understood in the seventeenth century. David ben Shmuel roots his argument in a Talmudic discussion (BT *Berakhot* 60a) as to what prayers to say when letting blood.
24. Cohen, Hermann, *Religion of Reason out of the Sources of Judaism*, tr. Simon Kaplan. New York: Frederick Unger, 1972, p. 18. See also Leaman, Oliver, *Evil and Suffering in Jewish Philosophy*. Cambridge: Cambridge University Press, 1995.
25. Saadia Gaon, *The Book of Beliefs and Opinions* tr. Samuel Rosenblatt. New Haven: Yale University Press and London: Oxford University Press, 1948, book 6 section 8. Saadia was attacking Karaites rather than Kabbalists.



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26. BT *Berakhot* 5; *Bava Metzia* 84b/85a.
27. BT *Mo'ed Qatan* 28a.
28. Berkovitz, E., *Faith After the Holocaust*. New York: Ktav, 1973. Compare BT *Hagiga* 5a: 'Whoever does not experience the hiddenness of God is not of them (*sc.* the elect)'. See also Laytner, Anson, *Arguing with God: A Jewish Tradition*. Northvale NJ and London: Jason Aronson Inc., 1990.
- 29 *Guide of the Perplexed* 1:10 – 12. Maimonides here adopts a Neoplatonic view, already espoused by Augustine and others.
30. Rubenstein, Richard, *After Auschwitz: history, theology and contemporary Judaism*. 2nd ed. Baltimore and London: Johns Hopkins University Press, 1992.
31. Kaplan, Modecai M. *Judaism as a Civilization: Towards a Reconstruction of American Jewish Life*. With an new Introductory Essay by Arnold Eisen. Philadelphia: Jewish Publication Society, 1994. (Original publication – New York: Macmillan, 1934.)
- 32 Kushner, Harold S., *When bad things happen to good people*. London and Sydney: Pan Books, 1982.
33. Soloveitchik, Joseph B., 'Kol Dodi Dofek: It Is the Voice of My Beloved That Knocketh', in *Theological and Halakhic Reflections on the Holocaust* ed. B.H. Rosenberg and F. Henman. Hoboken NJ: Ktav, 1992.
34. But how does the doctor allocate scarce resources if, for instance, there are two patients only one of whom can be treated? If one was thought to be afflicted on account of sin would priority be given to the other?
35. *Shulhan Arukh Yore Deah* 335:7 and 338:1.
36. BT *Shabbat* 12b.
37. BT *Hagiga* 14b/15a
38. Responsa *Tashbatz* 263. Much relevant background information may be found in Cadden, Joan, *Meanings of sex difference in the Middle Ages* Cambridge: CUP, 1993.
39. Several responsa in *Iggerot Moshe*, for instance *Even ha-Ezer* 1:71, written in 1959.
40. For the material in this section see Rosner, Fred, and Bleich, David J., eds. *Jewish Bioethics*. New York: Hebrew Publishing Company, 1979; and Alfred S. Cohen, 'Artificial Insemination', in *Journal of Halakhah and Contemporary Society* 13 (1987) 43–59.
41. Tractate *Semahot* 1; compare BT *Shabbat* 151b. This ruling is followed by all the major Codes.
42. *Sefer Hasidim*, #723.
43. Tosafot on BT *Avoda Zara* 18a.
44. BT *Ketubot* 104a.
45. Gordis, Daniel H., 'Wanted – The Ethical in Jewish Bio-Ethics', in *Judaism* 38,1 (Winter 1989) 28–40.
46. Dorff, Elliot N., 'A Methodology for Jewish Medical Ethics', in *Jewish Law Annual Association Studies* Vol. VI, ed. B.S. Jackson and S. M. Passamaneck, Atlanta, Georgia: Scholars Press, 1992, 35–57.
47. Dorff p. 46.
48. Sinclair, Daniel B., 'Law and Morality in Halakhic Bioethics', in *Jewish Law Association Studies* II, ed. B.S. Jackson, Atlanta: Scholars Press, 1986, 143–163.
49. Footnote 2 on page 143.
50. Those diagnosed as having Tay–Sachs disease were a case in point; Chief Rabbi Jakobovits' ruling against abortion caused distress and controversy in Anglo–Jewry.
51. Quinlan's parents had requested her physicians to remove the mechanical respirator in order to let their daughter, who was comatose and without hope of recovery, die a natural death. The doctors refused, relying primarily on medical ethics, which they believed prohibited taking an action that might lead to the death of the patient. In 1976 lawyers for the Quinlan family argued successfully before the New Jersey Supreme Court that what was at stake was not medical ethics but the legal rights of the individual patient to refuse medical treatment that was highly invasive and offered no chance for a cure. In the United States, the Quinlan rationale has been expanded to include the right of all mentally competent patients, whether terminally ill or comatose, to refuse any and all medical treatments.
52. *Healing and Wholeness: the Churches' Role in Health*. WCC/CMC, 1990.
53. Bleich, J. David, *Judaism and Healing*. New York: Ktav, Yeshivah University Press, 1989. Bleich is particularly interested in the halakhic aspects of the subject.
54. Beit–Hallahmi, Benjamin, *Despair and Deliverance: Private Salvation in Contemporary Israel*. Albany: SUNY Press, 1992.
55. In addition the the sources cited in previous footnotes, the following are helpful:

Rosner, Fred, *Modern Medicine and Jewish Ethics* 2nd ed., Hoboken NJ: Ktav Publishing House with New York: Yeshivah University Press, 1991.

Sinclair, Daniel B., *Tradition and the Biological Revolution: The Application of Jewish Law to the Treatment of the Critically Ill*. Edinburgh: Edinburgh University Press, 1989.

See also the following journals:

ASSIA (1970–) is published by the Falk–Shlesinger Institute for Medical Research at Sha‘are Zedek Hospital, Jerusalem

The Regensburg Institute for the Advanced Study of Halakhah and Medical-Halakhic Problems (Jerusalem and Chicago) published its first volume, *Halakha u-Refuah*, edited by M. Hershler, in 1980.

The Institute for Research in Medicine and Halakhah (Jerusalem) published its first volume, *Ha-Refuah l'Or ha-Halakha*, edited by M. Stern, in 1980.