

Bioethics for clinicians: 22. Jewish bioethics

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Abstract

JEWISH BIOETHICS IN THE CONTEMPORARY ERA EMERGES from the traditional practice of applying principles of Jewish law (Halacha) to ethical dilemmas. The Bible (written law) and the Talmud (oral law) are the foundational texts on which such deliberations are based. Interpretation of passages in these texts attempts to identify the duties of physicians, patients and families faced with difficult health care decisions. Although Jewish law is an integral consideration of religiously observant Jews, secularized Jewish patients often welcome the wisdom of their tradition when considering treatment options. Jewish bioethics exemplifies how an ethical system based on duties may differ from the secular rights-based model prevalent in North American society.

Mrs. L is an 85-year-old resident of a Jewish long-term care facility who has vascular dementia, controlled heart failure and diabetes mellitus. The gastrostomy feeding tube she received 2 years ago has begun leaking and needs to be replaced. Her daughter, who has become her surrogate since the recent death of Mrs. L's husband, has indicated that if the tube were to come out, she would not consent to the insertion of a new tube: a decision she feels would be in accord with her mother's true wishes. She would not, however, request that the tube be deliberately removed. The staff are concerned that, by not replacing the tube, they would be failing to maintain the current level of treatment. They feel that this would amount to taking the mother's life without any substantial decline in her clinical condition. The daughter acknowledges the concern and devotion of the staff and her mother's unchanged clinical status but reiterates her belief that her mother would prefer to be allowed to die rather than to continue with feeding through a gastrostomy tube.

What is Jewish bioethics?

Although discussions of medical ethics can be found in Jewish writings since ancient times, modern medical technologies have placed new challenges before interpreters of Jewish tradition.¹⁻⁶ The zeal with which these questions have been addressed has given rise to the field of Jewish medical ethics over the past 40 years. In keeping with Jewish ethics generally, Jewish bioethical inquiry appeals to the principles found in Jewish scriptures and commentaries and applies them to clinical decision-making. In doing so, it takes a duty-based approach rather than the predominantly rights-based approach characteristic of contemporary secular bioethics. As the late Benjamin Freedman pointed out, bioethical deliberations that are focused on rights may do well in solving the procedural question of who gets to decide a particular question, but they do not necessarily offer guidance as to what the best decision might be.⁷ Framing a dilemma in terms of the duties owed to those involved can clarify the issues and suggest a satisfactory course of action.

Interpersonal behaviour in Judaism is traditionally conceived as the execution of duties within the context of relationships. From this perspective, a preoccupation with rights implies the relative isolation of individuals making claims upon one another; this further implies an implicitly or overtly adversarial relationship. In a "regime of duty," participants seek to enable each other to satisfy the obligations inherent within relationships,⁸ including professional relationships. Judaism urges one to perform mitzvot (good deeds), that is, to act in accordance with one's duties, and

Review

Synthèse

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this applies in the health care setting no less than anywhere else. The clinic thereby provides a relatively new arena in which mutual obligations between patients, physicians and families can be explored. Such explorations inevitably begin with the established norms of Jewish law and behaviour, collectively known as Halacha (literally, “the way”).

A variety of approaches

Traditional Jewish legal and ethical thinking is based on reading and interpreting 3 main sources, each of which is vast, varied and complex. The oldest and most authoritative is the Bible, which includes the 5 books of Moses (the Torah), the Prophets and additional writings. The second source is the Talmud, which is composed of multilayered commentaries on biblical texts and oral traditions by learned rabbis of the second to fifth centuries CE. To make the voluminous Talmud more accessible, several great codifications of Jewish law emerged that attempted to summarize the Talmud’s primary teachings.^{9,10} One of the most notable, the Mishne Torah,¹¹ comes from Maimonides, the noted 12th-century physician and scholar. The third main source of Jewish legal authority is the Responsa literature, in which prominent Jewish scholars through the centuries have given opinions on contemporary matters as interpreted through the Bible and Talmud.^{12,13} Responsa are the continuation of a 2000-year-old interpretative tradition, which creates an intellectual link to the past, helping to keep the law relevant and vital to the present. (Descriptions of codes and responsa can be found in references 14 and 15, or in any general guide to the sources of Jewish law.)

Bioethical questions are treated by Jewish authors in a variety of ways, which reflect different orientations toward Judaism and degrees of strictness in the interpretation of Talmudic texts and cases. Pioneering work in contemporary Jewish medical ethics in the 1960s and 1970s came primarily from Orthodox Judaism, in which the authority of God, as expressed through the Torah and Talmud, underlies the deliberative process.¹⁶ Much Jewish bioethics literature comes from this perspective, which assumes that, through the proper interpretation of Talmudic texts and commentaries, answers to the most difficult questions can be discovered. In practice, the rabbi whose opinion is sought for an ethical answer serves as an “expert counsellor” to physician and patient, interpreting Halachic law for the situation in question. A local rabbi or chaplain may, in turn, consult more learned Halachic authorities in difficult cases.

Inspired by these Orthodox sources, Jews from the more liberal Reform and Conservative movements have also made contributions to contemporary bioethics.¹⁷⁻²⁰ The interpretative method and texts used are basically the same, but their rulings are often more flexible than those provided by Orthodox rabbis. Even within Orthodox Judaism there exist multiple interpretations of most texts, with a resultant variability of rulings. Jews of the Reform movement are often more open to “extra-Halachic Jewish ethical

analysis,”²¹ in which Halacha becomes only one of several sources of moral authority.

Common principles

Although traditional Jewish scripture expresses many principles worthy of ethical consideration, there are a few foundational tenets that ground much of the Jewish bioethical tradition. One commentator identified 3 main principles: “human life has infinite value; aging, illness and death are a natural part of life; and improvement of the patient’s quality of life is a constant commitment.”²² Other important principles are that human beings are to act as responsible stewards²³ in preserving their bodies, which actually belong to God,²⁴ and that they are duty bound to violate any other law in order to save human life (short of committing murder, incest or public idolatry). Compared with secular values, these principles suggest a diminished role for patient autonomy. The duty to treat illness or preserve health overrides any presumed right to withhold treatment or to commit suicide.

In general, traditional Judaism prohibits suicide, euthanasia, withholding or withdrawal of treatment, abortion when the mother’s life or health is not at risk and many of the traditional “rights” associated with a strong concept of autonomy. For example, an observant Jew would not consider it his or her right to seek physician-assisted suicide as a way to avoid present or future suffering from metastatic carcinoma. Exceptions to these prohibitions are sometimes made in extreme circumstances.

The problem faced by Jews in end-of-life decisions is not usually in determining the appropriate Halacha; a greater challenge is determining the moment when hope for continued life is lost and the process of death has begun. Jewish law is relatively clear that life is not to be taken before its time. It is equally clear that one is not to impede or hinder the death process once it has begun.²⁵ Lenient rulings in such cases may well be based on the same texts as strict rulings; one authority may see continued treatment as prolonging life, where another may see it as prolonging death. Working through this dilemma is a common feature of Jewish end-of-life decision-making. Both the duty to treat and the duty not to prolong death must be considered in light of the more general duty to care for one’s parents in old age or ill health.

Why is Jewish bioethics important?

To traditionally minded Jews, Jewish bioethics is a subset of Halacha, which guides all of their activities. To more secular Jews seeking guidance in difficult decisions about their health, Jewish bioethics offers helpful lessons and considered opinions from the sages. Many nonreligious Jews welcome traditional views to help ease the uncertainty inherent in difficult ethical decisions, even though they may not live according to traditional religious practice. Of the 360 000

Jews in Canada (over 13 million worldwide), 1990 Canadian statistics revealed that 40% of the affiliated Jews identified themselves as Orthodox, 40% from the Conservative movement and 20% from the Reform movement.²⁶

An understanding of Jewish bioethics can help anyone, Jewish or not, who wishes to explore the many ways people think about difficult ethical issues. Even without accepting the authority of the Bible and the Talmud, physicians may benefit from seeing how principles or norms can be derived from authoritative texts, how minority opinions can be incorporated into such deliberations (the Talmud consistently records these), and how grappling with tough questions in this structured way can increase sensitivity to ethical and decisional nuance. Perhaps the most important lesson to be learned is that there are few easy answers to complex problems. Jews do not have a guidebook that explicitly tells them what to do in every situation. Rather, their guidebook is cryptic and requires them to consider thoroughly the range of possible answers to ethical dilemmas. It is a tradition of continued and ongoing questioning rather than one of absolute theological law passed down from above.²⁷ Furthermore, familiarity with Jewish bioethics would give the practitioner the perspective to consider ethical dilemmas through the lens of duty rather than of rights, asking the question, "What are the obligations of each of the parties involved in this discussion?" Although the rabbis of the Talmud would have appreciated the procedural question, they were more concerned with finding the best course of action, irrespective of the participants' wishes.

How should I approach Jewish bioethics in practice?

Both Jewish and non-Jewish physicians can benefit from being acquainted with Jewish bioethics in caring for pa-

tients and their families when issues related to Judaism are raised. Table 1 summarizes essential points to keep in mind when providing care to Jewish patients.

The patient's life history might have some bearing on the type of treatment approaches he or she requires. Older Jews not born in Canada might be more likely to appreciate a rabbi's input, as they are often more traditional than their children. Also, there are still a significant number of Holocaust survivors in most Canadian cities, some of whom have significant psychological associations stemming from traumatic experiences.

Very traditional or religious Jews may have concerns about modesty in the health care setting, and many might appreciate being cared for by nurses or physicians of the same sex. Hospital attire that preserves modesty may be doubly appreciated by patients who are religious. Some Jewish patients may also appreciate brief periods set aside for prayer or other ritual obligations.

A physician treating a Jewish patient should not make assumptions about the extent to which he or she would like his or her care to be guided by Jewish tradition. It would be perfectly appropriate to ask a patient whether Jewish opinions are considered in the decision-making processes, and to consult with a rabbi — a specific one if so requested — when the patient wishes to explore the tradition's wisdom on a particular matter.

The case

Mrs. L's daughter is undoubtedly trying to respect her mother in not consenting to the insertion of a new gastrostomy feeding tube, but she will find it difficult to get rabbinical support for reducing or withdrawing treatment that would result in her mother's death without a prior serious decline in Mrs. L's overall condition. How best to respect

Table 1: Practical measures to consider when caring for Jewish patients

Religious observance: Try to determine the patient's degree of orthodoxy (observance). This information may help to determine the degree of adherence to Jewish laws, including dietary laws. Orthodox men will usually wear a head covering (yarmulke) at all times. Explore the needs for prayer and, whenever possible, facilitate such participation. During special "high holidays" (Rosh Hashanah and Yom Kippur) Jewish patients may want to have access to special religious services. Orthodox Jews should not "work" on the Sabbath (Saturday); however, necessary medical activities can be performed on the Sabbath. During Passover, special foods (unleavened bread) may be required. The patient may want to consult a rabbi when medical recommendations are made that affect dietary restrictions.

Diet: Many Jews, particularly Orthodox Jews, adhere to a strict diet of kosher food. If it is unavailable in hospital, patients may choose to bring kosher food from home. Some of the dietary principles include not eating pork or seafood and not mixing dairy and meat products. Six hours must pass before an Orthodox Jew can eat meat after a dairy meal. Usual dietary restrictions may be waived if necessary for medical reasons. Feeding is considered important, even in the late stages of disease, and therefore families may be reluctant to agree to the withholding of food unless the patient is in the dying process.

Privacy and modesty: Whenever possible, very personal care should be provided by a health care professional of the same sex, especially for female patients. Married Orthodox women may wear a wig in public as part of their adherence to the principle of modesty.

Consent: In general, the process of consent used in Western countries is also applicable to Jewish patients. Orthodox Judaism requires that a patient follow medical directions, but it is also expected that the best information be disclosed before the patient agrees to a procedure or treatment. Judaism promotes a strong commitment to the sanctity of life; as a result, there may be some difficulties when discussions take place about the withdrawal or withholding of treatments.

Rabbinical advice: Jewish people have a long tradition of asking a rabbi for advice when faced with difficult decisions. Families may present physicians with the results of rabbinical deliberations, which must be taken into account when decisions are made. It is always best to ask the patient or family if they would like the advice of a rabbi.

Life history: Many older Jewish patients may be Holocaust survivors. It is important to know this because such a history may affect their response to proposed treatments and their relationships with family members.

her parent is not easy to determine, but usually Judaism teaches that prolonging life is more respectful than assuming an incompetent patient wishes to end her suffering prematurely. There is a clear duty to "cause to eat"²⁸ in the Jewish tradition that her daughter should not, according to the Halacha, violate unless Mrs. L is deemed to be a *goses* (a person in the throes of dying), in which case treatment or feeding that would hinder the dying process would not normally be allowed. Even as death approaches, performing duties as articulated by Jewish law is the essence of traditional Jewish life, a source of joy and fulfillment for both patients and families, and Jewish bioethics suggests that the articulation and performance of such duties be the focus of clinical decision-making. The daughter agrees to have the gastrostomy tube replaced. She and the health care team determine conjointly the basis for future care within a palliative care framework. Mrs. L succumbs comfortably to pneumonia some months later.

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References

- Feldman DM. *Health and medicine in the Jewish tradition*. New York: Crossroad Publishing Company; 1986.
- Green RM. Contemporary Jewish bioethics: a critical assessment. In: Shelp EE, editor. *Theology and bioethics: exploring the foundations and frontiers*. Dordrecht: D. Reidel Publishing Company; 1985. p. 245-66.
- Meier L, editor. *Jewish values in health and medicine*. New York: University Press of America; 1991.
- Novak D. Bioethics and the contemporary Jewish community. *Hastings Cent Rep* 1990;20(4):14-7.
- Rosner F. *Modern medicine and Jewish ethics*. New York: Yeshiva University Press; 1986.
- Rosner F, Bleich JD, editors. *Jewish bioethics*. Brooklyn: Hebrew Publishing; 1987.
- Freedman B. *Duty and healing: foundations of a Jewish bioethic*. New York: Routledge; 1999. p. 18.
- Freedman B. *Duty and healing: foundations of a Jewish bioethic*. New York: Routledge; 1999. p. 54.
- Karo J. *Shulkhan Arukh*. 10 vol. New York: MP Press; 1965.
- Ben Asher J. *Tur Shulkhan Aruch* [no English translation available]. Explanation available: www.shamash.org/lists/scj-faq/HTML/faq/03-38.html (accessed 2000 Dec 8).
- Maimonides M. *Mishne Torah*. 6 vol. New York: MP Press; 1962.
- Feinstein M. *Darash Moshe I: a selection of Rabbi Moshe Feinstein's choice comments on the Torah*. Brooklyn (NY): Mesorah Publications; 1994.
- Waldenberg EY. *Responsa Tzitz Eliezer* [contemporary rabbinic responsa covering the corpus of Jewish law]. 10 vol. Jerusalem: Rabbi Elizer Y. Waldenberg; 1990. [No English translation available.]
- Freedman B. *Duty and healing: foundations of a Jewish bioethic*. New York: Routledge; 1999. p. 25-8.
- Rakover N. *Guide to the sources of Jewish law*. Jerusalem: Library of Jewish Law; 1994.
- Jakobovits I. *Jewish medical ethics*. New York: Bloch Publishing; 1959.
- Borowitz E. The autonomous self and the commanding community. *Theological Studies* 1984;45:34-56.
- Dorff E. A Jewish approach to end-stage medical care. *Conservative Judaism* 1990;43(3):3-51.
- Feldman DM. *Marital relations, birth control, and abortion in Jewish law*. New York: Schocken Books; 1974.
- Maibaum M. A "progressive" Jewish medical ethics: notes for an agenda. *J Reform Judaism* 1986;33(3):27-33.
- Grodin MA. Halakhic dilemmas in modern medicine. *J Clin Ethics* 1995;3:218-21.
- Meier L. Three cardinal principles of Jewish medical ethics. In: Meier L, editor. *Jewish values in health and medicine*. Lanham (MD): University Press of America; 1991. p. 60.
- Freedman B. *Duty and healing: foundations of a Jewish bioethic*. New York: Routledge; 1999. p. 256ff.
- Davis DS. Method in Jewish bioethics. In: Camenisch PF, editor. *Religious methods and resources in bioethics*. Dordrecht: Kluwer Academic Publishers; 1994. p. 109-26.
- Feldman DM. *Health and medicine in the Jewish tradition*. New York: Crossroad; 1986. p. 94-5.
- Institute of the World Jewish Congress. Canada. In: *Jewish communities of the world*. Minneapolis: Lerner Publications Company; 1998. Abridged version available: www.virtual.co.il/communities/wjcbook/canada/index.htm (accessed 2000 Dec 8).
- Fasching D. *Narrative theology after Auschwitz*. Minneapolis: Fortress Press; 1992.
- Freedman B. *Duty and healing: foundations of a Jewish bioethic*. New York: Routledge; 1999. p. 103.

Related Web sites

- American Physicians Fellowship for Medicine in Israel: www.apfm.org/discus
- The Gemara (Talmud): www.acs.ualgary.ca/~elsegal/TalmudMap/Gemara.html
- Institute for Jewish Medical Ethics: www.ijme.org
- Jewish Community Online's Inernet Resources (Family/Health and Bioethics): www.jewish.com/search/Family/Health_and_Bioethics
- Jewish Law: www.jlaw.com
- Judaism and Medicine on the Web: <http://shamash.org/shuls/einstein/medlinks.html>
- Judaism 101: www.jewfaq.org/toc.htm
- Mish Mash (Linking Judaism Worldwide): <http://mishmash.virtualave.net>
- Page from the Babylonian Talmud: www.acs.ualgary.ca/~elsegal/TalmudPage.html
- Physician-assisted suicide: www.jlaw.com/Articles/phys-suicide.html and www.jlaw.com/Articles/suicide.html
- The right to die: a Halachic approach: www.jlaw.com/Articles/right.html
- Risk: Principles of Judgment in Health Care Decisions: www.thebody.com/iapac/freedman.html
- Shulchan Aruch: www.torah.org/advanced/shulchan-aruch
- The Thirteen Principles of Jewish Medical Ethics: <http://members.aol.com/Sauromalus/index.html>

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