

# Jewish Thought on the Frontier of Medical Science

Jason Levine

Thesis submitted in partial fulfillment of the  
requirements for Ordination

Hebrew Union College – Jewish Institute of Religion  
2013

Referee, Dr. Mark Washofsky

## ***Table of Contents***

### **Acknowledgements**

### **Digest**

### **Introduction**

Opening Thoughts	1
On God and Humanity	4
The Extent of our Ability to Heal	10
Methodology and the Willingness to Change	16
Concluding Thoughts and a Note on the Thesis Structure	26

### **Chapter 1: Genetic Engineering**

Procreation	30
Racial and Social Control	49
What Features can be Altered Genetically?	54
Rabbinic Knowledge and Microscopic Data	70
Changing God's Creations	79
The Obligation to Heal	88

### **Chapter 2: Stem Cell Research**

Abortion and the Rights of the Fetus	97
The Sanctity of Life and the Disposal of Excess Embryos	124
May We Create Life in Order to Destroy it?	133
Potential Life versus Potential Research	142
The Limits of Healing	151

### **Chapter 3: Human Beings and Their Bodies**

Chapter Overview	160
Changing Yourself Physically	162
The Power to Influence the Mind	187
Social Concerns	217
Is it Our Place to Heal?	243

### **Conclusion**

Intersection between Judaism and Science	258
Social Responsibility and <i>Tikkun Olam</i>	261
Final Comments	263

<b>Guide to Sources and Bibliography</b>	<b>268</b>
--	------------

## *Acknowledgements*

This thesis represents a lifetime of seeking outlets to combine my passions for Judaism and science. Ever since I was little, these two areas have formed the core of who I am. My tale, which lead me from the laboratory to studying at Hebrew Union College, is the story of my ever-growing and ever-changing relationship with these two fields. The completion of this thesis is a landmark moment in this journey. It is also a testament to the many people who have supported me over the years and encouraged me to explore my passions throughout my life.

Without a doubt, the person I need to thank the most is Dr. Mark Washofsky, my advisor for this thesis. His wisdom and support expertly guided me through its conception, research, and writing. There was never any doubt that I wanted to study with Dr. Washofsky for my rabbinical thesis, and I am humbled by the experience to work with such a great teacher and wise scholar. He pushed me to develop my skills of critical thinking, legal analysis, writing ability, and much more. I am honored to be his student.

As this thesis is a culmination of a lifelong love of science, I must credit and thank my father, Dr. Alan Levine, for raising me in his laboratory and encouraging this love of science within me. Ever since I was little I jumped at any opportunity to work in his lab, learn about his research, and discuss science with him. I must also thank my mother, Pam Levine, and sister, Alisa Levine, for encouraging and supporting me throughout my life, and especially for their patience as my father and I debated science around the dinner table.

It is also essential that I thank Dr. Ron Hoy, Dr. Pat Rivlin, and Ms. Laurel Southard. Dr. Hoy and Dr. Rivlin welcomed me into their laboratory and trained me with constant care, commitment, and dedication throughout my college years. Even though I chose to leave a career in the sciences, I am grateful for everything they did to help me. Laurel was the greatest advisor I ever could have asked for, patiently supporting me each step of the way as I transitioned from a career in the sciences to one in the Jewish community.

Lastly, I want to thank all of my professors at Hebrew Union College for their support and guidance. During my second year at HUC and my first year in Cincinnati, I received valuable advice from a then-fifth year student. He told me that if I knew my passion, then I should take every opportunity possible to learn about it and develop it, culminating in my thesis. As a result, I thank every professor that permitted me to write a final paper or project on Judaism and healing, science, medicine, ethics, law, and anything else related to the intersection of these fields. I also thank my professors for the various conversations I had outside of class to help me discover my interest in medical ethics and Jewish law. All of these years of exploration lead me to my work with Dr. Washofsky presented in this thesis.

I am grateful to everyone who has supported me throughout the years and helped me fulfill my dream of writing about Judaism and science. I hope that this thesis is only the next stage in a lifetime exploration of the relationship between Judaism and science. This work has been a labor of love and I look forward to what lies ahead to study next.

## *Digest*

This thesis explores the intersection of two fields that have equally interested me throughout my life – Judaism and science. Living in an era of unparalleled technological growth and scientific discovery, we are often torn between two different yet equally compelling ways of understanding the universe and how it affects our medical decisions. The question stands before us: what happens when science and Jewish tradition appear to collide? Specifically, how flexible is Jewish tradition and *halacha* (Jewish law) when new medical and scientific breakthroughs challenge traditionally held beliefs?

By studying Reform, Conservative, and Orthodox responsa and legal rulings, this thesis analyzes Judaism's ability to embrace science as well as modify its *halacha* and legal opinions facilitating the acceptance of beneficial modern discoveries. Through the case studies presented in this thesis, we will be able to better understand how Jewish thought encounters, responds to, and often agrees with budding medical science. In addition, we will also see how the limits of Jewish thought are pushed to new levels.

The main chapters consist of case studies on Genetic Engineering, Stem Cell Research, and Human Beings and Their Bodies. Each topic focuses on these modern issues, informing us about Jewish thought in this era of medical science advancement. Scientific discoveries provide enormous opportunities and challenges for our community, so will Jewish thought keep pace with the moral, ethical, and legal complexity? Do modern Jews, across the movements, find satisfying ways to merge their Jewish convictions and their desire to take advantage of medical advances?

As technology and scientific research continue to develop, the confrontation between Jewish thought and the world of medicine, science, and technology will not decrease, keeping this topic relevant and pertinent for much of the Jewish community.

## ***Introduction***

### Opening Thoughts

As modern Jews living in an era of unparalleled technological creation and scientific discovery, there is an ongoing intersection and struggle between the possibilities of science and the teaching of religion. The scientific community is always on the cusp of new discoveries, new cures, and new ideas. The frontier of what is possible within the medical and scientific worlds is always shifting forward. As a result, the Jewish community and its included legal tradition cannot stay stagnant. Judaism has been forced to adjust to new societies, new technologies, and new influences repeatedly over its four thousand year history, and its relationship to the frontier of medical science is no exception.

Our Jewish tradition offers us many tools, such as theology, history, a fully developed legal tradition, and a scripturally based moral system, all of which serve as inspiration and proof text to reconcile the various unknown areas of our world. As such, the Jewish interest in medical science and the discovery of the natural world is tangential or even indifferent. Jewish thought is about more than science and intellectual curiosity, and less concerned with dogmatic rigidity. As a result, there is less conflict than other religious traditions.

On the other hand, we cannot overlook how the scientific empirical method has framed many intellectual, medical, and technology developments and has dominated the conscience of the Western world. In modern times, we see how the fields of nanotechnology, astrophysics, genetics, neuroscience, and more have

allowed science to expand further into areas that has been dominated by religion and philosophy for centuries. Furthermore, with growing advances in electronics and computing, our day-to-day actions and beliefs are focused to confront, or often embrace, the possibilities of modern science.

In most situations, Judaism and science are free to inhabit separate spheres of understanding. Their approaches are different; science is inherently inductive while Judaism is deductive. However occasionally, and perhaps even at an increasing rate, there are a number of confrontations that exist today. Science has the ability to challenge physical reality, as well as antiquated understandings about how the body and natural processes function. Plus, there is the age-old philosophical debate between reason and faith. On the individual level, it may be difficult to accommodate between different theories about how reality functions. This issue has spilled over into the political spheres as well. The overall question stands: where do you draw the lines?

The process of adjusting to new situations requires a legal system that is flexible yet firm, malleable yet internally consistent. What was the norm five hundred years ago medically and scientifically is certainly not so today. A religion or people cannot rebuke any modern technology as irrelevant if it hopes to embrace the times. Similarly, neither can they disregard previous legal decisions as outdated relics if its tradition and history is to remain their roots and foundations. Therefore, it is imperative that we understand the intersection between these two different ways of understanding the universe.

This thesis intends to overview and to analyze how Jewish tradition has been called upon to make ethical, legal, or moral decisions about some very dramatic and groundbreaking developments representing the frontier of medical science and technology. Using responsa, *halachot*, and other rabbinic rulings from Reform, Conservative, and Orthodox *poskim* and scholars, this thesis look at a wide range of topics pertinent to the intersection of science and Judaism. Through the case studies presented in this thesis, we will be able to better understand how Jewish thought encounters, responds to, and often agrees with budding medical science. However, we will also see how the limits of Judaism are pushed to new levels.

This introductory chapter permits us the opportunity to offer general conclusions about Judaism's ability to embrace science as well as modify its *halacha* towards the direction of accepting beneficial modern techniques and discoveries. Due to the specific nature of the chapters and case studies, this introduction will offer more broad observations about the larger spheres of science and religion. There are three general areas that will be briefly discussed in this introduction, each weaving in quotes and sources from the three major movements that are discussed in this thesis. Whereas in the main chapters each movement is discussed separately, the movements are discussed together in this introduction.

The first section of this introduction begins the discussion about the Jewish relationship between science and the natural world by looking at many of the theological implications involved in healing and our relationship to God. While human beings are given the ability to think, reason, and create, how is that

reconciled with the recognition that God is the Ultimate Source of Healing. The second section touches on our moral and legal responsibility to heal. Namely, we must act in order to complete the *mitzvah* of *pikuach nefesh* (saving a life). The final section of this introduction looks more about methodology and comes of the various approaches Jewish scholars take to formulating legal opinions on moral issues.

### On God and Humanity

“Who heals the sick – God or man?” This is the name of a chapter in a book on modern medicine and Jewish law by Orthodox physician and scholar Dr. Fred Rosner. The question is not only pertinent but sits at the core of the relationship between Judaism and science. Rosner, speaking from the Orthodox perspective declares, “The physician must always recognize that God is the true healer of the sick and that a doctor is only an instrument of God in the ministrations to the sick.”<sup>1</sup> Furthermore, based on *Berachot* 60a, Rosner writes that the patient must recognize that the physician is an agent of the Divine healer and that the person should also seek means of Heavenly intervention, such as prayer. A differencing opinion in that Talmudic section by Rabbi Abaye cites the verse “and heal he shall heal” (Jeremiah 17:14) to assert that a patient should not use prayer to find healing as the Torah gave consent for human healing.<sup>2</sup>

Let us pay particular attention to the last phrase of Abaye’s commentary that supports human healing. Conservative scholar Rabbi Joseph H. Prouser plays off this

---

<sup>1</sup> Fred Rosner, *Modern Medicine and Jewish Law: Studies in Torah Judaism*, New York: Yeshiva University, 1972, 14

<sup>2</sup> *ibid*, 20-21



idea. He cites medieval philosopher Bachya ibn Pakuda who taught that God wishes us to live and that "one should not endanger himself [or herself] relying solely on his trust in God."<sup>3</sup> Prouser goes a step further and adds, "Principled objection to any medical intervention as interference with Providence is generally to be considered foreign to Jewish Law and tradition."<sup>4</sup> God is part of the healing process, not an alternative to it.

But how much is God part of this process? Both Rosner and Prouser mention that we should not trust in Divine intervention alone, but do not say that humans and God are equal partners in the process of healing. Multiple Orthodox scholars hold that the relationship is far from fifty-fifty. Rabbi Eliezer Yehudah Waldenberg sees no partnership at all. As recorded by his student Dr. Avraham Steinberg, Waldenberg writes in his *Tzitz Eliezer* (Vol. VX, sect. 25, chap. 19, par. 2), "The physician and medication are only intermediaries providing the cure which God has prepared."<sup>5</sup> Waldenberg is very firm with his commitment to this idea that God is the only source of healing. In his *Ramat Rachel* (sect. 1), he writes, "The physician is considered to be God's emissary, not His partner, in healing the sick."<sup>6</sup> Waldenberg continues, "It is only because we are not worthy of divine intervention that we must rely upon modern medicine."<sup>7</sup> Yet despite this theological assertion about humanity, Waldenebrg still supports the use of this medicine. In fact, he chides anyone who

---

<sup>3</sup> Joseph H. Prouser, Compulsory Immunization in Jewish Day Schools, *Hoshen Mishpat* 427:8.2005, 10-11

<sup>4</sup> *ibid*, 10

<sup>5</sup> Avraham Steinberg, Jewish Medical Law: A Concise Response, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 22

<sup>6</sup> *ibid*, 23

<sup>7</sup> *ibid*

avoids medicine. In the *Tzitz Eliezer* (Vol. VIII, sect. 15, concluding paragraph) he declares, "When a person becomes ill, he is not permitted to rely upon miracles for his cure, but is required to consult a physician, as is the norm of human behavior. He who disregards this norm and relies upon miracles is not only foolish, but also self-destructive. He will have to defend his actions in judgment before God."<sup>8</sup>

Orthodox *posek* Rabbi Abraham S. Abraham writes similarly to Waldenberg. Quoting the *Orach Chayim* from the *Arba'ah Turim*, Abraham states, "a person should not think that healing lies in any given medicine or treatment per se, for God alone has the power to heal. Rather he should place his trust in the Almighty that the medicine or treatment he is about to have will be the means for his cure."<sup>9</sup> In another section of his *Nishmat Abraham*, Abraham writes, "A patient, even though he seeks medical help, should realize that cure is ultimately not dependent on a particular physician or treatment, but comes from Divine Providence whose mercy he prays for, as Scripture says (Deuteronomy 32:39): 'I strike and I heal.' But, the Almighty has so will it that the physician is the agent for healing in the natural order of things."<sup>10</sup> Abraham cites *Yoreh Deah* and Rabbi Sholomo ben Aderet, the Rashba, for this declaration.

Both Abraham and Waldenberg are very clear about the relationship between humans and God in the process of healing. God is the true healer and man only plays a role. The idea is discussed about who controls and owns our bodies. The CCAR Responsa Committee offered the traditional view in form of a quote by

---

<sup>8</sup> *ibid*, 22

<sup>9</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 14

<sup>10</sup> *ibid*, 111

Rabbi Moshe Rivkes, "The reason the Torah warned us about preservation of life is that God graciously created the world to benefit His creatures so that they may be aware of His greatness and may work in His service by observing His mitzvot."<sup>11</sup> Reform scholar Walter Jacob disagreed with this Orthodox assertion of God being the only arbiter of our ailing bodies. Jacob references Moses Sofer (*Chatam Sofer Yoreh Deah* #336) and Moshe Schick (*Maharam Schick, Yoreh Deah* #347) as Orthodox citations that our bodies belong to God alone. Jacob simply retorts he does not follow this strict Orthodox line of reasoning.<sup>12</sup>

However, humans play an important role in healing. Abraham made the special point about the physician being part of the natural order of the world. Waldenberg also mentioned that the act of healing is not based on miracles but human behavior. Healing is not the process of magic or unnatural acts. In fact the opposite is true. Healing comes through natural means, means that are comprehensible by humans. Conservative scholar Elie Kaplan Spitz speaks positively about human's role in the natural world. "Physicians, in the Jewish tradition, help fashion creation." Citing Midrash Samuel 4:1, Spitz writes, "Medicine in this account, is seen as a way to actualize God's blessing."<sup>13</sup> Medicine is something truly valuable. Rabbi Meir Leib ben Yechiel Michael, on the verse "for I am the God that heals you" (Exodus 15:26), teaches that the Torah and its laws were given to Israel by God like a physician ordering his patient. The benefit is derived by the

---

<sup>11</sup> TFN, Responsum on Smoking, 5753.23, 334

<sup>12</sup> CARR, Autopsy for Future Knowledge, December 1985, 141

<sup>13</sup> Elie Kaplan Spitz, On the Use of Birth Surrogates, *Even HaEzer* 1:3.1997b, 12-13

patient.<sup>14</sup> Medicine and the work of the physician is not a sign of God's control over humanity, but God's gift to us. Conservative *posek* Elliott N. Dorff argues that medicine is the human's tool to correct nature. He writes that it is understood in Judaism that not everything is natural and the descriptive statement of this "natural" occurrence or behavior is good. Instead, Jews engage in medical treatment precisely to alter what is the natural course of a disease.<sup>15</sup>

The Reform CCAR Responsa Committee also speaks of the positive value of medicine and humanity. The Committee also calls medicine and our ability to practice it as a gift from the Divine. Based on Maimonides' precedent using Exodus 21:19, Deuteronomy 22:2, and *Mishnah Nedarim* 4:4, among other texts, "he reaffirmed our obligation to apply the divine gift of human intelligence to explore nature and use its resources for the art of medicine, and that it was a *mitzvah* to heal and be healed. Physicians are therefore expected to use their art to health through the means provided to them by nature. Indeed, to refuse to heal was compared to shedding blood. In this way the pursuit of modern science to widen the opportunities for healing are urged upon us as a *mitzvah*, and Liberal Judaism fully supports this traditional demand."<sup>16</sup>

Orthodox Rabbi J. David Bleich similarly supports the positive notion of healing as it relates to human nature. Speaking more specifically about human curiosity and the desire to research the natural world, Bleich believes that such curiosity offers potential and is not an affront to the Divine. He argues that genetic

---

<sup>14</sup> Rosner, *Modern Medicine and Jewish Law*, 14

<sup>15</sup> Elliot N. Dorff, *Jewish Norms for Sexual Behavior: A Responsum Embodying a Proposal, Even HaEzer* 24.1992e, 11

<sup>16</sup> TFN, *Linkage Analysis*, 5752.6, 306

studies and other efforts to better understand biological traits should be enthusiastically welcomed even if there is no therapeutic benefit from the experiments or studies as they still contribute to the understanding of *chochmat haShem* (God's wisdom). "Of course there is every reason to hope – and to pray – that the theoretical knowledge gleaned in such studies will eventually lead to practical therapeutic benefits."<sup>17</sup> After all, humans do have a natural inclination to explore the world around them. If benefit can be found, then it should be permitted. The CCAR Responsa Committee also speaks highly of human's inquisitive nature. "Even though the result of testing provides us currently and perhaps inherently not with certainties but only with odds, we consider this an important and permissible inquiry. Knowledge is open-ended, and because human foresight will always be limited, certainties will elude us in any case in most areas of knowledge."<sup>18</sup>

But, as a last note in this discussion, we note that man's quest to heal is not an easy one. Rabbi Jacob ben Asher states that cures from heaven come easily but man-made cures come with difficulty.<sup>19</sup> Truly any act of healing or exploration of new medicine is not easy. Bleich notes the struggle between man's natural desire to learn and limited ability to know:

"When God enables man to discover a casual connection between a drug and the cure of a disease, man has no right to ignore the available therapy and to turn directly to God instead. Such a posture involves contravention of the divine will. Yet, in the absence of a known cure, a person afflicted by disease

---

<sup>17</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 100-101

<sup>18</sup> TFN, *Linkage Analysis*, 5752.6, 306

<sup>19</sup> Rosner, *Modern Medicine and Jewish Law*, 14

is under no obligation to visit an apothecary's shop and request a dose of every medicine in stock in the hope that perhaps one of the drugs available will be of some help. God demands only that man avail himself of drugs possessing known medicinal qualities, just as he demands only that vegetation of known nutritive value be used as good. The absence of an awareness of an effective remedy is an indication that God does not demand of man that he seek a cure for such an affliction. Man is at perfect liberty to utilize an experimental research if he so chooses. But since no obligation to do so has been imposed upon him, a person finding himself in such circumstances is equally free to surrender himself entirely to the will of God."<sup>20</sup>

It is this gift of freedom that causes humanity such trouble. Humanity must grapple with the moral implications of this divinely gifted knowledge, and in lieu of a cure, perhaps Divinely decreed disease. God gives man the ability to think, reason, and create, and whether we are partners in healing with God, or just God's messengers, morally ambiguous and difficult questions certainly stand before us. Humans are always in the process of learning and discovering. With that ongoing pushing of medical boundaries comes recognition that we do not know everything. As a result, we may have to turn to God for help, for healing, for answers or just perhaps for support.

#### The Extent of our Ability to Heal

---

<sup>20</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City Ktav Publishing House, inc., 2002, 152

Whether it is God or it is humans who heal, medical science has progressed quite far and offered our societies with many cures, remedies, and possibilities that our ancestors lacked. Diseases that were once deadly are readily cured. Disabilities that were once restricting can now be corrected. But with power comes the necessary responsibility to limit what we can and cannot do. Conservative scholar Mark Popovsky writes that technology is value neutral and can be used for good or evil purposes. However, the technology that a society creates reflects the values of that society.<sup>21</sup> Popovsky's Conservative colleagues Elliott N. Dorff and Elie Kaplan Spitz argue similarly. Dorff and Spitz wrote in a responsum, "the moral and legal valence of the technology depends on how it is used."<sup>22</sup> Spitz wrote in a separate responsum, "Rabbis universally accept the use of medical technology, but may question the ethical implications of the process." Spitz quotes from Rabbi Immanuel Jakobovits, former chief rabbi of England, "It is not the use of the tools which is objectionable, but the social and ethical implications."<sup>23</sup> Our morals and our laws must maintain us within the boundaries of what is acceptable and what covers the line.

But boundaries aside for a moment, life is regarded as the highest value in Judaism. No scholars of any movement within the Jewish community would disagree with such a statement. The *mitzvah* of *pikuach nefesh* (saving a life) is an overriding principle and law. The Sages of the Talmud use the language of "whose blood is

---

<sup>21</sup> Mark Popovsky, Choosing Our Children's Genes: The Use of Preimplantation Genetic Diagnosis, *Even HaEzer* 1:5.2008a, 4

<sup>22</sup> Elliot N. Dorff and Elie Spitz, Computer Privacy and the Modern Workplace, *Hoshen Mishpat* 331:1.2001, 7

<sup>23</sup> Elie Kaplan Spitz, On the Use of Birth Surrogates, *Even HaEzer* 1:3.1997b, 13

redder," implying that one person is worth more to save than another. Reform scholar Solomon Freehof declares no person is more important than any other person; no one's blood is redder. Therefore, we cannot obligate the saving of one person over another.<sup>24</sup> Orthodox *posek* Abraham S. Abraham writes on the need to protect the body from a ritual perspective. "If [a seriously ill person] refuses to eat [on Yom Kippur], he is held responsible for endangering his life, as the Torah says (Genesis 9:5): 'And surely your own blood of your souls will I require.'"<sup>25</sup> It is our responsibility to make sure we are healthy.

The CCAR Responsa Committee discussed this issue in their responsum on live liver transplantation. The Committee writes that the principle of saving a life takes precedent over respect for the dead if a liver from a cadaver can be used to save another.<sup>26</sup> Yet, there is a halachic dispute about whether the mitzvah to preserve one's own life or the mitzvah to rescue is higher.<sup>27</sup> In the case of *vadai sakanah* (mortal danger), we are forbidden to attempt the rescue.<sup>28</sup> But in the case of *safeik sakanah* (less-than-mortal danger), one is not obligated, and in some cases forbidden in halachic sources. However, by accepting the minority viewpoint and offering to help this "reflects a higher standard for our duty to our fellow human beings, a higher aspiration for our moral conduct."<sup>29</sup> In the end, the Committee concludes that serving as a donor is "an example of nobility and courage worthy of

---

<sup>24</sup> MRR, Choosing Which Patient to Save, 211

<sup>25</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 72

<sup>26</sup> RRTFC, Live Liver Transplantation, 5763.2, 144-146

<sup>27</sup> *ibid*, 154

<sup>28</sup> *ibid*, 155-156

<sup>29</sup> *ibid*, 156



our admiration and even our emulation." But at the same time we do not criticize a person for choosing to preserve his or her own life.<sup>30</sup> Saving a life, including protecting your own life, is a Jewish value that bears no shame or embarrassment.

It is our obligation to heal and to be healed. Orthodox scholars Fred Rosner and Moshe D. Tendler offer an example of how healing is more important than a religious sentiment. "The Torah permits one to seek healing from physicians. According to Maimonides and others, it is obligatory to do so. Therefore, one should go to the most expert physician, even if he is an atheist. We should not wonder how or why God sends healing through the hands of an atheist because in case of illness, we are divinely commanded not to rely on a miracle as long as we can be healed with a remedy that God created. This (atheist or irreligious) physician is familiar with the illness and knows best which remedies to apply to cure it."<sup>31</sup>

Reform scholar Walter Jacob offers another example of how healing overrides other sensibilities. Writing a responsum on transplanting eyes from deceased persons, Jacob speaks about the nature of blood. Even though blood has special status in life and in burial, it is "only a general hesitation, because it is overridden by the outright permission to use any valuable remedy for a patient who is in danger. For such a patient the blood can be used. If the patient is not in danger, then the blood plasma - which changes the appearance of the blood and its original form - may be used."<sup>32</sup> Using the eyes of a dead person to bring life to the blind is the act of healing and restoration, which in Jewish law takes precedence, over

---

<sup>30</sup> *ibid*

<sup>31</sup> Fred Rosner and Moshe D. Tendler, *Practical Medical Halachah*, Northvale: Jason Aronson, Inc., 1997, 170

<sup>32</sup> *ARR, Transplanting the Eyes of Deceased Persons*, 1967, 287

considering it an act of mutilation.<sup>33</sup> Jacob generalizes the point by stating any forbidden object, such as blood, *trefe* meat, etc., can be used for the sake of healing.<sup>34</sup>

Orthodox *posek* Abraham S. Abraham prevents two other examples of the importance of healing. In the first example, Abraham speaks about being treated by a non-Orthodox physician. "He who calls a non-Orthodox physician to visit a dangerously ill patient need not be concerned with how the physician will return home. Even if the physician stipulates that he will come only if able to drive in his car, one is still permitted to summon him (although halachically the physician is not permitted to drive home)."<sup>35</sup> Abraham prioritizes the importance of healing over one's concern for halachic responsibility and the desecration of Shabbat.

In the second example, Abraham permits the use of subterfuge as a way to trick a patient into accepting acts of healing. "If a dangerously ill patient requests that arrangements be made on the Sabbath to ask a renowned *Tzadik* (righteous person) to pray for him, one is not permitted to violate even a rabbinical law in compliance with his request. This is true even if the *Tzadik* is exceptionally pious and regarded as one whose prayers are accepted by God. One should attempt to dissuade the patient from his request if any violation of law would be involved. If necessary, one may mislead him into thinking that his demands have been acceded to. However, if the dissuasion is unsuccessful, one should send the letter or telegram through a gentile."<sup>36</sup> While this situation may sound a bit bizarre to the liberal Jew, it

---

<sup>33</sup> *ibid*, 288

<sup>34</sup> RRT, *The Use of the Cornea of the Dead*, 154

<sup>35</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 71

<sup>36</sup> *ibid*, 56

is another valid example of the importance and obligation of seeking healing wherever and however we are able.

The Conservative movement offers its own examples of striving for healing. These examples speak more explicitly to the permissibility and use of modern technology to help those with disabilities lead a more observant Jewish lifestyle. Rabbi Daniel S. Nevins writes that the Conservative movement, along with parts of Orthodoxy, permits the use of electronic equipment on Shabbat if it allows people with physical disabilities to participate more fully in communal life, such as electronic wheelchairs, microphones, and elevators.<sup>37</sup> Furthermore, e-readers, if their network functions were turned off, would be permitted to be used on Shabbat for visually impaired congregants.<sup>38</sup> The acceptance of e-readers is a challenging decision. Nevins admits that the Conservative movement recognizes that e-readers may be the only source of written material in the future. This scenario would result in the inevitable change in currently comfortable habits.<sup>39</sup> Truthfully these decisions are not always easy to reach. Nevins writes that the acceptance of new technology should focus on minimizing our violation of Shabbat, not just embracing what is new and exciting.<sup>40</sup> As we will see in the main chapters of this thesis, many rabbis struggle to reach their opinions about the use of modern medical technologies to heal. Artson concludes that it is often difficult to tell where the line between physical and psychological distress and the life-saving measures of *pikuach nefesh* are

---

<sup>37</sup> Daniel S. Nevins, The Use of Electricity and Electric Devices on Shabbat, *Orah Hayyim* 305:18.2021a, 48

<sup>38</sup> *ibid*

<sup>39</sup> *ibid*, 60

<sup>40</sup> *ibid*, 52

reached. "The benefit of the doubt in matters of health must always be towards leniency, and the judge of medical necessity must be the patient or their medical surrogate."<sup>41</sup> The law cannot decide on its own. The opinion of the patient is important as well.

When it comes to the importance of healing, humans do have great and ever increasing power over the natural world. Conservative scholar Popovsky speaks with caution about our ability to heal. He states that modern technology can create a false state of hubris in that we can truly control the value of life.<sup>42</sup> The prophet Isaiah is attributed in *Berachot* 10a to warn us of the need for humility, "Why do you concern yourself with the hidden things of the Merciful One?"<sup>43</sup> Human beings have a natural curiosity that must be kept in balance with our values and ethics. Clearly our moral guides must be always vigilant, ensuring that we live up to a certain standard. But one standard is never in question – the value of life. Reform scholar Walter Jacob says that Judaism does not speak of the quality of life, but that all life is wonderful and mysterious.<sup>44</sup> The value and importance of life will be an ever-present theme and often an overriding principle throughout this thesis.

### Methodology and the Willingness to Change

Our final discussion of this introduction looks very squarely at the connecting thread of this thesis – how willing are the rabbis and rabbinic literature to change in the face of new medical and scientific discoveries? As we will see in the

---

<sup>41</sup> *ibid*

<sup>42</sup> Popovsky, *Choosing Our Children's Genes*, 10

<sup>43</sup> *ibid*, 29

<sup>44</sup> CARR, *Autopsy for Future Knowledge*, December 1985, 140

main chapters of this thesis, the willingness to change a law does not always translate into practice. In many ways science is forcing the rabbis to go back and test some of their decisions. But each rabbi from his or her own movement or perspective on Jewish law will maintain a set of basic presumptions and immutable facts. Some lines, like the sanctity of life, cannot be crossed. Other lines are grayer or have movable boundaries. The willingness of a given rabbi to change Jewish law in accord with the frontier of medical science depends a lot on he or she approaches the task of writing halachic opinions.

Rabbi David Ellenson writes about the different methodologies employed as part of the halachic decision-making process. After all, each rabbi comes from the same tradition with the same core texts. The Tanach and Talmud have not changed over time. Rather, their interpretation has. Ellenson argues that one's approach to the religious heritage is significant in determining how Jewish medical ethics are done.<sup>45</sup> In his article, he describes two possible methodologies: halachic formulism and a "covenantal" approach.

Ellenson himself, supports halachic formulism as a means to approach Jewish medical ethics. Halachic formulism is defined as a "classical mode of doing Jewish ethics [that] seeks to identify precedents from the rich literature of rabbinic Judaism in order to extrapolate principles and norms that would yield authentic Jewish prescriptions on specific issues."<sup>46</sup> Professor David A.J. Richards explains that halachic formulism has two major characteristics. First, it "infers the legal standards

---

<sup>45</sup> David H. Ellenson, "How to Draw Guidance from a Heritage: Jewish Approaches to Mortal Choices," *A Time to be Born and a Time to Die*, ed. Barry Kogan, New York: Aldine De Gruyter, 1991, 220

<sup>46</sup> *ibid*, 220-221

applicable to a particular situation from a body of so-called primary authorities."

These sources, such as the Tanach or Talmud, have an ongoing "statutory" role in the Jewish legal system, and therefore serve as appropriate precedents for

contemporary cases. Second, halachic formulism utilizes "reasoning by analogy...

Principles of law found applicable to one set of fact patterns ... to other fact patterns

which are in relevant respects similar."<sup>47</sup> Simply stated, this methodology assumes

that the legal precedent of the past contains all of the relevant arguments and

factors that any rabbi would need to make a decision on a present medical issue.

Ellenson continues his defense of halachic formulism. Despite the fact that all scholars are using the same primary resources, this does not mean that all scholars

reach the same conclusion to every question. Each rabbi chooses to employ his or

her own methodology to the sources and precedents. "Adherence to a common

methodology does not preclude pluralism within the system. Authorities within any

system of law can read precedents either stringently or leniently. They can assert

that one set of precedents or values contained in the canon of a tradition is relevant

to the matter at hand, while another group may assert that such precedents either

have no bearing or have been completely misread. Affirmation of a common

methodology in no way ensures a single substantive outcome."<sup>48</sup> Ellenson offers two

examples about how a range of opinions can be reached using different

methodologies: brain death and euthanasia. He cites Rabbis Herschel Schacter, J.

David Bleich, Moshe David Tendler, Moshe Feinstein, Aharon Soloveichik, Elliott

Dorff, Immanuel Jakobovits, Solomon Freehof, and Faitel Levin and Dr. Fred Rosner

---

<sup>47</sup> *ibid*, 221

<sup>48</sup> *ibid*

all as examples of prominent scholars who utilize legal precedents to formulate their own halachic opinions.<sup>49</sup>

Ellenson expressly notes his inclusion of Reform Rabbi Solomon Freehof as an example of how halachic formulism is not only for the Orthodox. "'Halachic formulism' is characterized by more than its attention to classical texts. It is also transdenominational, that is, not only Orthodox authorities have adopted this methodology in approaching the complex issues of medical ethics."<sup>50</sup> Freehof, more than his Orthodox colleagues, is influenced by extralegal considerations such as personality and disposition. It is the same methodology but just different sources.<sup>51</sup>

Conservative scholar Bradley Shavit Artson would agree with Ellenson's approach to halachic writing. Describing his perception of the Conservative approach to Jewish medical law, he writes "Our use of rabbinic sources becomes an act of translation, from one context into another, and of creative transformation, in which essence is distilled from application, and then — out of loyalty to that sacred essence — applied in new contexts today."<sup>52</sup> Also, like Freehof, Artson takes into account the extralegal source available to him, such as social values. He writes, "Before moving to consider our own context, it is worth taking some time to extract core values from social contexts, to ask ourselves what abiding priorities were these texts meant to sustain and protect, and to then ask ourselves how we might best protect those same values in our own time." Artson is arguing that each scholar

---

<sup>49</sup> *ibid*, 221-226

<sup>50</sup> *ibid*, 224

<sup>51</sup> *ibid*, 226

<sup>52</sup> Bradley Shavit Artson, *The Woman Took the Child and Nursed It: A Teshuvah on Breastfeeding in Public, Orach Hayyim 75:1*.2005a, 4

must be aware of his or her own influences and motivations whenever writing a halachic opinion. Only through recognition of these inspirations can one be clear about how they are deciding a legal case.

Rabbi Ellenson also writes of a contrary approach to halachic formulism, a second methodology that we must consider. "Rabbi [Daniel] Gordis suggests that developments in medical technology have been so dazzling in recent years that a precedent-based classical approach to issues of Jewish bioethics is simply inadequate to address contemporary realities."<sup>53</sup> Gordis "considers unwarranted extrapolation of principles and norms from Jewish halachic [lega] and aggadic [non-legal] writings on other modern medical moral dilemmas." The use of sources alone is too exaggerated. "It is wrong or, at best, foolish to search the precedents of the Jewish tradition in such a narrow, case-law fashion to find answers to matters of contemporary bioethics." Instead of a precedent-only approach, "Rabbi Gordis states that the texts of Judaism must be examined to see what they have to say about the nature of what it means to be human. Furthermore, in seeking an answer to such a question, the ancillary issue of humanity's relationship with God arises. If one were to receive answers to these broader questions, then it might well be that Jewish medical ethics would draw normative conclusions in a far different way than it does with a methodology based on precedent."<sup>54</sup> Gordis is arguing that it is too simplistic and close-minded to think that one can just look back at old sources and reach appropriate and satisfactory conclusions to new questions. Too much about

---

<sup>53</sup> Ellenson, 227

<sup>54</sup> *ibid*, 228



humanity and science has changed over time for mere parallelism alone. Not everything is easily tied up in the halls of rabbinic case law.

The Reform CCAR Responsa Committee, when writing in 1997, strongly echoed Gordis' criticism of halachic formulism. "Rabbinic scholars ought to acknowledge that traditional techniques of halachic analysis, in particular the case method of reasoning by analogy, are of limited usefulness in an area dominated by technological novelty and innovation. The tortuous logic of the arguments we have just cited demonstrates that there may simply be no precedents or source materials in Talmudic literature that offer plausible guidance to us in making decisions about these contemporary scientific and medical issues."<sup>55</sup> Instead of finding legal inspiration from the rabbinic sources alone, the Committee turns to the work of modern medicine and science itself. "Given our positive attitude as liberal Jews toward modernity in general, it is surely appropriate to rely upon the findings of modern science, rather than upon tenuous analogies from traditional sources, in order to render what we most consider to be scientific judgments."<sup>56</sup> The Committee considers this approach to be part of a liberal tenet of welcoming modernism as an equal voice in one's religious expression.

Conservative scholar Rabbi Miriam Berkowitz also wrote about the influence of secular medicine on legal decisions. She gives the example of Nachmanides, the great medieval sage. Nachmanides, himself a physician and a mystic, was influenced by his Christian contemporaries. His writing actually more follows the lore of the time and is not scientifically based. It also does not reflect our modern legal or social

---

<sup>55</sup> RRTFC, In Vitro Fertilization and the Status of the Embryo, 5757.2, 164

<sup>56</sup> *ibid*

paradigms. Specifically speaking about female purity laws, He followed the medieval approach, which was "scientifically based," that a menstruating woman had the potential to harm or infect and should be kept away from the synagogue and the normal social routine.<sup>57</sup> Speaking about the balance between respecting our Sages and recognizing their medical intellectual nascence, Berkowitz says "We have the utmost respect for the sages and their wisdom in matters of Torah and *derech eretz* (the way of the world, appropriate manners or behaviors). Still, we could not expect their medical knowledge to be greater than that of the physicians of their time."<sup>58</sup> Berkowitz summarizes, "It is well known that Jewish physicians throughout the ages had to rely on the medicine of their time. They could not rely on Talmudic medicine (which was strongly influenced by the Greek heritage), because in matters of physical health, we must halachically rely on contemporary physicians, not rabbis."<sup>59</sup> Berkowitz later wrote with colleague Mark Popovsky "It is neither prudent nor proper for rabbis to give medical advice."<sup>60</sup> The rabbi defers to the medical information available to them in making his or her decisions.

Orthodox *posek* Eliezer Yehudah Waldenberg, writing through his student Dr. Avraham Steinberg, would agree with the CCAR Responsa Committee and Rabbi Berkowitz about how important it is for a rabbi to pay attention to the medical experts of his or her time. "Since nature has changed somewhat since the era of the Talmud, medical recommendations suggested therein are not applicable today.

---

<sup>57</sup> Miriam Berkowitz, Reshaping the Laws of Family Purity for the Modern World, *Yoreh Deah* 183.2006d, 6

<sup>58</sup> *ibid*, 17

<sup>59</sup> *ibid*, 6

<sup>60</sup> Miriam Berkowitz and Mark Popovsky, Contraception, *Even HaEzer* 5:12.2010, 22

Halachic authorities have dealt with specific issues that illustrate this point."<sup>61</sup> Legal precedent only cannot suffice.

Rabbi Ellenson likens Gordis' critique of halachic formalism to the "covenantal" approach of Rabbi Irving Greenberg, which is also used by Rabbis David Hartman, Eugene Borowitz, and Michael Morgan. Greenberg's "covenantal" approach teaches, "Jewish medical ethic must involve a dialectic in which both God and humanity play an active role. This means that one must search out the tradition for those precedents relevant to making an ethical decision." This theory assumes that humans share in God's power. Ellenson's description of Greenberg continues, "In short, human autonomy – the ability of individual persons to make and to act on their own ethical decisions – derives from the freedom that God has given persons. It receives a divine, religious warrant. Rabbi Greenberg argues that the dialectical interplay between 'power and partnership' that is the mark of the relationship between god and humanity in the Bible provides the proper model for Jewish medical ethics as well. This means, in part, that people are empowered to become more and more like God. They are charged by God with responsibility for their lives and are given permission to seek mastery and control over their environment. If someone asks, 'What are the limits,' Rabbi Greenberg contends the covenant response 'is that the limit is nonexistent.'"<sup>62</sup>

This approach by Greenberg, Gordis, and others is in direct contradiction to the comments described earlier by Waldenberg and Abraham who claim that there

---

<sup>61</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 181

<sup>62</sup> Ellenson, 228-229

is no equal sharing or partnership between God and man in the process of healing. But Greenberg would argue that the task of writing opinions on medical issues is not legal alone. Rather it is also part of the Divine relationship with humanity. Reform scholar Solomon Freehof writes about how he reaches his decisions through a similar approach that views the person, not the law, as centric. His argument is written as a critique of Orthodoxy but his point is still clear. "The Orthodox rabbi is protecting the law itself against its violation by non-observant people. Hence, he is often much more strict than the law actually requires, He is, as the legal phrase goes, 'building a fence,' to protect the law. The less Orthodox rabbi certainly respects the law, but his attitude and aim is to adjust the law and the people to each other. Hence, whatever liberal opinions are found in the law are especially important to him."<sup>63</sup> Freehof is arguing that the rabbi also weighs the emotional importance, not just the legal.<sup>64</sup> We will see repeatedly throughout the main chapters of this thesis that Freehof's generalizing of Orthodoxy is not accurate. For example, consider a responsum by *posek* Rabbi Moshe Feinstein. Feinstein answers a question about why he permits organ donation when the family of the deceased is greatly anguished at the thought of the mutilation of their loved one. Feinstein explains, *Tosafot* (Shabbat 44a) teaches that the pain and anguish of a grieving relative takes greater significance than other things, such as the loss of money. As a result, the pain and anguish of the grieving family would exempt them from signing the organ donor

---

<sup>63</sup> TRR, The Tay-Sachs Program, 48-49

<sup>64</sup> *ibid*, 49

card.<sup>65</sup> That being said, Feinstein still highly values, if not prioritizes, the legal concerns. "However, I must point out that the anguish a person feels at the thought of the mutilation should be counterbalanced by the knowledge that by doing so he is saving a human life." Therefore explain to the family that this is not a desecration of the dead but an act of saving a life. With this knowledge, writes Feinstein the family should not be anguished and should permit the donation.<sup>66</sup> Indeed, many *poskim* include the emotional as part of their deliberations, creating a semi-covenantal approach.

Conservative scholar Elliott N. Dorff also writes about a blended approach towards his halachic process. Here he is writing specifically about changing legal opinion to address the issue of AIDS. "My own understanding is that we have both moral and medical reasons for changing the law. The medical reason is that AIDS is still lethal. The cocktail of drugs that was discovered for it in 1996 only works for about half of AIDS patients, and we are finding out that many of those patients who have returned virtually to full health as a result of these drugs are now developing strains of the disease that are resistant to the drugs."<sup>67</sup> Here Dorff is showing a willingness to change the law and accommodate modern medical concerns with no hesitation about there being a legal barrier to doing so.

While Ellenson thoroughly explains the point of view of Gordis and Greenberg, he still does not agree with them, instead supporting halachic formulism as his approach to Jewish medical ethics. Ellenson declares Gordis' approach to be

---

<sup>65</sup> Moshe Dovid Tendler, Responsa of Rav Moshe Feinstein: Translation and Commentary, Vol. 1: Care of the Critically Ill, Hoboken: Ktav Publishing Inc., 1996, 122

<sup>66</sup> 659

<sup>67</sup> 494

"nascent and somewhat inchoate."<sup>68</sup> Regarding Greenberg's covenantal approach, Ellenson worries that it removes too much authority from the legal process and places too much responsibility on the individual. "It is the patient who would be empowered to make this decision-not the doctor, not the rabbi, not his or her family. The person's autonomy as a covenantal creature standing in relationship with God would ultimately be affirmed as the highest value in the system."<sup>69</sup>

We will see a range of halachic methodologies and approaches throughout the main text of this thesis. Each rabbi chooses to approach the modern medical issues differently, and each movement has its own theories. This leads to a range of legal arguments, opinions, permissions, and concerns about the frontier of medical science. Some rabbis show a greater willingness to change the law based on the new medicine and new technology but all grapple with the legal issues involved.

### Concluding Thoughts and a Note on the Thesis Structure

This introduction has discussed a number of broad topics that will repeat throughout the course of this thesis. Even while the rabbis debate nuances of law, they maintain the big questions as central to their decisions. Issues such as the sanctity of life, God's relationship to man, the role of expanding knowledge, and the extent that precedent plays in legal decision-making, continue in each chapter and discussion.

There are three major chapters as part of this thesis: Genetic Engineering, Stem Cell Research, and Human Beings and Their Bodies. The order of these

---

<sup>68</sup> *ibid*, 228

<sup>69</sup> *ibid*, 228-229

chapters is meant to progress from the microscopic to the macroscopic. Each topic is discussed very generally, seeing them more as categories or general areas of exploration than discrete scientific phenomenon and types of research. As a result, each chapter contains multiple subsections including a range of topics that are peripherally related to the core conversation. As mentioned at the start of this introduction, the discussion and analysis for each movement (Reform, Conservative, and Orthodox) is dealt with separately within each subsection of each chapter. The appropriate parallels and disagreements will be commented on but structurally speaking, the movements are written about separately. The Reform material comes primarily from the responsa of Rabbi Solomon Freehof, Rabbi Walter Jacob, and the Central Conference of American Rabbis (CCAR) Responsa Committee. The Conservative material comes primarily from the responsa of the Rabbinical Assembly's Committee on Jewish Law and Standards. It is important to note that while most of the material is published from one source, we cannot assume that all Reform or Conservative affiliated individuals, congregations, or communities live in lock step with these opinions and legal decisions. The Orthodox material is collected from a range of scholars and *poskim*. The Orthodox, while described as a movement in this thesis, does not continue one single legal body like the Reform and Conservative movement. As such, it is very important that we never think of the Orthodoxy as a single group with a single point of view.

This type of analysis, using many broad and expansive subsections, permits us to look at the range of issues that impact each topic of Jewish medical ethics. It is the opinion of the author of this thesis that it would be irresponsible to answer

only the core question, ignoring the satellite issues. While the inclusion of more topics may complicate the issue, this reflects the reality of the halachic scholars who must make decisions on each topic. In total, these chapters should present a full and rich description of the legal issues involved, how rabbis and scholars are tackling these tough questions, and where there is a willingness to change the law and where there is caution. Therefore, in the course of reading each chapter, do not view them as simply an answer to a single question or field of research but instead as a survey and general overview of what is involved in the rabbinic legal process.

While the topics discussed are quite plentiful, what unites them is the understanding that science is not only about discovering new things and changing the world but also changing the way we perceive our place in the world. It speaks of ethical responsibility and how we relate to our bodies and the bodies of others. The questions and issues raised are not scientific challenges but their offspring – the ethical and moral implications that are born from the research. The rabbinic material used in this thesis are responsa by rabbis, answers to challenges posed by advancing science and technology that present Jews with options and problems that the sources just do not talk about explicitly. The frontier of medical science tests the power of a religious tradition to be plastic. Can it stretch or be molded to address new ways of healing? Are there issues that the *halacha* cannot handle, creating limits to how far we can push? How far do the rabbis and the law go?

We conclude this introduction with a quote that Rabbi David Ellenson used to end his article on Jewish Approaches to Moral Choices: "We Jews like to think of ourselves as *rachamim b'nei rachamim*, merciful people who are the children of



merciful people. May our reading of our tradition on these mortal matters be, in view of these methodologies, a fulfillment of this vision as we deal with the realities of human suffering and human healing in our lives."<sup>70</sup> Let this be our quest throughout this thesis.

---

<sup>70</sup> David H. Ellenson, "How to Draw Guidance from a Heritage: Jewish Approaches to Mortal Choices," *A Time to be Born and a Time to Die*, ed. Barry Kogan, New York: Aldine De Gruyter, 1991, 231

## ***Chapter 1: Genetic Engineering***

### Procreation

When discussing the Jewish response to genetic engineering, our first task must be to determine the boundaries of this technology. The topics covered by this conversation will include the issues of chemical manipulation of our genetic code and scientific techniques performed at the microscopic level, but we first must recognize that humans have the ability to affect, manipulate, or even limit, the genetic make-up of a human being through selective or restrictive breeding practices. The question from these topics therefore rises – to what level can humans control technology related to procreation and pregnancy, and what is our responsibility to do so? Jewish law uses the *mitzvah p’ru ur’vu*, “be fruitful and multiply” from Genesis 1:28, as an overriding principle to declare the importance of having children. But Jewish law also recognizes that limitations exist. These limitations reflect two sides of the same coin: should someone be having children, as well as, should someone not be having, or stop having, children? As we explore this topics we consider how procreation and pregnancy, benefitted through modern technology, is a means to artificial manipulate genetic expression.

### *Reform discussion and analysis:*

The responsa of the Reform Movement welcome almost any technological innovation designed to help people bring life into this world, frequently prioritizing the emotional desires of the mothers over halachic restraints, often through modern

technology that helps women become pregnant or have children. This is most apparent in how Reform responsa have accepted and encouraged the use of artificial insemination for women who are unable to conceive. In its 1998 responsum, the CCAR Responsa Committee argues that Reform rabbis should acknowledge, as part of their counseling, the "miracles" of modern medicine. We would be ungrateful if we did not acknowledge our good fortune to live in such an age to overcome infertility and other "diseases," especially for couples to yearn to fulfill the *mitzvah* of procreation.<sup>71</sup> The question that mainly arises is whether the technology is safe, or if the potential risks are minimized, to see this practice as *chovah* (a required action) in order to fulfill the *mitzvah* of procreation. The rabbis define fertility technology as "medicine" but do not define infertility as a "disease." This difference is important because defining something as "medicine" gives it strong Jewish backing, considering the importance of "healing." Indeed, to call a thing "medicine" is to imply that it is a *mitzvah* to utilize it. But since infertility is not a disease, is treating it *chovah*? How can a procedure be "medical" and therefore a good thing and yet not ethically required or obligatory? Let us explore potential answers to these questions.

Along with modern medicine and our current ability to create pregnancies through artificial insemination, Reform scholars teach that there must be hesitancy and concern. The science is still new and risks are significant. As a result, this technique is a possible tool, rather than a guaranteed success. Both the CCAR Responsa Committee on in-vitro fertilization (IVF) and Walter Jacob, in a 1952

---

<sup>71</sup> RRTFC, In Vitro Fertilization and the *Mitzvah* of Childbearing, 5758.3, 175

responsum on artificial insemination, express how the experimental nature of such a process does not qualify it to be a *chovah*. The CCAR Responsa Committee teaches, "Due to the balance between the possible blessings and the potential risks of IVF, the dubious success of this procedure makes it difficult in the extreme for us to assert that a particular woman is somehow 'required' to undertake the procedure."<sup>72</sup> IVF will be discussed in greater detail in the next chapter on Stem Cell Research. Instead, we can currently declare artificial insemination to be *refuah b'dukah* or *refuah vada-it* (tested and proven remedy), and therefore urge couples to seek it out, but not a required means to satisfy a *mitzvah*.<sup>73</sup> Declaring artificial insemination as *refuah b'dukah* or *refuah vada* is significant because treatments or procedures that fall within these halachic categories are seen as efficacious. As a result, for anything that is *refuah b'dukah* or *refuah vada-it* we are duty-bound to seek to preserve health, overriding any presumed right to withhold treatment. Jacob speaks more generally, warning that we should not force solutions to biological problems, such as issues regarding pregnancy. He believes that Jewish law is built in a way that allows for change and updating with new technology, but we must be wary that this technology be satisfactory and safe.<sup>74</sup> Instead, let us take this new technology to be a "heavenly reward," as the CCAR Responsa Committee describes it, and the sign of future work yet ahead.<sup>75</sup>

If we are therefore allowed to engage in artificial means to create life, does this violate any rabbinic dictum or concern? Jacob argues no. He states that artificial

---

<sup>72</sup> *ibid*, 176

<sup>73</sup> *ibid*, 173-174

<sup>74</sup> ARR, Artificial Insemination, 1952, 504

<sup>75</sup> RRTFC, In Vitro Fertilization and the *Mitzvah* of Childbearing, 5758.3, 175

insemination, as it is currently understood and practiced, is not mentioned in rabbinic literature and is therefore is no concern to the Talmudic period. The Rabbis do discuss indirect insemination, such as through the transmission of sperm through a hot bath, but this is accidental and therefore does not have the same intention of artificial insemination.<sup>76</sup> From this we can conclude that modern means to pass on one's genetic material through an artificially created pregnancy is acceptable in the Reform movement.

We must also discuss the Reform stance on pregnancy through surrogacy. This artificial means to have a child in effect serves as a counter-argument to the claim that we are engaging in genetic engineering through the technologically created pregnancy of artificial insemination. The relevant Reform responsum does not oppose surrogacy. In fact, it supports surrogacy as another means to create life for those who otherwise would not have the opportunity to raise a child.<sup>77</sup> Jacob in his responsum advises that the biological mother remain a major part of the family and child rearing process, recognizing the linkage between genetic compliments.<sup>78</sup> This does not necessarily argue explicitly that a genetic link is more important but it recognizes its uniqueness and significance to the larger goals of raising a child as more than just a biological vessel to transmit one's genome. Genetic engineering through artificial or adapted pregnancy is not about genes but about creating life wherever possible.

---

<sup>76</sup> ARR, Artificial Insemination, 1952, 504

<sup>77</sup> ARR, Surrogate Mother, 1982, 506-507

<sup>78</sup> *ibid*, 505-506

*Conservative discussion and analysis:*

The rabbis of the Conservative movement are quite receptive to new technology in light of how these new medical procedures are able to assist families in their successful fulfillment of the *mitzvah* of procreation. In this regard, the Conservative responsa welcome new technology for its ability to grant life where it would not have been possible otherwise. Similarities with the Reform movement certainly exist. The divergence between these two movements occurs when the Conservative movement delves more deeply into characterizing what actually fulfills the *mitzvah* of procreation and what is a positive act but falls outside of this category. In general, the Conservative movement welcomes acts to increase procreation but calls for clarity regarding each possibility.

Rabbis Kassel Abelson and Elliot Dorff speak very highly of the importance of procreation. They pen a responsum that answers a question about how many children a young married couple should have and what are the duties to make it possible to have more than two. In this responsum about “*mitzvah* children,” they emphasize the need to continue having children. *Mitzvah* children are defined as any children born over the halachically recommended minimum of two children. The parents are not only replacing themselves as commanded by *mitzvot*, but also making additional contributions to the world and Jewish people to help fulfill God's plan in the world.<sup>79</sup> Note however that this responsum only discusses using artificial means to have children above and beyond the required minimum of two. The

---

<sup>79</sup> Kassel Abelson and Elliot N. Dorff, *Mitzvah Children, Even HaEzer* 1:5.2007, 13

authors state at the beginning of the responsum, "There is no obligation to procreate when the couple is unable to have any children or when they cannot have any more children than they have already produced."<sup>80</sup> Therefore this responsum does not answer directly if artificial means can be used to fulfill the *mitzvah* of *p'ru ur'vu*.

But for parents and families that have biological difficulties having children in the first place, what is permitted to fulfill this ongoing *mitzvah*? "Judaism sees children as a blessing and an obligation. The duty to procreate does not apply to couples who cannot have them through their conjugal relations, but infertile couples are encouraged to explore alternatives such as adoption and the assisted reproductive techniques that medicine has now made available."<sup>81</sup> Since infertile couples are no longer bound by the commandment of *pru ur'vu*, the rabbis have not replaced a *mitzvah* with new techniques that assist in procreation. Couples will still be participating in additional Jewish values of child rearing and creating a Jewish family, but there is no change in the law during infertile couples. In conclusion, what we see through this responsum is openness to new technology but no acceptance of these new tools as a reason to change *halacha*.

Abselon and Dorff specify two such possibilities that assist in procreation – adoption and assisted reproduction. In a later responsa by Dorff he further explains which of these techniques is preferable. "Jews must be educated to the Jewish acceptability of all these options for adoption and to the preferability of adoption over egg donation. They should also be educated to the possibility of adoption in addition to procreating and to the *hesed* (loving-kindness) involved in helping

---

<sup>80</sup> *ibid*, 1

<sup>81</sup> *ibid*, 12

children with only one parent through programs like Jewish Big Brothers."<sup>82</sup>

Adoption preference over egg donation is explained thusly: "In light of the physical risks of egg donation, and in view of the tradition's overwhelmingly positive attitude toward adoption, we must urge couples to reconsider adoption before engaging in egg donation."<sup>83</sup> It should be understood, however, that adoption does not fulfill the commandment to procreate, for Jewish law sees the child as the product of the biological parents. Nevertheless, people who adopt children fulfill many other commandments and do a real act of faithfulness and *hesed*. As a result, adoption is a time-honored institution in Jewish law.<sup>84</sup> But we still notice that this ruling has not recommended any change in law, just the separating and prioritizing of different methods to have children.

But what about assisted reproduction? A variety of techniques are available to the family, including medical aids, artificial insemination, and surrogacy. A couple can use medical interventions, such as fertility drugs, to induce fertility, as it is to aid the natural process.<sup>85</sup> Nothing unnatural is occurring at all. In fact, we are assisting what is meant to happen. Artificial insemination is also permissible but with necessary caveats. In order for the father to successfully fulfill the *mitzvah* he must donate the sperm himself. His semen can be extracted from masturbation but as long as it is used to create a child, his obligation is complete. In other words, the traditional prohibition against masturbation – *hotza'at zera l'vatalah* – does not

---

<sup>82</sup> Elliot N. Dorff, Artificial Insemination, Egg Donation and Adoption, *Even HaEzer* 1:3.1994, 48

<sup>83</sup> *ibid*, 44

<sup>84</sup> *ibid*, 46

<sup>85</sup> *ibid*, 44



apply when the goal of the act is to aid in the fulfillment of a *mitzvah*. Note however in *Mishnah Yevamot* 6:6, it is stated that the *mitzvah* to be fruitful and multiply is required only of the man, not the woman.<sup>86</sup> Therefore if the couple decided to use a third party sperm donor in order to get pregnant, the man would not have fulfilled the *mitzvah*. He still would fulfill other important *mitzvot* such as childrearing, and this should be commended, but this responsa makes the man aware that he has not fully completed his responsibility.<sup>87</sup> This is another example of Dorff separating legal categories, but not recommending any specific action regarding new medical technology. Interestingly, the authors do not note that under traditional *halacha* the woman bears something of a responsibility to bring children into the world. The CCAR Responsa Committee also mentions this principle of *lashevet y'tzarah* (God formed the world for habitation, from Isaiah 45:18) in a responsum on IVF. Some authorities, including the *Tosafot* on *Gittin* 41b and *Bava Batra* 13a, consider *lashevet y'tzarah* to be a statement requiring women to have children as well. This principle is derived from a prophetic source, and therefore is less stringent than *pru ur'vu*, which came directly from the Torah.<sup>88</sup> This principle, if used by the Conservative scholars, could provide an interesting rethinking of their statements.

In fact the main reason that Dorff and the Conservative responsa do not fully embrace the possibilities of artificial insemination is based on the risks of such a procedure. "Even in those cases where the commandment to procreate is not fulfilled, these techniques enable the social parents to experience the joys and

---

<sup>86</sup> *ibid*, 38

<sup>87</sup> *ibid*, 44

<sup>88</sup> RRTFC, In Vitro Fertilization and the *Mitzvah* of Childbearing, 5758.13, 180

challenges of parenthood, thereby growing themselves, and they add to the numbers of the Jewish people at a time when that is nothing short of critical. Because of the way the commandment to procreate has been interpreted in Jewish sources, because of the physical dangers sometimes incurred, and because of the psychological problems involved in the asymmetry that these methods of having children sometimes create, infertile couples are not required to engage in these procedures to have children."<sup>89</sup> This conclusion is the same as the one reached by the CCAR Responsa Committee in 1998 that stated that it is not *chovah* (required) for infertile couples to use artificial means to have children.<sup>90</sup> Again Dorff recommends adoption or other non-invasive means to enjoy children over unclear new technology. With this answer we witness a slight hesitation to the enthusiasm that Abelson and Dorff expressed towards using modern medicine to assist in procreation in the earlier responsa about *mitzvah* children. Dorff does note that medicine will become more adept and efficient in its process to assist infertile couples conceive on their own.<sup>91</sup> The door is left open for future resolutions but none have yet been made.

The third option discussed to assist in the *mitzvah* of procreation is surrogacy. A debate is held within the literature regarding this method of reproduction between Rabbis Aaron Mackler and Elie Kaplan Spitz. Rabbi Mackler, arguing the dissenting opinion, is concerned with the potential harms and

---

<sup>89</sup> Elliot N. Dorff, Artificial Insemination, Egg Donation and Adoption, *Even HaEzer* 1:3.1994, 49

<sup>90</sup> RRTFC, In Vitro Fertilization and the *Mitzvah* of Childbearing, 5758.13, 176

<sup>91</sup> Elliot N. Dorff, Artificial Insemination, Egg Donation and Adoption, *Even HaEzer* 1:3.1994, 49

exploitation involved in surrogacy, such as treating humans like commodities. He feels there is enough concern to not recommend widespread use and consider it not halachically recommended, and in most cases forbidden.<sup>92</sup> Speaking in favor of surrogacy, Rabbi Spitz argues that the benefits and joys for the parents are decisive and outweigh concerns about exploitation of the surrogate, which is still serious but can be dealt with in court, not used to disallow or discourage surrogacy.<sup>93</sup> Let us examine each argument individually to see if we can ascertain a relationship between new medical technique and halachic malleability.

Mackler simply sees too many issues, halachically and socially, to allow surrogacy as a recommended practice. He argues that accepted social order would have to be overturned to allow for surrogacy. The already accepted halachic ruling that the status of the child is based on the birth mother, not the genetic mother, provides further complications in regards to creating halachic acceptance for surrogacy. If anything, permitting some to serve as surrogates and not others would upset *darkei shalom* (the paths of peace) more than benefit it.<sup>94</sup> "Surrogacy cannot be halakhically recommended, and in at least most cases would be forbidden by Jewish law and ethics. Any exceptional cases in which surrogacy is accepted would need to meet specific requirements safeguarding the well-being, rights, and dignity of any children affected, and all other vulnerable persons, including the surrogate."<sup>95</sup> Mackler's argument that surrogacy is forbidden is not well defined in this

---

<sup>92</sup> Aaron L. Mackler and Elie Kaplan Spitz, On the Use of Birth Surrogates, *Even HaEzer* 1:3.1997a, 1

<sup>93</sup> *ibid*, 5

<sup>94</sup> Aaron L. Mackler, Surrogate Parenting, *Even HaEzer* 1:3.1997c, 7

<sup>95</sup> *ibid*

responsum. His under-developed argument is based on the halachic rule that the mother's identity is based on gestation and birth, not the genetic donor.<sup>96</sup> However, Mackler still recognizes the potential value of such science, even if it is not acceptable at this point in time. He leaves an opening for leniency in *halacha* moving forward, subject to proving that the primary determination of motherhood is through the genetic component.<sup>97</sup> "If grounds to permit surrogacy are found in a particular case, at a minimum certain requirements would be clearly mandated by *halacha* to protect the well-being, rights, and dignity of any children affected, and all other vulnerable persons, including the surrogate."<sup>98</sup> That is to say that *halacha* would be permitted to be changed if the risks are minimal and the proper precautions are met.

Spitz argues her case based on biblical precedent and social concerns, not grounded in *halacha*. The scriptural evidence of the handmaid and the *yabam* show that "constructs evolve in response to changing variables, shifting social mores."<sup>99</sup> Spitz offers both examples as possibilities of third party intervention in cases of both female and male infertility. Based on Genesis 30 where Jacob sires children through Bilhah, handmaid of Rachel, and Zilpah, handmaid of Leah, this is an example of when it was socially acceptable for a man to impregnate a woman in addition to his primary wife.<sup>100</sup> In the context of Genesis 30, Jacob first had a child with Bilhah because of Rachel's barrenness. The matriarch Sarah also gave her

---

<sup>96</sup> *ibid*, 3

<sup>97</sup> *ibid*

<sup>98</sup> *ibid*, 6

<sup>99</sup> Elie Kaplan Spitz, On the Use of Birth Surrogates, *Even HaEzer* 1:3.1997b, 22

<sup>100</sup> *ibid*, 9

handmaid Hagar to Abraham in Genesis 16 because she was barren. Regarding the *yabam*, it "demonstrates the Bible's willingness to redraft familial lines to overcome infertility."<sup>101</sup> In Deuteronomy 25:5-6, the Bible states that if a husband dies before having children, particularly a son, his wife should engage in a levirate marriage wherein she marries the younger, unmarried brothers of his deceased husband in order to bear a son, which will legally be named for the original husband. The brother-in-law who becomes the husband is called a *yabam*, or levir.

Mackler, however, rejects Spitz's examples of the handmaid and *yabam* as vague models of surrogacy are unfounded as the halachic tradition has largely eliminated these examples in favor of *chalitzah* (ceremony to avoid the levirate marriage). There is no similar way to eliminate the handmaid situation. Quoting Robert Gordis, Mackler notes that "the dual process of extending the rights of women, on the one hand, and limiting the powers of men on the other." Therefore Mackler's critique of Spitz's argument is only half complete.

Spitz continues that there is enough impetus outside of the realm of law to require a change in Conservative thought. First, there is a change in our modern thought and understanding about biology. "Not so long ago biology was destiny. Only recently have doctors learned to manipulate the mechanics of pregnancy and birth."<sup>102</sup> Second, we recognize that family structures are different and our understanding of the law must reflect this. "Jewish law contains many examples of the power of the courts to redefine family relationships and rights. Such change comes slowly and is a response to shifting societal norms and new variables.

---

<sup>101</sup> *ibid*, 10

<sup>102</sup> *ibid*, 12-13

Moreover, the legislation of the state, as in the case of adoption, may give Jewish courts authority to foster entirely new social arrangements." Of course there needs to be the proper legal controls but surrogacy is a potentially positive use of new technology.<sup>103</sup> We notice that Mackler has not presented any argument that actually prohibits surrogacy via Jewish law. He only teaches that it should not be recommended on the grounds that it has a bad side. Therefore, Spitz is not going outside the parameters of Jewish law at all. Instead, she has a very strong claim that our society now is accepting of surrogacy as a means of family-creation.

Spitz concludes her argument with two important statements, one based on morality and the other based on law. This dual approach is noteworthy as it represents the Conservative responsa trying to work beyond the confines of a single way to answer life's questions. Regarding morality she states, "From a Jewish perspective, it would be wrong to outlaw a procedure that has the potential to help so many couples overcome infertility and which works smoothly in the overwhelming majority of cases. On balance, surrogacy offers the joy of parenthood, a profound benefit to society. Judaism, we see in this analysis, affirms couples who say as did the matriarch Sarah: 'Through her I too shall bear a child.'"<sup>104</sup> And regarding our need to modernize the law to accommodate new medical technology Spitz states, "This is a time to acknowledge that new variables provide a need to craft law. To determine whether Jewish law should support surrogacy is to balance the gains of surrogacy over its potential damage." Spitz seems to be calling for the creation or drafting of law that permits surrogacy, not arguing against changing or

---

<sup>103</sup> *ibid*, 20

<sup>104</sup> *ibid*, 22

repealing a standing law. So in this case, the law is not changing. Rather it is an example of putting the wagon before the horse and arguing that new technology could become the framework for new law.

It would be irresponsible for us to conclude that the Conservative movement is embracing a change in *halacha* to permit new technological means to procreate based on the unresolved debate between Mackler and Spitz. But we do see enough potential openings and pleas for modernization between the two to conclude that the Conservative legal tradition values procreation and has an eye toward technology as means to encourage the fulfillment and expression of this important mitzvah. Notice however that the Conservative literature speaks nothing about engineering or manipulating the body to lead to more children, just assisting along what should otherwise be considered a natural process.

*Orthodox discussion and analysis:*

As was explained in the introductory chapter, for each subsection within each larger topic this discussion will look at specific case studies and example that Orthodox scholars and *poskim* have debated and ruled upon. In this subsection about the importance of and commandment to procreate, we look squarely at the modern technological possibilities created by artificial insemination.

Rabbi Eliezer Yehudah Waldenberg, in a concise listing of various *halachot* and rulings compiled by his student Rabbi Abraham Steinberg, gives a clear answer. Steinberg summarized Waldenberg's ruling on artificial insemination, "Many halachic authorities permit artificial insemination if ten years have passed since the

couple married, or if the infertility workup by expert, reliable physicians has established that artificial insemination is the only procedure that might succeed in achieving a pregnancy."<sup>105</sup> From this statement we can glean three key points. First, Waldenberg and the unnamed other halachic authorities do accept this modern technology to assist in the process of procreating. Second, artificial insemination is meant to be a final measure used by couples in order to conceive. The ten-year limit is in reference to the Talmudic ruling in *Yevamot* 65a that states that if a woman has not given a child to her husband ten years after marriage, he is entitled to a divorce. Third, the expertise and advice of reliable physicians can take precedent in deciding whether a couple may undergo this new procedure. Waldenberg emphasizes the importance of artificial insemination being a couple's final step, "In cases of infertility among Jewish couples, one should, if at all possible, refrain from artificial insemination using the husband's semen if there is still some hope that pregnancy can be achieved in a natural way."<sup>106</sup> While modern medicine is an acceptable option, medicine only serves to support the natural means, not replace it.

Looking deeper into the issue of artificial insemination at the opinions of Dr. Fred Rosner, Rabbi J. David Bleich, Rabbi Moshe Feinstein, and Rabbi Abraham S. Abraham, we learn that the issue for these Orthodox scholars is not whether artificial insemination is controversial on a philosophical level. Waldenberg summarized quite clearly that such technology is permissible under the right circumstances. Instead, the major issue for these scholars is that of preserving

---

<sup>105</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 109

<sup>106</sup> *ibid*



marital fidelity. The main question asked is if the use of sperm from a man other than the husband constitutes adultery. The issue at hand being asked is if there is a halahic difference between AIH (artificial insemination using the husband's sperm) and AID (artificial insemination using a donor's sperm). The question here is not only the use of new, potential harmful technology, but also the use of genetic material to determine paternity. Rosner lays out the two main arguments. He writes that most scholars permit the use of AIH as there is no risk of adultery or mamzerim, offering the names, without citations, of Rabbis Moshe Feinstein, Sholom Schwadron, Aaron Wolkin, and Zvi Pesach Frank as examples. However, a few scholars, including Rabbis Eliezer Yehuda Waldenberg and Gershon Tannenbaum, recommend that this only be used in the rarest of situations.<sup>107</sup>

Regarding the use of AID, there are multiple opinions. Rosner states that many rabbis consider the use of AID, to be an abomination equivalent to adultery, citing the reasons of the possibility of incest if by chance the donor is related to the potential mother, the difficulty in determining paternity, and the issues of inheritance. Many of the key rabbis that fall on this side of the argument include Rabbis Waldenberg (*Tzitz Eliezer*, Vol. 9, No. 51, Section 5), Judah Leib Zirelsohn (Responsa *Ma'arkei Lev*, No. 73), Abraham Lurie (Responsa *Haposek*, 1949), and Obadya Hedaya (Responsa *Hazra'a Melakhutit*, Vol. 1, 1958, pp. 130-137).<sup>108</sup> However, Rosner makes mention of the counter argument that permits the use of AID. The list of rabbis who permit this practice include Benzion Uziel (Responsa

---

<sup>107</sup> Fred Rosner, *Modern Medicine and Jewish Law: Studies in Torah Judaism*, New York: Yeshiva University, 1972, 101

<sup>108</sup> *ibid*, 95-96

*Mishpatei Uziel, Even Ha'ezer*, No. 19), Schwadron (Responsa *Maharsham*, Vol. 3, No. 268), Yehoshua Baumol (Responsa *Emek Halakhah*, No. 68), and Wolkin (Responsa *Zoken Aharon, Even Ha'ezer*, Part 2, No. 97).<sup>109</sup> Rabbi Bleich agrees with this point of view and explains the common reason that some Orthodox scholars do not permit AID. He contends that artificial insemination is adultery based on Leviticus 18:20 which reads "and to the wife of your fellow you shall not give your intercourse for seed to defile her." Bleich notes how these words are not used when describing the various incestuous relationships. Therefore, incest is predicated upon sexual act whereas adultery is not.<sup>110</sup> Rabbi Moshe Feinstein also permits the use of AID, but for a different and unique reason. In his *Igrot Moshe, Even Ha'ezer* 1:10 and 1:71, he permits AID, especially when the donor is a Gentile because there are no concern about incest should this woman's offspring someday have sexual intercourse with the semen donor's other offspring or relatives. Feinstein later backed off this position somewhat in a letter reprinted in Responsa *Chelkat Ya'akov* 3:47, due to the opposition he encountered from other *poskim*.<sup>111</sup> As a summary to the two sides of the argument that Dr. Rosner presented, he personally concludes with the statement that the use of artificial insemination should follow a required waiting period to see if a couple can conceive a child through purely natural means.<sup>112</sup> This statement is not too different from Waldenberg's ten-year stipulation.

---

<sup>109</sup> *ibid*, 96

<sup>110</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City: Ktav Publishing House, Inc., 2002, 85-86

<sup>111</sup> Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice*, New York: UAHC Press, 2001, 447-448

<sup>112</sup> Rosner, *Modern Medicine and Jewish Law*, 105-106

Bleich continues his discussion by digging deeper into his point that no adultery as occurred if there is no sexual act. Therefore the wife, in accepting genetic material medically from another man through means other than sex, is not breaking her marriage contract and is not forbidden from engaging in sexual behavior with her husband. The child as a result of the non-sexual union would not be a *mamzer*.<sup>113</sup> A *mamzer* is defined as the offspring of an adulterous or incestuous union. Since no sexual act is involved, the child is not a *mamzer*, even though it is the offspring of a man who would have committed an act of adultery with this married woman had sexual intercourse been involved. However, while this process is permitted, it is considered repugnant and a violation of the marital relationship if the wife is artificially inseminated without her husband's consent. This is because the marital relationship entitles the husband to divorce his wife without being required to satisfy the financial obligations as a result of breaking the marriage contract.<sup>114</sup> Bleich places a difficult choice before the couple. Do they risk dissolving their marriage by using modern technology to conceive using another man's sperm? Or do maintain a marriage by not fulfilling the mitzvah of having children?

Rosner and Bleich have both explained the problem, but is a change possible? We conclude this subsection by comparing two editions of Rabbi Abraham's Nishmat Abraham. Note that his use of the term "test-tube baby" may raise a question. This term is normally associated with in vitro fertilization, but the following halachic statements are classified by Abraham in his chapter entitled "Artificial Insemination." Referencing Rabbi Ovadiah Yosef, Abraham states,

---

<sup>113</sup> Bleich, *Judaism and Healing*, 85

<sup>114</sup> *ibid*, 86

"Insemination for a 'test-tube baby' is permitted provided that other means have failed and as long as only the husband's semen is used."<sup>115</sup> Citing an authoritative source for this conclusion, which would be supported by Waldenberg, Rosner, and Bleich, the issue seems finalized. This statement comes from the 1980 printing of *Nishmat Abraham*. In the 1990 edition, a minor change is noted. While this may be the decision of *Nishmat Abraham's* printer, the statement that only the father's semen may be used for artificial insemination is adjusted wherein the word "only" is no longer italicized.<sup>116</sup> This possibly indicates a decreased emphasis on this stipulation, possibly permitting AID to a similar level of acceptance at AIH. It is recognized that this typographical change does not create a halachic ruling, but perhaps a loosening of the boundaries of artificial insemination to avoid adultery may occur.

---

<sup>115</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 174

<sup>116</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 208

## Racial and Social Control

While procreating is a macro-technique to create pregnancies and transmit genetic material, we also have the ability to eliminate genetic material from being passed on through sterilization. Removing genetic material from the gene pool is a form of genetic engineering of its own. While the thought of forced sterilization or selectively removing specific people or groups of people from the gene pool may strike us as scary and immoral, the technology does exist and therefore must be reconciled in the Jewish law. After all, the law is built to act on the best interests of a group, community, or society, therefore it is quite conceivable that legislation, rulings, or laws can be created that mandate the control of genetic transmission. Such racial and social control must be taken into account in any discussion of genetic engineering.

### *Reform discussion and analysis:*

While the Reform literature supports using technology to allow new ways for mothers to become pregnant when it is otherwise biologically difficult or impossible, there is also a clear recognition that we cannot control the other side of the coin and force sterilization on anyone. Walter Jacob went as far as to call such an act prohibited.<sup>117</sup> He notes that earlier Reform rulings that permit the use of birth control and allow couples ways to regulate when they do or do not get pregnant.<sup>118</sup> Therefore, the law has already been adjusted and opened to allow for couples to make their own decisions. The law, according to Reform analysis, may be malleable,

---

<sup>117</sup> NARR, Sterilization, August 1989, 238-239

<sup>118</sup> *ibid*, 239

but some medical choices are permanent. Jacob notes that sterilization is too permanent of a solution for couples that choose to stop having children, as they may regret this decision in the future. He cites the high rate of divorce and general instability of marriage as proof.<sup>119</sup>

Solomon Freehof, in an earlier ruling than that of Walter Jacob, sees sterilization as a means for a society to forcibly control the mating behaviors of the people in a manner that is too strict. Freehof does recognize that some members of the society, namely the feeble-minded, should probably not be having children as they could be mentally or physically unable to properly care and raise that child. However, Jewish law already recognizes this potential problem and attempts to correct it by prohibiting such people from marrying in the first place. Therefore, says Freehof, sterilization is not necessary.<sup>120</sup> However, we cannot be naïve to think that marriage laws are satisfactory to prevent people who should not be having children from having them. Certainly we recognize that marriage is not required for pregnancy to occur. Freehof therefore stipulates that it be left open for sterilization to be used on the feeble-minded, but declares effective consent must occur.<sup>121</sup> This argument is not entirely clear as it is reasonable to believe that the feeble-minded, who believe they are physically and mentally fit to properly raise a child, may not similarly give the proper consent for such a dramatic medical procedure.

Lastly, although this conversation may seem out of date, we must make mention the concept of miscegenation as a means of genetic engineering in a

---

<sup>119</sup> *ibid*

<sup>120</sup> CoRR, *Sterilizing the Feeble-minded*, 75

<sup>121</sup> *ibid*, 76-77

population. From our modern perspective, such practices of preventing marriages based on race may seem antiquated, and we do recognize that the responsa relating to this concept date from 1963. However, these responsa signal the Reform Movement's approach to racial purity and the more general question about what are the key factors that are important to be controlled through genetic engineering. Is it permissible in Jewish society to control, or eliminate, race through marriage law? In the responsum that also regards the conversion of Negroes, Freehof notes out that for Nachmanides the mixing of races could be prohibited through the parallel reasoning that the mixing of animals is prohibited as it creates new species that were not created by God.<sup>122</sup> However, Freehof dismisses the rabbinic text recognizing that the Bible refers to the "mixed multitude," although such groups are often the source of sinfulness in the text.<sup>123</sup> Freehof eventually admits that racial mixing is a cause for concern but should not be prohibited. His concern is based on the social interaction that results from the union of distinct cultures and families, and not any sort of genetic inferiority.<sup>124</sup> This responsa also bears resemblance to the discussion about intermarriage that currently pervades the Reform Movement.

We can conclude from these responsa that the Reform literature discourages any social attempt to declare one set of genetic material to be better than another's and discourages, but not eliminates, any medical attempt to selectively remove someone from the gene pool. The conclusion is that it is not society's place to actively determine which genes are more valuable or beneficial.

---

<sup>122</sup> RRR, *Miscegenation and Conversion of Negroes*, 84

<sup>123</sup> *ibid*, 85

<sup>124</sup> *ibid*, 86-87

*Conservative discussion and analysis:*

Looking back through the past few decades of Conservative responsa, there is no formal discussion about racial or social control, including the topics of miscegenation, sterilization, or others that occurred in the Reform literature. This lack of data does not mean that conversations were not held, just that such arguments have not been held recently.

*Orthodox discussion and analysis:*

Similar to the Conservative movement, there is no recent comprehensive discussion about racial and social control through sterilization in Orthodox sources consulted for this chapter. J. David Bleich writes that recent studies have shown that sterilization is unnecessary and has little or no effect. Major medical centers have now abandoned this practice and many consider it superfluous.<sup>125</sup> Rosner and Tendler do discuss sterilization on the voluntary, individual level through vasectomies and similar procedures. They state, "surgical or physical impairment of the reproductive organs of any living creature violates Jewish law, except in cases of urgent medical necessity."<sup>126</sup> Speaking on a larger more social level, they write, "vasectomy as a 'population control' technique is not condoned in *halacha*. It is forbidden to assist at such surgery in any way on man or animal."<sup>127</sup> Regarding any future efforts to produce new and better ways to sterilize a person, Rosner and

---

<sup>125</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City: Ktav Publishing House, Inc., 2002, 65

<sup>126</sup> Fred Rosner and Moshe D. Tendler, *Practical Medical Halachah*, Northvale: Jason Aronson, Inc., 1997, 38

<sup>127</sup> *ibid*



Tendler argue, "The halachic evaluation of new experimental techniques... by virtue of new surgical procedures is not yet complete. The initial opinion is that they cannot be condoned, but more study is needed."<sup>128</sup> At the very least we can conclude that Orthodox scholars do not need to concern themselves too much with matters that are not as medically relevant today. This is an example of how Jewish thought is concerned with modern, up-to-date science is not hanging on to the threads of older scientific theories and practices. If new practices as developed, as Rosner and Tendler imply, then they will be debated in its appropriate time.

---

<sup>128</sup> *ibid*

### What Features can be Altered Genetically?

With advances in technology, our ability to control genetic material offers far more dramatic possibilities than simply if couples should have or not have children. While we are not yet able to select for specific traits, levels of intelligence, or physical characteristics to a high degree of certainty, this is a middle ground. The question that is asked of is what can be changed? Presumably some characteristics, such as likely to contract a disease or condition would fall under the category of *pikuach nefesh*, and we would be expected to actively use our scientific and medical knowledge to prevent them from happening. On the other hand, selecting for athletic ability or physical appearance, while they may have social and potentially economic benefits, draws dangerously close to impeding on God's design. Where do various movements through their interpretation of Jewish law draw their line?

#### *Reform discussion and analysis:*

While the technology to manipulate genes on a microscopic level is new, the Jewish community has endeavored to eliminate diseases through genetic selection for decades. Tay-Sachs disease is the most predominant example. However, the Reform movement has not been as cavalier as other segments within the Jewish world to declare marriages ineligible if Tay-Sachs disease has a strong possibility of occurring in the child. In 1990, Solomon Freehof declared that the chances of Tay-Sachs disease are so low, 1 in 900 cases by this data, that the chance of a rabbi ever having such a case to counsel against is quite rare. The sheer improbability of this an

occurrence does not negate the biblical command to be fruitful and multiple.<sup>129</sup>

However, while the marriage is not disallowed, being aware that Tay-Sachs disease

is still a concern to Reform scholars. The CCAR Responsa Committee permits

abortion if amniocentesis indicates that Tay-Sachs disease is a high probability.<sup>130</sup>

Whether the parents chose to abort for this or any other reason is a more complex

issue, and according to this responsa, is left to be decided on the individual basis

including criteria such as emotional concern, family issues, and others.<sup>131</sup> Generally

speaking, while the Reform scholars do not go as far as to declare that the medical

issues of Tay-Sachs disease and other conditions should require abortion or other

such decisions they strongly support testing as an acceptable substitute in situations

where no effective treatment is available. "Healing through information may in fact

become a new frontier of medical arts."<sup>132</sup> Therefore, testing and prevention, and

general regard for personal choice, is preferred over direct genetic engineering

efforts to change a baby's medical future.

The next characteristic to discuss is sexual selection or predetermination of sex. Rabbi Israel Bettan discussed this topic in a 1941 responsum. The Talmud is not

shy on offering folklore or advice on sexual tactics that will lead to a boy or a girl.

Frequently the preference was for a boy as a result of living in a patriarchy-based

society where the land and wealth was transmitted to male children. While liberal

Jews may find this preference for one sex over another to be reprehensible, from the

Talmudic and Rabbinic understanding, the objective was legitimate and not a moral

---

<sup>129</sup> TRR, Jewish Donor for Insemination, 126-127

<sup>130</sup> TFN, Linkage Analysis, 5752.6, 307

<sup>131</sup> *ibid*

<sup>132</sup> *ibid*, 308

judgment against women in society.<sup>133</sup> From a legal standpoint, it is not a question of morality and gender equality but instead a question of whether the new techniques to predetermine and select for gender are “moral, simple, and safe.”<sup>134</sup> The comments in the Talmud were more magic and superstition than statements of medical knowledge. Reform Judaism in this sense does not take the expected path of siding with post-modern attitudes of gender equality and instead favors an approach that regards medical safety as the primary concern. Jacob summarizes this position adequately: "Judaism, it is well to state here emphatically, is not a religion that teaches the doctrine that the end justifies the means. In this case, therefore, if the means, yet to be discovered, will prove scientifically sound and morally unassailable, the Jewish teachers of that far-off day will find ample basis for their endorsement of the enterprise in the thought and tradition of their past."<sup>135</sup>

In the most recent responsum on genetic engineering, which has not yet been published, the CCAR Responsa Committee agrees with the principles from Jacob's responsum, speaking from a more modern perspective. The Committee notes, as Jacob did, that the idea of selecting for different traits is not new to Judaism. For example, *Berachot* 5b includes rabbinic advice about how to best ensure a male offspring. We would consider these superstitions or unproven scientific techniques. However, from the rabbinic context they are considered *segulot* (actions that work through supernatural means but do not replace God's will). This implies that divine intervention is not necessary to guide the genetic process toward specific offspring.

---

<sup>133</sup> ARR, Predetermination of Sex, 1941, 508-509

<sup>134</sup> *ibid*, 509

<sup>135</sup> *ibid*

The CCAR Responsa Committee concludes, "These sources do suggest that the Sages did not object in principle to measures undertaken by human beings to influence the outcome of the 'genetic lottery' and to try to insure that children would possess qualities that their parents thought desirable."<sup>136</sup> However, we should not treat "desirable" as the benchmark for genetic engineering. The responsum concludes that it would not permit any genetic modification for non-medical purposes. Each situation would be decided on a case-by-case basis but the authors see no compelling reason to permit if it is not to fulfill a mitzvah. Therefore, couples should be advised against using prenatal genetic diagnosis (PGD) to screen for non-medical factors such as height or intelligence. Enhancement should be differentiated from therapeutic benefits.<sup>137</sup>

So far the technology available to select specific genetic qualities is far from the point where we can voluntarily select for more arbitrary, non-health significant, traits. The main question that arises is to what extent we can experiment on humans to determine if such specific genetic engineering is even possible. The Reform literature has declared that the physician's concern is the health of the patient, not the research that can be accomplished.<sup>138</sup> As a result, physicians are discouraged from taking such risky procedures and trials upon human subjects. In addition, Jewish patients themselves are similarly discouraged from being part of such experiments. In the halachic literature, it seems there is no requirement to submit to testing, even if it could potentially save a life if it forces the person to *vadai sakanah*

---

<sup>136</sup> NYP, On Human Genetic Modification, 5768.3, 2

<sup>137</sup> *ibid*, 4

<sup>138</sup> TFN,

(put his or her life in danger).<sup>139</sup> The Reform responsum upholds the *halacha* that declaring that one must avoid any injury to themselves. A person must weight their own life's worth and danger over any benefit to someone else.<sup>140</sup> How much the more so does this statement hold weight when it concerns experiments on non-crucial aspects of genetic engineering.

*Conservative discussion and analysis:*

When it comes to discussing our power to engineer and manipulate our basic genetic material to achieve specific ends, the Conservative movement starts by initially setting parameters. A distinction is quickly made between preimplantation genetic diagnosis (PGD) and prenatal genetic diagnoses. Preimplantation genetic diagnosis differs from both prenatal genetic diagnosis and genetic engineering. Prenatal occurs with a live fetus and the only options are abortion or continue through birth. Genetic engineering involves the direct manipulation of genetic material. In contrast, PGD is a matter of selecting which embryos to implant. The core question for pre-natal genetic diagnoses is what conditions or genetic predispositions are so dangerous as to justify an abortion or terminating a pregnancy before birth? Genetic engineering, as understood by Rabbi Mark Popovsky who wrote this responsum, is "to repair mutations, fix disease genes, and even insert synthetic genes is in development and carries its own distinct set of halachic concerns." However, PGD does not involve changing an embryo's DNA. Instead it is a process to search through the embryo's genetic material in vitro

---

<sup>139</sup> 173

<sup>140</sup> 174

before it is implanted and allowed to grow into a fetus in utero.<sup>141</sup> While genetic engineering by its most strict definition is not discussed in the Conservative literature, we can use this discussion nonetheless to raise certain points about what is permissible and what is changeable within Conservative legal circles.

Regarding prenatal testing, Rabbi Kassel Abelson relies heavily on the teaching of Orthodox *posek* Eliezer Waldenberg who accepts the concept in principle but is wary of such new technology. Also we note quite strongly that Kassel and Waldenberg speak about prenatal testing only in regards to determining if the fetus has a genetic disease that may warrant an abortion.

Continuing on to the longer discussion of PGD, a number of opinions exist on how we express our values through genetic engineering. Rabbi Israel Zilberstein argues that the best use for PGD is for the mental and emotional benefit of the mother and father, not the child, knowing that there will not be serious genetic diseases.<sup>142</sup> Rabbi Moshe Feinstein, in *Igrot Moshe, Even Ha'ezer* 1:62, argues against PGD stating that is permissible as all children will attain *Olam Ha'ba* (the world to come). Rabbi Shlomo Zalman Auerbach, as cited in *Nishmat Abraham, Even Ha'ezer* 1:5, permits PGD saying it is good to produce a healthy child. Rabbi Aaron Mackler notes that abortion based on fetus deformity is permitted. Rabbi Shlomo Daichovsky prefers selection before implantation than after.<sup>143</sup>

Through this range of opinions, some Conservative and some Orthodox, we witness the plethora of priorities being expressed. As a result, contradictory

---

<sup>141</sup> Mark Popovsky, Choosing Our Children's Genes: The Use of Preimplantation Genetic Diagnosis, *Even HaEzer* 1:5.2008a, 3-4

<sup>142</sup> *ibid*, 13

<sup>143</sup> *ibid*, 18-19

conclusions have been reached. Aaron Mackler, in a 1994 responsum, argues that such genetic testing is permitted for use for couples to avoid having a child with serious genetic disease.<sup>144</sup> Speaking specifically about in-vitro fertilization he states, "IVF should not be used solely for the purpose of gender selection."<sup>145</sup> If used to avoid having a child with a severe disease that is gender-linked, however, preimplantation testing would represent a form of genetic testing, and would be acceptable."<sup>146</sup> Specifically, Mackler prohibited gender selection to avoid sexism and the preference of one gender over the other in society. He did permit selection based on a lesser trait, i.e. gender, if it reached a greater purpose, i.e. preventing disease.

Popovsky, in his 2008 responsum, was not as ready to accept Mackler's decision. His concern was more based on what he does not know than what we are able to do. He writes that we must be aware that our limited understanding of the current PGD technology means we do not know if we are selecting against one trait in favor but might also be unaware that we are also selecting for a different undesirable trait.<sup>147</sup> Even while we continue to learn more about the genome and how genes become expressed in the human body, Popovsky is calling for a cautious approach and the sobering fact that we are not playing God; we as humans are limited in our knowledge. Based on a number of classical sources, it is concluded, "one must be confident that acting will lead to a benefit in order to justify

---

<sup>144</sup> Aaron L. Mackler, In Vitro Fertilization, *Even HaEzer* 1:3.1995, 16

<sup>145</sup> *ibid*, 8

<sup>146</sup> *ibid*, 16

<sup>147</sup> Mark Popovsky, Choosing Our Children's Genes: The Use of Preimplantation Genetic Diagnosis, *Even HaEzer* 1:5.2008a, 11



endangering oneself."<sup>148</sup> A little hesitation, even in the face of groundbreaking medical science is not a bad thing. Furthermore, PGD or any current science is not guarantee; all is based on probability. Therefore, because PGD cannot guarantee the prevention of diseases, it cannot be accepted based on the argument of actions for health are always accepted.<sup>149</sup> Lastly, there is a note of distrust in Popovsky's comments. While there is no doubt that it is better to select embryos based on health-only concerns, the temptation will exist for parents to select based on height, looks, or other factors. It can be encouraged that parents select only for health concerns but this cannot be completely controlled. In addition, factors such as physical appearance or sexual orientation relate to one's social health and well-being, and efforts to change society's effect need to come through healthcare and social means, not only through embryo selection.<sup>150</sup>

The values of a society are reflected in the technology they created and how it is used. Therefore the responsum cautions us to read our medical capabilities as a reason to act to improve humanity, not just select for selfish physical traits. To that end, this Conservative responsum defines the important values that make PGD possible as beneficence, reproductive freedom, coping with uncertainty, and coping with difference and disability.<sup>151</sup> It is these values that should guide our decisions as we wade into the sea of genetic engineering. By permitting genetic engineering and genetic testing, this practical application is our vehicle to express these values.

Therefore for these Conservative scholars, the law holds considerable weight, not

---

<sup>148</sup> *ibid*, 15

<sup>149</sup> *ibid*, 22-23

<sup>150</sup> *ibid*, 26

<sup>151</sup> *ibid*, 4-9

just to enforce action and protocol but also to speak to the way a society functions and upholds its own principles. While genetic engineering as a technology may be far off from completion and wide-scale implementation, the law recognizes that how we use it may be the greater concern.

*Orthodox discussion and analysis:*

There is most certainly a limit on how much leeway human beings have to control the genome and the genetic process. For many Orthodox scholars, genetic screening is recognized as having benefits that can be lead healthy children but there is disagreement about how far genetic design can be implemented. The two major case studies for this subsection regard the issue of Tay-Sachs disease and the possibility of sex selection.

Regarding Tay-Sachs disease, most scholars approach the issue in a similar manner, declaring genetic screening and counseling to be the best approach to curbing the spread of this disease. All scholars recognize the danger of a child born with Tay-Sachs disease and are aware of its higher than average likelihood within the Jewish community. Yet, with only one exception, they are not ready to offer a difficult ruling that permits abortion as a way to deal with cases that slip through the genetic screening cracks.

For Rabbi Moshe Feinstein, and J. David Bleich who elaborates on Feinstein's position with his own conclusions, the emphasis is placed on testing for Tay-Sachs disease before marriage begins. Feinstein advises genetic testing as one is preparing to be married. Feinstein states that the failure to take the simple test is tantamount

"to closing [one's] eyes [in order not] to see that which it is possible to see."<sup>152</sup> The screening should be encouraged throughout the Orthodox community. The Association of Orthodox Jewish Scientists in 1973 issued a statement endorsing the voluntary screening of young adults but is also concerned about the psychological state of a young person that discovers that he or she is a carrier.<sup>153</sup> No one wants to see a young person shunned from a community because they have a genetic likelihood of an awful disease, a predisposition that they had no control over. Feinstein states that as a result the location to test should be publicized but the results kept secret from society. Feinstein further acknowledges that there is no physical or mental disease or handicap for the Tay-Sachs disease carrier. As a result, there are no scientific or rational grounds to shun the carrier or eliminate them as a marriage partner.<sup>154</sup> He does make the exception for young men below age twenty and women below age eighteen from being testing that their youth makes them sensitive to nervous tension and psychological stress.<sup>155</sup>

The issue is raised that some tests to identify carriers of Tay-Sachs disease include inherent risks. Bleich writes, "The surgical risk might conceivably be regarded by some as within the parameters of 'God preserves the simple' (Psalms 116:6), i.e., a risk not commonly deemed onerous and hence halachically acceptable."<sup>156</sup> This concept of *shomer pita'im hashem* will be discussed in great deal

---

<sup>152</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 103

<sup>153</sup> Fred Rosner, *Modern Medicine and Jewish Ethics*, New York: Yeshiva University, 1991, 176-177

<sup>154</sup> Bleich, *Biomedical Dilemmas*, 106

<sup>155</sup> Rosner, *Modern Medicine and Jewish Ethics*, 174-175

<sup>156</sup> Bleich, *Biomedical Dilemmas*, 109

in the third chapter in regards to smoking as a social concern. But for the sake of this conversation, this principle permits the use of actions and procedures that have some inherent risk or danger if they are often practiced and accepted within the general community. This principle recognizes that risk is a factor in many parts of life and society has accepted many such risks as normal. For example, in modern times society accepts that driving a multi-ton vehicle at 60 mph is permissible even though traffic accidents kill millions of people annually. Therefore, a slightly dangerous test for Tay-Sachs disease is acceptable if society sees it as not too great of a risk. Bleich offers a second reason why genetic testing is allowed. Any medically indicated prophylactic or diagnostic procedure would be considered part of Maimonides' obligation to maintain a healthy body. According to Maimonides, love of God (based on Deuteronomy 6:5) increases with enhanced understanding of the nature of God's handiwork. For Maimonides, avoidance of disease and focusing on physical well-being are commanded and necessary measures to fulfill this mitzvah.<sup>157</sup>

Practically speaking, testing alone will not solve the whole problem of Tay-Sachs disease in the Jewish population. Even when identified to be genetic carriers, is a rabbi permitted to prevent the marriage of two such carriers? Rabbi J. David Bleich encourages the use of testing and states the elimination of the disease should be a social goal. Therefore the testing should be used to prevent such a situation. That being said, the possibility of Tay-Sachs disease does not exclude one from their

---

<sup>157</sup> *ibid*, 117-118

biblical command to procreate.<sup>158</sup> That is to say that marriage is permitted even if both husband and wife are carriers of a genetic disease. In this regard, the *mitzvah* of procreation is prioritized over the possibility of genetic engineering through marital control.

But the final step is the most difficult. What if a fetus is identified to have Tay-Sachs disease? Knowing how much genetic screening was emphasized and encouraged, how far do the *poskim* go to prevent it? For all of them, abortion is not permitted. Feinstein strongly condemns abortion for Tay-Sachs disease. Neither does Bleich. In the 1973 statement from the Association of Orthodox Jewish Scientists, they are opposed to abortion as well, even if Tay-Sachs disease is discovered. For these *poskim*, genetic engineering is a precautionary measure but there are limits to how far humans can go to act on diseases. Life cannot be sacrificed.

As was just seen, most scholars focus their writings on the issue of precautionary efforts for Tay-Sachs disease, such as genetic screening and counseling. They call for a sense of openness and permissibility within the Orthodox community to stem this genetic disease. But, once the issue of screening has passed and a couple is dealing with a fetus that is identified to have the disease, any sense of openness disappears. Abortion may not be used. The one exception is Rabbi Waldenberg, and those who follow him. Waldenberg permits abortion following amniocentesis during the first trimester if the fetus is determined to have Tay-Sachs disease. He bases this ruling on Rabbi Jacob Emden who sanctions abortion for a

---

<sup>158</sup> Rosner, *Modern Medicine and Jewish Ethics*, 175-176

"grave need."<sup>159</sup> Dr. Abraham Steinberg, a medical physician who studied Torah with Waldenberg, later expands Waldenberg's permission to perform an abortion in such cases up to the seventh month, or through the second trimester, of pregnancy.<sup>160</sup> Waldenberg explains his ruling in *Tzitz Eliezer* 51:3 and 13:102, again citing the rubric of a "grave need." Abortion may be permitted for the sake of the mother's healing (*r'fu'at ha'em*) In this instance, Waldenberg permits the abortion in order to spare the mother the pain and distress of watching her child suffer. He thus includes emotional and psychological health under the rubric of *refuah*. Unlike his other Orthodox colleagues, Waldenberg seems unafraid to deal with the issue head on, comfortable making a very clear statement permitting abortion and preventing Tay-Sachs disease. It seems that Waldenberg was ready to take a step and offer a legal ruling that others were not prepared to do. This does not mean that Waldenberg would accept genetic engineering on a more general level, but it is an example of an Orthodox case wherein the *posek* using modern medicine rules against his colleagues, for the sake of a life with a grave need.

Let us turn to sexual selection of unborn children as a type of genetic engineering. Dr. Fred Rosner notes how there are a plethora of biblical and Talmudic examples of superstitions or folk advice that permit a couple to conceive of one gender over another, most commonly male.<sup>161</sup> "In a recent publication of the Institute for Jewish Policy Planning and Research of the Synagogue Council of America, Dr. Hyman J. Roberts writes about societal risks in sex pre-selection with

---

<sup>159</sup> *ibid*, 177

<sup>160</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 103

<sup>161</sup> Fred Rosner, *Modern Medicine and Jewish Ethics*, 129

emphasis upon Jewish perspectives. He describes the preference for male babies in contemporary society and discusses sociological and psychological consequences and potential biological problems stemming from male pre-selection."<sup>162</sup> While this reason is not grounded in textual or halachic ruling about genetic possibilities, we are aware that the preference for male babies over female babies is certainly not a new phenomenon. Our concern here is how modern genetic technology turns superstition into scientific reality.

Citing Rabbi Ovadiah Yosef and others, the *Nishmat Abraham* rules that it is not permitted to choose the sex of a baby by artificially separating sperm cells, even in a situation wherein artificial insemination has been halahically approved.<sup>163</sup> Bleich concurs with this statement and states that no authority would accept sex determination as legitimate cause for an abortion.<sup>164</sup> Even though artificial insemination is a permissible procedure to stimulate the natural processes of pregnancy and childbirth, it is be a violation of Jewish law to use this technique to select between sperm and pick a gender.<sup>165</sup> Furthermore, says Bleich, it is doubtful, though strictly forbidden, for a couple to engage in sexual activity only as specific moments in a woman's monthly cycle as a means to increase the likelihood of one sex over another. Bleich believes a marginal increase is possible at best.<sup>166</sup> In a similar statement to the one mentioned by Rosner, Bleich worries about a society

---

<sup>162</sup> *ibid*

<sup>163</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 208

<sup>164</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City: Ktav Publishing House, Inc., 2002, 129

<sup>165</sup> *ibid*, 130

<sup>166</sup> *ibid*, 130-131

that permits sex selection of children and subsequently creates moral judgments about male versus female child, a statement similar to that of Popovsky in the Conservative movement. Such potential sexism would undoubtedly result in grave sociological repercussions and would be counter to the goals and values of Judaism. From all these statements we see that while we have a rabbinic tradition including different superstitions about how to have a child of one sex or another, it is out of bounds to use modern genetic engineering to make such a practice official. In this regard, modern medicine should not be used to fulfill the desires of the old Sages. Modern medicine must be held cautiously and not abused to select the sex your child.

J. David Bleich offers a few concluding comments that appropriately summarize the limits of using genetic engineering to change or manipulate specific aspects of an unborn child and the future possibilities that such technology creates. In time, development and perfection of in vitro techniques may make it possible to select not only the sex but also other genetic traits, such as eye color, IQ, height, etc. It is not inconceivable that in the future nearly every possible permutation regarding a human being can be controlled at will. "The moral, genetic, and societal implications of such practices are truly awesome."<sup>167</sup> However, Bleich notes that the purpose of genetic manipulation and in vitro fertilization is as a means to alleviate infertility due to abnormality and assist in creating life through natural procreation.<sup>168</sup> Genetic engineering offers us a whole new gateway of possibilities

---

<sup>167</sup> *ibid*, 95

<sup>168</sup> *ibid*



and human power but that power is restrained to the assisting nature, not ruling over it.

### Rabbinic Knowledge and Microscopic Data

As our conversation transitions from the macroscopic to the microscopic we recognize that any discussion about genetic material has only been possible for barely a century. The great Sages and scholars of the past millennia knew very little if anything about cellular structure, genomes, and the general microscopic processes that cause the human body to function. It is these processes that must be harnessed and controlled for future manipulation and control over the human genetic structure to be successful. The rabbis simply did not have this knowledge or information. Therefore as we attempt to understand classic rabbinic text from our modern perspective, we ask how to accept or reject legal rulings that quite simply did not have all the facts.

#### *Reform discussion and analysis:*

Regarding specifically genetic engineering the Reform responsa do not deeply wrestle with the lack of rabbinic information about modern science in the same manner that other movements do. As has been demonstrated already the Reform responsa carefully weigh a range of perspectives, from rabbinic to modern, from legal to social, but do not often reach firm rulings on any given topic. Instead information and opinions are often left to rabbis and individuals to make wise, informed rulings as fits their personal situations. Each opinion or rabbinic source offers a valuable perspective but it is how the modern Jew formulates his or her own conclusion that is more important.

Furthermore, it is important that we recognize that our understanding about science and the natural world differs from that of the ancient rabbis. While our understanding of microscopic issues and genetic material is far advanced from theirs, what is to say that we are not still in the nascent stage of our knowledge ourselves? Walter Jacob appropriately concluded that only preliminary guidance and rulings could be given at this time. The parameters and consequences of genetic engineering remain to be explored.<sup>169</sup> We may be more aware than the great Sages but we still lack considerable amount of knowledge to truly understand how human technology can play with the basic building blocks of who we are. For all we know, we are still as ignorant as they were.

*Conservative discussion and analysis:*

There certainly is precedent in the halachic literature when it comes to understanding new information. The rabbis were not so bold as to think that they understand everything. They knew that progress would change, and as such, so would the law to accommodate new and unknown situations. The main conversation within the Conservative literature concerns the concept of a *davar hadash, panim hadashot* (a new thing, a new aspects or elements), which implies a changing reality. The principle defines that something that is completely manufactured is not natural, and not food, and therefore falls outside tradition categories about food and *kashrut*. Their responsum are on *kashrut* but its

---

<sup>169</sup> CARR, Genetic Engineering, February 1978, 34

discussion of understanding molecular structure certainly has relevance to our conversation about genetics.

*Davar hadash, panim hadashot* was used by Rabbi Isaac Klein in a 1969 responsum on the *kashrut* of gelatin and a 1972 responsum on the *kashrut* of cheese, and means "when a substance goes through a transformation that changes it into something completely new, it also loses its former status in regard to being a forbidden food."<sup>170</sup> Delving more into the realm of microscopic or molecular level compounds Rabbi Klein extends the definition of *davar hadash* to mean, "a substance treated by another substance which transforms it chemically thus becomes a *panim hadashot*."<sup>171</sup> Rabbi Abelson concludes therefore that mono- and di-glycerides are chemically created and therefore are kosher and pareve.<sup>172</sup>

However, we cannot end our conversation here stating that genetic engineering makes something artificial and new and is therefore outside the boundaries of the law. Abelson continues regarding tri-glycerides. He offers a number of other legal principles, including *davar hama'amid* (an integral ingredient used to solidify or give a product body, and can be used as the critical ingredient to create a new entity), *afilu be'elef lo batel* (a foreign substance is considered insignificant if it is only one in a thousand, or an extremely tiny proportion), *noten ta'am lifgam* (that something that adds a negative flavor to a dish is permitted to eat even though it might not have originated as an allowable food), *nifsal me'akhilat kelev* (food that is not even fit for canine consumption, let alone human

---

<sup>170</sup> Kassel Abelson, The Kashrut of Mono- and Di-Glycerides, *Yoreh Deah* 87:10.1982, 5

<sup>171</sup> *ibid*

<sup>172</sup> *ibid*

consumption), and *batel beshishim* (nullified in sixty; that is, permissible so long as forbidden ingredients constitute no more than 1/60 of the whole), which disqualify tri-glycerides as non-foods.<sup>173</sup> In fact, in an effort to make a more complex molecular structure, the process renders it more vulnerable to halahic restrictions and less acceptable than its more basic molecular cousins.

Rabbis Jeffrey Bocarsly and Jonah Roth wrote a paper entitled "Toward a Definition of *Davar Hadosh*" and concluded: "Any chemical reaction which breaks a carbon-to-carbon bond in the central (i.e., non-substituent) carbon skeleton of an organic compound, or breaks a connecting linkage between two macromolecule subunits, creates a *davar hadash*." The reason for this, they assert, is to "insure that major and truly fundamental chemical change has occurred before it can be considered a *davar hadash*."<sup>174</sup> Rabbi Kassel Abelson and Mayer Rabinowitz, the authors of this responsum, disagree and find that there is no reason to define halachic authority away from "a visible change" and instead use chemical terminology, i.e. "the breaking of a carbon bond."<sup>175</sup> Or more simply stated smaller and more complex is not better. Abelson and Rabinowitz argue it is appropriate to use the term *davar hadash*, relevant to both the halachic perspective and the chemistry, "when a new compound is formed." You can include chemical analysis into this definition by adding "the breaking of old bonds and the forming of new

---

<sup>173</sup> *ibid*

<sup>174</sup> Kassel Abelson and Mayer Rabinowitz, Definitions of a *Davar Hadosh*, *Yoreh Deah* 87:10.1984, 2

<sup>175</sup> *ibid*

bonds." This chemical change will lead to a change in physical attributes, which satisfies the halachic criteria.<sup>176</sup>

The conclusion we can draw from this debate is that the Conservative scholars are not ready to completely leave all decisions about medical advancement and scientific discovery into the hands of the technical experts. The experts can describe the technical and scientific reality, but it is up to the rabbis to determine the religious significance of this reality. Jewish law already contains adequate ways to define a new situation and mark when something new has been created. We can turn to the scientific experts for their advice and expertise but we do not need to concede the law to them completely. In this regard, there is hesitancy to changing the law in response to new genetic and microscopic understanding. The law itself has built in means to define something new, so let the law speak without elaboration or innovation. Note this does not mean that the law is blind to scientific or medical innovation, quite the opposite. In fact it teaches that the law is ready for new discoveries and is set to handle the changes.

*Orthodox discussion and analysis:*

Rabbi Faitel Levin, student of the Lubavitch Rebbe and a prominent Chabad rabbi in Australia, discusses how modern *halacha* is confronted with new issues in the twentieth century, specifically around the topic of the microscopic organism. Despite the various rulings by Orthodox *poskim* in previous subsections about the limits of genetic engineering and using such technology only as a means of assisting

---

<sup>176</sup> *ibid*

nature, not controlling it, Levin offers a different Orthodox opinion. We are aware that Levin represents only one opinion and in his book he is speaking specifically about the role of the microscopic organism in modern *halacha*, not about the larger topic about the permissibility of genetic engineering in our current society. But his comments provide an interesting point of view about this topic nonetheless.

Levin offers the following argument about the limits of *halacha*: "Can the deaf perform the mitzvah of hearing *megillah* reading with the help of a hearing aid? Levin notes that Rabbi Feinstein rules in the negative, on the grounds that hearing which the human cannot achieve by his very nature is not halachically recognized. Rabbi Feinstein goes on to prove Torah's disregard for phenomena beyond the natural human senses, by reminding us that we constantly swallow innumerable bacteria – life forms that neither chew the cud nor have split feet. Evidently, he concludes, Torah is concerned only with that which is readily accessible to the human senses."<sup>177</sup> Levin offers another opinion of Rabbi Eliezer Rothfeld. Rothfeld suggested that there is no halachic prohibition regarding the manipulation of genes because there are submicroscopic particles, invisible to the naked eye.<sup>178</sup> Levin says that it is possible to conclude from all of these rabbinic opinions that since genes are not visible to the human naked eye, *halacha* could not be used to regulate their use, therefore genetic engineering is not against Jewish law.

J. David Bleich presents an argument that reaches a similar conclusion similar to Levin's about *halacha* and microscopic arguments. Bleich's analysis of this

---

<sup>177</sup> Faitel Levin, *Halacha*, Medical Science and Technology: Perspectives on Contemporary *Halacha* Issues, New York: Maznaim Publishing Corporation, 1987, 176-177

<sup>178</sup> *ibid*, 177

topic comes from his chapter on stem cell research but is also applicable in this chapter. Bleich discusses the topic of sub-visual zygotes by comparing the Jewish laws regarding unseen objects. For example, Jews are not permitted to eat creeping animals yet any microscopic examination of even one drop of water will reveal countless foreign creatures.<sup>179</sup> "Jewish law concerns itself only with gross phenomena. A physical phenomenon that is sub-visual is of no consequence. An organism that can be seen only under a microscope or by means of a magnifying glass is an organism of which Jewish law takes no cognizance; for the purposes of the Jewish legal system, it is as if the organism does not exist."<sup>180</sup> If you cannot see it, the law has no control over it. Another example is regarding broken letters on a Torah scroll. A letter is only considered broken and in need of repair if it can be perceived with the naked eye by a person with normal eyesight.<sup>181</sup> Bleich's conclusion, which again relates to stem cell research and will be repeated in that chapter is, "Therefore, it can be concluded that when a zygote is sub-visual, the law takes no cognizance of its existence. If so, it may well be argued that there is no prohibition associated with its destruction."<sup>182</sup> For the sake of this chapter and based on some of the other statements by Bleich that have already been presented we do not want to extrapolate that Bleich would state similarly about the gene as he does about the zygote.

---

<sup>179</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 211

<sup>180</sup> *ibid*, 211-212

<sup>181</sup> *ibid*, 212

<sup>182</sup> *ibid*



Rabbi Shlomoh Zalman Auerbach would disagree with Levin and Bleich's conclusion based on the argument that the cross-pollination of species leads to traits that are visible to the eyes. Therefore, genetic material and sub-visual organisms, even if used for non-practical or scientific purposes, would trigger halachic cognizance.<sup>183</sup> Auerbach's argument is based on focusing upon intentional harnessing of sub-visual events to produce a specific and desired effect. This effectively narrows the area of halachic innovation, limited only to intentional behavior.<sup>184</sup> So, *halacha* would have greater control of anything, regardless of its size, if there is a perceivable effect. As a result, nothing is out of halachic boundaries. Citing *Shulchan Aruch, Yoreh Deah*, 98:4, Rabbi Bleich reaches the same conclusion as Auerbach. Normally, if a forbidden substance becomes mixed with a large quantity of a permitted substance, at least sixty times its volume, the whole mixture is still permissible. This principle is *batel b'shishim* (nullified by a sixtieth). However, in this portion of *Shulchan Aruch, Yoreh Deah*, Bleich points out that if the forbidden substance remains recognized, despite its being less than one-sixtieth, it is not nullified. Therefore, using genes from a non-kosher source, for example, would render the final product forbidden.<sup>185</sup> Just because the gene is small does not mean it is insignificant. Or in regards to Auerbach's argument, the lesser element, even to the point of being microscopic, is not completely lost and still retains some character and role in the halachic argument.

---

<sup>183</sup> *ibid*, 213

<sup>184</sup> *ibid*, 214

<sup>185</sup> *ibid*, 144-145

Auerbach also applies the halachic principle of *achsheveih*, which declares that an object that lacks intrinsic value receives value based on the intent of a person who uses the object for a subjectively valued purpose.<sup>186</sup> This argument was written on stem cell research; therefore he concludes that the subvisual zygote or the fetus has the attributed value of being potential life, a level higher than any random microorganism or foreign object. Could we extrapolate that a gene, which is also given an intrinsic value due to its potential to create a phenotypic result in human beings, is also bound by *achshevieh*?

So there is no clear answer about the role of microscopic organisms in halachic literature. But Levin makes a very poignant point that aptly concludes this discussion: "One thing appears certain: coming to grips with this one question will shed light on all the aforementioned problems and on numerous others; both questions which have already been raised, as well as others which are yet to be raised - in the twentieth century, when the humanly observable universe is constantly expanding."<sup>187</sup> As medical science continues its growth and development, these issues will be increasingly relevant and pertinent as part of rabbinic debate.

---

<sup>186</sup> *ibid*, 214-215

<sup>187</sup> Levin, *Halacha*, Medical Science and Technology, 177-179

## Changing God's Creations

Along with our discussion about knowledge of the microscopic and unseen, it is necessary to include remarks about how Jewish law does not function independently from a moral and theological framework. In fact, our relationship to God and its origin to the Divine Creator play a sizable role in recognizing how medical science has boundaries. God bestowed humanity with the divine gifts of knowledge, insight, creative, and exploration. But, there are limits to what we can do and what we can create. We do not how one small decision will impact a greater end. We do not the full consequences of our actions. Bluntly stated, is man ready to wield the power of a divine being?

### *Reform discussion and analysis:*

For the Reform scholars who wrote and released responsa literature over the past 80 years, the question has been more about understanding the limitations of human curiosity than a concern about reaching into the divine realm. The intellectual achievements of mankind are celebrated in liberal Judaism and we marvel at how we have been able to benefit humanity through our cognitive prowess. Indeed for centuries we have engaged in “divine-like” behavior of genetic engineering through the selective breeding of plants and animals. Morally and legally speaking such behavior was never seen as controversial or in any way impeding on God’s powers. In Genesis 1:28, God gave Adam dominion over all the earth during Creation.

This control over the millennia has been extremely beneficial to humanity. Controlled breeding of animals has been a common practice for thousands of years. Our tradition had very little to say about breeding animals as long as no attempt was made to do with unlike species, based on the commandment against mixing from Leviticus 19:19.<sup>188</sup> Walter Jacob notes: "Throughout the centuries, every effort was made to assist nature and to produce animals suited to specific purposes as well as plants which would yield abundantly. Despite Jewish involvement in agriculture through the centuries, this matter has not been discussed in the older responsa literature. In modern times these efforts have been accelerated through selective breeding and an understanding of the genetic process."<sup>189</sup> Jacob continues: "Genetic engineering of plants or animals within a species poses few old halachic problems though it raises many other issues. Human beings have selective bred plants and animals since the beginning of herding and agriculture in order to adapt them to specific human needs and environments. Genetic engineering will vastly accelerate this process. This may eliminate poverty, famine and disease but may also bring scourges and problems which we can not foresee."<sup>190</sup> Therefore in this sense, genetic engineering is extremely positive.

However, changing the human genetic code is where the need for concerns and limitations dramatically increases. Jacob concerns regarding human genetic engineering, "The lines between plant, animal, and human are thin and in some ways do not exist at all. So we must proceed with caution. In consort with others we

---

<sup>188</sup> NARR, Jewish Involvement in Genetic Engineering, March 1989, 249-250

<sup>189</sup> *ibid*, 251

<sup>190</sup> *ibid*

must set limits and provide direction.”<sup>191</sup> But caution does not mean inaction. The Reform responsa do not in any way argue that science be held back or delayed, just be done in a deliberate and morally sound manner.

The most recent responsum on genetic engineering from the CCAR Responsa Committee also discusses moral and theological implications about our advances in medical knowledge and expertise. First, the responsum notes that no *poskim* have identified any ritual prohibition on the modern technology of genetic engineering. Some discuss a prohibition in light of the Biblical prohibition against *kilayim* (mixing or crossbreeding) but that parallel is not exact. Citing Rabbi Shlomoh Zalman Auerbach in his Responsa *Minchat Shelomo* 2:100, *kilayim* concerns the mating of different species whereas genetic engineering concerns the mixing of genetic material in a confined laboratory pace, not necessarily for the means of reproduction. The CCAR Responsa Committee concludes that because no clear prohibition exists, there is no reason to creatively produce one.<sup>192</sup> Nachmanides comments on Leviticus 19:19 raise an argument worth discussing. He notes that the *mitzvah* of *kilayim* is an instruction for humanity not to interfere with God's creation, which is in essence perfect. By mixing different parts of God's work, we are tampering with *ma'aseh bereshit* (the order of creation). However, this responsum also considers another statement by Nachmanides that recognizes that humans have some control over the natural order. Nachmanides reads from God's command of humanity to fill and master the earth in Genesis 1:28. “God has given to humankind power and sovereignty over the earth, to do as they please with the

---

<sup>191</sup> *ibid*, 252

<sup>192</sup> NYP, On Human Genetic Modification, 5768.3, 1

animals and all that creep upon the earth, to build, to uproot, and to plant." This statement, in turn, has been cited by *posek* Rabbi Abraham S. Abraham in *Nishmat Abraham* (Vol. 4, page 215) in support of a permissive approach toward genetic engineering.<sup>193</sup> The Committee concludes, "For this reason, we cannot say that Jewish tradition requires that we regard the existing natural order, including the existing genetic structures of the various species of plant and animal life, as sacred and inviolate. This might imply, in turn, that there is no clear Jewish religious or legal objection to our manipulation of the genetic code of plants, animals, or even of human beings."<sup>194</sup>

This responsum then shifts the discussion from the legal to other theological and moral issues. Just because a technology is not prohibited with the law does not mean we should engage in it. The CCAR Responsa Committee reminds us that the Torah holds us to higher standards of "holiness" and "righteousness" that should guide all of our actions and decisions. This leads the Committee to avoid a blanket acceptance of genetic engineering. They cite two main reasons. The first is a concern about the environment. The technology is too new and too unproven. We simply do not know the larger implications of society that has full control over the genome. Such control smacks of hesitancy, not a fast-forward approach.<sup>195</sup> The second concern address by the Committee regards humanity's relationship with the Divine. While it was already mentioned by Nachmanides that God's commandment to fill and master the earth permits us to benefit from it, we are not to assume we have

---

<sup>193</sup> *ibid*

<sup>194</sup> *ibid*

<sup>195</sup> *ibid*, 2

complete control. Judaism teaches that humanity has a *brit* (covenant) with God, a relationship where we recognize our places in God's eyes and our respect of our own human limits. Furthermore, we believe that humans are in *shutaf* (partnership) with God. We work together with God, not act to gain the power to rule.<sup>196</sup> To that end, the CCAR Responsa Committee lists a series of theological questions that appropriately should be on the minds of the Jewish community as our ability to engineer the genome grows. A little concern and mindfulness will keep it in that realm of being holy and righteous.<sup>197</sup>

"What happens to this sense of balance, of limitation, and of proportion when we arrogate to the physical and moral limitations upon it. What happens to this sense of balance, of limitation, and of proportion when we arrogate to ourselves the power to design the genetic makeup of our children totally in accordance with our own desires? What sort of people do we become when we assert our dominion over the generation of human life to the extent that these new genetic technologies make possible? What, moreover, becomes of our relationship to our children when we are empowered to "order" them in accordance with a list of desired specifications? Do we not risk turning them into commodities whose worth is measurable precisely on the basis of those specifications? We are concerned that the availability of this power will serve as an invitation to precisely the sort of arrogance that our tradition decries. Indeed, it will serve to convince us that there are no limitations (aside from

---

<sup>196</sup> *ibid*

<sup>197</sup> *ibid*, 2-3

technological ones) upon our right to affect and control the generation of human life."

From these thoughts, we see a desire by the Reform Movement to consider the issues of technologic discovery and advancement on more levels than just permission or prohibition. We have moral obligations and higher values to weigh and respect that must remain in the forefront of our minds no matter what we are medically and scientifically able to do.

*Conservative discussion and analysis:*

Within the Conservative literature, there is a sobering nature to this business of genetic engineering, preimplantation genetic diagnosis, and molecular understanding. In the end we are forced to admit that while our understanding of the science has expanded and our ability to cure is more advanced than any other time in human history, there is much we still cannot do. The rest is left to the hands of God. The rabbis do not know everything and we do not know everything. The question about sick newborns and children born with genetic defects is simply heart breaking. Medicine is not at the point where it can fix everything, and quite frankly, it may never reach that level. Rabbi Avram Israel Reisner fully admits that this power is something out of our hands as legal and religious scholars. There is a limit to how much law can do. Changing law will not necessarily save lives. Perhaps it is



prudent to leave the assessment of severely premature newborns to medical experts.<sup>198</sup>

So the answer to the question about what can be done is something simply – nothing. The rabbis, and to some extent, us as well do not know exactly why some genetic malformations occur, and more so if there is anything to do about it. As such it is problem best to treat these newborns as born dying and allow the latitude for non-treatment that we would consider appropriate at the end of life.<sup>199</sup> We do not mean to begin to end this section on a hopeless note but it is appropriate to recognize that we have limits and the Divine does not. The power to fully control the genome is not yet ours.

*Orthodox discussion and analysis:*

Orthodox scholars are certainly aware of the question that has been dealt with by the Reform and Conservative options, as well as all ethicists: may we do this? Are we permitted to manipulate the genome to our design and our own goals? Are we reaching the level left only to the Divine or disrupting God's intended plan for the human body? This subsection will serve more as survey of opinions than a discrete analysis but the variety of expressions about our role regarding genetic engineering should be elucidating.

Dr. Fred Rosner offers two arguments for consideration. The first point of view is his own, which argues for the limits of man's permission (*r'shut*) to heal,

---

<sup>198</sup> Avram Israel Reisner, Peri- and Neo-Natology: The Matter of Limiting Treatment, *Yoreh Deah* 339.1995, 8

<sup>199</sup> *ibid*, 9

recognizing that we do not know how our actions will truly impact humankind. Yet we know that this research and new technology can be used for a good and true purpose meant to bring about *pikuach nefesh* and the desire to heal:

"Since man was created in the image of God, human beings are holy and must be treated with dignity and respect, both during life and after death. Our bodies are God-given, for only God gives and takes life. Recent development in medicine and science threaten our observing these fundamental Jewish principles. When scientists master genetic engineering, are we tampering with life itself? Nature was created by God for man to use to his advantage and benefit. Hence, animal experimentation is permissible in Jewish law. The production of hormones in animals for man's benefit by recombinant DNA techniques also seems perfectly permissible. Gene therapy, such as the replacement of the missing or defective gene in Tay-Sachs disease or hemophilia, is also probably sanctioned in Jewish law because it can restore health and preserve and prolong life."<sup>200</sup>

Second, Rosner offers the opinion of Rabbi Moshe Herschler, who, like Rosner, recognizes that we are on the cusp of true power and untold breakthroughs of our medical and scientific possibilities. Herschler admits that such power and progress is scary, and it is easy to fall back on halachic protections. But instead we can look power to the healing that could result from this new frontier:

"Rabbi Moshe Herschler writes that we should not blind ourselves to the potential of genetic engineering and gene therapy, which is no longer a

---

<sup>200</sup> Fred Rosner, *Modern Medicine and Jewish Ethics*, New York: Yeshiva University, 1991, 188

dream or a fantasy but becoming a medical and scientific reality. Herschler raises the question of the permissibility (or lack thereof) of experimenting with gene therapy to try to save the life of a child with thalassemia or Tay-Sachs disease if the unsuccessful outcome of the experimentation would be a shortening of the child's life. Herschler is of the opinion that gene therapy and genetic engineering may be prohibited because "he who changes the [Divine] arrangement of creation is lacking faith [in his Creator], and he cites as support for his view the prohibition against mating diverse kinds of animals, sowing together diverse kinds of seeds, and wearing garments made of wool and linen. However, genetic engineering does not seem to be comparable to the grafting of diverse types of animals or seeds. The main purpose of gene therapy is cure disease, restore health, and prolong life, all goals within the physician's Divine license to heal."<sup>201</sup>

---

<sup>201</sup> *ibid*, 189

## The Obligation to Heal

To conclude our discussion about the role of genetic engineering as a case study in our understanding of Judaism's relationship to the frontier of medical science, we engage the concept of the overriding principle that is scattered throughout our medical *halacha* and law in all spheres of the Jewish world – *pikuach nefesh*, the need to heal. This chapter has raised many of the concerns surrounding the rise of genetic engineering, from the macro to the micro, from the legal to the theological. As we are on a precipice of untold power to control our basic genetic structure we take a final look at how each movement balances the need to heal with the uncertainty of future developments in this field.

### *Reform discussion and analysis:*

The power available to humankind through the advances of science requires a degree of humility and curiosity. We should not be brash to think we are all knowing or in control over all nature. There is the traditional doctrine, born out of biblical and rabbinic texts, that God is the Source of both illness and healing. Sickness is seen as God's punishment and the correct course of action is prayer and repentance. Turning to the medical arts is seen as a betrayal of God's decree and trust in God's power.<sup>202</sup> Nachmanides comments on Leviticus 26:11 that "medicine is irrelevant to the community of the righteous, for whom disease is a matter not of the body but of the spirit. Cures are affected by repentance and prayer."<sup>203</sup> This implies a sense of vulnerability and weakness for us, not one of power and control.

---

<sup>202</sup> TFN, Physicians and Indigent Patients, 5754.18, 373-374

<sup>203</sup> *ibid*, 374

But the CCAR Responsa Committee teaches, "The tradition developed a positive and affirming conception of medicine. This fact is most obvious in the large number of rabbinic scholars who were also physicians, well as in the significant medical literature produced by rabbinic writers, most notably Maimonides."<sup>204</sup> *Pikuach nefesh* becomes the rubric, overriding Shabbat and Yom Kippur. Maimonides derives the obligation to save lives from the restoring of lost objects in Deuteronomy 22:2, which is itself derived from *pikuach nefesh*.<sup>205</sup> He then argues that whoever refuses to heal is accused of shedding blood himself or herself. "The practice of medicine is an enterprise of *pikuach nefesh*, a duty which outweighs virtually all others."<sup>206</sup>

Walter Jacob makes two key comments in his responsum on Genetic Engineering. On one hand he argues, "Genetic engineering is a new science. There are many questions about its dangers which may arise from new, altered, or hitherto unknown, substances formed by these methods."<sup>207</sup> The quality of being new is exciting but comes with its share of moral and legal quandaries. Reform scholars simply cannot reach conclusions on issues that have yet to be discovered. On the other hand, Jacob writes, "We accept genetic changes for medical purposes and experiments as *pikuach nefesh*. Human life must be saved at all costs."<sup>208</sup> Some things, such as life, are certainly worth taking the risks. The most recent responsum on genetic engineering by the CCAR Responsa Committee agrees wholeheartedly with Jacob, in that the role of genetic engineering should be seen as an act of healing

---

<sup>204</sup> *ibid*

<sup>205</sup> *ibid*, 375

<sup>206</sup> *ibid*

<sup>207</sup> NARR, Jewish Involvement in Genetic Engineering, March 1989, 247

<sup>208</sup> *ibid*, 252

and bettering humanity, "Given that Jewish law and tradition offer no clear prohibition against the technologies of human genetic modification, there is no justification for rejecting their use for legitimate medical purposes. The practice of medicine is a *mitzvah*; it partakes of *pikuach nefesh*, the act of saving human life, which our tradition recognizes as our highest moral obligation. To turn our back upon these newly developed treatments for disease would accordingly be a senseless, self-destructive act in violation of that *mitzvah*. The better response is one of gratitude: we ought to give thanks that science has improved our ability to relieve human suffering."<sup>209</sup>

The Reform literature attempts to hold both the issues of potential healing and potential risks at the same time, eager to new forward with the vast potential that genetic engineering offers but struggling to reign in that experiment until legal and safety concerns are fully addressed. This dual-sided sentiment is fully expressed in a concluding comment by the CCAR Responsa Committee: "We are standing at the edge of a new scientific era. We certainly wish to utilize the potentials of genetic engineering for the benefit of humanity. That may be partially within our power. It is not without our power to stop the scientific experimentation. The human yearning to understand the divine creation and everything in it as fully as possible cannot be halted, nor can the desire to alleviate the problems of hunger, disease, and poverty."<sup>210</sup>

---

<sup>209</sup> NYP, On Human Genetic Modification, 5768.3, 3

<sup>210</sup> NARR, Jewish Involvement in Genetic Engineering, March 1989, 251-252

*Conservative discussion and analysis:*

Our conclusion returns to the same conversation as the Reform discussion – *pikuach nefesh*. There is the need to heal that is at the core of all human medical advancements. Reisner discusses the permissibility of genetically engineered foods and how this issue impacts the law. But *pikuach nefesh* and the need to heal unsurprisingly win out. He writes that even if genetic elements or proteins from non-kosher animals are used in medicine they are permissible as the Jewish emphasis on healing would likely override any other concerns.<sup>211</sup>

Reisner also raises the issue of *kilayim* (crossbreeding) that could stand as a stumbling block of any future genetic research. Are we permitted to introduce foreign genetic material, mixed with the host material? Reisner answers: "The kashrut laws of prohibited admixtures do not apply to the submicroscopic manipulation of genetic material. The law of *kilayim* which might apply, show an extraordinary tendency toward leniency. 'Natural *kilayim*' products, though the fruit of an illicit operation of *kilayim*, have nonetheless been permitted as early as the *Tosefta* and the rationale tying the laws of *kilayim* to the Creation, while often tempting exegetes, has not become the dominant law. Of genetically engineered foodstuffs it should be minimally said that even if genetic engineering is to be prohibited, the products thereof are permissible."<sup>212</sup> In this regard the Conservative teaching holds that the law is already open to new genetic creations. Regarding food

---

<sup>211</sup> Avram Israel Reisner, Curiouser and Curiouser: The *Kashrut* of Genetically Engineered Foodstuffs, *Yoreh Deah* 87:10.1997, 1-2

<sup>212</sup> *ibid*, 10

only, Reisner teaches that the process of genetic engineering bears only a very minimal resemblance to the sexual and grafting processes that the Torah bans."<sup>213</sup>

But despite the leniency in the law regarding food, in the end, Reisner is not just to rule on human genetic engineering. "It is excessive to place barriers against manipulation of the human species at the point of genetic manipulation of protein expression. It may not be excessive to place such barriers at manipulation of the very characteristics by which species are identified. I reserve final judgment in this area."<sup>214</sup> The question that seems to hold Conservative writers back from fully embracing the medical frontier is understanding the categories and limits of their knowledge and of our scientific capability. Reisner, like Dorff, Mackler, and Popovsky, want to create categories of action within the law, making it easy to decide what is permitted and what it not.

Yet despite the level of uncertainty in the Conservative literature, we end with a positive conclusion for the medical future of genetic control. For humans are endowed with the power of knowledge and the ability to develop technology to change their lives and conditions. Rabbi Avram Israel Reisner and Dr. Marilyn Wind, in their dissent to Rabbi Mark Popovsky's responsum about PGD, make an interesting rhetorical observation about the role of man in changing what God has created. Referring Popovsky's argument about humans' lack of knowledge, the authors wonder if we can select an embryo based on our best knowledge at the

---

<sup>213</sup> *ibid*

<sup>214</sup> *ibid*



time. Is partial knowledge morally better than randomness?<sup>215</sup> Just because we cannot fully change the genome or guarantee children to the barren or stop genetic diseases or grasp the molecular does not mean we are held hostage against progress of any kind. The Conservative scholars are teaching us to use the knowledge we have to move forward, concerns and legal restrictions at our side, but forward nonetheless.

*Orthodox discussion and analysis:*

As was made clear in the introduction and throughout the various subsections, we cannot jump to any generalized conclusions that speak to all Orthodox Jews as a collective. At best we can reach for examples or cases that help illuminate a shared point of view. Dr. Fred Rosner and Rabbi Moshe Tendler express such a sentiment in a brief discussion about genetic counseling as a profession for an Orthodox Jew. They write that the Orthodox Jewish counselor should emphasize the sanctity of life and other basic principles of Judaism and its religious orientation. If the final decision made by the patient(s) is contrary to Jewish law, the counselor bears no responsibility. If the counselor is unable to convince the patient or client of the Torah view, at least the counselor tried. If possible and when appropriate, rabbinic consultation and advice should be sought concomitantly with the medical-genetic counseling."<sup>216</sup> While we are always cautious of any statement that categorizes the Orthodox community as a whole, we do take away from Rosner and

---

<sup>215</sup> Avram Israel Reisner and Dr. Marilyn Wind, PGD: Preimplantation Genetic Diagnosis - An Ideological Dissent, *Even HaEzer* 1:5.2008b, 2

<sup>216</sup> Fred Rosner and Moshe D. Tendler, Practical Medical Halachah, Northvale: Jason Aronson, Inc., 1997, 19-20

Tendler's statement an appreciation of the sanctity of life being the most important element that new technology and the medical frontier feeds into. Technology will not replace an Orthodox point of view; just add to our ability to live out of highest values.

We also note in Rosner and Tendler's statement how the rabbinic advice is meant to hold considerable weight and should be used as a tool to help lead those seeking counsel down the path to live out the law. But that knowledge is not one-sided. Rosner and Tendler write, "Since many important legal and moral considerations that cannot be enunciated in the presentation of these general principles may weigh heavily upon the verdict in any given situation, it is essential that each individual case be submitted to rabbinic judgment that, in turn, will be based upon expert medical opinion, both physiological and psychological."<sup>217</sup> There is a joint effort between wisdom and knowledge between religious and medical leaders that share in the deciding about how new medicine will be used, person-by-person, case-by-case.

Besides sanctity of law and upholding expertise in medicine and the law, it is clear that one of the highest values for Orthodox thinking is *pikuach nefesh* and the central role that man's plays in the act of healing. Rosner writes that humanity's ability to learn more about the core building blocks of our genome are not scary, but an opportunity for us to grasp. Speaking specifically about the Genome Project of the 1990's, he argues that it is not an act of man encroaching on God's knowledge. Most rabbis consider the acquisition of knowledge for the sake of healing and discovering

---

<sup>217</sup> *ibid*, 29

new cures for human illnesses to be divinely sanctioned, if not in fact mandated. Rabbi Sampson Raphael Hirsch, based on Genesis 1:28 and our instruction to "replenish the earth and subdue it," argues that humans can transform the earth for our own purposes. He further says that such control is not a violation of Genesis 2:17 and the prohibition to eat from the tree of knowledge. "Whatever is good for mankind must be permissible and praiseworthy."<sup>218</sup> Nachmanides, also commenting on Genesis 1:28, states that humans have the God given power and dominion of the earth. Rosner interprets Nachmanides' comment to mean that the use of scientific knowledge to benefit mankind is biblically mandated. Hirsch's and Nachmanides' statements that humans should use the earth to our benefit is further confirmed by *Bava Kamma* 85a, Exodus 21:19, and Maimonides' *Mishneh Torah, Nedarim* 4:4 based on the biblical obligation from Deuteronomy 22:2 to restore one's lost health.<sup>219</sup> Rosner argues that genetic engineering should be acceptable under the law and embraced by modern Jewish society today. "The healing of illness includes the use of genetically engineered medications such as insulin and various antibiotics. The cure of disease by gene therapy, if possible, is also sanctioned in Jewish law."<sup>220</sup> And he is not alone in this assertion.

Indeed genetic engineering holds much future promise. John D. Loike and Moshe Tender write similarly. The capacity for knowledge and capacity to heal through our expand control over our own genomes is still an undiscovered treasure. "Examining how these genes differ may lead to a partial but better understanding of

---

<sup>218</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 210

<sup>219</sup> *ibid*, 210-211

<sup>220</sup> *ibid*, 210

how human beings possess a greater intelligence and capacity to reason than chimps and may provide insights into brain pathology and abnormal behavior as well. Thus, understanding our genetic composition can help us understand how to better control our actions."<sup>221</sup> We can know so much more, do so much more, and better ourselves so much more as we explore the world of genetics and embrace it within Jewish law.

Lastly, to conclude the Orthodox discussion about genetic engineering we have the remarks of the Rabbi Lord Immanuel Jakobovits. Jakobovits speaks about one of humanity's greatest gifts, the power to heal. His comments reflect many of the rulings by Abraham, Feinstein, Bleich, and others that have been mentioned already, that our newfound medical knowledge serves as a partner with the natural order of God's word that exists before us:

"On Genesis 1:26: We can dismiss the common argument of 'playing God' or 'interfering with divine providence' [in reference to cloning]. Every medical intervention represents such interference. In the Jewish tradition this is expressly sanctioned in the biblical words: 'And he [an attacker] shall surely cause him [his victim] to be healed' (Exodus 21:19). The Talmud states: 'From here we see that the physician is given permission to heal.' But such 'interference' is permitted only for therapy, not for eugenics -- for correcting nature, not for improving it."<sup>222</sup>

---

<sup>221</sup> John D. Loike and Moshe D. Tendler, *Molecular Genetics, Evolution, and Torah Principles*, *Torah u'Madda Journal*, 2006, 211

<sup>222</sup> *Jewish Medical Ethics*, Vol. 1, No. 1, May 1988; also in *Will Cloning Beget Disaster?*, *The Wall Street Journal*, Friday, May 2, 1997 (1997 WL-WSJ 2419168), 10-11

## ***Chapter 2: Stem Cell Research***

### **Abortion and the Rights of the Fetus**

Of all the many areas where medical science has made advances in the past decade, stem cell research has become a hot button issue in the public and political realms. This is a result of its proximity to the national and religious debate over abortion and the more general question about when life begins. Abortion and stem cell research are connected as a result of the stage of cellular development that stem cells are in when they are used for scientific research. Stem cells exist in blastocysts, which are group of cells in which some differentiation has already occurred. Differentiation is the stage when generic cells become specialized for a specific purpose or organ, such as a skin cell or nerve cell. It is this moment of differentiation that is of particular interest in stem cell research as control over this process could potentially permit scientists to decide what cells will differentiate into. For example, a scientist could decide that all cells become liver cells, creating an artificially developed, but natural, liver for transplantation. The connection with abortion comes from the fact that embryos contain blastocysts. In order to get the stem cells from the embryo or blastocyst, it must be destroyed. This in effect involves the destruction of a prenatal human organism.

For the Jewish scholar or halachist, one of the major questions that arise is what is considered a *nefesh*. A *nefesh*, literally translated as a “life,” actually refers to the legal concept of “personhood.” As will be discussed, this designation is not given to something in utero. The concept of *nefesh* is relevant in that neither abortion nor

the destruction of an embryo is defined as murder. Furthermore, there are legal boundaries between what constitutes an embryo and what is a fetus. Do the embryo and fetus share the same legal status? Or does the status and legal responsibility change as the embryo develops into a fetus? Both the embryo and the fetus may become a human life and yet is not endowed with the same legal standing as that enjoyed by its mother or any other person. So, the stem cell conflict in Jewish responsa literature is less about the legality or morality of abortion but more about the conflict between potential research and potential life.

As will be discussed, the Jewish stance on personhood is rather uniform throughout the various movements of Jewish and does not create a major roadblock for stem cell research. However, just because neither an embryo nor a fetus is legally a *nefesh*, this does not make it less meaningful or easy to discard. You must treat it with respect and honor, but does this legally eliminate or restrict the use of unused embryos for research? The questions are vast and the issues are tricky. But first let us analyze the primary question that must be answered before preceding any further: what is each movement's view on abortion and, more specifically the rights of the fetus?

*Reform discussion and analysis:*

The Reform movement, much like the other movements in Judaism, permits abortion in a number of situations, beyond the commonly cited case of endangering the life of the mother. Rabbi Solomon Freehof in the early 1960's wrote a responsum that lays out many of the core arguments used in the abortion debate. Many of these

texts and arguments will be explained in the course of this analysis. Freehof highlights two sources as the primary texts concerning the nature of the fetus. The first text is from Exodus 21:22, which concerns the case of an accidental miscarriage. Freehof points out that the man who caused the miscarriage is subjected to a fine, but was not tried for murder. The second text is *Mishnah Ohalot* 7:6, which states that a woman who is having difficulty during her pregnancy can abort the fetus in order to save her life. Freehof mentions how this text considers the unemerged fetus as part of the mother's body. Just as any limb may be amputated to save her life, so may the fetus be destroyed.<sup>223</sup> Rabbi Walter Jacob, who took over the major responsa writing responsibilities from Freehof, wrote a similar responsum in 1985. In this responsum, Jacob discusses an additional noteworthy text that Freehof did not directly address – the issue of the *rodef* (pursuer). The concept of the *rodef* in terms of abortion is part of Maimonides' interpretation of the Mishnah. Based on Deuteronomy 25:11 and Leviticus 19:16, this biblical commandment permits us to strike dead someone who pursues with the intention of killing. Maimonides in *Hilchot Rotzeah Ushemirat Hanefesh* 1:9 declares a fetus that endangers the life of a mother to be a *rodef*, thereby permitting the mother to kill it first.<sup>224</sup> The *p'sak* (ruling) of Maimonides was repeated in the *Shulchan Aruch, Hoshen Mishpat* 425:2.

The distinction is made between a fetus, which is still inside the mother, and the fetus that has already put its head out.<sup>225</sup> Rashi teaches in his comment in

---

<sup>223</sup> CARR, When is Abortion Permitted?, January 1985, 24

<sup>224</sup> *ibid*, 25

<sup>225</sup> RRR, Abortion, 188

*Sanhedrin* 72b, which is the commentary on this section of *Ohalot*, when the fetus is entirely inside the mother, the mother is regarded as being superior in status, and therefore the fetus can be sacrificed. Once the head of the child is out of the mother, the child is considered a *nefesh*, and therefore has the same legal standing as the mother and cannot be sacrificed. Rashi continues and says that permission for terminating the pregnancy can only be given for the life of the mother.<sup>226</sup> Rashi therefore can be seen as disagreeing with Maimonides over the interpretation of *Mishnah Ohalot*. In Rashi's view, the abortion is permitted not because the fetus is a *rodef*, but because it is not a *nefesh* and is therefore of a lesser legal-moral status than the mother. Most halachic debates over the question of abortion center upon this conflict of interpretation between Rashi and Maimonides. As we will see later in the Reform literature, contemporary scholars do not agree with Rashi's stipulation limiting the purpose of an abortion only for the sake of the mother's life.

There is further argument within rabbinic writings about whether one should actually abort a fetus. Rabbi Joshua Falk, in his 16th century commentary on *Hoshen Mishpat* 425 and Rashi, argues on the basis of Exodus 21:22-23 that destroying a fetus results in a monetary damage and such an act should therefore not be considered a capital crime. *Sanhedrin* 57b provides a counter-example that concludes that it is a capital crime to kill a fetus. However, this case is regarding an adulterous non-Jew only. Lastly, the *Tosafot's* comment on *Chullin* 33a reaches a

---

<sup>226</sup> *ibid*, 189



middle ground. They teach that it is not a capital crime to kill a fetus but a person is not permitted to do it.<sup>227</sup>

Freehof bases his final decision on the subject on three modern responsa, even though he mentions many others. Rabbi Yair Chaim Bachrach of Worms, in *Chavat Yair* 31, reached a similar opinion to the *Tosafot* comments on *Chullin*. Based on the fact that a fetus is not a *nefesh*, it can be destroyed to save the mother's life. But, says Bachrach, while it might be legally allowed it should be considered immoral. So you are permitted to kill a fetus but you forbidden from actually doing it except in order to save the mother. The second responsum comes from Rabbi Jacob Emden in *Yabetz* I 43. His opinion is a bit curious. Emden, who is writing about the case of an adulteress, says that such a person would have been executed by the ancient *Sanhedrin* for her transgression, which would kill the fetus as well. But then he quickly pivots and says an abortion is permitted to save the mother from excessive pain. While Emden's argument may be unclear, he rules in the opposite direction of Bachrach. The third responsum is by the late Sephardic Chief Rabbi Ben Zion Uziel in *Mishp'ey Uziel* III 46 and 47. He concludes that not only is the fetus not a *nefesh* and therefore in a different legal category, but the fetus is considered part of the mother, and if it is harming or endangering her, then it can be removed or destroyed for the sake of the mother's whole being.<sup>228</sup> Freehof concludes, "Since there is strong preponderance of medical opinion that the child will be born imperfect physically, and even mentally, then for the mother's sake (i.e., her mental anguish now and in the future) she may sacrifice this part of herself. This decision

---

<sup>227</sup> *ibid*

<sup>228</sup> *ibid*, 190-193

thus follows the opinions of Jacob Emden and Ben Zion Uziel against the earlier opinion of Yair Chaim Bachrach."<sup>229</sup>

That last comment deserves additional discussion due to the inclusion of the phrase "her mental anguish now and in the future." Freehof did permit abortion out of concern for the mother's mental state, if she was not able to care appropriately for the children. Freehof concluded that protecting the mental state of the mother, was the same as protecting her physical health.<sup>230</sup> This conclusion in itself is a major adaptation on previously mentioned rabbinic statements that focus on the mother's physical health. Permitting an abortion for the sake of mental health is significant. Walter Jacob, reaffirming Freehof's permission for abortions relating to non-physical, health related reasons to abort, such as the emotional or psychological conditions of the mother.<sup>231</sup> He argued, "A line of reasoning which dealt with the mother's psychological state has been based on *Arachin* 7a; it would permit abortion for such reasons or for the anguish caused to the mother by a child's potential deformity or other problems."<sup>232</sup> Our main conclusion from Freehof's and Jacob's lenient permission of abortion based on non-physical health concerns represents a prelude to the Reform movement general premise of considering more issues than simply health.

Regarding the status of the fetus the conclusions get much more complicated. Different Reform responsa over the years have prioritized different concerns. Overall, no Reform responsa strayed from the general halachic principle of *maya*

---

<sup>229</sup> *ibid*, 193

<sup>230</sup> *ibid*

<sup>231</sup> CRR, *Sterilizing the Feeble-minded*, 76-77

<sup>232</sup> CARR, *When is Abortion Permitted?*, January 1985, 25

*b'alma* (merely water). This principle states that a fetus under forty days old is not even considered a potential life, let alone a *nefesh*, and has no legal standing at all. A larger discussion of the principle is found later in the Conservative section of this topic. Walter Jacob took a more compassionate stance on the status of the fetus. He cites multiple sources mentioned already by Freehof (*Mishnah Ohalot* 7:6, *Shulchan Aruch*, *Hoshen Mishpat* 425:2, and *Yad Hil Rotzeah Ushemirat Hanefesh* 1.1) that declare that even at one day old, a child is still live as soon as it has left the womb. Jacob argues that even if there is no chance of survival long after birth, it will still be born and deserves the human dignity of a child.<sup>233</sup> However, Jacob does draw a line when the potential life simply will not survive after birth. A fetus that cannot "survive on its own without artificial means and can never have an independent life should be permitted to die peacefully and possibly allow the machinery to maintain normal bodily functions for a short period necessary to transfer the organs, which will be transplanted and used to help others."<sup>234</sup>

Solomon Freehof, on the other hand, sees a sharp distinction between the fetus under forty days old and the fetus that has reached the forty-day mark. In his 1974 responsum, citing *Ketubbot* 20b, he writes that generally speaking the fetus is not considered to be a living thing and not required to have a proper burial. In Talmudic times, stillbirths were informally disposed of. He notes that in *Ketubbot* it was not a mandate to bury amputated limbs or fetal material, just the common practice. Therefore, according to Freehof, if the use of the fetus would be to save

---

<sup>233</sup> NARR, The Abortion of an Anencephalic Fetus, September 1988, 253

<sup>234</sup> NARR, Fetus Kept Alive as a Source for Organs, May 1988, 272

lives, it can be used for research.<sup>235</sup> In a 1977 responsum, he stipulated that study can be done on the fetus while within the mother's womb but it cannot be sacrificed or damaged in the process. As long as the mother and fetus are not hurt, research may be done.<sup>236</sup> In another responsum published in 1990, Freehof held firm to his position. Again referencing the statement in *Mishnah Ohalot* that the fetus is not to be treated legally as a *nefesh* and is therefore of lesser legal importance than a legal person, Freehof argued that if an abortion to save the life of the mother is permitted, then using the fetus to save anyone's life, not just the mother, is therefore permitted.<sup>237</sup> Although Freehof does not state specifically, it is implied from the question he was asked that a fetus that was already aborted might be used for research, and not that an abortion may be permitted for that reason alone. Furthermore, if there is an immediate need for the fetus' body parts to save someone else, then how much the more so must the fetus be used to save another's life.<sup>238</sup> In conclusion, we are left with a conflict of priorities between Jacob and Freehof. It appears that Jacob, even though he recognizes the beneficial nature of the fetus' body parts, cares more about respect for potential life whereas Freehof focuses on the immediate use of the fetus in its current legal state.

The CCAR Responsa Committee continues Freehof's argument that an abortion is permitted for the sake of someone besides the mother. In a 1994 responsum, the Committee argues about whether it is permissible to abort to save siblings from suffering. Rabbi Joseph Trani in *Teshuvot Maharil*, Vol. 1, n. 97 and 99,

---

<sup>235</sup> CoRR, Study of Foetal Material, 157-159

<sup>236</sup> RRT, Abortion and Live Fetus Study, 260

<sup>237</sup> TRR, Medical Use of the Fetus, 90

<sup>238</sup> *ibid*, 90-91

says it is okay to permit abortion for "great pain," which incorporates both physical and psychological pain.<sup>239</sup> Rabbi Yitzchak Oelbaum permitted an abortion if the pregnancy would change the mother's milk that was keeping alive a "weak child," keep the existing child out of danger.<sup>240</sup> However, these opinions do not directly address the questions about the stress of siblings. Even though the CCAR Responsa Committee seeks a new path for the "right and good" an abortion for the sake of hurting siblings with a handicapped fetus is rejected. The fetus is still potential life, and while it has fewer rights than the mother, it does have great significance. It can be sacrificed only for the most profound reasons.<sup>241</sup> While the question at hand does not receive a positive answer, the Reform Movement has considered, and presented, cases where pain is considered to be larger than just the fetus and the mother.

Walter Jacob offers an appropriate conclusion guided by the principle of liberalism. "The Reform Movement has had a long history of liberalism on many social and family matters. We feel that the pattern of tradition, until the most recent generation, has demonstrated a liberal approach to abortion and has definitely permitted it in case of any danger to the life of the mother. That danger may be physical or psychological. When this occurs at any time during the pregnancy, we would not hesitate to permit an abortion."<sup>242</sup> Jacob argues Reform Judaism's "liberal stance" on abortion follows the most lenient of traditional authorities. "We do not encourage abortion, nor favor it for trivial reasons, or sanction it 'on demand.'"<sup>243</sup>

---

<sup>239</sup> TFN, Abortion to Save Siblings from Suffering, 5755.13, 173

<sup>240</sup> *ibid*, 174

<sup>241</sup> *ibid*, 175-176

<sup>242</sup> CARR, When is Abortion Permitted?, January 1985, 26

<sup>243</sup> *ibid*, 27

But has been discussed in detail, the fetus is not a *nefesh*, and therefore is limited under the law. The Reform Movement recognizes that an abortion is a necessary save in many cases to protect another human being.

*Conservative discussion and analysis:*

The Conservative movement's approach to abortion and the rights of the fetus are again about determining and upholding strict categories and boundaries of action. The various responsa regarding abortion try to maintain a highly clinical standard. Occasionally, however, the comments focus on the strictest side to the conversation. Strict limits on abortion and the rights of the fetus are established but the rabbis do offer some compassion. Interestingly however, many responsa about abortion have been written by Conservative *poskim* throughout the years, but their conclusions are not terribly varied. Moments of divergence will be mentioned and discussed.

First and foremost, a line is drawn between when a fetus is considered independent from the mother, and therefore falling into a different category. There are three major categories: when the fetus is considered to still be a part of the women's body, when the fetus has further developed but is not still a person, and lastly at birth. Regarding the first category, where medical science considers the fetus a living thing from the moment the ovum is fertilized, Judaism sees a more cautious line.<sup>244</sup> Issac Klein, in sharing the opinion of Rashi, writes "Being a living thing and being a separate entity are two separate matters. Even if it is a living thing

---

<sup>244</sup> Isaac Klein, *A Teshuvah on Abortion*, *Hoshen Mishpat* 425:2.1983e, 5

we can say that the fetus is *pars viscera matris* or to use the Talmudic expression, *ubar yerekh immo hu* (it is a limb of its mother). The fetus is, thus, accounted as the loin of its mother. When abortion is therapeutic there can be no objection to it because, as in any surgery, we sacrifice the part for the whole."<sup>245</sup> Another opinion by Rashi is offered in a responsum on abortion written by David Feldman. Rashi taught "*lav nefesh hu* (it is not a legal life)," the fetus is not protected as "*nefesh adam*" (a legal living being) while it is still in the woman's body. Only when the fetus "comes into the world" is it a full legal person.<sup>246</sup> Rashi continues, the fetus is considered to be a limb of the mother (*Mishnah Ohalot 7:6*) and the mother is given the primacy concern up until the moment the birth.<sup>247</sup> We see that both the Reform and Conservative movement focus on this Rashi interpretation about the meaning of *nefesh* in regards to the relationship between fetus and mother.

The specific number of days for when a fetus is still considered a limb of the mother is set at forty days. "Rabbinic law established the time of ensoulment as taking place on the fortieth day, irrespective of the sex of the fetus (*Sanhedrin 91b*). Before the fortieth day, the fetus is considered *maya b'alma* (merely water) by the Rabbis (*Yevamot 69b* and *Niddah 30a*) and, if miscarried before that time, does not affect the status as first-born of any future offspring. (*Niddah 3:7* and *Shulchan Aruch, Yoreh Deah 305:23*)<sup>248</sup>

---

<sup>245</sup> *ibid*

<sup>246</sup> David M. Feldman, Abortion: The Jewish View, *Hoshen Mishpat* 425:2.1983a, 1-2

<sup>247</sup> Robert Gordis, Abortion: Major Wrong or Basic Right?, *Hoshen Mishpat* 425:2.1983b, 4

<sup>248</sup> Susan Grossman, Partial Birth Abortion and the Question of When Life Begins, *Hoshen Mishpat* 425:2.2001b, 2

The embryo is judged as "mere water" or less than a human is based on its location outside of a womb and its resulting inability to develop into a full human and on "its low level of cell organization, the short period of time that it will remain in this state, and its incapacity to live on its own."<sup>249</sup> Note the use of modern scientific language as a means to additionally justify the upholding of the rabbinic statements. Elliot Dorff specifically mentions the concurrent views of science and halachic thought. He teaches that modern science backs the rabbis' "forty-day rule" by using fifty-six days as an obstetrical count of when basic organs have begun to appear in the fetus.<sup>250</sup> Dorff notes that the rabbis' understanding of science was limited. While he and other Conservative scholars accept the forty-day guideline, Dorff argues that the "mere water" argument is a bit too simplistic. As opposed to the Talmudic view that the embryo in its first forty days is only water, "In our own day, when we understand that the fertilized egg cell has all the DNA that will ultimately produce a human being, we must clearly have respect for human embryos and even for human gametes alone (sperm and eggs), for they are the building blocks of human procreation."<sup>251</sup> Our knowledge of science has certainly increased but our understanding of the halachic law and how it is carried out remains the same.

The second category past the forty-day marks continues through the fifth month of development. A fetus before the fifth month, or before it is "fully formed" is only considered part of the mother's body, not even a limb or organ, so it does not

---

<sup>249</sup> Elliot N. Dorff, Stem Cell Research, *Yoreh Deah* 336.2002, 12

<sup>250</sup> *ibid*, 11

<sup>251</sup> *ibid*, 10



get a special burial.<sup>252</sup> However, Rabbi Stephanie Dickstein wrote an emotionally charged dissent to this upholding of halachic views. Given our ever-growing medical knowledge and how medicine's ability to save tiny lives is continually being pushed forward, she argues that the Conservative movement needs to adjust the ritual limit of five months in order to require the burial of a newborn.<sup>253</sup> It is advised that the Rabbinical Assembly Committee of Jew Law and Standards considers new approaches and standards regarding infant burial considering the emotional connection of parents, families, and communities. Flexibility is sought.<sup>254</sup> In this responsum by Dickstein we witness an effort from within the movement to see *halacha* not as the end-all stance for legal decisions, but just the grounds to begin the conversation. Dickstein and others are speaking from a modern point of view where our emotional sensibilities no longer accept infant normality as a normal or non-dramatic occurrence. As much as the *halacha* attempts to create appropriate boundaries and categories, the human factor simply cannot be ignored and can serve as the impetus for changing a movement's point of view. Dickstein's opinion does not affect the Conservative permissibility about abortion but raises appropriate questions as we consider the various emotional ramifications from a modern perspective.

The final category about determining when life begins as compared to the lesser legal category of a potential life will be discussed in a later section of this

---

<sup>252</sup> Isidoro Aizenberg, Treatment of the Loss of a Fetus through a Miscarriage, *Yoreh Deah* 340:30.1987, 1-2

<sup>253</sup> Stephanie Dickstein, Jewish Ritual Practice Following the Death of an Infant who Lives Less than Thirty-One Days, *Yoreh Deah* 374:8.1992a, 10

<sup>254</sup> *ibid*, 10-11

discussion. However, before reaching that movement of birth, the Conservative scholar notes many reasons that abortion can occur. We specifically note in this listing of examples the often-nuanced view the rabbis take to what is otherwise a clinical categorization about fetus development and rights. Through this we observe how a single act is permitted from a variety of causes. Primarily it is made clear that abortion is not murder. As was briefly mentioned in the Reform section, Exodus 21:22 teaches that an accidental abortion requires monetary compensation but is not a capital crime.<sup>255</sup> Abortion is removed from the category of murder, then therapeutic abortion (to save the mother's life; the sources dispute whether this *Mishnah* can be extended to cover cases of "health") is permissible and in fact mandated (*Mishnah Ohalot* 7:6).<sup>256</sup> Maimonides, in explaining *Mishnah Ohalot*, teaches in the *Mishneh Torah* that the fetus is considered a *rodef*, "pursuer" or "aggressor," who can be killed in order to save the victim.<sup>257</sup> Using the principle of *tza'ar gufah kadim* (her pain prevails), Feldman, the responsum's author, is advancing the argument of Maimonides beyond the point that Maimonides took it, since Maimonides restricts abortion to cases where the mother's *life*, and not merely her health, is in danger). The mother's welfare has priority over that of the fetus.<sup>258</sup> That was also briefly discussed in an earlier paragraph regarding the mother's health being primary as the fetus is still part of her body. Note that the mother's physical health is not the only concern. "The Rabbinical Assembly Committee on Jewish Law and Standards takes the view that an abortion is justifiable if a continuation of

---

<sup>255</sup> David M. Feldman, Abortion: The Jewish View, *Hoshen Mishpat* 425:2.1983a, 2

<sup>256</sup> *ibid*, 4

<sup>257</sup> *ibid*

<sup>258</sup> *ibid*, 5

pregnancy might cause the mother severe physical or psychological harm, or when the fetus is judged by competent medical opinion as severely defective."<sup>259</sup> In a different responsum, we read a similar argument citing concern for the mother's mental health as a major factor in deciding to permit abortion. "The most lenient decisions [unspecified but written to contrast with ultra-Orthodox *beit din*] also permit abortion to protect the mother's mental health which has sometimes been broadly defined. The *Mishnah* and *Gemara* already provide a precedent for considering the mother's emotional concerns, in protecting her from embarrassment even in the latest stages of pregnancy" (*Arachin* 7a).<sup>260</sup>

While we note the compassion and emotional concern, the Conservative scholars are still very clear where that line can be drawn. Abortion is not a form of birth control in Jewish law.<sup>261</sup> David Feldman makes this argument in very strong terms. It is abhorrent to Judaism to use abortion for casual purposes, population control, or economic reasons. Concerns about finances or other issues should be discussed and dealt with prior to the pregnancy, not afterwards.<sup>262</sup> The permissibility of abortion extends beyond the health of the mother to additional concerns, including the future life of the child and to social concerns. We already noted such examples in the Reform Movement's responsum on abortion to save siblings from suffering, even though the main question of that responsum was answered in the negative. For example, abortion in a case where the pregnancy

---

<sup>259</sup> Ben Zion Bokser and Kassel Abelson, A Statement on the Permissibility of Abortion, *Hoshen Mishpat* 425:2.1983c, 1

<sup>260</sup> Susan Grossman, Partial Birth Abortion and the Question of When Life Begins, *Hoshen Mishpat* 425:2.2001b, 18

<sup>261</sup> *ibid*, 25

<sup>262</sup> David M. Feldman, Abortion: The Jewish View, *Hoshen Mishpat* 425:2.1983a, 7

results from rape is permitted. Since the fetus is not a *nefesh* then the only concern is the mother. Feldman contends that such an abortion is necessary, as delivering a child conceived through rape would "bring into the world a permanent reminder of the terror and the shame that the woman experienced at the time the crime was permitted." Also "the child would forever bind her to one who had viciously violated the sanctity of her person." In addition, "the child himself, who is free of guilt, would carry a stigma almost too heavy to bear throughout his life."<sup>263</sup> All of these powerful arguments that favor the life of the mother are predicated on the halachic basis that the fetus may be sacrificed for *r'fu'at ha'em* (the health of the mother), and not only in order to save her for mortal danger, precisely because the fetus is not a *nefesh*.

There is also an argument to permit abortion for the sake of the child if there is a deep concern about the future health. For example, if the mother is a drug addict or is taking some other medication that might lead to a birth defect, could abortion be permitted? . "The pregnant woman's worry is sufficient ground for an abortion because of the debilitating effects psychologically or otherwise on her well-being."<sup>264</sup> Note that the child's health is not the issue. Rather it is the desire to save the mother from pain and suffering that leads to the determination to permit the abortion. Citing an Orthodox *posek* to defend this approach, Kassel Abelson argues, "Rabbi Eliezer Yehuda Waldenberg, also takes into account the future, and the well-being of the fetus. He states: "If there is a substantial risk that the fetus would be born with a deformity that would cause it to suffer, it is permitted to terminate the pregnancy within the first three months." Rabbi Waldenberg adds, "in

---

<sup>263</sup> *ibid*, 5-6

<sup>264</sup> *ibid*, 6

circumstances where it has been conclusively proven (i.e., by amniocentesis) that the fetus will be afflicted with Tay-Sachs disease, it is permitted to perform an abortion up to the seventh month of pregnancy."<sup>265</sup> To this end, "Rabbi Waldenberg evidently permits sufficient time for the information to be gathered, a decision to be made by the parents, and the abortion to be performed."<sup>266</sup> Waldenberg's opinion differs from many within the Orthodox community. This disagreement has already been mentioned in the previous chapter and also will be discussed more fully in the Orthodox section of this chapter. Abelson chooses to use Waldenberg to further his own argument. Abelson notes that our ability to reach such an emotionally difficult but prudent conclusion will only change as our understanding about fetus development grows. As testing and technology increases, there will be greater knowledge about the development of the fetus and its genetic defects, allowing parents more information unavailable to previous generations. A greater "window on the womb."<sup>267</sup> At this point, the best the rabbi and halachic scholar can do is present the options as best they can. The rabbi should explain the Jewish view on abortion to the mother, and father, and encourage the parents to consult physicians as well as a psychiatrist, as well as their family, before deciding to abort.<sup>268</sup>

*Orthodox discussion and analysis:*

"In stem cell research and therapy, the moral obligation to save human life, the paramount ethical principle in biblical law, supersedes any concern for lowering

---

<sup>265</sup> Kassel Abelson, Prenatal Testing and Abortion, *Hoshen Mishpat* 425:2.1983d, 6

<sup>266</sup> *ibid*, 7

<sup>267</sup> *ibid*

<sup>268</sup> *ibid*

the barrier to abortion by making the sin less heinous."<sup>269</sup> This quote from the responsum by Rabbi Moshe Dovid Tendler on stem cell research serves as an appropriate backdrop to open the Orthodox discussion about abortion and the rights of the fetus. While we attempt to stray from any generalizations about the Orthodox community, Tendler's point represents a constant struggle for Orthodox *poskim* – how do you weigh an ethical good, i.e. saving a life, against a medical procedure that has been perceived to be so disconcerting? The struggle for these *poskim* is the same as we observed for the Conservative scholars, to appropriately define the clear limits and boundaries for when the fetus holds legal standing that makes it intrinsically too valuable or too real to abort. Yet, while the rabbis debate the details, there is a sense, as Tendler implied, that they are looking for the higher good, the higher value which modern medical techniques do offer. The Orthodox rabbis also struggle with the problem about whether the embryo living in vitro has the same legal or moral status as the fetus. If it does, then the extraction of stem cells from it is tantamount to abortion, and the Orthodox *posek* will have to overcome that problem. If the in vitro embryo (blastocyst) does not enjoy the status of a fetus, however, then it will be much easier for the Orthodox *posek* to permit the procedure and extract the stem cells for use in research.

Beginning first with the legal status of the embryo, Tendler explicates the same boundaries that we have observed in both the Reform and Conservative sections of this discussion. As was similarly described in the responsa of the

---

<sup>269</sup> Moshe Dovid Tendler, Stem Cell Research and Therapy: A Judeo-Biblical Perspective, Ethical Issues in Human Stem Cell Research, Volume III: Religious Perspectives, September 1999, H-4

Conservative Movement, before forty days of gestation, the embryo does not have moral status. It is considered to have the same moral status as male and female gametes, and its destruction prior to implantation is of the same moral import as the "wasting of human seed."<sup>270</sup> In the next stage, "After forty days—the time of 'quickenings' recognized in common law—the implanted embryo is considered to have humanhood, and its destruction is considered an act of homicide. Thus, there are two prerequisites for the moral status of the embryo as a human being: implantation and forty days of gestational development. The proposition that humanhood begins at zygote formation, even in vitro, is without basis in biblical moral theology."<sup>271</sup> Tendler clearly notes in this quote that the moral implications of destroying a forty-day-old embryo are taken quite seriously.

Speaking more generally about abortion Tendler writes, "Biblical law as practiced for 3,500 years views the destruction of an eight-week-old fetus as tantamount to homicide. It is permitted only to save the endangered life of the mother. However, an abortus from a spontaneous or medically necessitated abortion may be used to further research for the benefit of mankind."<sup>272</sup> With this quote we reach two major points that continually arise in the Orthodox literature. First, while destroying an embryo is considered homicide, there are grounds for exceptions, such as the saving of the mother (*r'fu'at ha'em*). It will become clear shortly that this exception becomes broadened by some later and modern *poskim*. Second, an abortus may be used for research. However, we explicitly note that the

---

<sup>270</sup> *ibid*, H-3

<sup>271</sup> *ibid*, H-3-H-4

<sup>272</sup> *ibid*, H-4

research is a by-product of the abortion, not the purpose of the abortion. This note will become very important in a later subsection of this chapter.

Let us linger for a moment on Tendler's statement that destroying an embryo after forty days is considered homicide. A debate is held between *poskim* Rabbi Yehuda Ashkenazi and Rabbi I.Y. Unterman, the former chief Ashkenazi rabbi of Israel, and others about the implications of such a statement. This debate is necessary to help us understand how Orthodox responsa are arguing the big picture while debating the details. The medical procedure of abortion is not the full issue; taking a life is. "Ashkenazi, in his commentary on the Code of Jewish Law (*Be'er Hetiv, Chosen Mishpat* 425:2), reasons from here that a fetus is not a full-fledged person, since regarding the one who hits the woman, causing her to miscarry (Exodus 21:22-23), '... he pays the value of the child and we do not label him a murderer, nor do we execute him...'”<sup>273</sup> In this manner, Ashkenazi is more explicit than Tendler about the extent of punishment for one who causes a miscarriage, although Tendler does not say that one who causes an abortion is culpable for death.

Unterman in Responsa *Shevet M'Yehuda*, Vol. I, p. 29 and *Noam* 6 (1963): 1-11, among other *poskim*, disagree with Ashkenazi and declare that abortion is considered murder (*retzicha*) but does not include the punishment of death. The death of the embryo could be justified if it posed a threat to another life.<sup>274</sup>

Unterman “bolsters his opinion by quoting from *Torat Ha'Adam* (in *Mosad HaRav Kook Kitvei Haramban*, Vol. 2, p. 29), a famous Jewish law book by Nachmanides that

---

<sup>273</sup> Daniel Eisenberg, Stem Cell Research in Jewish Law, Jewish Law Articles: Examining *Halacha*, Jewish Issues, and Secular Law, 2001, <http://www.jlaw.com/articles/stemcellres.html>, accessed on December 4, 2012, 4

<sup>274</sup> *ibid*, 5



discusses medical issues. Nachmanides quotes the *Ba'al Halachot Gedolot*, who asserts that one may desecrate the Sabbath for a fetus because, by desecrating one Sabbath, the fetus will be able to fulfill many Sabbaths in the future (*Yoma* 85b). Thus, the *Ba'al Halachot Gedolot* argues that saving the life of a fetus before forty days overrides the Sabbath; therefore, argues Rabbi Unterman, feticide is murder."<sup>275</sup> That is to say, saving a fetus is considered *pikuach nefesh*, implying that the fetus has the same status of a "person." In fact, the *Ba'al Halakhot G'dolot* applies the life-saving rule even to the fetus prior to forty days of gestation. These conclusions run counter to many of the sources already discussed, which did not classify a fetus as a *nefesh*. However, we do note that Unterman agreed with Ashkenazi in that the death penalty is not the acceptable punishment in this case. So in both cases, the one who kills a fetus is not executed, which presents a legal foundation for researchers to understand that a fetus, while still an important potential life, does have a decreased legal status.

At this point in our discussion, we reach a suitable stopping point. The previous discussion has been crucial to understanding the Orthodox Jewish view on stem cell research. One of the primary ways in which stem cells are acquired is from living embryos. However, any attempt to extract the stem cells from the embryos will destroy the embryo, thereby ending its development into a fetus and eventually a child. Therefore, this discussion has reached multiple conclusions. First, the forty-day-rule provides an ample boundary to separate the classification embryo from the classification of fetus. Before forty days, the embryo can be sacrificed and stem cells

---

<sup>275</sup> *ibid*, 7

used for research purposes. After forty days, the circumstances grow more complicated, which we will now explore. The next section of this discussion focuses on some key examples of the Orthodox view on abortion. While the previous discussion was about an embryo vs. a fetus, the following discussion is about the legal difference between killing a fetus or killing a *nefesh* (a full legal human being). This subject is related to the larger discussion about changing halachic points of views based on medical need and scientific understanding.

Before digging deeper into the various exceptions that permit abortion, it must be mentioned that some *poskim* disagree with the forty-day limit altogether and feel that killing a fetus is never justified. For example, Rabbi Yair Bachrach, in his *Chavot Yair* (Responsa *Sheilot Yaavetz*, no. 43), prohibits feticide based on the command against wasting seed in Genesis 38:9-10.<sup>276</sup> In addition, let us look at the example of Rabbi Yosef Trani, the Maharit who seemed to make contradictory legal rulings about abortion. Rabbi Daniel Schiff, author of *Abortion in Judaism*, describes Trani's two statements, No. 97 and No. 99, as presenting "a confusing and seemingly dichotomous approach to the subject, which, although amenable to harmonization, is open to variant interpretations." Rabbis David Feldman, Eliezer Waldenberg, and Daniel Sinclair hold that a printing or editing error has corrupted the original purposes of these two statements, muddling their correct understanding.<sup>277</sup> In his Responsa *Maharit* Vol, 1, No. 99, Train responds to the question about if a Jew, or non-Jew assists in performing an abortion, are they guilty of murder? Based on the Exodus 21:22 verse, he concludes, that destruction of a fetus is not considered

---

<sup>276</sup> *ibid*, 7-8

<sup>277</sup> Daniel Schiff, *Abortion in Judaism*, Cambridge: Cambridge University Press, 2002, 68-69

murder. Trani points that even though it is not murder, the practice should not be taken slightly. To that end, he references *Arachin* 7a that states that a woman would be “dishonored” for having an abortion. The Reform responsum by Freehof used this same Talmudic passage to support abortion for non-physical pain. Nevertheless, Schiff describes No. 99 as being a very lenient position on abortion.<sup>278</sup> However, in his Responsa *Maharit* Vol, 1, No. 97, Trani prohibits abortion, declaring it as an act of *chavala* (wounding) the mother that would be in violation of the commandment of against wounding oneself in Deuteronomy 25:3 and the similar Talmudic statement in Bava Kamma 90b. Furthermore a non-Jew helping in an abortion would be violating the commandment in Leviticus 19:14 about not placing a stumbling block before the blind.<sup>279</sup> Schiff attempts to reconcile these two statements, stating that No. 99 when taken alone does not prohibit abortion, even if it looked down upon. So Trani added No. 97 as a way to full prohibit the act.<sup>280</sup>

Let us continue with the discussion of scholars who do permit abortion in select cases. It was already mentioned by Tendler that abortion is permitted biblically for the sake of the mother’s health (*r’fuat ha’em*). But what about birth defects? How do the scholars consider not only the legal status of the embryo or fetus but also the eventual birth and difficult life of a child born with abnormalities? Dr. Daniel Eisenberg, with halachic contributions by Rabbi Sholom Kaminetsky, writes "As a rule, *halacha* does not assign relative values to different lives. Therefore, almost all major *poskim* forbid abortion in cases of abnormalities or

---

<sup>278</sup> *ibid*, 69-70

<sup>279</sup> *ibid*, 71

<sup>280</sup> *ibid*, 70

deformities found in a fetus.” For example, Rabbi Moshe Feinstein, one the greatest *poskim* of this century, rules that even amniocentesis is forbidden if it is performed only to evaluate for birth defects for which the parents might request an abortion.<sup>281</sup> This point was already addressed briefly in the chapter on Genetic Engineering wherein Feinstein supported the testing for genetic deformities but did not permit action if they were discovered. Feinstein (*Igrot Moshe, Chosen Mishpat*, 2:49) writes in strong terms that the killing of a fetus is actual murder. Feinstein bases his ruling on the *rodef* (pursuer) argument first laid out by Maimonides in *Hilchot Rotzeah Ushemirat Hanefesh* 1:9, grounded in *Mishnah Ohalot* 7:6 and *Sanhedrin* 72b. Maimonides’ argument was explained in greater detail in the Reform discussion on this topic earlier in this subsection. Feinstein’s opposition to abortion based on genetic testing is so strong that he is actually appalled that many civil governments, including the State of Israel permit such an act.<sup>282</sup> He makes it very clear that abortion is prohibited as it is considered actual murder, regardless if the fetus is pure or illegitimate or regular or suffering from Tay-Sachs disease. He further states that his responsa is the only one that should be followed.<sup>283</sup>

As was also mentioned in the previous chapter, while most *poskim* forbid abortion because of Tay-Sachs disease, Rabbi Eliezer Waldenberg (in his "*Tzitz Eliezer*," vol. 9, chapter 51:3 and 13:102) is a notable exception.<sup>284</sup> Here is a summary of the Waldenberg exception. As recorded by Waldenberg’s student, Dr. Abraham Steinberg, an abortion would be permitted for a fetus with diagnoses Tay-

---

<sup>281</sup> Eisenberg, Stem Cell Research in Jewish Law, 3-4

<sup>282</sup> Schiff, Abortion in Judaism, 171

<sup>283</sup> *ibid*, 172

<sup>284</sup> Eisenberg, Stem Cell Research in Jewish Law, 4

Sachs disease.<sup>285</sup> Waldenberg recommends that the abortion be done within the forty-day period when the embryo is still in that first lesser category of legal standing but permits under unusual circumstances the abortion to be performed after the first trimester.<sup>286</sup> Waldenberg uses the rubric or determination of “grave need,” i.e. saving the life of the mother. However, abortion is only permitted up to seven months, i.e. through the second trimester of gestation. After seven months, the fetus is often fully developed and Waldenberg no longer permits abortion.<sup>287</sup>

For Waldenberg, the abortion is permitted for the sake of “the mother’s health” (*r’fu’at ha’em*), i.e., protecting her from the emotional anguish that would result should she give birth to this child only to watch it suffer and die. In other words, abortion is permitted not simply because of the fetus’s abnormality but because of the effect that abnormality might have upon the mother. Waldenberg references Rabbi Trani, who permitted an abortion as matter of the mother's health even when the mother's life was not at stake, as was mentioned above. Therefore Waldenberg asks what is the greater need. He concludes that the pain and suffering on the mother who gives birth to a child who is so deformed that its very life will only be pain and suffering is greater and therefore abortion is permitted. The pain and suffering of the mother could be defined as either physical or emotional, and in some circumstances emotional pain is often greater than physical pain.<sup>288</sup> In this

---

<sup>285</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 103

<sup>286</sup> *ibid*

<sup>287</sup> Schiff, *Abortion in Judaism*, 164

<sup>288</sup> *ibid*, 166

manner, Waldenberg is able to offer a halachic ruling that permits abortion in the case of child that would be born to suffer.

The *Nishmat Abraham* expands on Waldenberg's ruling in 1980. He argues that based on Waldenberg's argument that the fetus would be forced to endure intense suffering as a result of this abnormality other risks may be considered.<sup>289</sup> Abraham offers the example of Rabbi Yechiel Weinberg's ruling on rubella, also known as German measles.<sup>290</sup> Weinberg originally ruled in his *Hapalat HaUbar B'Ishah Cholanit*, (p. 215) that the abortion of a fetus with severe deformities could be permitted before forty days because the fetus did not yet constitute a "limb" reference in the *Mishnah Ohalot* argument.<sup>291</sup> He would also expand his ruling who in his Responsa *Seridei Eish* 1:162 to the example Abraham mentioned, permitting abortion in cases where the mother contracts rubella even after the first trimester.<sup>292</sup> However, after Rabbi Unterman's disagreed with this exception for rubella, Weinberg slightly backtracked on his position in *Seridei Eish* vol. 3:350, no. 7, stating that he cannot arrive at his conclusion without further study.<sup>293</sup> These various changes in points of view are a good example of an Orthodox scholar changing his view on fetal deformities and the possibility of abortion.

Returning to Rabbi Abraham, we note that in this case of rubella, the terms of the abortion are based on a disease contracted by the mother, not one that is genetic in origin. However, ten years later in 1990, the *Nishmat Abraham* changes his

---

<sup>289</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 171

<sup>290</sup> *ibid*

<sup>291</sup> Schiff, *Abortion in Judaism*, 152

<sup>292</sup> TFN, *Abortion to Save Siblings from Suffering*, 5755.13, 173-174

<sup>293</sup> Schiff, *Abortion in Judaism*, 152

opinion on the subject. While Abraham still does not make a ruling regarding the permissibility of abortion for fetal illness or malformations, he does list additional examples of relevant diseases, including "Tay-Sachs disease, German measles, Down's Syndrome, AIDS, etc."<sup>294</sup> Citing Rabbi Yitzchok Zilberstein, Abraham does permit the abortion of an anencephalic fetus.<sup>295</sup> Abraham also permits the abortion, under certain circumstances, of some fetuses in a multiple pregnancy in order that the other(s) develops naturally.<sup>296</sup> While there is no clear explanation given about why Abraham has removed his permission for fetal illness or malformations, he has paid attention to the evolution and changes within the medical world, for example recognizing AIDS as an included disease. The *Nishmat Abraham* does not offer us a halachic rule but is an example of an Orthodox scholar who updates his opinions based on the changing world of disease and illness. This conclusion in and of itself is not entirely pertinent to the discussion on stem cell research but it is relevant as an example of a changing point of view.

As a concluding comment for this subsection, the *Nishmat Abraham* reminds us of the overriding principle that govern the rabbinic task and guide the law. In this case, Abraham, quoting from *Harefu'ah v'Hayehudit* page 152, reminds us "life is held to the highest value, until the very end."<sup>297</sup> This is true for the rights of the fetus, which is also treated with the greatest respect and sanctity.<sup>298</sup>

---

<sup>294</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 205

<sup>295</sup> *ibid*, 206

<sup>296</sup> *ibid*

<sup>297</sup> Abraham, *Medical Halachah for Everyone*, 145

<sup>298</sup> *ibid*

## The Sanctity of Life and the Disposal of Excess Embryos

Modern technology has developed new techniques and processes that allow the creation of human embryos outside of the womb. With the advent of in-vitro fertilization (IVF) parents and families are now capable of creating fertilized embryos where it was other medical impossible. The process of IVF and other medical technology often requires that multiple fertilized embryos be created, even though only some are implanted into the woman. The life has been created, and the *mitzvah* of childbearing is now fulfilled. But what is to come of the unused embryos? The scholars debate whether these extra embryos are then permissible to be used in research settings, or even serve as the base for pluripotent stem cell lines. What is considered life and what is considered extra?

### *Reform discussion and analysis:*

Overall, Reform contribution to this conversation argue that the existence of extra or unused biological creations offers an opportunity, rather than a roadblock, for future medical advancement. In its responsum on stem cell research, the CCAR Responsa Committee reached the conclusion that unused embryos should be used for a medical benefit, citing numerous scholars that confirm this opinion. Rabbi Chaim David Halevy permits a hospital or clinic to discard "excess" embryos created for the purposes of IVF, explaining that the prohibition against abortion relates only to the fetus and not to an embryo maintained outside the womb. A similar decision is rendered by Rabbi Mordechai Eliyahu.<sup>299</sup> Since these embryos are no longer

---

<sup>299</sup> RRTFC, In Vitro Fertilization and the Status of the Embryo, 5757.2, 161



under a legal boundary preventing their use in other situations, then let them be used to help. If IVF is “medicine” (a therapeutic response to infertility), and if embryos may be destroyed to further this medical goal, then it follows they may be destroyed in order to further the medical goal of scientific research. The CCAR Responsa Committee noting the danger of IVF and related procedures still argues in favor of using the embryos. Since the couple has already chosen to undergo the procedure for the sake of having children, then contributing to stem cell research can continue the beneficial nature of this decision. While we regard our bodies as gifts from God and we are therefore prohibited from placing them in danger or unnecessary physical danger, these concerns are set aside in the case of legitimate medical need, since medicine is a *mitzvah*.<sup>300</sup>

However, this freedom to research and desire to heal through medicine is not without its limitations. The CCAR Responsa Committee reminds us that Jewish law and the Jewish decision-making process should not be cold to what is being given up for the sake of medicine. “If in the name of ‘medicine’ it is permitted to discard the excess embryos created during IVF, then it is certainly permitted to utilize these embryos for research intended to increase our lifesaving scientific knowledge. We would add the proviso that whether it be discarded or used for research, the embryo be treated and handled with an attitude of respect and reverence that is benefitting of that which is, after all, a potential person, a *nefesh* in becoming.”<sup>301</sup> A *mitzvah* of healing and of medicine is indeed noble and powerful but our sensitivities toward how we are accomplishing our goals are never lacking.

---

<sup>300</sup> *ibid*, 160

<sup>301</sup> *ibid*, 162

Therefore, on the most basic question about permission to use extra embryos for scientific and medical research and exploration both Reform scholars reach the same conclusion that yes permission is not only granted but even encouraged. The CCAR Responsa Committee responds to the claim that life should be considered above all else, embraces *halacha*, and carries it out by upholding an overriding principle. In the case of the CCAR Responsa Committee, we can see modern responsa as a continuity of ages of legal tradition. What matters however is the values, here life and healing. With these values at the forefront unused embryos are destined for the laboratory and stem cell research is being allowed.

*Conservative discussion and analysis:*

The Conservative scholars' approach is open and favorable to the concept of using aborted fetuses or additional embryos from IVF procedures for the sake of research. As we seen with the Reform perspective, IVF is permitted under the principle that the creation of life and fulfilling the *mitzvah* of procreation is held in very high regard. The Conservative scholars reason similarly. This technology is not an affront to nature, but rather a support of it. Rabbi David Feldstein argues that IVF is not a circumvention of the natural process of reproduction but rather "an appropriate way to act as partners with God in improving upon nature, and represents a positive response to the deeply human desire for offspring." Medical interventions allow us to work in partnership with God.<sup>302</sup>

---

<sup>302</sup> Aaron L. Mackler, In Vitro Fertilization, Even HaEzer 1:3.1995, 5

However, the use of IVF or donated genetic material is regarded as an avenue to having child, but not a required process. "Couples considering the use of donated sperm, ova, or embryos should consider the halachic and personal concerns involved, receive thorough counseling, and seriously investigate alternatives, including adoption. Those wishing to use donated sperm, ova, or embryos may do so."<sup>303</sup> The modern technology is welcomed at best. But with any developing technology or medical procedure there is a sense of apprehension that we are still in the experimental stage. "An infertile couple may utilize IVF, using the husband's sperm and wife's egg, to have a child. They are under no obligation to do so. Before undergoing IVF procedures, the couple should consider medical risks as well as the personal and psychological toll that IVF often entails. A child born as a result of such an IVF procedure is fully the parents' child in all respects, and causes the *mitzvah* of "be fruitful and multiply" to be fulfilled."<sup>304</sup> In conclusion, we see the Conservative scholars excited for what science can currently produce, especially its ability to help fulfill a *mitzvah*, but still maintaining a sense of waiting for what remains to be perfected.

Elliott Dorff actually sees this new technology even as a positive. The upshot of the Jewish stance on abortion, then, is that if a fetus had been aborted for legitimate reasons under Jewish law, then the aborted fetus may be used to advance our efforts to preserve the life and health of others.<sup>305</sup> Dorff elaborates on this statement, "Thus even if Jewish law would not condone the particular abortion, once

---

<sup>303</sup> *ibid*, 16

<sup>304</sup> *ibid*

<sup>305</sup> Elliot N. Dorff, Stem Cell Research, *Yoreh Deah* 336.2002, 9

it has been done we may use the aborted fetus for a sacred purpose like curing diseases and saving lives. Using aborted fetuses to do research is not as directly and clearly permitted as using them for the cures themselves once they have been developed; but since aborted fetuses would otherwise just be discarded or buried, we may and should extend the permission to use them for research that holds out the hope for curing diseases and saving lives. What is critical here is what the Talmud states... namely, that the results of a prohibited act may be used for sacred purposes without in any way condoning the prohibited act."<sup>306</sup> To this end we observe a very receptive attitude where Rabbi Dorff is attempting to reason that in lieu of the most ideal act, i.e. childbirth, we can still find positive uses and beneficial means through medical science. A little help is better than a complete waste.

On this note Dorff and others recognize that simply because we can use a discarded fetus or embryo for a positive medical use does not make it any less special. There is certain sanctity to the life that must be upheld. The question arises regarding *ba'al tashchit* (do not destroy), the rabbinic principle that teaches one should not destroy things unnecessarily or waste resources, including inanimate objects (*Shabbat* 67b and 129a, 140b; *Kiddushin* 32a; *Bava Kamma* 91b; *Chullin* 7b.). So what level of respect should be ascribed to something not living?<sup>307</sup> To answer this question, Dorff relies on *halacha* to be his guide and his anchor. Just because the traditional texts do not speak of embryos does not mean we can do with them whatever we wish. "Where no precedents on point exist, we must rather seek to apply foundational Jewish concepts and values to the new case. People can, of

---

<sup>306</sup> *ibid*, 10

<sup>307</sup> *ibid*

course, disagree as to which concepts are relevant or how to apply them, but Jewish law is no stranger to disputes even when rabbis are reading and weighing precedents that are on point to the case at hand."<sup>308</sup> In other words, all Torah learning is based upon the making of analogies from what is already known and agreed upon to what is new and unprecedented. By their nature, such analogies are often controversial, but this has never stopped rabbis from using this method of learning; indeed, how else could they apply old texts to new situations? It is a matter of judgment if older rulings speak to modern times. Quite often Jewish concepts and values can be applied to new and unknown situations.<sup>309</sup> While the rabbis may not have been aware of where science would take them, we cannot disregard the principles and guidelines that set down for us. Again, we see Dorff anchoring a Jewish answer to a modern medical question in a Jewish way, never letting the wonders of modern technology flee from beyond his grasp.

Dorff offers a concluding statement on this discussion about reusing genetic material for a positive end.

"Couples should be encouraged to donate their extra embryos and any fetuses that they abort - to such efforts. Donating such materials for purposes of research is minimally an act of *hesed*, of loyalty and love, and possibly, given its goal of cure, even a *mitzvah*. This is not to say that men or women are duty-bound to donate their sperm or eggs for this purpose, although that is laudable; it is only to say that when they have frozen fertilized eggs or aborted fetuses that they would otherwise discard, it is at least an act of

---

<sup>308</sup> *ibid*, 10-11

<sup>309</sup> *ibid*, 11

*hesed*, possibly a *mitzvah*, to donate such products to stem cell research. We rabbis need to educate our laity to the goodness and possibly even the duty of donating such materials to that research, much as we need to educate our laity to the *mitzvah* of organ donation."

The couple, with the assistance of their rabbi should frame this act in a Jewish way, considering the various concerns and possible mitzvot that could result from such a medical procedure. In the end, Dorff attempts to open the minds of Conservative Jews to bring to embrace the benefits of genetic donations, framed of course through a Jewish lens.

*Orthodox discussion and analysis:*

As we have already seen, the Reform and Conservative scholars spend considerable thought discussing how such a new medical procedure relates to the rights of the fetus. The main concern discussed by J. David Bleich is the danger associated with IVF. Bleich raises the concern about submitting to a dangerous procedure. Even in the absence of moral or halachic objections, no woman is required to submit to in vitro fertilization. This was the same conclusion reached and discussed by the CCAR Responsa Committee in its 5758.3 responsum. Rabbi Moshe Feinstein, *Igrot Moshe, Even Ha'ezer*, III, no. 12, explains that while a woman is bound by biblical account to bear the pain of children, she is under no obligation to conceive when faced with a high likelihood of unusual or extraordinary pain.<sup>310</sup>

"Comments of *Tosafot*, *Yevamot* 70a and *Pesachim* 28b, established the principle

---

<sup>310</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City: Ktav Publishing House, Inc., 2002, 93

that one need not assume the pain and risk of a surgical procedure for purposes of fulfilling even an obligatory *mitzvah*."<sup>311</sup> Therefore, despite the possibilities that IVF offers modern couple to assist in the natural process of procreation, it is not required. Too much is on the line and the mother's health is not to be taken lightly. Here again we have an example of rabbinic scholars being receptive of new technology but jumping to embrace it fully as the new norm of life and cures of all problems.

Looking more specifically at the main topic of this subsection, regarding the use of extras embryos for the sake of research, within the Orthodox community, this specific matter has not been heavily discussed. That being said there is a general sense that Orthodox scholars would accept the practice as an act of potential healing and helping. Daniel Eisenberg, writing in 2001, notes the difficulty of this topic. "Regarding Jews, the answer is more complicated. Since stem cell research is a new endeavor and cloning of humans has not yet occurred, there are no published responsa on the topic. We must, therefore, look to more practical cases that encompass our question to find an applicable ruling."<sup>312</sup> Based on the rulings of Rabbi Yosef Shalom Eliyashiv and Rabbi Dovid Feinstein, if the pre-embryo may be destroyed for various reasons than it may also be used for research and other life-saving purposes.<sup>313</sup> "In fact, Rabbi Moshe Dovid Tendler, in testimony for the National Bioethics Advisory Commission, argued strongly in favor of the use of pre-

---

<sup>311</sup> *ibid*

<sup>312</sup> Daniel Eisenberg, Stem Cell Research in Jewish Law, Jewish Law Articles: Examining *Halacha*, Jewish Issues, and Secular Law, 2001, <http://www.jlaw.com/articles/stemcellres.html>, accessed on December 4, 2012, 8

<sup>313</sup> *ibid*, 9

embryos for stem cell research."<sup>314</sup> The argument here is two fold. First the destruction of a pre-embryo, or blastocyst, is not defined as murder. Second, something that has the potential to heal should not be simply disposed but instead ways should be found to make them useful. Dr. Fred Rosner writes of a similarly accepting position: "The Committee on Medical Ethics of the Federation of Jewish Philanthropies of New York concluded that a fertilized egg not in the womb, but in an environment - the test tube - in which it can never attain viability, does not have humanhood and may be discarded or used for the advancement of scientific knowledge."<sup>315</sup>

---

<sup>314</sup> *ibid*

<sup>315</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 154



### May We Create Life in Order to Destroy it?

For the Jewish tradition, the scientific and medical advancement of IVF and other technology to artificial create life is certainly a blessing as it offers the gift of childhood to many Jewish families. Of course, not all *poskim* would agree that IVF is a blessing, although most do. However it also asks the question if it is permitted for human beings to create to life. For once that life has been created, it is quite conceivable that the embryos or fetuses can be then used for medical or scientific purposes. And taking it a step further, the creation of pluripotent stem cell lines is among the most beneficial steps for scientists to counter their research. But the question remains, is it permissible to create life to then destroy it even for beneficent purposes, or to use it for purposes beyond fulfilling the *mitzvah* of childbirth?

#### *Reform discussion and analysis:*

Solomon Freehof first considered the issue of a test tube baby, or an embryo fertilized outside of the body. He refers the Chief Rabbi of Israel Goren's uncited statement allowing this new procedure because it created more Jewish life. This permit is upheld by the Reform scholar because there are other examples in Jewish law wherein it is permitted to create a child outside of normal sexual congress and that child is still legally the couple's own child. However, we are aware that Freehof is arguing *b'di'avad* (after the fact). That is to say that Freehof is drawing a forced and controversial analogy between a test tube baby and older rabbinic examples of third party intervention, such as the *yabam* (handmaid).

Freehof is referencing number biblical examples, most notably Abraham having a child with Sarah's handmaid Hagar in Genesis 16 and Jacob having multiple children with Leah's handmaid Zilpah and Rachel's handmaid Bilhah Genesis 29-30. It is true that if a child is conceived in such an unusual way it is still considered the legal offspring of the mother or father. But it is quite a stretch to deduce from Biblical examples of surrogacy that it is perfectly permissible to conceive a child by way of in vitro fertilization. The analogy does not work; the two cases are too dissimilar. Therefore IVF is permitted to enable parents who otherwise would not be able to have children to engage in their religious duty.<sup>316</sup> However, Freehof called for restraint and was not as ready to formally recognize this technology because it was still too new and the risks were still unknown.<sup>317</sup> Similar to his stance on abortion above, we see Freehof refusing to recognize a decision based on health benefits alone.

The CCAR Responsa Committee dealt with this topic many decades later in 1998, after this process of IVF had become much safer and more widely used. This responsum was already briefly discussed in the previous chapter in context of fulfilling the need to procreate. As a result, the CCAR Responsa Committee was not burdened by Freehof's concern about the unknown nature of the procedure and argued fully in favor of IVF as a means to fulfill the *mitzvah* of having children, "Human infertility is a disease, not because it threatens the life and health of the infertile, but because it frustrates our attainment of the goal – the *mitzvah* – of

---

<sup>316</sup> NRR, The Test-tube Baby, 210-211

<sup>317</sup> *ibid*, 212

bringing children into the world."<sup>318</sup> The responsum argues that IVF should be understood as a form of medicine (*r'fu'ah*) that responds to the disease of infertility. The committee no longer relies upon a forced analogy to Biblical precedents but accepts IVF for what the scientific community judges it to be: a treatment or remedy for the disease of infertility.) This allows us to regard IVF as a *mitzvah*, much as medicine itself is a *mitzvah*. The problem is that many would not regard human infertility as a "disease" since it doesn't threaten the life of the infertile person. Thus, the argument that infertility ought to be regarded as a disease. The CCAR Responsa Committee went even a step further, "The scientific tools developed to cure this disease are therefore advances in medicine and should be welcomed, as we welcome other medical advances, as a positive good."<sup>319</sup> For the Reform movement there was little issue about the concept of IVF being used to play God or artificially create life. In fact, the opposite is true. Man's ability to allow for more pregnancies should be celebrated. However, an infertile couple is not obligated to use IVF or any other new technology in order to become pregnant. Medical treatment is considered obligatory based on *pikuach nefesh*, but experimental techniques are not because there are still considered uncertain and not proven medicine. If sufficient safeguards and checks on IVF or other experimental techniques were accomplished, then *pikuach nefesh* could be an overriding principle. But we have a ways to go until we reach that point.

How far does our ability to create life go? If IVF can create a fertilized embryo to produce a child, couldn't the same procedure be used for research purposes? The

---

<sup>318</sup> RRTFC, In Vitro Fertilization and the Mitzvah of Childbearing, 5758.3, 173

<sup>319</sup> *ibid*

CCAR Responsa Committee argues that these situations are not the same. For the argument in favor of creating embryos just for research, we cannot equate it to using pre-existing IVF embryos as they are being discarded as a result of creating life; they are not created for the sake of research.<sup>320</sup> Our law must respect the intention of the procedure, and creating life is a far different situation than creating tools for research. Furthermore, the CCAR Responsa Committee recognizes that even in the act of creating a fertilized embryo life has been created. He teaches it is not permissible to create life just to destroy it. While the fetus is not a *nefesh*, a legally recognized living being, the *halacha* still accords it a high degree of protection. It prohibits feticide in the absence of serious cause. On the other hand, the fetus does deserve Shabbat violation for *pikuach nefesh*, as it is a potential life. It has a lower legal status than a *nefesh* but, as a human being, it enjoys sanctity of life and deserves our honor and respect.<sup>321</sup> Therefore, embryos are not a *nefesh*, and have no legal standing but we can never forget they are embryonic human life, and contain all of the genetic material to create life.<sup>322</sup> For the CCAR Responsa Committee, the quality of life is just too much of an overriding principle. Even though creating stem cells might lead to medical advancements, the sanctity of life is just too great to be overridden for this situation.<sup>323</sup> However, the CCAR Responsa Committee's responsum on stem cell research does end with a proviso that leaves a future opening. The Committee writes "it might be permissible, however, to create and destroy embryonic human life in order to derive stem cell material that would

---

<sup>320</sup> RRTFC, Human Stem Cell Research, 5761.7, 131-132

<sup>321</sup> *ibid*, 127

<sup>322</sup> *ibid*, 131-134

<sup>323</sup> *ibid*, 133-134

be used as medical therapy for actual patients. The development of such therapies, if it ever occurs, lies in the distant future. In the meantime, it is incumbent upon all of us to continue to study, consider, and debate the moral implications of this promising new avenue of medical research."<sup>324</sup> If the question not one of "research" but of actual life-saving, we might very well permit the creation of an embryo for the express purpose of extracting stem cells from it, despite the "sanctity" of the embryo.

*Conservative discussion and analysis:*

In responding to this issue about creating life, Rabbi Aaron Mackler permits this practice. "Creating extra embryos and freezing embryos are halachically acceptable. Embryos may be maintained as frozen indefinitely, but thawing a frozen embryo that the couple does not wish to implant, in order to discard it, would be halachically permissible."<sup>325</sup> We do note that the embryos were not necessarily created in this example for the sole purpose of research, but we then altered to this end by the couple. But he does not expressly prohibit the creation of embryos for the express purpose of medical research. In this regard, Macker's response is similar that of the Reform scholars who also saw the potential for research and the curing of disease, even though he does not expressly speak of the possibility to create embryos for research only.

Dorff also takes on this question and offers a more nuanced response than Mackler. He first recognizes that this question is based in biblical concerns. The

---

<sup>324</sup> *ibid*, 135

<sup>325</sup> Aaron L. Mackler, *In Vitro Fertilization, Even HaEzer* 1:3.1995, 16

issue of creating embryos from stem cells is balanced against the example of Onan in Genesis 38:8-9 and the prohibition against wasting seed (*hashatat zera*), regarding masturbation.<sup>326</sup> Dorff notes that there is the worry that allowing the use of embryos specifically created for research creates a slippery slope in that human genetic materials will then be diminished. Human beings and the creation of life will lose its mystery and holiday. Perhaps, taken to the nth degree, we could be commodifying people as sources for genetic products.<sup>327</sup> However, Dorff disagrees. "In our case I do not see a serious danger of a slippery slope in the status of human genetic materials, for the use to which these embryos would be put is nothing less than another holy cause - namely, curing people of serious diseases. Thus I do not consider the deliberate creation of embryos for purposes of stem cell research to demean the birth process in any way."<sup>328</sup> Like Mackler, Dorff is upholding the value of saving a life through modern medical means, but does not necessarily equate this *mitzvah* to procreation. Instead these Conservative responsa see the ability to create life is a reasonable proposition due to the benefit humankind can reap in medicine and health.

*Orthodox discussion and analysis:*

J. David Bleich considers the concept of creating embryos solely for use in research and experimentation. Bleich argues that *Teshuvot Chacham Zevi*, no. 93 is a potential proof text. This text cites the golem as an example of a living creature, or at

---

<sup>326</sup> Elliot N. Dorff, Stem Cell Research, Stem Cell Research, 12-13

<sup>327</sup> *ibid*, 13

<sup>328</sup> *ibid*, 13-14

least one with human status, whose death or destruction is not considered homicide. The exegesis is based on *Sanhedrin* 57b, citing Genesis 9:6, concluding that the biblical phrase "a man within a man" requires that life originated from within another living being. Therefore just as the golem was created externally alone, something created in a petri dish is also not categorized as "a man within a man" and its destruction is not homicide.<sup>329</sup>

Similarly, Rabbi Moshe Herschler answers a question about the legal status of a human being that is hypothetically grown entirely ex utero. Herschler tries to answer the question about the humanhood of a fetus whose full gestation is in a totally artificial womb or incubator. He concludes that the baby should be considered human with all the legal and moral responsibilities of a similar child born in the natural way. Yet Herschel also concludes that destroying an infant that came into being outside a human uterus may not be legally considered an act of murder.<sup>330</sup> Since Herschler argues that the ex utero human does not fall under the legal categories that would consider its death to be an act of murder, it could be reasoned that artificial created embryos are a possibility. Such embryos are not protected by the laws of homicide and as such can be used by researchers in other ways. This does not explicitly imply that life can be created for the sole purpose of research but it is an argument that leaves the door open for discussion.

Rabbi Moshe Sternbuch, in an article in *Be-Sheveli ha-Refu'ah*, no. 8 (*Kislev* 5747) concluded that the embryo produced outside the uterus is to be treated

---

<sup>329</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 219-220

<sup>330</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 154-155

differently the embryo produced naturally, because an additional step is required to implant into a human uterus and it will not survive on its own outside of a human environment. Sternbach however does not cite rabbinic sources for his opinion.

Rabbi Chaim David Halevy agrees with Sternbach but also does not cite sources.<sup>331</sup>

In a contrasting decision, Rabbi Samuel ha-Levi Wozner argues that a fetus produced outside the uterus should not be treated any differently. He likens such a fetus to one created through in vitro fertilization but has yet to be implanted.

Wozner explains that Shabbat laws cannot be broken to save the IVF embryo because it is not yet considered a viable life. Since the ex utero embryo is also not a viable life, it should be treated similarly. Therefore one cannot violate Shabbat to save that sort of embryo either.<sup>332</sup> While Wozner concludes that these artificially created embryos share some value and respect under the law, he admits that advancement in science made lead to change in halachic opinion. "Rabbi Wozner carefully adds the cautionary note that the empirical situation may change and that with advances in the development of reproductive knowledge and techniques any future halachic ruling would reflect the changed reality. If so, it would appear that, even at present, overt destruction of a possibly viable zygote cannot be sanctioned. Nevertheless, in a letter appended by Rabbi Abraham Friedlander to his *Chasdei Avraham*, II (Brooklyn, 5759), 317, Rabbi Wozner permits the destruction of surplus zygotes."<sup>333</sup> It appears the Wozner is vacillating between two positions unsure, based on present science, about how to rule. This uncertainty has been seen

---

<sup>331</sup> J. David Bleich, *Biomedical Dilemmas*, 219

<sup>332</sup> 578

<sup>333</sup> 579



in all three movements and is certainly a topic to keep an eye on for the future. As the medical frontier progresses and stem cell lines are more often developed for research alone, more concrete rabbinic decisions will have to be made.

## Potential Life versus Potential Research

Whenever discussing medicine on the frontier, one must consider the nature of experimentation. It is the methodology by which science and medicine advance. But experimentation certainly contains its own share of legal and ethical struggles. In order to push the boundaries of knowledge, researchers often seek new techniques and sources of data that advance their own research. History contains many examples of researchers who used morally ambiguous means to reach their purpose. The most famous example, which contains particular relevance to the Jewish people, is the experiments performed by Nazi doctors on Jewish prisoners during World War II. As we advance our medical and scientific abilities, one cannot become overzealous and believe that the end justifies the means. That is, reaching a medical breakthrough does not permit one to be immoral or unethical during the experimental stage. Each life holds significant moral and legal weight and cannot be simply discarded because a scientist needs new data or tissue to work with. The potential we can gain from research is balanced against the value of life. Or in the specific case of stem cell research, each stem cell could become a step toward a medical discovery, but it could also become a human being.

### *Reform discussion and analysis:*

The Reform movement argues in favor of science with limits. The responsa literature speaks of the need to maintain a critical eye on how science and medicine are being developed. The rabbis are always cognizant of the balance between the value of life in each patient, as protected under the law, and the progress that may be

achieved with new discoveries in the medical field. Freehof discusses this balance and cites the “general spirit of the law” as his deciding factor. That is, if the “general spirit” of the law is supportive of healing, then a particular procedure is to be allowed in the absence of a specific halachic prohibition against that procedure. This balance arises in the case of using the cornea of a dead person. Freehof sees enough ambiguity and uncertainty in the halachic arguments to conclude that if the law has not staunchly disproven it, then it might be permitted. The procedure is not forced nor guaranteed but if the law leaves open enough room to try it, then it must be tried. Lacking a statement of general principle about the transplanting of the cornea, Freehof says the general spirit prevails.<sup>334</sup>

Jacob, in taking up the case of cryobiology, is both excited and concerned about the future direction of science. Cryobiology is the process of freezing biological organisms to be healed or used at a later time. This topic applies to our conversation about stem cell research as it relates to the possibility of creating, or at least preserving, biological material to be used in the act of healing at a later date. Whereas a kidney could be grown from pluripotent stems, a kidney could be frozen and used later. Jacob writes, "in the case of all strange remedies discussed in the law, the question is always asked as to how provable a remedy it is, and whether there are not dangers involved in it."<sup>335</sup> Note how this is not a declaration to cease research, just a note of caution. What was once strange may now be commonplace. Though the concept of freezing bodies or creating organs from one random

---

<sup>334</sup> RRT, *The Use of the Cornea of the Dead*, 157-158

<sup>335</sup> ARR, *Freezing Bodies for Later Revival*, 1967, 277

undifferentiated cells may seem farfetched now, the time to practical application may not be too far away. So be wary, but still try.

The CCAR Responsa Committee's concern about experimentation and the future is not too different from Jacob's. When it comes to stem cell research, the current question is about experimentation. As has already been mentioned above, when science progresses far enough to offer therapeutic benefit to actual patients, involving many steps and many years of research and appropriate testing until we reach that point, than *pikuach nefesh* can be applied to the technology.<sup>336</sup> That is to say that the overriding the principle of *pikuach nefesh* is not infinitely malleable. There are limits to what we may permit in its name. The law must be sure of stem cell's ability to create and to heal before *pikuach nefesh* applies. Our excitement to heal must be tempered by the certainty that we are being safe and truly helping others. But like Freehof, once science and medicine reach that level of advancement it is our responsibility to change *halacha* to reflect our progress, "Were that reality to change - specifically, were science to develop from stem cell research real therapies to threat life-threatening illnesses like those mentioned at the outset of this *teshuvah* (responsum) – then our answer would quite possibly change as well. In that case, we might well conclude that the need to derive the necessary stem cell material overrides our concern for the life of the embryo."<sup>337</sup>

For Freehof, Jacob, and the 2001 CCAR responsum on stem cell research, the potential to heal, the potential to save, and the potential to protect life allows us to change *halacha* and to act beyond its constraints. While we may not be infallible and

---

<sup>336</sup> RRTFC, Human Stem Cell Research, 5761.7, 134

<sup>337</sup> *ibid*

should act with caution, the law is no barrier for us from moving forward with our medical science. We continue to experiment and work step by step toward our goal, but the path is always forward.

*Conservative discussion and analysis:*

Rabbi Avram Israel Reisner discusses the halachic moment when a child is considered to be “born.” Reisner cites *Mishnah Niddah* 2:5 which contains a textual discrepancy. This text defines birth as when defines birth as when *rov rosho* (most of its head) has emerged. Some versions read the word *rosho* as *rubo* (the major part of the fetus). Reisner has chosen the first explanation and then continues in the *mishnah*, which further defines *rov rosho* as the baby’s forehead. Reisner concludes that the head is the factor for determining birth, and therefore no other body part is considered to define the moment of birth.<sup>338</sup> A similar ruling about the head is found in *Sanhedrin* 72b: if the mother is in danger during labor, the midwife can reach in and remove parts or limbs of the fetus to save the mother, but if the head has emerged, the baby is considered born and cannot be killed.<sup>339</sup> This text also contains the alternate readings between *rosho* and *rubo*. Similar to the above mishnah, Sanhedrin reads *rosho*. We remind ourselves here that the fetus was classified only as a limb of the body and therefore can be abort for the sake of the mother’s life. When removing a fetus before forty days, we are not doing is disrespect because it has not amounted to anything that can be used for a good purpose. So removing it and using it for medical and scientific purposes it the same as removing part of an

---

<sup>338</sup> Avram Israel Reisner, *Ein Dohin Nefesh Mipnei Nefesh, Hoshen Mishpat* 425:2.2001a, 5-6

<sup>339</sup> *ibid*, 3

object that has not achieved the status of a formed fetus, let alone a human being.<sup>340</sup>

A potential life has more value as potential research.

In Elliott Dorff's responsum about stem cell research, he notes that technology is an ever-changing, ever-developing field wherein experimentation is the path that leads to discovery. Regarding animals, there is not much controversy or conflict. While we are bound by the principle *tza'ar ba'alei hayyim* (the suffering of living creatures), which bans inflicting unnecessary pain on animals, only humans were created in the image of God and therefore have priority. So we can do preliminary research on animals.<sup>341</sup> Regarding humans, Dorff is also clearly the difference between potential life and potential cures. While stem cell research does entail the destruction of a potential human life, it is still just potential and requires great amounts of scientific intervention to lead it to a state where it can remain alive as a zygote in that state.<sup>342</sup> We need to balance the sanctity of potential life against what we have good reason to hope will be actual treatments for serious diseases, which is much easier to justify than when balanced against actual life. This is about a thing, not a person. We are surely allowed – indeed commanded – to use things to find cures for diseases.<sup>343</sup>

*Orthodox discussion and analysis:*

One cannot deny the value of human life within Jewish law. Even while various categories are created and responsa are written, the dignity and sanctity of

---

<sup>340</sup> Elliot N. Dorff, Stem Cell Research, *Yoreh Deah* 336.2002, 11

<sup>341</sup> *ibid*, 8

<sup>342</sup> *ibid*, 13

<sup>343</sup> *ibid*

human life are upheld. It is with this understanding that Orthodox scholars are more likely to favor the value of life over the value of research. First let us consider the value of the research itself and its scope within the law. For this topic, it is appropriate to repeat a discussion from the chapter on Genetic Engineering regarding microscopic organisms. In that discussion, Faitel Levin, J. David Bleich and Sholomoh Zalman Auerbach, debated whether microscopic organisms were part of halachic cognizance. Levin and Bleich argued that the law only has jurisdiction over that which is perceived by human senses. Bleich's contribution to this discussion was taken from his chapter on stem cell research. To repeat quotes from the earlier chapter: "Jewish law concerns itself only with gross phenomena. A physical phenomenon that is sub-visual is of no consequence. An organism that can be seen only under a microscope or by means of a magnifying glass is an organism of which Jewish law takes no cognizance; for the purposes of the Jewish legal system, it is as if the organism does not exist."<sup>344</sup> He concluded that if you cannot see it, the law has no power. Therefore, the law cannot legislate and act against a zygote that is too small for the human eye. Repeating another quote: "Therefore, it can be concluded that when a zygote is sub-visual, the law takes no cognizance of its existence. If so, it may well be argued that there is no prohibition associated with its destruction."<sup>345</sup> From this argument, the stem cells, or fetus, or zygote or potential genetic material are not protected at all within the law and researchers may utilize to suit their

---

<sup>344</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 211-212

<sup>345</sup> *ibid*, 212

needs and purposes. Research and the possibilities of experimentation are preferred because the life of something so small is of no concern of Jewish law.

Auerbach offered two contrasting opinions however. First, Auerbach argued that sub-visual organisms such as a zygote do not remain in that state, growing into something detectable by the human eye and something that falls within the purview of the law. Therefore, the law should have say over the matter.<sup>346</sup> Second, Auerbach applied the halachic principle of *achsheveih*, which argues that an object has value based on a subjectively valued purpose. That sub-visual zygote has an attributed life of being potential life and must be treated as such. We declare it important and therefore it is. As such, the law must recognize this importance when it comes to permitting or prohibiting its destruction. Based on Auerbach's argument, the potential for life is far greater than the potential for future research. However, the opposite could equally be argued, although to a less convincing degree. If the principle of *achsheveih* argues on behalf of subjectively given value of an object, than the value of potential healing techniques, possible cures, or scientific discovery certainly could be that value. In fact it could be further argued that extra embryos or artificially created stem cell lines were never meant for implantation and creating a child, so their value as experimental material is greater. I leave it to the reader to determine which argument is more convincing.

Rabbi Moshe Feinstein does not respond to this question directly about the potential possibilities of stem cell research. He does, however, offer a relevant ruling concerning heart transplants for sick patient, as recorded by his son-in-law and

---

<sup>346</sup> *ibid*, 573



student Rabbi Moshe Tendler. "You ask whether it is permissible for the doctors to keep a patient in an intensive care unit, providing him with all heroic measures, solely for the purpose of maintaining him as a potential donor. If prolonging the life of this patient means that he will be maintained in a state of suffering, then it is forbidden to do so." Feinstein reaches this ruling based on *Shulchan Aruch, Yoreh De'ah* 339:1 where the Rabbi Moshe Isserles permits the removal of a salt crystal that was prolonging his life because he is in anguish. "It is forbidden to do anything that will prolong a life of anguish."<sup>347</sup> Therefore, for on this ruling, once something is considered to be a life, based on the previously described categories, it is to be protected. Life, according to Feinstein, is not something to be readily given up or sacrificed, even if it serves another life, here a heart transplant, or for our discussion, for the sake of future research.

Rosner and Tendler debate the value of research versus the value of life in the treatment of a fetal material:

"If the fetus is alive, although not viable because of prematurity or malformation, it is considered to be a living person in all respects. Any research activities that might shorten the life of this fetus are absolutely prohibited. If the abortus is dead as defined by the halachic criteria (absence of spontaneous respiration and absence of cardiovascular pulsations), then there does not exist any biblical requirement for burial. However, it is desirable to secure the fetus for burial, in order to preserve the dignity of man 'created in God's image' and the sanctity of the dead. Since there is no

---

<sup>347</sup> Moshe Dovid Tendler, *Resposna of Rav Moshe Feinstein: Translation and Commentary*, Vol. 1: Care of the Critically Ill, Hoboken: Ktav Publishing Inc., 1996, 119-120

absolute halachic requirement for burial, for cogent and critical medical research a dead fetus may be used without halachic objection."<sup>348</sup>

They conclude that research is permissible because the fetus is not yet a full life and does not have the rights under the law of a full life. That being said, experimentation on fetal material should never be done irreverently or carelessly. The aborted fetus had the potential for life and deserves the appropriate respect as its cells serve a different, but hopefully fruitful, purpose.

Rabbi Waldenberg would disagree with this conclusion. While it has been fully explained how Waldenberg permits abortion on embryos with defects or abnormalities through the second trimesters under certain circumstances, he holds that fetus with the highest regard. His student Abraham Steinberg records, " As long as the aborted fetus has a human form (usually after the first trimester), it should be buried immediately following the procedure."<sup>349</sup> By this explanation, the fetus should not be used for research, even if it may be helpful. Once it is in human form, it is to be appropriately returned to the earth. This ruling is interesting in light of the emotional dissent written by Rabbis Stephanie Dickstein about the burial of a newborn. With Bleich, Feinstein, Rosner, and Tendler debating one position and Auerbach and Waldenberg debating the other, there is no Orthodox consensus on this topic and we suspect it will continue as the human ability to manipulate stem cell grows.

---

<sup>348</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 535

<sup>349</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 105

## The Limits of Healing

To close the discussion about the relationship of Jewish law to stem cell research we remind ourselves that the law is concerned not only with the governance of a people but maintaining a sense of religious identity and moral scale. Technology has created ways for women to become pregnant through artificial means. IVF and other medical breakthroughs have opened us up to new avenues for research and advancements. We can create life. We can surely heal others. But where are the moral limits of healing? What are the larger responsibilities that the Jewish law and Jewish community have? Is *pikuach nefesh* the overriding principle or are there gradations? Are there limits to what we are permitted to do even in the name of *pikuach nefesh*?

### *Reform section:*

For these final general considerations about Reform and stem cell research we turn to the CCAR Responsa Committee's most recent writing about the subject. There is no doubt that the value of *pikuach nefesh* pervades over the conversation of stem cell research in the Reform literature. But the CCAR Responsa Committee also recognizes that balance of the law between practical and the moral standard that is expected of us. We are commanded not to shed the blood of others nor commit murder. The act of saving a life is balanced against the possibility of hurting another. As a result, *pikuach nefesh* limits the way we are permitted to practice medicine; we are not allowed to commit murder, even if the shedding of one person's blood will

lead to healing for another.<sup>350</sup> Freehof and other Reform scholars did recognize that the fetus or embryo is not a full *nefesh* and therefore not under the same standard of law. But the CCAR Responsa Committee reminds us that even if destroying an embryo is not murder, we cannot assume it is simply "permitted." "Respect for human life" is not equivalent with the prohibition against bloodshed.<sup>351</sup> Again the balance is struck. A lack of a legal category does not free us to behave in any way we want. We remain responsible. The CCAR Responsa Committee reminds his Reform audience there is a higher standard we are held to. Even if destroying an embryo is not murder, we cannot assume it is simply "permitted." "Respect for human life" is not equivalent with the prohibition against bloodshed.<sup>352</sup>

The CCAR Responsa Committee notes a parallel nature between medical experimentation and the value of *pikuach nefesh*. He explains that the advancement of medicine is in and of itself the fulfillment of *pikuach nefesh*.<sup>353</sup> Therefore it makes no sense to destroy extra embryos, as their use and any experimentation on them if performing the act of saving life, even if indirectly. The CCAR Responsa Committee makes it clear that this statement permitting experimentation on "excess" embryos extends to the use of stem cell lines that have already been derived and are currently being used in laboratories."<sup>354</sup> The Reform approach sees medical science as a process that does the work of *pikuach nefesh*. Embryos and stem cell lines should be used to better the lives of others.

---

<sup>350</sup> RRTFC, Human Stem Cell Research, 5761.7, 125

<sup>351</sup> *ibid*

<sup>352</sup> *ibid*

<sup>353</sup> *ibid*, 130-131

<sup>354</sup> *ibid*, 131

We leave the CCAR Responsa Committee with the last word. In this final comment we see many elements reflective of the Reform position on this topic – the value of experimentation, the caution of new science, the desire to heal, the willingness to keep moving forward, and the important of *pikuach nefesh*. Stem cell research is certainly at the frontier of medical science but with the proper precautions and moral checks, Reform Jewish law is open and welcoming to the possibilities this new research provides: "Medicine' as we understand it today is a scientific discipline, defined by the canons and practices of a scientific community. Among these canons and practices is the insistence that medicine is an experimental science, founded upon extensive, carefully controlled laboratory and field research. It is this body of research, a continuing process of testing, verification, and discovery subject to the critical review of peer scientists, that commands our respect for the practice of medicine and that empowers physicians to speak and to act with authority... If we define the administration of lifesaving medical therapy as *pikuach nefesh*, we should not forget that physicians could not save lives were it not for the extensive scientific research upon which our contemporary practice of medicine is based. Since research into human stem cells partakes of the *mitzvah* of healing, surely our society ought to support it."<sup>355</sup>

*Conservative section:*

Let us conclude this discussion about the multitude of issues surrounding stem cell research with the concept of *pikuach nefesh*. This topic appears over and

---

<sup>355</sup> *ibid*, 124

over again throughout these chapters and through the Jewish literature because of its centrality to the Jewish approach to medicine. Indeed the preserving of life weighs very highly. Rabbi Joseph H. Prouser published a responsum regarding post-mortem organ donation that is a very applicable look into how *pikuach nefesh* fits into the Conservative mindset. As an introduction, Prouser notes that the halakhic objections to this practice include the prohibitions against *nivel hamet* (disgracing the dead body, as by disfigurement), *hanaah min hamet* (deriving benefit from a dead body), and *hanalat hamet* (delaying burial). All of these revolve around *kavod hamet* (treating the corpse with respect).<sup>356</sup> However, *pikuach nefesh* is quickly asserted, with the citation of multiple halachic scholars, to overcome these legal barriers. Israeli Chief Rabbi Isser Yehuda Unterman teaches such procedures constitute the saving of a life. Rabbi Ephraim Oshry teaches where saving a life is involved, we are not concerned with the desecration of the dead. Rabbi Theodore Friedman, as recorded in the 1953 Proceedings of the Rabbinical Assembly, taught “greater is saving a life than *kavod hamet*.”<sup>357</sup> Unterman says, “Preservation of life overrides all other considerations,” even regarding the partial use of organs or the delay of burial.<sup>358</sup>

Besides the legal barrier, Prouser also discusses the human side to the conversation. The act of donating part of yourself may be traumatic or difficult. However, Prouser attempts to comfort his readers by stating the *mitzvah* of preserving life outweighs any emotional aversion to organ donation, and as a result

---

<sup>356</sup> Joseph H. Prouser, *Hesed or Hiyuv? The Obligation to Preserve Life and the Question of Post-Mortem Organ Donation*, *Yoreh Deah* 336.1995, 3

<sup>357</sup> *ibid*, 3-4

<sup>358</sup> *ibid*, 4

Jews should feel duty-bound to act to this end, much more strongly than simply creating a law that is permissible to the possibility of organ donation.<sup>359</sup> The "redemptive comfort" of saving a life should help people get past an emotional or psychological concern about donating a piece of themselves.<sup>360</sup> The act of donation can also aid the emotional pain of *aninut* (mourning) as an effective source of comfort for the mourners and emotional healing in the knowledge that it brings life and healing to others.<sup>361</sup>

Prouser also notes limits to these very general statements declaring *pikuach nefesh* to be above all else. Theoretical medical knowledge alone does not constitute *pikuach nefesh*.<sup>362</sup> However, Rishon L'Tzion Rabbi Meir Chai Uziel ruled more leniently, extending the principle of *pikuach nefesh* to general advances in medical knowledge. The Knesset passed the Law of Anatomy and Pathology in 1953, based on an agreement with the Chief Rabbinate, although there were later attempts to restore the more stringent guidelines of the *Noda B'Ychuda*. Rabbi Issac Klein concludes his responsum on the question of autopsy thus: "If medical science claims that these may save lives ... it is not only permitted, but it is actually a *mitzvah*."<sup>363</sup>

Using Klein as our guide we transition our discussion from the science of organ donation to the frontier theoretical discussions about stem cell research. Dorff reminds us that our body belongs to God and we must care for it, therefore *pikuach*

---

<sup>359</sup> *ibid*, 10-11

<sup>360</sup> *ibid*, 12

<sup>361</sup> *ibid*, 13

<sup>362</sup> *ibid*, 4

<sup>363</sup> *ibid*

*nefesh* and the need to develop new cures for human diseases is paramount.<sup>364</sup> "The Jewish tradition accepts both natural and artificial means to overcome illness. Physicians are the agents and partners of God in the ongoing act of healing. Thus the mere fact that human beings created a specific therapy rather than finding it in nature does not impugn its legitimacy. On the contrary, we have a duty to God to develop and use any therapies that can aid us in taking care of our bodies, which ultimately belong to God."<sup>365</sup> In this quote we see a similar view to Prouser's conclusion about organ donation; *pikuach nefesh* holds firm in the wake of this still theoretical science. We are meant to do as much as we can. We are not God and must act with precautions that our actions do not harm ourselves or our world, while we are trying to improve them. We are supposed to work the world and preserve it.<sup>366</sup> In light of our divine mandate to seek to maintain life and health, from a Jewish perspective we have a duty to proceed with that research.<sup>367</sup> There is so much to gain from stem cell research and with the proper guidelines, proper boundaries, and understanding of the Jewish framework that always resides upon us.

#### *Orthodox section:*

It is quite difficult to reach any satisfying conclusion about the Orthodox point of view on stem cell research. Of the many *poskim* described in this chapter, all recognize how modern medicine can serve as tools to heal. However, they also maintain allegiance to the higher principles about sanctity of life, always holding it

---

<sup>364</sup> Elliot N. Dorff, Stem Cell Research, *Yoreh Deah* 336.2002, 7-8

<sup>365</sup> *ibid*, 8

<sup>366</sup> *ibid*

<sup>367</sup> *ibid*, 14



as a banner that should not be forgotten. Let us close with a brief debate before Rabbi David Eisenberg and Rabbi J. David Bleich.

Eisenberg, a supporter of stem cell research writes, "Nevertheless, it is important to realize that this conclusion is not unanimous and that all of these rulings are predicated upon the understanding that the pre-embryo is not included in the prohibition of *retzicha* (murder)."<sup>368</sup> For no halachic ruling, no matter how much it supports the use of modern medical research, will override the taking of a life. Steinberg comments, "for example, Rabbi J. David Bleich has voiced his opposition to the destruction of pre-embryos and their use in stem cell research."<sup>369</sup>

Bleich's explanation about the use of research to preserve and save life:

"Halachic restrictions are suspended in anticipation of preserving life only in the case of a *refu'ah bedukah*, i.e., a therapeutic procedure known to be efficacious or with regard to which there is cogent reason to presume it to be efficacious. Thus, the very nature of virtually all scientific research is such that Shabbat restrictions, for example, may not be disregarded in order to enhance the likelihood of success in such endeavors. Despite the fact that it may be predicted with certainty that a successful outcome of a research endeavor will save lives and hence the situation may be tantamount to that of a *holeh le-faneinu*, nevertheless, at the research stage the endeavor almost by definition involves a *refu'ah she-einan bedukah*. Hence no rabbinic authority has argued that a scientist may engage in activities prohibited on Shabbat in

---

<sup>368</sup> Daniel Eisenberg, Stem Cell Research in Jewish Law, Jewish Law Articles: Examining *Halacha*, Jewish Issues, and Secular Law, 2001, <http://www.jlaw.com/articles/stemcellres.html>, accessed on December 4, 2012, 9

<sup>369</sup> *ibid*, 14

the course of conducting research on stem just as no one has argued that Shabbat restrictions are suspended for purposes of cancer investigation or the like. By the same token, no other prohibition may be ignored in order to engage in such research. Accordingly, stem cell research can be sanctioned by *halacha* only if it involves no infraction associated with the destruction of the fetus."<sup>370</sup>

Bleich is arguing that higher values, such as keeping Shabbat or preserving life, are upheld over anything else, even the potentially life-saving possibilities offered by stem cell research. To be clear, Bleich is still a supporter of stem cell research but wonders at what cost must such discovery come. We note that Bleich uses similar halachic principles as the Reform movement did in its discussion about the use of IVF.

For Bleich, there are limits of healing and limits of *pikuach nefesh*. A society is responsible to work to protect its citizens. Talmudically speaking, a city must build walls or doors to protect the city. While *pikuach nefesh*, which involves individual concerns, does not directly require cities to find medical cures to all ailments it is the part of social responsibility to take them out.<sup>371</sup> There is a social responsibility to help and heal. But there is the other side there is a concern as well. It is also a society's responsibility to prevent against future danger and prevent loss of life. Regarding diseases, if a *refu'ah bedukah*, a tried and tested therapy, does not exist there is no requirement to find one. Yet the citizens of the society may demand that

---

<sup>370</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 201

<sup>371</sup> *ibid*, 202-203

such health protections exist. While acting in this manner does not fall under the obligation of *refu'ah bedukah* or *pikuach nefesh*, research to this end is certainly laudable. If a society refuses, it is not a halachic violation.<sup>372</sup> Bleich is arguing that proper precautions and concerns must be taken into account when choosing to embrace new technology and techniques.

In the end, we do not think that Bleich is directly disagreeing with Steinberg but, like other scholars across the movements, a little hesitancy is not a bad thing. All Orthodox scholars are wrestled with issues of healing versus life versus suffering versus reacting to the modern world around them. Steinberg and Bleich both recognize the possibilities that exist on the medical frontier. The only question is how quickly we get it and accept it as part of Jewish tradition and law.

---

<sup>372</sup> *ibid*, 203-204

### ***Chapter 3: Human Beings and Their Bodies***

#### Chapter Overview

Humans are complex creatures in almost every way, from the inside out. But humans are endowed with a great gift – the power of intellect. We can think. We can act. We can change the world around us. As the previous two chapters have demonstrated, human capabilities at the frontier of medical science are indeed quite vast and ever growing. We are on the forefront of manipulating the basic genetic material that composes all creations. We are learning how to change cells into formations of our determination, and along with that, potentially even have the capacity to create life. Science is offering humans untold opportunities.

Yet, as has been demonstrated within the Jewish realm, we are not only in awe of the human ability to discover but we are also balanced by the recognition that human have limits. What is technologically possible may not be morally prudent. The Jewish legal material speaks of an imbued sense of responsibility that is always incumbent upon us. After all, outside the realm of medicine, Jewish law covers the topic of criminal action, punishment, contracts, property and many other situations that require us to be responsible for our action. Contained within this concept of legal responsibility is the premise of personal responsibility. That is to say, the choices we make have consequences – legally, morally, and even theologically.

But what if they didn't? The previous two chapters have dealt with concrete areas of science, genetic engineering and stem cell research, which are somewhat

easy to categorize from an intellectual point of view. Whole departments in academic institutions are dedicated to these known fields. But what about our personal control over our physical selves, both in body and mind? May they be changed? May they be manipulated? A physical trait can be corrected through surgery, or potentially altering the genetic structure effecting cellular growth and external expression. But the question of control over voluntary physical changes is another issues. Furthermore, the concept of behavior, or thought, or an idea is much more complex. Does man have legitimate power, ethically speaking over these aspects of humanity? Do our Jewish society have legal standing to effect such situations?

Human beings and their bodies are not a specific discipline and its phrase itself has only been coined for the sake of this project. This chapter endeavors to explore the Jewish legal boundaries in regards to our bodies, our minds and our actions. Is it possible to change so much that each person is legally are no longer who they once were? Can one be in such a different mental state that they are not legally responsible for the actions they have committed? Can a society or collective group decide what is correct morally and therefore enforce this behavior on others? What are the Jewish legal limits regarding our own bodies?

## Changing Yourself Physically

Before delving more deeply into the various ways one can or or change who he or she is as a person, let us first approach from the macro level – changing oneself physically. In Jewish tradition our body is believed to be owned by God, and therefore any modification of this vessel could constitute an affront to the Divine Creator. However, it should be no surprise that surgery done for the sake of *pikuach nefesh* is permitted and even encouraged, but elective surgery procedures for non-medical reasons have a much more varied responses from the various movements. The two main topics in this section are trans-sexual or gender reassignment surgery and cosmetic surgery. The core question for both of these surgeries is not simply if they are considered non-medical and voluntary procedures. The issue at hand is often that the person feels such medical procedures are necessary to correctly express who they are as people. In the case of gender reassignment surgery a person may feel that they are born incorrectly and are therefore using modern medical techniques to follow God's intended path for them. And regarding cosmetic surgery, many use such procedures not for purely aesthetic reasons but to change their body as a means to improve its function and even to fulfill *mitzvot*. The various movements take up these issues in different ways.

### *Reform discussion and analysis:*

The Reform responsa deal with the question about one's right and ability to change from a male to a female, or vice versa. This question was discussed twice by Solomon Freehof and twice by the CCAR Responsa Committee. The main impression

we note is the change in social acceptance of gender reassignment surgery as reflected in the thirty years between these responsa. For Freehof and his contemporaries, gender reassignment surgery struck a much more taboo chord than it did for later responsa by the CCAR Responsa Committee. However, both eras reflect a consistency of Reform thought, which is that one's identity is not strictly based on their physical genitalia. In the second responsum from the CCAR Responsa Committee, the discussion expands into the necessary conversation about "gender" vs. "sex," and the physical genitalia do not always determine one's identity.

Writing in 1971, Freehof questioned such a medical procedure, not on the grounds of it being immoral or indecent, but because it would result in sterility for the person. He notes that such surgery was unknown to the Sages, but concludes that if this were discussed in the traditional literature, the rabbis would have forbidden it, as it would sterilize someone and make them unable to perform the *mitzvah* of procreation.<sup>373</sup> However, Freehof does not discuss the situation if the person, i.e., the male, who is the one obligated to fulfill *pru ur'vu* (be fruitful and multiply) has already birthed two children and effectively completed his obligation.

Freehof does recognize the rabbinically accepted categories of the *androgynous* (one who is intersex or does not fit on the gender binary) and *tumtum* (one whose genitalia are hidden or unknown), those who are biologically unable to reproduce. Certainly then such a surgery would be committed since fulfilling this *mitzvah* is null. Freehof does not permit gender reassignment surgery in this situation either citing its danger. The person is in good health and subjecting them

---

<sup>373</sup> MRR, Surgery for Trans-sexuals, 129

to a dangerous surgery would not be a good enough reason.<sup>374</sup> With these two answers, Freehof appears to take a fairly traditional stance on this topic. However, an additional point is made.

Recognizing that one's health is not only dependent on their physical condition, Freehof makes special exception for those people who are so emotionally and psychologically distraught that they are in grave danger of dying. If doctors were able to confirm such a condition and could state that such a surgery would restore him or her to mental health, then the surgery might be considered.<sup>375</sup> Freehof appeals to the concept of whole body health – mind, body, and spirit. All must be considered when engaging in the task of healing.

In 1977, Freehof again wrote on the topic of trans-sexual surgery. Here he discussed whether it was permitted to marry someone who had already undergone the operation. The act of writing on this responsum alone could indicate the Reform scholar's acceptance that such surgery takes place, and as a result, he then has to deal with the situation once someone has done through this possibly forbidden surgery. The issue at hand is determining if gender reassignment surgery actually changed the gender of the person, here into a woman. By including marriage in the conversation, the issue is further complicated as homosexual marriage in the 1970's was not widely performed within the Jewish community as it is today. If you believe that one's gender is based on physical genitalia alone then the new "woman" is accepted as a woman, and her attempt to marry a woman would be disallowed. The issue at hand is whether it is permissible to marry an individual of the gender

---

<sup>374</sup> *ibid*, 131-133

<sup>375</sup> *ibid*, 130



opposite of the one with which the individual identifies. If you deny that the surgery changes her gender, she is still a man and the marriage proceeds as normal.<sup>376</sup> Freehof does not reach any legal conclusion on this subject. He instead leaves the decision up to each individual community.

"It would be wise to let the decision be based upon the reaction of the community to such a marriage. If the community, including the larger general community, would be outraged or cynical or derisive at a rabbi officiating this marriage, then the Jewish community would be hurt by this action. How can the community attitude be determined? Perhaps as follows: If the state decides to issue a wedding license to the couple, then we can say that the general community fully accepts this marriage, and the rabbi may safely officiate. If, however, no wedding license is issued, the rabbi cannot officiate legally anyhow, and also has saved the community from ugly repercussions in a miserable situation."<sup>377</sup>

Our main conclusion from this case is Freehof's preference for a community's autonomy over the need for a strict legal decision. Not only does Freehof leave the decision of the surgery up to the person, by allowing the emotional loophole, but he also permits each rabbi and community decide upon how the gender is defined. And furthermore, if the community itself has trouble reaching a conclusion, they are to turn to the secular authorities and follow their lead. Therefore, regarding the more general issue of a legal basis for changing one's body, Freehof is ambivalent at best.

---

<sup>376</sup> RRT, *Marrying a Trans-Sexual*, 199

<sup>377</sup> *ibid*, 199-200

Decades later, in 1997, the CCAR Responsa Committee confronted the same issue. Within this span of time, homosexual marriage officiating was still a taboo but at least had greater precedence. Whereas Freehof's ambiguity almost seemed to stem from a sense of limited options, this responsum is more nuanced. First and foremost, we must recognize that gender is not a simple binary – male or female. The rabbinic sources recognized this as well, such as the *androgynous* or *tumtum*. Modern science's discussion of intersex has revealed a whole spectrum of sexual identity. "Reform also would accept the findings of modern science, which holds that external genitalia may not reflect the true identity of the individual. Thus, analysts have distinguished five categories that can be said to identify biological sex."<sup>378</sup> So perhaps, according to the CCAR Responsa Committee, this surgery is not the best or only way to change the behavior and make the person more comfortable. While Freehof recommended to side with the community, the Committee's responsum is less clear on the matter. The question is raised about why the person needs to physiologically change into a woman, when there are other ways to live as a woman.<sup>379</sup> If we do recognize the whole body approach to define the person than resorting to dangerous and invasive surgery should not be our first step. If the person is truly uncomfortable, let us explore a myriad of ways before putting the person under the knife.

In contrast to Freehof, the CCAR Responsa Committee did not leave the decision about the marriage up to the community. Instead this responsum recommends that the rabbi not to proceed with *kiddushin* (marriage) on the

---

<sup>378</sup> TFN, Conversion and Marriage after Transsexual Surgery, 5750.8, 194

<sup>379</sup> *ibid*

grounds that the maleness of the person is weakened and the sexual identity is in doubt. If there is such a doubt over a person's identity, they cannot be forced into a single category for the sake of a marriage. However, the responsum does note that if the rabbi performs homosexual marriage than this whole conversation is moot.<sup>380</sup> Similar to Freehof, the CCAR Responsa Committee accept that such behavior occurs in the general population and are more accepting on the changing times of gender definition and non-traditional marriages.

The CCAR Responsa Committee in 2009 wrote a yet to be published responsum that discusses the understanding of transgender. The writing of this responsum alone represents a further updating of the Reform Movement's point of view as social perceptions about "gender" and "sex" develop. This responsum strikes a very different tone than the attitude from Freehof's time where a woman was considered a woman based only on physical genitalia. Transgender, as defined by the American Psychological Association, "is an umbrella term used to describe people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex."<sup>381</sup> From the outset of this responsum, the Committee makes it clear that they are stepping into an unclear area. "Our attitude concerning transgender has undergone a significant change during the last several decades. Our general approach to the subject, however, has remained constant: we have turned to science, in particular to the mental health professions, to learn about a phenomenon that, to say the least, has been imperfectly understood. There was a time, not so long ago, when most

---

<sup>380</sup> *ibid*, 194-195

<sup>381</sup> NYP, Circumcision of a Transgender Female, 5769.6, 1

scientists held that transgender people suffered from a mental or psychological illness.”<sup>382</sup> However, modern times force the Reform scholars to consider the difference between “gender” and “sex.” The Committee embraced the conversation, saying that it offers an opportunity to rethink the “general approach” about long held understandings about sex. The Committee attempts to draw rabbinic parallel between transgender and the *androgynos* described in *Mishnah Bikurim* 4:1.<sup>383</sup> The *androgynos*, with both female and male genitalia, is a good example of how the sages recognized that some individuals do not fall into strict categories of sexual identity. That being said, an *androgynos* is still defined by physical characteristics, whereas transgender, and the concept of “gender” itself, relates to a person’s mental, emotional, and psychological identity, a concept that the rabbis did not understand. Therefore the parallel is weak at best. This responsum concludes with a statement accepting a change in understanding how we perceive “gender” and “sex” and an openness to the different ways members of the community define themselves. “The great message of these texts is the duty of inclusion: like the Rabbis, we, too, are obligated to find a place within our midst for the outsider, the Jew who does not seem to fit within the established boundaries and social categories upon which our communities are normally based.”<sup>384</sup> With new social understandings about “gender” and “sex,” the Reform Movement happily changed its opinion in the interest of inclusion and respect. In conclusion, the Reform Movement cannot conclude that one’s identity is based on physical genitalia alone. The conversation about personal

---

<sup>382</sup> *ibid*

<sup>383</sup> *ibid*, 2

<sup>384</sup> *ibid*

identity however remains unresolved and complex.

While trans-sexual surgery is an obvious way that humans can physically change who they are, cosmetic surgery must be discussed as well. Non-medical surgery, such as breast enhancement surgery, for the sake of vanity or social acceptance, and not for a medical need would be considered a violation of *chavalah* (the prohibition against wounding oneself unnecessarily). The overuse of surgery to make someone feel better and focus on superficialities is not a good enough reason and people considering such an action are advised to get help in another way than breast enhancements.<sup>385</sup> However, there are exceptions. The CCAR Responsa Committee concludes that cosmetic surgery that is meant to fulfill a *mitzvah* is certainly acceptable. Therefore a man may get a penile implant to benefit his sexual performance and correct impotence if it will allow him to procreate.<sup>386</sup> Health is also a strong argument for the surgery. Breast reconstruction following a mastectomy is permitted as it is considered a response to a disease and serves a medical purpose.<sup>387</sup> Also, cosmetic surgery may be permitted for individuals whose emotional health requires cosmetic surgery.<sup>388</sup> The Conservative and Orthodox scholars discuss this issue in greater detail. Decisions must be made on a case-by-case basis. The Committee's main concern is that in many cases cosmetic surgery is done for reasons that are contrary religious values, such as modesty. While

---

<sup>385</sup> TFN, Cosmetic Surgery, 5752.7, 131

<sup>386</sup> *ibid*, 127

<sup>387</sup> *ibid*

<sup>388</sup> *ibid*, 131

modern surgery offers may some legitimate benefits to help people change their bodies, but we must be aware of the intention and purpose behind such actions.<sup>389</sup>

The Reform responsa seem to permit humans to engage in modern techniques that allow us to manipulate and change our bodies but only if for the right reasons. Furthermore we have seen that Reform reactions to social mores about gender and sex do change over time and the scholars attempt to remain in line with the community. Social conventions change over time. Medicine advances over time. And therefore the law or at least our interpretation of it needs to keep up as well.

*Conservative discussion and analysis:*

Regarding gender reassignment surgery and the Conservative movement, we turn to a responsum written by Rabbi Mayer Rabinowitz as an example of how *halacha* is upheld in the wake of a physical modification. The major debate is what defines one's gender – external genitalia or internal genetics. Rabinowitz cites Orthodox scholars Waldenberg, Hirsch, Tendler, and Rosner. Rabbi Waldenberg. Using the example of performing surgery on a hermaphrodite to select a gender, these *poskim* state that it is the external genitalia, not the genetics, that determine gender.<sup>390</sup> In a concurring point of view, Rabbi Abraham Hirsch, in commenting on an Ibn Ezra commentary on Leviticus 18:22, says that a MTF (transitioning from male-to-female) person is still considered male, implying that the change in status

---

<sup>389</sup> *ibid*, 130-131

<sup>390</sup> Mayer Rabinowitz, Status of Transsexuals, *Even HaEzer* 5:11.2003, 7-8

occurs only after the transition is complete.<sup>391</sup> Rabbi Moshe Tendler and Dr. Fred Rosner disagree and state that one's ability to sexually perform determines sexual status. Therefore, according to Tendler and Rosner, someone who is in transition would not be allowed to enter into marriage as a male.<sup>392</sup> Rabinowitz's analysis is that "*Halacha* has always been macroscopic and not microscopic. Therefore, external organs determine the sexual status of a person. Genetic information may be helpful but at present are not considered the determining factor. The same is true as far as DNA is concerned in halachic issues."<sup>393</sup> Interestingly, Rabinowitz considers the use of modern scientific knowledge as the main source to resolve this debate but as has been seen repeatedly with different responsa, the scholar does not upend the Jewish definition based on the secular medical definition alone. The *halacha* does not change.

And what of the legal implications of sex reassignment surgery? Numerous rabbinic sources, including Rabbis Yosef Pelaggi (*Yosef et Eha* 3:5), Saul Berlin (*Besamim Rosh* #340), Israel Isserlein (*Trumat Hadeshen* 2:102), Yosef Badad (*Minhat Hinukh* 203), and Eliezer Waldenberg (*Tzitz Eliezer*, X, no. 25, chap. 26, sec. 6) all cite various Talmudic sources to teach that a change in status (the removal of genitalia, or from an angel to human) means that a marriage does not require a *get* (document of divorce). The one who had the surgery is a different person altogether and that new person was not part of the original marriage contract.<sup>394</sup> Based on these arguments, if a person changes their status, their marriage is annulled and no

---

<sup>391</sup> *ibid*, 3

<sup>392</sup> *ibid*, 8

<sup>393</sup> *ibid*, 9

<sup>394</sup> *ibid*, 4-7

*get* is required. Through the act of transitioning, he or she accepts the automatic annulment of the *kiddushin*.<sup>395</sup> The *halacha* simply states that a new person is created and the prior legal arrangement is void. Regarding FTM (transitioning from female-to-male), Rabinowitz states that a person who is FTM does not require *hatafat dam brit* (drawing of a drop of blood from the penis to represent circumcision) as medically there can be no circumcision.<sup>396</sup> In both examples of a *get* and *hatafat dam brit*, the Conservative responsa finds no halachic reason to prevent such a surgery, as there are halachic answers that satisfy any concerns. In fact, gender reassignment surgery is encouraged for those suffering from one of many medical ailments, such as gender dysphoria, based on the principle of *letovat haholeh* (it is beneficial for the sick).<sup>397</sup> Therefore, for the case of gender reassignment surgery, Rabinowitz sees no reason to upset halachic precedent and permits this sort of physical modification. People wishing to understand this procedure have a place within the law.

#### *Orthodox discussion and analysis:*

To study the Orthodox position on a human's right to change himself or herself physically, we also examine the case studies of trans-sexual surgery and cosmetic surgery. Overall, Orthodox *poskim* tend to disapprove of surgical procedures undertaken for reasons of personal taste or for anything less than a life- or health-threatening condition. Surgery is a dangerous procedure and not

---

<sup>395</sup> *ibid*, 9-10

<sup>396</sup> *ibid*, 10

<sup>397</sup> *ibid*, 11



something to engage with lightly or haphazardly. As such, these *poskim* see little reason to change the standard *halacha* for the sake of this new technology.

On the subject of trans-sexual surgery the sources are rather consistent. Gender is defined by a binary. One's identity is determined by physical genitalia. This method of individual identification is in contrast to the division between "sex" and "gender" spoken of in the contemporary scientific literature and discussed in the Reform section of this topic, specifically in context of the responsum on Circumcision of a Transgender Female (5769.6). Furthermore, there is no strong reason to engage in such a surgery, regardless of emotional or psychological motivations. Dr. Fred Rosner and Rabbi Moshe D. Tendler summarize a general Orthodox point of view as such:

"Surgical procedures or medical interventions (i.e. hormonal therapy) to effect a sex change in an adult are strictly forbidden for a variety of reasons, including the prohibitions of castration (*seirus*) and homosexuality (*mishkav zachar*). Surgery not recognized as necessary for correction of anatomic or physiological abnormalities is viewed as an act of mutilation. The psychological stresses that underlie the patient's request for such self-mutilation must be dealt with by psychiatric therapy, not surgery. If in violation of Torah law such a sex change operation was performed, the individual maintains his pre-surgical sex with all its halachic implications."<sup>398</sup>

That is to say, "gender" is the same as "sex," determined by external physical characteristics alone. Rosner and Tendler do recognize that some people have a

---

<sup>398</sup> Fred Rosner and Moshe D. Tendler, Practical Medical *Halachah*, Northvale: Jason Aronson, Inc., 1997, 104

psychological need to change their sex that leads to discomfort and a feeling of being out of place in their environment. However it is clear from this statement that a physical change to the body is not the way to solve this problem, rather they recommend the use of psychological or psychiatric counseling instead. It is also important to note the last line of Tendler's and Roner's statement, which maintains one's halachic and legal identity based on the gender before the surgery. The *halacha* does not change or bend if one chooses to break its ruling. It will disregard any physical change surgically imposed on oneself.

Rabbi Eliezer Yehudah Waldenberg, as recorded by his student Rabbi Abraham Steinberg, concurs with Rosner and Tender. Waldenberg teaches, "transsexual surgery is forbidden."<sup>399</sup> He does however permit two exceptions; both in cases of a person can then be defined as male or female. This is necessary so the person can be properly categorized under the law. For example, "A child whose primary sexual characteristics appear female, but who, upon genetic investigation, has a male karotype (e.g. testicular feminization), may undergo bilateral orchiectomy," which is a surgical procedures that removes the testes.<sup>400</sup> In the case of a hermaphrodite, one "may undergo surgery in order to establish one sexual identity. If possible, the male organs should preferably be preserved and reconstructed. However, if circumstances are such that it would be more advisable to transform the child into a phenotypic female, the surgeon may do so."<sup>401</sup>

Waldenberg does not explain the preference of a male over a female, but it most

---

<sup>399</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 123

<sup>400</sup> *ibid*, 122

<sup>401</sup> *ibid*, 122-123

likely has something to do with the prohibition of *seirus*, (castrating/sterilizing a human being), a prohibition that seems to apply to males more clearly than to females. Based on Leviticus 22:24, Deuteronomy 23:3, and Maimoindes's *Hilkhot Isurei Bi'ah* 16:10, at face value the physical cutting off of male genitalia is prohibited, but he does not force sexual selection upon the child. This is similar to statements against sex selection in genetic pre-screening described in an earlier chapter.

Waldenberg also discusses how a person who chooses to undergo transsexual surgery is seen under the law. Rosner and Tendler already mentioned that the person is legally viewed as their pre-surgery gender. Waldenberg's ruling teaches the opposite; "If one spouse of a couple undergoes sex change surgery, the marriage is annulled, and no divorce is necessary."<sup>402</sup> For Waldenberg, the sex change is accepted within the law and it effectively annuls any prior legal arrangement that was held before the surgery. This person is not the same one any longer. Other *poskim* hold similar points of view. Rabbi Yosef Palaggi, in *Yosef et Echav* 3:5, states that no divorce is necessary to dissolve a marriage contracted before the transformation.<sup>403</sup>

Rabbi J. David Bleich agrees as well. He writes that *Teshuvot Besamim Rosh*, no. 130, does not reach a clear conclusion as to whether it is necessary for a man who surgical is changed into a man to divorce his wife or not. However, it strongly asserts that once the male sex organs are removed, regardless of individual status,

---

<sup>402</sup> *ibid*, 123

<sup>403</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, Jersey City Ktav Publishing House, inc., 2002, 82

the person in question is no longer competent to contract a valid marriage as a man. In other words, the person's identity does not change; what he can no longer do is fulfill the function of marriage. Although not stated, this ruling could also relate to a woman wanting to undergo such a procedure.<sup>404</sup> Bleich's argument based on this responsum does not state that the person is no longer the same one but instead judges that one who chooses to undergo such a surgery is psychologically incompetent. This statement does not just judge physical criteria but also a person's mental stage. "Although Judaism does not sanction reversal of sex by means of surgery, transsexualism is a disorder which should receive the fullest measure of medical and psychiatric treatment consistent with *halacha*." This includes correcting endocrine imbalances and seeking psychiatric guidance to help with the emotional problems associated with this state.<sup>405</sup> Bleich states that the gender of a transsexual is determined strictly based on genitalia, regardless if the person experiences psychological trauma as a result of any emotional confusion.<sup>406</sup> Regardless of the reason, there is at least clear consistency within the Orthodox scholars, trans-sexual should not be accepted within the law.

On the subject of cosmetic surgery, the Orthodox *poskim* accept various procedures, but only in specific situations. Rabbi Immanuel Jakobovits succinctly summarized, from his perspective, the various issues at play regarding cosmetic surgery, "The problem was considered under four headings: the theological implications of 'improving' God's work or flying in the face of Providence; the

---

<sup>404</sup> *ibid*, 81-82

<sup>405</sup> *ibid*, 83

<sup>406</sup> *ibid*

possible risks to life involved in any operation; the Jewish objection to any mutilation of the body; and the ethical censure of human vanity."<sup>407</sup> From a halachic standpoint, the situations permitting cosmetic surgery are the same ones discussed by the Conservative scholars, those that involve helping a woman be acceptable socially in order to be married. But there are certainly dissenting opinions on this topic. There are multiple halachic issues, including those mentioned by Jakobovits, involved in this decision-making process, such the prohibition against wounding, the role of beauty in a marriage, the risk of surgery, and what constitutes a medical necessity.

First, let us set a general ground rule. Voluntary cosmetic surgery, done for a selfish reason, is not permitted. Rosner and Tendler explain: "Without valid psychological or medical reason, undergoing elective plastic surgery constitutes transgression of the following prohibitions: 1) intentionally wounding oneself, 2) placing one's life in possible danger. The latter prohibition must be carefully considered if the use of general anesthesia is being contemplated. The increased risk to life may indeed make such cosmetic surgery halachically unacceptable."<sup>408</sup> However, there are numerous psychological and medical reasons that do permit cosmetic surgery. In this regard, the *halacha* welcomes modern surgical techniques that are considered beneficial.

Let us first discuss the issue already mentioned by Rosner and Tendler – the prohibition against wounding. The larger issue of concern for these *poskim* is that

---

<sup>407</sup> Daniel Eisenberg, Judaism and Cosmetic Surgery, Aish.com, <http://www.aish.com/ci/sam/48955041.html>, accessed on December 4, 2012, 2

<sup>408</sup> Fred Rosner and Moshe D. Tendler, Practical Medical *Halachah*, 161

one's body belongs to God and that one therefore does not have the *r'shut* (permission) to do whatever one wants with it. "Destructive" treatment of the body is prohibited. The issue therefore is how do we define "destructive" in the face of cosmetic surgery techniques that offer some real material benefits for those who undertake it? Bleich teaches that "wounding," or the choice to injury your body, is permissible not only for curing a physiological disorder but also for alleviating pain, as the alleviation of pain is included in the biblical commandment "and he shall surely heal."<sup>409</sup>

But even this category is not closed off. *Tosafot, Shabbat* 50b, expands the definition of pain to include mental pain. "Accordingly, if an individual shuns normal social intercourse as a result of a deformity or other disfigurement, the condition causing distress may be corrected by means of plastic surgery."<sup>410</sup> *Tosafot, Bava Kamma* 91b states that "wounding" is not permissible for purposes of financial gain. However, the psychological anguish of being unable to secure a marriage partner or gain employment is a form of "pain" no less severe than the mental pain mentioned above that limits people from engaging in social situations. Therefore in such circumstances that one's physical appearance prevents marriage or employment plastic surgery is permissible to relieve this anguish.<sup>411</sup> It is noteworthy that the *Tosafot* and Bleich describe pain in more ways than just the physical. This holistic approach was missing from Bleich's discussion of trans-sexual surgery but is clearly evident here. The whole person needs treating under the eyes of the law in this case.

---

<sup>409</sup> J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, 160

<sup>410</sup> *ibid*

<sup>411</sup> *ibid*, 160-161

Numerous times Bleich has mentioned the permissibility of wounding oneself through surgery to make one appear more socially beautiful and therefore more likely to secure a marriage partner. This issue has been taken up many times by multiple scholars. Initially, Rabbi Immanuel Jakobovits concluded in *Noam* 6:273 that cosmetic surgery for purely aesthetic reasons is a form of vanity and arrogance, and is therefore forbidden unless the patient meets certain needs.<sup>412</sup> Later in 1961, Jakobovits defined those needs. He issued a ruling permitting cosmetic surgery for a woman to help her find or maintain a marriage partner and for a man to correct a condition that interferes with him finding employment or earning a livelihood. Later rulings by Jakobovits explain that the psychological pain of not being able to find a partner or being unemployed is significant and this surgery is permitted to relieve that anguish, the same reason as mentioned by Bleich above.<sup>413</sup>

Rabbi Moshe Feinstein in *Igrot Moshe, Chosen Mishpat* 2:66 from 1964 permitted a woman to undergo cosmetic surgery to improve her chances of finding a suitable marriage. This was permitted based on Maimonides *Hilchot Chovel Umazik* 5:1 definition of wounding (*chavalah*). Maimonides states that *chavalah* is defined as something done "in a degrading or belligerent manner." Therefore Feinstein infers that wounding done for a beneficial reason would not be prohibited.<sup>414</sup> Feinstein's permission for wounding (if it's beneficial) is therefore different from Bleich's (to overcome pain). Feinstein presents four Talmudic proof

---

<sup>412</sup> Eisenberg, *Judaism and Cosmetic Surgery*, 2

<sup>413</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 534

<sup>414</sup> Chaim Jachter, *Cosmetic Surgery: A Review of Four Classic Teshuvot - Part 1, Kol Torah*, January 8, 2005, <http://www.koltorah.org>, accessed on December 4, 2012, 1

texts to uphold his definition of wounding. *Bava Kamma* 91a tells of Rav Chisda being injured by thorns but explaining that the skin heals itself. This presents an example of non-degrading and non-belligerent wounding. *Sanhedrin* 89 explains I Kings 20:35-36 where the prophet Micah asks to be injured in order to better prove a point. The *Talmud* notes that wounding for a positive purpose, here to fulfill a Divine command, is permissible. *Sanhedrin* 84b permits bloodletting on one's father, citing Leviticus 19:18; "love your neighbor as yourself." Feinstein further explains this Talmudic argument that all prudent people want this necessary procedure to be done to them, so this form of wounding is permissible. *Bechorot* 45a discusses the removal of an extra finger, which does not include the phrase "even though one does not enjoy the right to do this." However, in *Bechorot* 2a and 13a this phrase is included regarding the selling of a cow to a *Nochri* (a non-Jew). Therefore, the lack of condemnation of the finger removal permits such wounding to take place.<sup>415</sup> Feinstein therefore allows cosmetic surgery for her benefit and also with her consent.<sup>416</sup> But, he does note that this is not the only way. In another responsa, he permitted dieting as another way to beautify oneself.<sup>417</sup>

Citing Moshe Feinstein among others, the *Nishmat Abraham* rules "A woman may undergo cosmetic surgery which might enable her to get married, or to preserve a marriage, should her appearance be a factor causing marital discord."<sup>418</sup> However, for a slightly different approach, we turn to Rabbi Yaakov Breisch,

---

<sup>415</sup> *ibid*, 1-2

<sup>416</sup> *ibid*, 2

<sup>417</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, 535

<sup>418</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 165



*Teshuvot Chelkat Yaakov* 3:11 (*Chosen Mishpat* 31), answered the same question posed to Moshe Feinstein. His approach focused more on the parameters of the question asked, searching for precedents to guide him.<sup>419</sup> In 1964, Rabbi Yaakov Breisch permitted cosmetic surgery on a girl's nose so she could find a mate. He sets aside the concern about harming oneself unnecessarily in order to relieve physical or mental pain.<sup>420</sup> Breisch cites the *Shulchan Aruch*, *Yoreh Deah* 241:3 that forbids a person from removing a thorn, performing bloodletting, or cutting a limb of one's father even though he intends to heal him. Reading further into this *Shulchan Aruch* text, Breisch notes how Rabbi Moshe Isserles adds that it is forbidden to cut one's father's limb unless there is no one else to do it. Breisch infers from this that a doctor may cut a limb in order to alleviate pain.<sup>421</sup>

Breisch also discusses the difference between eliminating pain and beautification. *Shabbat* 50b permits a man to remove scabs from his body to eliminate pain but not for beautification. Rashi explains that doing this for the purpose of beautifying oneself is forbidden as he considers that only the behavior of women.<sup>422</sup> *Tosafot* write, referring to the man with scabs, "If the only pain that he suffers is that he is embarrassed to walk among people then it is permissible, because there is no greater pain than this." In this way, they are now considering psychological pain as a valid type of pain. Breisch reads from the *Tosafot* comment that it is permissible to have plastic surgery to beautify oneself to find a suitable marriage because of the inability to do so is among the most distressing form of

---

<sup>419</sup> Chaim Jachter, *Cosmetic Surgery*, Part 1, 3

<sup>420</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, 534

<sup>421</sup> Chaim Jachter, *Cosmetic Surgery*, Part 1, 4

<sup>422</sup> *ibid*

pain.<sup>423</sup> In a similar opinion from 1964, Rabbi Menasheh Klein permitted cosmetic surgery on both men and women to remove blemishes on their body, classifying this as the normal process of biblically permitted healing. He later permitted the removal of sunspots on men as it caused him shame within public society.<sup>424</sup> Klein does not classify the removal of scabs or spots in relation to beautification the same way Rashi does, he does recognize that cosmetic surgery and the need to be physical appropriate within a society is not a gender-specific issue.

Breisch also recognizes that all healing involves some degree of risk involved with cosmetic surgery but these are acceptable as part of the divine command to heal.<sup>425</sup> He invokes the principle that "the multitude has trodden thereon" (*shomer pita'im hashem*) to permit some activities that involve some danger if people commonly engage in it. This principle will be further explored in the discussion on dangerous medical procedures and also on cigarette smoking. Breisch also notes how the risks for surgery have been lowered considerably and therefore the risk is quite tolerable and thus permissible in our times.<sup>426</sup> Breisch only permits cosmetic surgery in cases where it is severely needed, not permitting it out of convenience. He does not forbid it for convenient purposes, merely because he does not address the topic directly.<sup>427</sup> Either way, Breisch is an excellent case study about the various levels of permission involving cosmetic surgery and even a recognition that with

---

<sup>423</sup> *ibid*

<sup>424</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, 534-535

<sup>425</sup> *ibid*, 534

<sup>426</sup> Chaim Jachter, *Cosmetic Surgery*, Part 1, 4

<sup>427</sup> *ibid*, 5

increased technology there is lower risk, and whereas greater approval of the technique.

However, Rabbi Chaim Jachter writes that not all Orthodox *poskim* are as receptive to the medical and social possibilities offered by cosmetic surgeries. Rabbi Eliezer Waldenberg, in *Tzitz Eliezer* 11:41, takes a much more strict position than Feinstein and Breisch forbidding all cosmetic surgeries.<sup>428</sup> Furthermore, according to Waldenberg, a surgeon is forbidden to perform such an operation.<sup>429</sup> Waldenberg declares that the Divine license to heal only applies to illnesses, not to changing one's physical appearance. It would be an affront or insult to the Creator and imply that the Divine work was imperfect. Waldenberg cites a story in *Ta'anit* 20b to support his argument. In this story, Rabbi Elazar ben Shimon insulted an ugly man only, leading to great repentance afterwards. The *Tosafot* state that this ugly man was actually Elijah the Prophet in disguise.<sup>430</sup> Going a step further, in *Tzitz Eliezer* 12:43, he simply forbids all elective surgery, cosmetic or otherwise. For Waldenberg the risk of any elective surgery is simply too great.<sup>431</sup>

However, it is possible that Rabbi Waldenberg's position on cosmetic surgery is not as stringent as Jachter implies. Waldenberg's student, Dr. Avraham Steinberg in *Hilkhhot Rofim U'refu'ah*, a summary of the rulings of Waldenberg on medical subjects, wrote "it is forbidden to consent to plastic surgery for the purpose of mere

---

<sup>428</sup> Chaim Jachter, *Cosmetic Surgery: A Review of Four Classic Teshuvot - Part 2, Kol Torah*, January 15, 2005, <http://www.koltorah.org>, accessed on December 4, 2012, 6

<sup>429</sup> Avraham Steinberg, *Jewish Medical Law*, 123

<sup>430</sup> Chaim Jachter, *Cosmetic Surgery, Part 2*, 6

<sup>431</sup> *ibid*, 7

beauty - when there exists no disease or pain.”<sup>432</sup> Therefore, if there is disease or pain, cosmetic surgery could be considered. Returning to *Tzitz Eliezer* 11:41, Waldenberg does appear to leave himself room to permit plastic surgery for legitimate medical reasons. In this responsum, he indicates that he is talking about plastic surgery “for the sake of physical beauty, etc., in the absence of any disease or pain.” Waldenberg writes, “Permission was never granted to the physician to practice medicine for such a purpose.” The inference would be that if plastic surgery is indicated for purposes other than physical adornment, it might come under the heading of *r’fuah* (healing) and be permitted.

Lastly, we consider the opinion of Rabbi Yitzchak Yaakov Weisz, who raises a similar argument to the one made by Bleich about trans-sexual surgery – that anyone choosing to undergo this procedure is psychologically incompetent. Rabbi Weisz in *Minchat Yitzchak* 6:105:2 adopts the same position as Feinstein in that *chavalah* (wounding) is not prohibited if done for a beneficial purpose.<sup>433</sup> In 1967, he permitted the use of elective surgery to correct a congenital or acquired defect to relieve the anxiety or mental anguish of one concerned about their appearance.<sup>434</sup> However, Weisz believes that while wounding may not be the main issue, the risk involved in any surgery cannot be ignored. In *Minchat Yitzchak* 1:28:2 he forbids any surgery unless it is necessary to save the patient's life. Referring to the same comment by Rabbi Moses Isserles that Breisch discussed regarding the cutting of a limb, Weisz states that this is only permissible in the case of life or death. However,

---

<sup>432</sup> Avraham Steinberg, *Hikhot Rofim U'refu'ah*, Jerusalem: Mosad Harav Kook, 1978, 168

<sup>433</sup> Chaim Jachter, *Cosmetic Surgery*, Part 2, 7

<sup>434</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, 535

comments Rabbi Chaim Jachter, Isserles does not seem to imply such grave terms at all.<sup>435</sup> Weisz does acknowledge that some who want to undergo cosmetic surgery are *choleh* (sick), but does not permit the surgery as they are not *choleh sheyeish bo sakanah* (a sick individual whose life is endangered).<sup>436</sup> Rabbi Weisz concludes that he is unsure of the matter and that with God's help he will look into further at a later time.<sup>437</sup>

Let us conclude our look at the Orthodox permissibility of cosmetic surgery with Rabbi Chaim Jachter's discussion about choosing to perform risky modifying procedures on oneself. Jachter struggles to understand if Feinstein's permission of cosmetic surgery could be broadened. To answer this question, he analyzes *Igrot Moshe, Orach Chaim* 3:90 that discusses feeding a seriously ill patient through an IV on Yom Kippur. Because the patient has an illness, he or she is forbidden to fast on Yom Kippur for the sake of protecting that person's health. However, is it permissible to give this person medication through an IV in order that he or she may be able to fast and observe Yom Kippur as it is normally practiced? Feinstein rules that the IV is not permitted based on *Bava Kamma* 85a's understanding of Exodus 21:19 which obligates a person to pay the medical bill of the person he or she injured. This verse leads to the statement that "the Torah permits a physician to heal" and hence the *mitzvah* of medicine. However, Feinstein, through the *Tosafot*, understands this permission to be only in cases where a person is ill or injured, not simply out of convenience. Therefore, Feinstein concludes that an IV on Yom Kippur

---

<sup>435</sup> Chaim Jachter, *Cosmetic Surgery*, Part 2, 7

<sup>436</sup> *ibid*, 7-8

<sup>437</sup> *ibid*, 8

the sole purpose of which is to enable the patient to fast is not *r'fuah* (healing). Even though the IV assists with a *mitzvah*, it does not heal a malady or injury and is therefore not permitted.<sup>438</sup> Another argument that Feinstein cites against this permit is the fact that the insertion of the IV would result in physical injury (*chavalah*), which is normally forbidden for purposes other than medical ones. Jachter however does not reach a solid conclusion. "Perhaps Rav Moshe also believes that *Hashem* permits us to perform cosmetic surgery only when it is done in case of great need but not when it is done merely for convenience. It is difficult to determine what Rav Moshe's opinion is on these matters from his published Teshuvot."<sup>439</sup> Jachter is concluding that loopholes and openings do exist to permit more halahically acceptable changes to one's physical nature but it is unclear if the *poskim* would ever engage these possibilities.

---

<sup>438</sup> Chaim Jachter, *Cosmetic Surgery*, Part 1, 2-3

<sup>439</sup> *ibid*, 3

## The Power to Influence the Mind

The previous section dealt with various intersections between the law and medical procedures that change the physical body. Let us now consider the mind. Through the use of drugs, for example, humans are able to create mind-altering experiences and places themselves in mental states that might interfere with their normal decision-making process or even lead them to immoral situations. But we can even go a step further. Other people and other ideas can influence our minds. Cult leaders are able to convince some to make decisions that they are illegal. In addition, some people claim that environmental influences, such as violent imagery, can lead us to reconsider the immorality of a given situation. The question then arises – to what degree are we still responsible for our own actions and decisions? While the *halacha* provides for a certain degree of personal choice and decision making the stronger our drugs or interrogation methods get, the more we wonder about our own ability to control what we know or how we express ourselves. When are we responsible? Or, when are we no longer in control of our own mind and will?

### *Reform discussion and analysis:*

When it comes to addressing the question of drug use, Walter Jacob begins with the overriding principle of protecting one's health. Our tradition strongly favors the use of medicine to decrease pain and for the treatment of pain. "We would have a greater fear of continuous pain than addiction."<sup>440</sup> While this is rule number one, there are certainly circumstances where pain is not the reason that one

---

<sup>440</sup> NARR, Drugs to Alleviate Pain, August 1991, 240

engages in the use of drugs, particularly mind-altering or psychedelic drugs. These drugs are extremely powerful on the person and their actions. Jacob very plainly states that any psychedelic drug used purely for pleasure is illegal. However, his argument is not based on any moral opposition but to its legality within the United States. Invoking the halachic principle *dina malchuta dina* (the law of the land is the law, a principle used four times in the Babylonian *Talmud* – *Niddarim* 28a, *Gittin* 10b, *Bava Kamma* 113a-b, and *Bava Batra* 55b-55a) he declares them illegal and therefore not permissible for use.<sup>441</sup>

Legality aside, Jacob continues to explore the reasons for take such narcotics. Two main reasons are discussed – health and a spiritual experience. As mentioned above, Jacob approves the drug use for medical purposes. He states that any drug used for healing, and under the prescription of a physician, may be used, no matter if it is mind-altering or not.<sup>442</sup> This statement is in direct contrast to Rashbam's comments on *Pesachim* 113a many centuries earlier. Rashbam is commenting upon the statement in the *Talmud*: Rav said to his son Chiya, "Do not get into the habit of taking drugs (literally, potions)." Rashbam, the major commentator on the page, seeks to explain this statement. He says that Rav's major concern is that if one becomes habituated to a particular drug, one will incur great expense; hence, his advice to his son. Rashbam offers a second explanation as well: "Don't take drugs, because a drug that is beneficial for one thing may be harmful for another."<sup>443</sup> Notice that Rashbam does leave an opening for "if some other form of medicine is

---

<sup>441</sup> CARR, Mind Altering Drugs for Pleasure, May 1985, 122-123

<sup>442</sup> CuRR, Psychedelic Drugs, 246

<sup>443</sup> CARR, Mind Altering Drugs for Pleasure, May 1985, 120-121



available.” Jacob reads Rashbam as saying that there was no danger of drug abuse among the Jewish population. Rashbam shows an awareness that drugs can become habit-forming, but does not believe drug abuse to be a major concern or epidemic for the Jewish community of his time.

Like Rashbam, Jacob is also concerned about the Jewish people as a whole. Jacob is posed the question about whether it is permitted to give out free needles to drug users as a method to stem the transmission of AIDS. Jacob actually permits the practice because he believes that AIDS is a greater evil than drug usage and on the grounds of saving a life above all.<sup>444</sup> Jacob is weighing the evil and danger of two different actions. On one hand, drug dependency and addiction is bad for individual and communal health, but through the proper medical and psychological aid, it can be cured or at least treated. On the other hand, there is no known cure for AIDS, which clearly endangers individual and has reached epidemic levels around the world. Faced with a choice between these two unpalatable alternatives, Jacob opts for what he considers the lesser of two evils. He justifies this determination on the grounds of *pikuach nefesh* of the addict as well as of others with whom he or she will come into contact.

Now the second reason some give for taking drugs – the spiritual experience derived from them. This reason is promptly dismissed in the Reform responsa. Medical evidence shows that these drugs can severely injure someone, or put him or her at great risk, and any sort of religious knowledge is meant to be reached with a clear, sober mind. One should not endanger their health to try to seek religious

---

<sup>444</sup> NARR, AIDS and Free Needles for Drugs Addicts, June 1989, 274

insight.<sup>445</sup> The high received from drug usage is purely artificial and does not bring one to a higher state of *chochma* (wisdom) or perception of the Divine. Therefore in fact all the drug user is doing is continuing to risk harm to himself or herself, which is a principle that cannot be overlooked. Therefore, since psychedelic drugs promote no assurance that a "heightened state of awareness" will be attained, they cannot be classified as pleasure seeking, so they are prohibited. Kabbalistic experiences are meant to come through intense study, commitment, and *mitzvot*.<sup>446</sup>

Jacob appropriately explains that one does not become wiser or reach a deeper state of spiritual awareness. Therefore, no could not become a great *rav* or *tzaddik* (righteous person) through drug usage. However, Jacob does not answer the question about the criminal responsibility for taking controlled substances. It can be inferred that Jacob would conclude that drug usage would not exempt anyone from legal responsibility. As the drug use is temporary and can be reapplied, you are not actually changing the person's behavior permanently. Therefore, the person is not changed and the responsibility is still theirs.

Freehof brings up another interesting case that can be applied to this discussion – deprogramming young people. Freehof wrote in a time where many young people were attracted to cults or other organizations that used either narcotics or brainwashing techniques to manipulate and control the minds of its followers. He claimed that this problem was unique to present day and had no parallel in the past.<sup>447</sup> In this manner, Freehof quickly and efficiently separates his

---

<sup>445</sup> CuRR, Psychedelic Drugs, 249-250

<sup>446</sup> CARR, Mind Altering Drugs for Pleasure, May 1985, 122

<sup>447</sup> NRR, Deprogramming Young People, 231

legal decision from any halachic restraints and creates a way for him to make a whole new argument. He also argues that there are so many new temptations and methods of persuasive propaganda that were not available in the past, so we cannot apply ancient examples indiscriminately. The question is then if we can describe modern professional methods of deprogramming as meaningful and acceptable in the spirit of our Jewish religious thought.<sup>448</sup> It is assumed within the argument that deprogramming is forced, painful, traumatic, and potential violent. Freehof is asking if you can change someone's behavior in a dramatic way if you have positive means. The answer is no. "The duty to find some way to reprove or to teach or to convince is basic in the law. The purpose of such reproving is not to denounce, but to help restore the balance of thought and judgment."<sup>449</sup> Hateful as some of these cults are, and serious as the duty to rebuke, violent methods are counter-productive and might alienate generations. The Jewish ideal of the relation between generations holds above modern techniques.<sup>450</sup> From this responsum we do get an answer to our larger question – we cannot forcibly change human behavior using our modern techniques that were unknown to the Sages.

The Jewish ideal holds us to a higher purpose and implores us to seek different ways to achieve this goal. Connecting to the earlier discussion about drug usage, Jacob teaches that our response should be the same. The community should step in to help and try to heal someone in need. Regarding drug abuse, even though the parents' responsibility under Jewish law for the actions of their children ends

---

<sup>448</sup> *ibid*, 232-233

<sup>449</sup> *ibid*, 233

<sup>450</sup> *ibid*, 234-235

when the children reach the age of thirteen, in our society the parents still care for the child through college and sometimes beyond. "It would be wise if the parents continue to be helpful and try to get the young man involved in a treatment program but direct responsibility is no longer theirs."<sup>451</sup> We conclude that the person is not making the correct choices for their own health but our recourse as Reform Jews is not to rid ourselves of them but instead to care for them and help bring them back to health once again.

To switch topics to a different area, the Reform scholars struggle with the question of limits of experimentation, that is, to what extent can you test on human subjects without being intrusive, disrespectful, or risking their health. On one hand there is a major impetus to do good by the community's general health, seeking to take the best possible direction for the future. However, we are limited by the individual choice, which is valued so highly by Reform scholars. Regarding the doctors themselves however, the ambiguity is far less. Jacob takes a bold stance on the issue. Referencing Orthodox *posek* Abraham S. Abraham he concludes that no doctor has the right to subject another person to a medical experience even though such an experiment may eventually help others.<sup>452</sup> The main concern is consent and recognizing that each person must have a say in whatever is being done to their bodies. However, when the issue about a person volunteering himself or herself for a dangerous experiment Jacob reaches an impasse. As we will see with Conservative and Orthodox scholars, the decision here is simple. But for Jacob, he is not willing to

---

<sup>451</sup> NARR, Responsibility Towards a Drug User, June 1989, 238

<sup>452</sup> CARR, Dangerous Medical Experiment, August 1985, 28

fully prohibit, letting the person make his or her own decision. After all, acting to save another's life is considered a *mitzvah*.<sup>453</sup>

The CCAR Responsa Committee, in a responsum about Testing on Human Subjects goes a step further and celebrates Reform Judaism's relationship to science and the advancement of new technology: "We liberals have historically placed great faith and trust in the power of reason and science to improve the human condition. We therefore cannot ignore the critical importance of scientific experimentation to the advancement of medicine. The very institution of "modern medicine" whose achievements we praise and upon which we rely to protect our lives is largely the product of testing and experimentation, much of it upon human subjects.<sup>454</sup> Our caution and concern for the limitations of human's knowledge and power cannot be an impediment from performing experiments and creating new procedures and processes that could potentially save countless lives.<sup>455</sup> This approach takes the stance that our non-divine like character should not be a stumbling to trying to achieve our full potential and make as much positive change as we can. This requires us to be always cognizant of the advances in medical science and always considering our position in relationship to the latest research. The CCAR Responsa Committee notes how we rely on the "overwhelming view" of scientists, trusting them that their medicine is safe and effective.<sup>456</sup> We trust that their methodology has been rigorous, tested and retested, and scrutinized by peer review. Scientists

---

<sup>453</sup> *ibid*, 29

<sup>454</sup> TFN, Testing Emergency Medical Procedures Without the Consent of the Patient, 5755.11, 382-383

<sup>455</sup> *ibid*, 383

<sup>456</sup> RRTFC, Compulsory Immunization, 5759.1, 114

can be wrong and conclusions can change. Our “overwhelming view” that scientists deserve our confidence is crucial to our relationship to the frontier of medicine.

But while science and technology can be celebrated, what laws can we willingly break for the sake of experimentation? Can it be forced upon us? The CCAR Responsa Committee discusses medical experimentation and testing drugs made from pork by-products. Rashi says that we may use anything for the sake of healing, even if it is a prohibited substance, for the sake of *pikuach nefesh*.<sup>457</sup> But in the case of non-fatal illnesses, the patient can still take a prohibited substance as medicine if it is taken in a way that is not typical for eating or drinking, such as injection or even swallowing.<sup>458</sup> Therefore a patient can break *kashrut* in order to take new medicine from pork-products in pill or capsule form.<sup>459</sup> There is nothing controversial in this responsum so far. It has demonstrated that all ritual prohibitions, including *kashrut*, can be set aside for the sake of *pikuach nefesh*.

The issue at hand is if *pikuach nefesh* can be used when testing experimental drugs or procedures. While the results of scientific experiments can be used to save lives, the act of testing itself is not directly *pikuach nefesh*. This begs the question about what is the fundamental relationship between science and medicine? Medicine is a *mitzvah*, is science? There is no doubt that medicine and *r'fuah* (healing) are held above all else. The CCAR Responsa Committee writes, "Virtually every prohibition in the Torah is set aside for the sake of *r'fuah*. And *r'fuah*, moreover, is viewed as a 'science,' an organized body of learning that is mastered by

---

<sup>457</sup> RRTFC, Medical Experimentation: Testing Drugs Made of Pork By-Products, 5758.8, 139-140

<sup>458</sup> *ibid*, 140-141

<sup>459</sup> *ibid*, 141

those specially trained in its accepted standards and procedures. Like all science, medicine as we understand it today is an experimental enterprise. The many wonderful lifesaving tools of contemporary medicine, the drugs and surgeries and therapies, could scarcely have been developed had they not been tested in accordance with the rigorous standards demanded by the scientific community."<sup>460</sup>

The second half of the quote draws a close connection between medicine and science, seeing science is the necessary first step that leads to medicine. This however does not equate the experiment-driven scientific process with the proven and effective tools of modern medicine. Failures are part of the scientific process. "They are in integral element of science itself. In our case, the science we call medicine requires experimentation of the sort described in our *sh'eilah* (question), whether or not that experiment succeeds in establishing the effectiveness of the cardiac drug. In the absence of such experimentation, the practice – that is to say, the science – of *r'fuah* could scarcely be conceived."<sup>461</sup>

The authors of this responsum accept the important role science plays in creating the medical techniques, drugs, and procedures that keep us alive and protect us, allowing us to fulfill the *mitzvah* of *pikuach nefesh*.

"For this reason, too, we today cannot conceive of the *mitzvah*, the religious obligation of medicine, apart from the scientific approaches that structure and govern the practice. Just as the science of medicine cannot exist apart from the experimental methods by which therapies are tested and perfected, so too would it be impossible to fulfill the *mitzvah* of *refuah* without them.

---

<sup>460</sup> *ibid*, 142

<sup>461</sup> *ibid*, 142-143

We do not distinguish between the therapies of medicine on the one hand and the legitimate scientific procedures on the other. The term 'medicine' includes both the application of lifesaving measures and the development of those tools in accordance with the methods of experimental science."

This responsum has effectively broadened the definition of medicine to include the experimental science that leads to its practical application to save lives. The consequence of this statement is quite impactful. By grouping science with medicine, the Reform Movement sees the concepts of "science" and "Judaism" not as contradictory but as complementary. The act of science is part of the act of healing and therefore is part of our religious responsibility. We should embrace the possibilities that science offers, even at the frontier of medicine because it does help us in the act of healing. Legally speaking, grouping science with medicine offers scholars a way to permit the use of experimental techniques on the grounds that it can help save a life. To be clear, science is not equated with medicine and all experiments certainly do not have *carte blanche*. But science is associated with medicine and seen as necessary component of *r'fuah*.

*Conservative discussion and analysis:*

The question of personal responsibility and individual mental choices arises through two Conservative responsa, all peripherally related but still relevant to the questions at hand – computer privacy and violent video games. While the individual subject matters in each of these cases is not of a highly medical nature, they include discussion from within the Conservative world about how far the law and its



scholars go to understanding a person's decision, as detrimental as it may be. The main conclusion we discover is that there is an expectation of a high level of moral behavior but no legal basis to punish anyone based on how they think.

Rabbis Elliot Dorff and Elie Spitz discuss computer privacy in the modern workplace. They consider the boundaries between professional time and resources versus personal use of property or technology. While they do recognize the need for a business or company to function efficiently and have committed workers, the responsum authors conclude that the *halacha* does not permit the company to invade the personal privacy of the individual. Citing multiple *midrashim* as reference, the responsum authors write "As God keeps His own confidences, then, we too must preserve both our own privacy and that of others to enable us to be like God. Moreover, since human beings are created in God's image (Genesis 1:27), when we honor God's creatures we honor God, and, conversely, degrading people is tantamount to dishonoring God."<sup>462</sup> The act of embarrassing the person or implying they lack loyalty is too great for a business to intrude on the individual's domain. "Furthermore, God intends that the Israelites be "a kingdom of priests and a holy people" (Exodus 19:6), not just a nation that observes the minimal necessities of maintaining order and providing for basic needs. As the Torah specifies, to be a holy people requires, among other things, that a lender not intrude on a borrower's home to collect on a loan (Deuteronomy 24:10-11), and that nobody be a talebearer among the people (Leviticus 19:16)."<sup>463</sup> This responsum does not mind legal ground

---

<sup>462</sup> Elliot N. Dorff and Elie Spitz, Computer Privacy and the Modern Workplace, *Hoshen Mishpat* 331:1.2001, 3

<sup>463</sup> *ibid*

for invasion of space to recover stolen property, even if it is intangible, i.e. time or productivity. The law respects each person to make what should be morally appropriate and outstanding decisions. The law expects the person to uphold Jewish values that encourage appropriate behavior but does not give space for the business to enforce them.

Shortly after the infamous and tragic events in Columbine, Colorado, Rabbis Elliot Dorff and Joshua Hearshen penned a responsum about violent and defamatory video games. While video games are not as extreme as the psychedelic drugs and cults discussed in the Reform responsum, the question was raised about how these external influences could cause negative behavior and actions. Are these external stimuli bad enough to cause people to be unaware of their actions or not be responsible for damage done? And furthermore, is the danger great enough for the Jewish law to forbid them?

Dorff and Hearshen begin their exploration of these questions with a medieval understanding about mental fantasies and the law. Maimonides and others declare *hirhur davar ha-asur* (thoughts or fantasies about forbidden acts) prohibited, including anything likely to cause such fantasies.<sup>464</sup> Maimonides believed that the *yetzer ha-ra* (evil inclination) grows as the illegal and forbidden nature of the act grows. Therefore, the stronger the temptation, then the greater the person is likely to act on those temptations, hence the ban of fantasies and activities that would produce them in the first place.<sup>465</sup> Maimonides argued that by

---

<sup>464</sup> Elliot Dorff and Joshua Hearshen, Violent and Defamatory Video Games, *Even HaEzer* 21:1.2010, 17

<sup>465</sup> *ibid*, 19

eliminating the cause of the negative behavior, the person would no longer be influenced to engage in negative behavior.

But does the influence of the *yetzer ha-ra* actually eliminate personal responsibility regards to any illegal or illicit actions? Psychologist Moshe Halevi Spero argues that such prohibitions are an effective tool to keep people from engaging in these actions or behaviors. Such prohibitions serve as a form of *viddui* (confession) that leads the person to *teshuvah* (repentance), or can be seen more generally as part of *hochachah* (rebuke). Spero speaks about how *hochachah* can be an effective tool to influence someone's behavior by citing Maimonides' definition of the term: "One who sees his fellow sin or that he is following an evil path, it is an obligation to return him to the good and to make him know that he sins against himself... as it is said, 'You shall surely rebuke your friend' (Leviticus 19:17)."<sup>466</sup> The psychologist's goal is to ultimately help the patient change his or her ways, or in Spero's word, to serve as "casual change agent in the patient's *teshuvah* project."<sup>467</sup> The purpose of these prohibitions in Jewish law is to rid the things that cause fantasies.<sup>468</sup> Therefore, these prohibitions are meant to prevent actions, not serve as legal justification for any consequence of being negatively influenced. People are liable for their own thoughts and actions, despite however external stimuli may influence us to believe that a certain action is considered good or moral. Just

---

<sup>466</sup> Moshe Halevi Spero, *Judaism and Psychology: Halakhic Perspectives*, New York: Ktav Publishing House Inc. and Yeshiva University Press, 1980, 152

<sup>467</sup> *ibid*

<sup>468</sup> Elliot Dorff and Joshua Hearshen, *Violent and Defamatory Video Games, Even HaEzer* 21:1.2010, 20

because fantasies and activities push us toward the *yester ha-ra*, it is still our choice to follow them.

The Conservative authors of this responsum offer some concrete rulings about whether such games should be prohibited from society, as a means to control behavior and influences. Whereas the Orthodox may choose to ban all potentially dangerous things, the authors choose to understand that there is a connection between what one feels and thinks and what one does. Therefore the authors take the advice of health organizations to limit the time spent on violent video games and entertainment, instead of arguing for a full ban.<sup>469</sup> The Conservative conclusion is a more measured response, similar to the ruling on computer privacy, which respects the individual to make the right decision. Dorff and Hearshen note that this conclusion is influenced by Western, American values that differ from classical Jewish values. "The United States and Western nations generally place a high value on protecting the right to free speech, the right that argues most strongly for permitting violent or defamatory video games. Jewish law thrives on vigorous debate, but it also includes far stricter limitations on what is appropriate speech than American law does. This is part of a larger picture: although Western cultures certainly value groups like families, communities, and nations, they emphasize the individual and his/her rights. In contrast, classical Judaism focuses on group ethics."<sup>470</sup> Dorff and Hearshen do not conclude that Western or American values usurp Jewish values, just that they play in role in their legal recommendation.

---

<sup>469</sup> *ibid*, 23

<sup>470</sup> *ibid*, 20

Dorff and Hearshen use a non-traditional source to support their rulings – modern psychological research – in exactly the same way that rabbis have always used expert opinion as data for their decisions. Mental health organizations have found few connections between fantasy and actions, as millions of people play such games but very few emulate the violence in the games. People recognize the line between fantasy and reality and do not blur our moral thought and legal rulings.<sup>471</sup> The human mind has the capacity to reason between what is right and what is wrong. To reiterate the conclusion, the authors encourage people to follow the recommendations of mental and physical health experts regarding limiting one's exposure to electronic entertainment, including interactive violent or defamatory material so minimize their deleterious effects.<sup>472</sup> The authors cannot ban playing any violent or defamatory video games because we recognize the differences between fantasy and reality and recognize that Jewish law works only on action, and not on thoughts or feelings.<sup>473</sup> This last comment is clearly a departure from the above statement about thought and action. The general conclusion is that the individual is responsible for thought and action, i.e. the example of the *Shema*, but the law can only react on the action. One may think bad things, but the law only responds if the individual acts on those feelings. If anything, this responsum gives each of us the benefit of the doubt. While humans often follow ethical guidelines there are moments that are unclear and actions that are less than ideal.

---

<sup>471</sup> *ibid*, 24

<sup>472</sup> *ibid*

<sup>473</sup> *ibid*, 25

The law similarly allows for flexibility. While Jewish law speaks in terms of *assur* (acts that are forbidden), *muttar* (permitted), and *hayyav* (required), we are expected to see decision-making as more than black-and-white. Citing Isaiah 49:6, 42:1-4 and 51:4-5, Hillel in *Mishnah Avot* 2:5, *Bava Metzia* 30b, and Nachmanides' *Perush La-Torah* comment on Deuteronomy 6:18, the Conservative *poskim* claim that Jews are expected to behave in a way of "virtue ethics," where morals and behavior are encouraged or discouraged based on what is right and good. Nachmanides cites the principle of *lifnim m'shurat ha-din* (going beyond the requirements of the law) to what is morally appropriate.<sup>474</sup> Dorff and Hearshen recognize that this principle, as well as many others, represents heuristic function of law meant to encourage people to be better and more intentional in their actions. The rabbis "saw a life of fulfilling the commandments as aimed at making us better, 'purified' human beings."<sup>475</sup> One could argue that such a view of law is aspirational or even an idealization. Or it could be considered motivational for the individual Jew struggling to hold up a value system against negative external stimuli. We can change ourselves mentally – through the positive values of mitzvot and the Jewish tradition.

But does the law have any say? If we cannot force behavior, how can the law provide an alternative, positive influence? Jewish law does work to purify us, and our actions. An example is given about how the Mormon Church has forbid smoking, leading to the lowest rate of smoking in the United States. Rav in *Genesis Rabbah Lech L'cha* 44:1 speaks of the laws purifying us, and the rabbis clearly saw the need

---

<sup>474</sup> *ibid*, 25-26

<sup>475</sup> *ibid*, 29

to reflect positive behavior with the inclusion of *Pirke Avot*.<sup>476</sup> Dorff and Hershen wax philosophically about how Jewish law defines good people. Based on a number of different sources, including Micah 6:8 and the sections of *Hichot De'ot* in the *Mishneh Torah*, can we synthesize what makes the ideal person in classical Judaism? He is "a person who honors and respects his or her parents; who cares for others and demonstrates that caring through concrete actions to help others; who cares for others and demonstrates that caring through concrete actions to help others; who marries and has children, if possible, and who then carries out the duties of parenthood faithfully; who is educated and educates his or her children in both Judaism and a profession; who takes an active role in his or her community; who lives in Israel; and who hopes and works for a Messianic future in which there is peace and all of the other features of God's kingdom on earth."<sup>477</sup> This is the ideal person that is sought.

But people cannot be forced into a given set of actions or ethics. The *halacha* and law of the community cannot do this. The boundaries of the law do not go this far. Dorff and Spitz's summary: "Specifically, viewing violent or defamatory video games may not be expressly forbidden, given that they do not involve the players in prohibited acts in the real world and may not even make such acts more likely, but it still may be – and, we think, is – much less than the ideal, something that is displeasing to the Sages of today and that undermines our mandate to strive to be a holy people. The proper adjectives for such decisions are thus not 'required,' 'prohibited,' or their synonyms, but rather 'appropriate,' 'inappropriate,'

---

<sup>476</sup> *ibid*, 28-30

<sup>477</sup> *ibid*, 30-31

‘encouraged,’ ‘discouraged,’ and the like; and the apposite verbs are ‘should’ and ‘should not or ‘ought’ and ‘ought not rather than ‘must’ or ‘must not.’”<sup>478</sup> Dorff and Spitz include a note about the social responsibility to create good people: Judaism does not expect us to be perfect, hence, the requirement to repent of our sins every day, as testified by the fifth and sixth benedictions of the *Amidah*, however it would be wrong of us to promote such violence and inappropriate behavior through synagogue sponsored events that include these games or activities.<sup>479</sup> "In light of these values, then, we see avoiding violent or defamatory video games as a mandate of the Jewish tradition for both individual Jews and for Jewish institutions. Playing these games may not be legally forbidden, but it is not what Jews should do."<sup>480</sup> Jews are expected to behave better, but the Conservative responsum does not prohibit individual's choice to such behavior.

*Orthodox discussion and analysis:*

In our discussion about making intentional decisions that contain an inherent risk or danger, we will use four case studies from Orthodox scholars: illicit drug use, participating in dangerous medical procedures, human experimentation, and organ transplants. Regarding illicit drugs use, like the Reform and Conservative scholars that have already been discussed, there is no effort to permit them. For example, Rabbi Feinstein prohibits marijuana for multiple reasons. First, medical evidence has proven that is harmful to the body. The damage may be mostly mental, not

---

<sup>478</sup> *ibid*, 33

<sup>479</sup> *ibid*, 33-34

<sup>480</sup> *ibid*, 36



physical, but it confuses the mind and distorts one's abilities of reasoning and comprehension. As a result, this person should not be able to study Torah and engage in other functions. Second, marijuana can bring on extreme and uncontrollable lusts and desires. Third, the use of marijuana against a parent's wish should violate the commandment to honor one's father and mother. Other issues and prohibitions may arise so Feinstein concludes that one must use all energies to eliminate such a habit.<sup>481</sup> The *Nishmat Abraham* argues similarly, "The intake of narcotic drugs in any form, unless on specific medical instructions, is a most grave offense," declaring that its serious danger as a reason to prohibit the behavior.<sup>482</sup> His argument is based on Maimonides' claim that a drug is like a pursuer that comes to kill a person and avoid be avoided.<sup>483</sup> No scholar permits illicit drug use.

Regarding giving permission for a patient to engage in a dangerous medical procedure there are two main criteria that are looked at – level of risk and proximity to death. We look first at subjecting oneself to different types of risk. The halachic principle, which was already briefly discussed in the chapter on Genetic Engineering and the risk involved in surgery for patients with Tay-Sachs disease, is *shomer pita'im hashem*, meaning "God preserves the simple" from Psalm 116:6. This principle has already been mentioned in previous chapters and will be further discussed later in this chapter, especially in regards to cigarette smoking. This rule determines acceptable assumption of risk. It was formulated by the sages of the

---

<sup>481</sup> Fred Rosner, *Modern Medicine and Jewish Ethics*, New York: Yeshiva University, 1991, 398-399

<sup>482</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 6

<sup>483</sup> *ibid*

*Talmud* in *Shabbat* 129b, *Yevamot* 12b, *Ketubbot* 39a and *Niddah* 31a, as – “Since the multitude have trodden thereon, God preserves the simple.”<sup>484</sup> The concept of this principle is that any activity routinely undertaken by members of society and not perceived by them as hazardous is permitted despite the inherent danger. The “simple” person, who is blissfully unaware of the danger inherent in commonplace activities, the Divine still looks out for him or her as well. However, God’s protection is not given to those who foolhardily assume risks shunned by more knowledgeable or responsible members of society. Risks ignored by people in general fall below the threshold of “danger” of which Jewish law takes cognizance.” Therefore, everyday actions such as driving a car, using a kitchen knife, or riding an elevator, all of which have inherent risks, are not prohibited under rabbinic law because everyone accepts the risks for such activities. But when a person understands the risks and pushes the boundaries of the danger, such as a daredevil, the law cannot look idly by any longer. As a result of this principle, hazardous medical procedures are permitted and left to the discretion of the individual, but not mandatory. This principle recognizes the inherent danger involved in modern medicine and the risks of healing.<sup>485</sup> Therefore the principle of *shomer pita'im hashem* is a useful tool to allow halachic decisions that permit the use of new and sometimes unproven medical techniques.

Bleich offers the opinions of a few rabbinic scholars that further develop the idea of risk. Rabbi Ryeh Balhuver recognizes how one may involve a risk in order to

---

<sup>484</sup> J. David Bleich, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998, 239-240

<sup>485</sup> *ibid*, 241

heal but considers the difference between an inherent immediate danger and a future danger, even if fulfilling a *mitzvah*, i.e. saving a life.<sup>486</sup> Rabbi Jacob Ettlinger's *Binyan Zion*, no. 137 also discusses the difference between present and future danger, using the example of a scorpion and serpent interrupting prayer.<sup>487</sup> The *Binyan Zion*, an authoritative source according to Bleich, would not permit the use of medicine or procedures that would shorten a person's life. It cannot be sanctioned on the basis of "the multitude has trodden thereon" because the danger that lies in the future is too great to be dismissed.<sup>488</sup> Returning to the description of this halachic principle, the law cannot constantly ignore those who are aware of risks and foolhardily disregard them. Risks have limits.

However, the concept of risks changes as the patient nears death. The principle of preserving life becomes more profound and takes on a much higher weight. To this end, Waldenberg rules, "Therapeutic surgery involving a significant risk of death may be performed if the patient will otherwise die from his disease in the near future."<sup>489</sup> Note how the surgery is therapeutic, meant to aid the patient, not cure him or her. Waldenberg also permits a dangerous surgery if the patient's death from the disease is uncertain yet have life-threatening moments. If one's life is in danger the law applies, even if there is a risk that surgery will hasten his death, as long as the chances for cure or palliation are greater choosing not to have

---

<sup>486</sup> *ibid*, 243-244

<sup>487</sup> *ibid*, 242-243

<sup>488</sup> *ibid*, 246

<sup>489</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 120

surgery.<sup>490</sup> This ruling also applies “in cases where the therapy is very involved and sophisticated or where dangerous experimental drugs are used.”<sup>491</sup> Going yet a step further, Waldenberg permits surgery, although not life-threatening surgery, if the patient is in great pain and suffering, but not near death.<sup>492</sup> The criterion for Waldenberg, if described in terms of the debate presented by Bleich above, is if there is immediate need.

Similar to Waldenberg, the *Nishmat Abraham* rules that a patient close to death may undergo an operation, even though the operation itself carries a risk of being fatal. However, physicians and rabbinic authorities must be consulted to assist with the decision.<sup>493</sup> As a caveat, the *Nishmat Abraham* also rules a patient who is not in a critical condition may undergo an operation that will relieve suffering and restoring him to good health.<sup>494</sup> This scenario sets up a middle ground between a dying patient and Bleich’s example of an elective use of a hazardous procedure. But risk is not a hard and fast rule. It is fluid as medicine progresses and develops. In 1990, the *Nishmat Abraham* updated his ruling on prostatic cancer with an additional statement to accommodate newly discovered therapy that involves the removal of both testes, i.e. for the sake of *r’fuah* one may ignore the prohibition against destroying the sex organs.<sup>495</sup> While risk is the main principle that is used by

---

<sup>490</sup> *ibid*

<sup>491</sup> *ibid*

<sup>492</sup> *ibid*

<sup>493</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 133

<sup>494</sup> *ibid*

<sup>495</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 164

this rabbinic sage regarding surgery, the boundaries of risk can change as the medical frontier expands.

The next case study is similar to engaging in dangerous medical procedures but does not include the element of immediate need – human experimentation. There is a general apprehension to human experimentation among the Orthodox scholars. The reason why has already been mentioned in the Reform and Conservative sources: one cannot put themselves at great risk or sacrifice their own lives even if it means helping the multitudes.

Rosner and Tendler write a clear summary of the concerns regarding experimentation and the criteria that would need to be followed in order for a person to be permitted to engage in such an act. "If the following three areas of ethical-halachic concern have been satisfied, it would be permissible to use the experimental apparatus on humans: adequacy of animal experimentation to warrant a scale-up to human trials; informed consent of the patients; selection of patients who may personally benefit from the use of the apparatus so as not to merely evaluate a new technology solely for the benefit to others."<sup>496</sup> The main reason for such concerns and safeguards is to protect the sanctity of each individual life. No person's life is weighed less than another's and therefore is more worthy to be placed in potentially mortal danger. Each human is holy and raised above all other creatures. "Jewish law is categorically opposed to any form of experimentation in which the human organism serves as an experimental animal, if there is the slightest hazard to the individual taking part in the experiment, without

---

<sup>496</sup> Fred Rosner and Moshe D. Tendler, *Practical Medical Halachah*, Northvale: Jason Aronson, Inc., 1997, 93

concomitant benefit to the same individual. Even the informed voluntary consent of an individual does not suffice to permit the physician to subject him to possibly hazardous medical procedures."<sup>497</sup>

But the rabbis are not blind to the importance of experimentation that leads to medical and scientific breakthroughs. Rabbi Waldenberg argues in a way that permits assisting science but, similar to Rosner and Tendler, minimizes risk. He rules that a person is permitted to volunteer for medical experimentation as long as there is no threat to his own health and the results benefit others. Although a person is not required and should not be forced to volunteer, he is fulfilling a *mitzvah* by doing so. If the experiment threatens the person's health, he is not permitted to volunteer nor may the experiment be performed.<sup>498</sup>

The *Nishmat Abraham* follows suit. Citing both Waldenberg and Feinstein, Abraham teaches that if the danger is small; it is meritorious for one to take a risk for the sake of another human being, or more generally for the advancement of medicine.<sup>499</sup> In the 1990 version of his halachic rulings, Abraham does not change his earlier ruling that one may endure minimal risk for the sake of another or to advance medicine, but he expands on the concept. He simply permits one to participate in research that helps others or advance medicine. But the word "meritorious" is removed and only used when a person volunteers to undergo a minimally risky procedure that could save a terminal patient, such as a kidney transplant. In effect, Abraham has tweaked what he defines a just acceptable and

---

<sup>497</sup> *ibid*, 90

<sup>498</sup> Avraham Steinberg, *Jewish Medical Law*, 158

<sup>499</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 118

what is declared "meritorious," creating a hierarchy of value. This is another example of an update to a definition about what is considered risky and what is considered beneficial as medicine continues to develop.

As was already mentioned, the main concern about medical experimentation is about the sanctity and preservation of each life. Abraham rules that patient that is very ill and likely to die in a short period of time may, with expert advice, take an experimental drug or other treatment, even this experimental effort include a risk to his life.<sup>500</sup> Furthermore, this experimental treatment may be carried out on Shabbat, even permitting the setting aside of Torah prohibitions, for the sake of life.<sup>501</sup>

And every life is equal. Waldenberg, through Steinberg, offers two interesting example that prove this point. The first example teaches that a sick baby does not deserve less attention or less help. "It is a *mitzvah* to operate on a baby with meningomyelocele, (i.e., to close the abnormal opening) immediately in order to prevent infection and death. Similarly, he should be given all necessary medical/surgical therapy, regardless of any future difficulties connected with this serious congenital malformation."<sup>502</sup> We are not to give up on anyone, regardless of how sick they are. Our ability to experiment may indeed benefit this child. The second example teaches about treating all lives, Jewish and non-Jewish, alike. "The physician is required to treat a Mongoloid baby with the same dedication he would show any normal child. The criteria for surgery and resuscitation are identical to

---

<sup>500</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, 147

<sup>501</sup> *ibid*

<sup>502</sup> Avraham Steinberg, *Jewish Medical Law*, 158

those for any other patient."<sup>503</sup> The doctor is not permitted to work less hard or with less care for a child or patient who is ethically different than them. Jewish medical law protects all humans the same.

We close this case study about medical experimentation with a quote by Rabbi Immanuel Jakobovits which beautifully expresses the sentiment mentioned by Rosner, Tendler, Waldenberg, Abraham, and many others, about the sanctity of life as it relates to our ability to experiment:

"Human life is sacrosanct, and of supreme and infinite worth. Any chance to save life, however remote, must be pursued at all costs. The obligation to save a person from any hazard to his life or health devolves on anyone able to do so. Every life is equally valuable and inviolable, including that of criminals, prisoners and defectives. One must not sacrifice one life to save another, or even any number of others. No one has the right to volunteer his life. No one has the right to injure his own or anyone else's life. No one has the right to injure his own or anyone else's life. No one has the right to injure his own or anyone else's body, except for therapeutic purposes. No one has the right to refuse medical treatment deemed necessary by competent opinion. Measures involving some immediate risks of life may be taken in attempts to prevent certain death later. There is no restriction on animal experimentation for medical purposes."<sup>504</sup>

---

<sup>503</sup> *ibid*, 158-159

<sup>504</sup> Fred Rosner, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001, 408



Our last case study about Orthodox *halacha* regarding subjecting yourself to complicated and risky medical decisions concerns organ transplants. Similar to the prior discussion about medical experimentation, the main concern is between helping heal another life versus putting yourself as a great risk. Because the donation of certain organs, such as a heart, involves killing the donor immediately, if we hold to a particular definition of death – and not all Orthodox authorities do, Orthodox *poskim* have drawn strict lines about what is permitted and what is not. However, we will see an example of updating *halacha* as a result of updated, and safer, medical procedures.

Rabbi Waldenberg clearly draws that strict line between life and donation. "It is definitely forbidden to remove the heart from a donor for transplantation purposes since, of necessity, this must be done while the heart is still beating and the patient is, halachically speaking, alive. Such an act is considered murder."<sup>505</sup> Even though such an act is meant to save a life, you may not give your own prematurely. This also goes for the patient who is near death, for near death still means the patient is alive. This law also applies to the recipient who, by receiving the beating heart, is caused the death of another person.<sup>506</sup> Waldenberg writes, regarding a dying donor, "it is forbidden beyond the shadow of a doubt" to remove an organ. It is also forbidden to remove it from a *treifa* (one who cannot be cured). Even if the donor is in extreme pain and suffering, and requests that the organ be removed, it is forbidden to listen to him.<sup>507</sup> Each person's death must be natural.

---

<sup>505</sup> Avraham Steinberg, Jewish Medical Law, 127

<sup>506</sup> *ibid*

<sup>507</sup> *ibid*, 126

Therefore, "it is forbidden to artificially prolong a dying patient's life with the intention of preserving his organs for transplantation purposes."<sup>508</sup> Because if you were to do such a thing, the dying patient is being seen as an incubator for organs, no longer as a human being.

We must point out one larger, curious caveat. Waldenberg, through Steinberg, also issues this ruling: "If the prospective recipient is a Torah scholar, one is permitted to donate even a vital organ for such a transplant. There is, however, no religious obligation to volunteer for such a donation. A great deal of consultation and reflection are necessary before such an operation could, in actuality, be performed with halachic sanction."<sup>509</sup> While no further explanation is offered, this seeming exception that strays from the principle about preservation and sanctity of life is quite noteworthy. Waldenberg does not also specifically mention if one could donate their heart to save a Torah scholar. The heart is a special case, treated differently than other organs, as we will soon discuss. Based on a ruling in the *Nishmat Abraham* mentioned later, it is unlikely that Waldenberg would permit a heart transplant even to save a Torah scholar.

But when donating an organ does require the donor to die, such as the heart, Waldenberg rules differently. The *Nishmat Abraham* writes, based on the ruling of Eliezer Waldenberg, a person may offer part of their body for transplantation if it will help a seriously ill patient. This act is considered meritorious. However, he or she may not harm himself or herself in the process, and this determination is left up

---

<sup>508</sup> *ibid*

<sup>509</sup> *ibid*, 125

to current medical opinion.<sup>510</sup> Going into greater detail and citing Moshe Feinstein, Yitzchok Yaakov Weisz, and Waldenberg, Abraham does not permit the removal of kidney from a dying patient, even if a recipient's life may be saved.<sup>511</sup> The difference between this ruling and the prior ruling by Waldenberg is that donating a kidney does not kill the dying patient.

As has already been seen in the cases of risk and experimentation, the *Nishmat Abraham* will update his halachic rulings as medical science grows more efficiently and the danger to patients decreases. This is similar here as well. In his 1990 edition of rulings, Abraham has updated his rulings on organ donations to include the many possibilities that modern medicine has developed in the decade between updates of his book. He now permits bone-marrow transplants, skin grafts from a corpse, and corneas transplanted from a corpse.<sup>512</sup> Abraham also broadens his 1980 ruling not permitting the removal of kidneys from a dying patient to include all organs.<sup>513</sup> In 1980, citing both Waldenberg and Feinstein, Abraham states that "in our present state of knowledge, heart transplants are forbidden, and are held to be akin to murder of the donors."<sup>514</sup> However, in an effort to reconcile this 1980 ruling forbidding heart transplants, Abraham makes mention of the current discussion about brain-stem death. He notes that there is no definitive consensus among halachic authorities whether a person can be declared dead while the heart

---

<sup>510</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 140

<sup>511</sup> *ibid*

<sup>512</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, 172

<sup>513</sup> *ibid*, 173

<sup>514</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 140

still beats, and therefore recommends consulting a rabbinical authority.<sup>515</sup> Abraham has not changed his opinion but is aware of the larger discussion within that rabbinic community that challenges traditionally beliefs about death in the *halacha*. We note that later, in 1986, the Israeli chief rabbinate permitted heart transplants on the grounds that brain death qualifies as “death” under halachic criteria. Therefore if Abraham was to reissue his ruling today he could possibly permit heart transplants from brain dead patients.

---

<sup>515</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, 173

## Social Concerns

Let us turn our conversation about human behavior from the individual to the more general. Jewish law does not only function on the person-to-person level but works in a way to create and bolster a strong community. After all, society is concerned for its own collective health. To this end laws, such as required immunization or restaurant health standards, have already been put into place to create a healthy society. But how far does the law bend? Or more so, how does the law change when confronted with new medical information that goes against previously held social norms, such drinking or smoking? Can the law adjust to new ideas?

### *Reform discussion and analysis:*

The first area of social control we consider is not related to health at all, but is a side effect of the growing possibilities in medical science – patenting genes or genetic material. Walter Jacob takes up this question in 1989. He quickly notes how the question of patenting anything is a relatively new concept, something that was unknown to the ancient sages. For example, much of rabbinic writing is anonymous or apocryphal. The authors did not care if they were the recognized author, seeking no credit or monetary compensation for their work. But having the money to support a living is also important. Jacob offers this historical note: “It was always considered important to assure the livelihood of craftsmen, artisans, teachers and tradesmen in the community by limiting the access of others or prohibiting it entirely. This was carefully balanced throughout the ages with a concern for the

economic well being of the community and concern about a potential monopoly which might drive prices excessively high (*Mishnah Bava Metziah* 4.5; *Bava Batra* 21a; *Kiddushin* 59a and commentaries; *Yad Hilchot Zekia Umatanah* 1.14; *Tur* and *Shulhan Aruch*, *Hoshen Mishpat* 156; Meir of Rothenburg Responsa #544; etc).<sup>516</sup> So what could be patented? Jacob has reservations about patenting an animal and rejects the concept, as animals have a special relationship with human beings.<sup>517</sup>

The responsa literature also discusses how a society controls the behavior of its people on larger issues, such as disease. The two issues raised in Reform responsum about compulsory immunizations for children and the ethical responsibilities of a carrier of AIDS. In the case of compulsory immunizations, higher is given to greater social concerns priority, but for the carrier of AIDS, higher priority is given to personal responsibility. The difference is between preventing the contraction of a disease compared with preventing the spread of the disease. A society and the law will behave differently when the disease is already within the population.

The CCAR Responsa Committee takes up the case of compulsory immunizations and gives a very straightforward answer – yes, immunizations should be required. This ruling is based on the halachic concept of *takanot hakahal* (the power of the community to enact ordinances). *Takanot hakahal* are explained by Rabbi Shelomo ben Adret (Rashba; d. 1310) of Barcelona in his Responsa 5:126: "the relationship of the majority of the city to the minority is that of the Great Sanhedrin (*beit din hagadol*) to the Jewish people in ancient times: their decrees are

---

<sup>516</sup> NARR, Patenting Genetic Engineering, March 1989, 245

<sup>517</sup> *ibid*, 246

binding, and the one who transgresses them is to be punished."<sup>518</sup> This theory, however, is not universally accepted. "Rabbi Ya`akov Tam, in *Sefer HaMordechai, Bava Batra* 1:480, rejects the analogy of the community council to the rabbinical court; accordingly, he rules that the majority of the community may not enforce its will upon those who dissent.<sup>519</sup>

It is significant in this responsum that medicine is defined in accordance with the latest consensus of medical experts. Those experts regard immunization as standard and necessary measures for the prevention of dangerous diseases. The need to avail ourselves of such measures outweighs the concern that immunization may be dangerous for some. Therefore, the use of a *takanot hakahal* in this case is doubly controversial. First, its use alone is complex. Second, it is declaring that all parents have the ethical responsibility to immunize their children except in specific cases where the children belong to an at-risk group.

This responsum concludes that a congregation may require immunizations as a condition for admission to their religious schools, both on the grounds that medicine is a *mitzvah* and of our ethical responsibility to those who live alongside us.<sup>520</sup> The CCAR Responsa Committees quotes Rabbi Chaim Yosef David Azulai, cited by Rabbi Shlomo Ganzfried, "Whoever refuses medical treatment in favor of the other, non-natural responses is guilty of the sin of arrogance, of assuming that one

---

<sup>518</sup> NYP, The Reform Rabbi's Obligations Toward the UAHC, 5758.1, 3

<sup>519</sup> *ibid*

<sup>520</sup> RRTFC, Compulsory Immunization, 5759.1, 114-115

deserves to be healed by way of a miracle."<sup>521</sup> In other words we are required to accept appropriate medical treatment.<sup>522</sup>

Retorting to detractors who argue that private concerns take precedent over the will of the society the CCAR Responsa Committee answers, "Immunizations are not a purely private matter but one of social ethics: our decision to vaccinate or not to vaccinate directly affects the lives and health of our neighbors."<sup>523</sup> Therefore in this case we see how the society can require particular behaviors on a general scale for the sake of public health, even at the expense of personal decision. This decision therefore distances itself slightly from other Reform responsa that have been cited that focus heavily on personal choice wherever possible. The Committee draws a balance between the rights of parents to refuse medical care for their children versus the safety of the public, concluding that vaccinations are considered a "medicine," which is a *mitzvah* that is required and necessary.

Walter Jacob struggles with a similar balance in his responsum on social restrictions for carriers of AIDS. Jacob notes the traditional response to such a situation and then proceeds to disagree all of it in favor of a more emotionally based conclusion. While the traditional response is to quarantine those who might infect others, Jacob instead draws a different conclusion. He instead tries to balance between personal choice and the risk of endangering other members of the community. Jacob writes, "his/her right to work and to function in a normal manner

---

<sup>521</sup> *ibid*, 108

<sup>522</sup> *ibid*

<sup>523</sup> *ibid*, 113



in our society must be protected as long as such individuals are willing to do their share in protecting society."<sup>524</sup>

Having AIDS is grounds for a divorce but the responsum discourages divorce, recommending that the spouse stay married to the AIDS sufferer out of compassion and to support him or her.<sup>525</sup> Instead the onus of responsibility is given over to the patient himself or herself. Jacob expects that the patient be aware of the danger he poses to his wife and to society and to act accordingly. For example, someone with AIDS is permitted to get married, but he should not continue to permit himself to continue sexual relations with his wife, as to not endanger another human being.<sup>526</sup> Additionally, "A known carrier who is aware of his/her condition and engages in sexual relations without the regular use of condoms as guilty of endangering another human life. Society can demand that they refrain from all sexual activity or to protect their partner with great care. Their partner must be warned."<sup>527</sup>

Therefore, Jacob does prohibit sexual activity as it would endanger another human being. In a similar case regarding a dentist with AIDS, he is encouraged to inform his patients and close his practice. Jacob makes this argument citing the dentist not to put a stumbling block before the blind and to avoid unnecessary danger. But like the case of the married man with AIDS, he is not required to close down completely.<sup>528</sup> Again, Jacob is giving the person a choice but encourages the proper precautions to avoid the spread of AIDS to anyone else. Whereas the CCAR

---

<sup>524</sup> NARR, Responsibility of an "AIDS" Carrier, July 1987, 270

<sup>525</sup> *ibid*, 269

<sup>526</sup> *ibid*

<sup>527</sup> *ibid*, 270

<sup>528</sup> *ibid*, 272

Responsa Committee argued strongly that society demands that health comes first, Jacob creates a certain leeway or openness for the individual to make the right decisions for himself or herself and for those in the community, but will not risk someone else's health.

Let us now turn to the issue of smoking. Written at a time when there was new medical information about the dangers of tobacco, Freehof writes that Jewish law will have to change as the science becomes clearer.<sup>529</sup> "Until such time, we can only say that those for whom it is surely harmful would be carrying out, not only the recommendation of their doctor, but the mandate of Jewish law if they give up their use of tobacco" for the sake of health and preserving life.<sup>530</sup> However, Freehof realizes that smoking was very widespread within the society and that one could not simply pass a law ridding it from the culture. Walter Jacob, writing about a decade later, also did not come to a strong conclusion. He argued Jewish tradition prohibits individuals from wounding themselves, but the dangers of tobacco, were discovered only recently. Jacob cites Orthodox *posek* Moses Feinstein who says letting them sin unwittingly is preferential to issuing a general prohibition that may or may not be followed by the larger portion of the population that does smoke. Feinstein's approach to smoking will be explored in greater depth in the Orthodox section of this discussion.<sup>531</sup> In effect, Jacob, through Feinstein, took the same approach of Freehof, which is having no clear solution about how to change society.

---

<sup>529</sup> RRT, The Use of Tobacco, 54-56

<sup>530</sup> *ibid*, 29

<sup>531</sup> CARR, Mind Altering Drugs for Pleasure, May 1985, 122

Changing the law is easy but changing people is much harder. Therefore Jacob only encourages moderation.<sup>532</sup>

Rabbi Moshe Zemer, writing another decade later when the dangers of smoking were much better known, also struggled with how to change the law. Referencing Orthodox *posek* Rabbi Eliezer Waldenberg, who disagreed with Rabbi Moshe Feinstein, Zemer noted that just because smoking is widespread does not mean that one cannot rule against it.<sup>533</sup> From here we begin to see a bit more determination to try to address the issue both through law and through society. Rabbi Moshe Feinstein started by forbidding children to begin smoking due to its clear medical danger.<sup>534</sup> Realizing that stopping whole generations of adults from smoking is much more difficult, Feinstein prohibits children from buying cigarettes for their parents due to the commandment to preserve life.<sup>535</sup> It is hoped that children will influence their parents to give up the habit. But taking the most proactive step of all, Rabbi Zemer states that synagogues and rabbis should be involved in serious educational campaigns against smoking and help set up cure groups. They should also counteract the smoking advertisements by the tobacco industry.<sup>536</sup> So in this case the law itself was not the issue, but more so how society could be changed. Rabbi Zemer encourages people to help each other and through social pressure and aid the habits could be tossed away. “Jewish law in its position on smoking has progressed from the 18<sup>th</sup> century rabbinic view that ‘tobacco is

---

<sup>532</sup> *ibid*

<sup>533</sup> TFN, Responsum on Smoking, 5753.23, 333

<sup>534</sup> *ibid*

<sup>535</sup> *ibid*

<sup>536</sup> *ibid*, 334

healthful for the body' to the present day opinion: 'smoking is the number one killer of mankind.'" Zemer concludes based on these changes that "*halacha* can and must be a developmental and dynamic phenomenon which has taken cognizance of the discoveries of medical science" and the Reform movement welcomes such progression, especially in the case of smoking.<sup>537</sup>

Through all these cases we are left with a tension in the Reform movement. The legal scholars want to limit behavior for the sake of social concerns and public health but they struggle with the process of doing so. Changing the law is of less concern to these scholars than changing the behavior within the society itself. Therefore the title of the chapter is quite appropriate here; one should control his or her own body and behavior to affect the public good but the process of doing so is not that easy.

*Conservative discussion and analysis:*

Like the Reform responsa, the Conservative *poskim* must weigh individual rights against what is best for society. Unlike the previous sections where Conservative responsa heavily argued in favor of individual choice and expecting each person to behave a morally responsible manner, when the dangers of society are involved, there is a less flexible stance in the law. Three cases will be discussed, each representing a different way to tackle the question about how society and health concerns lead to legal change. The first case, breastfeeding in public, will rule on the side of the individual, but with an eye toward health reasons. The other two

---

<sup>537</sup> *ibid*

cases – required immunizations and smoking – favor public health. As with the Reform responsa, the issue here is balancing between the community and the individual. The question always comes down to just how vital is the concern on one side versus that on the other. What are we asking the individual or the community to sacrifice? If one side is seen as less important, then we, and the law, have less of a reluctance to protect it.

Regarding breastfeeding in public, the halachic legislation argues on the basis of *tzinut* (modesty) a woman should not behave this way in public. Responsum author Rabbi Bradley Shavit Artson recognizes that the Conservative movement must adjust this halachic conclusion to reflect modern views on women in society. "We, their heirs, face the dual task of admitting where their world and ours diverge, and at the same time, of separating their goals from their rulings. In an ancient rabbinic context, the implications of those rulings are quite different than they are today. We are bound, as the descendants of the rabbis, to continue their incremental task, moving Jewish rulings along so they continue to express fidelity to the ancient, timeless truths."<sup>538</sup> As such, Artson argues that is possible to accept the legislation and reject the social agenda. The rabbis were also working to give "rights" to women, as a way to protect her dignity and her ability to function in society. The Conservative ruling retains the rabbinic understanding of modesty but removed from the patriarchal context.<sup>539</sup>

---

<sup>538</sup> Bradley Shavit Artson, *The Woman Took the Child and Nursed It: A Teshuvah on Breastfeeding in Public, Orach Hayyim 75:1*.2005a, 9

<sup>539</sup> *ibid*, 10

There is a debate in the literature about whether there actually is a need for reinterpretation of the laws of modesty. According to Artson, the main concern was the covering of women's bodies that could serve as sexual titillation for men and a distraction from *kavannah* (intention or direction) and prayer.<sup>540</sup> However, Rabbi Paul Plotkin in a dissenting opinion contends that we need to recognize that distraction goes both directions, male and female, and there is a general concern among the rabbis that no one should be distracted or turned away during prayer or in the performance of mitzvot.<sup>541</sup> "Our actions therefore, should be, not to rectify an injustice from the past, but rather to be inclusive of the principles of the past in applying them to the real situation of the present."<sup>542</sup> Regardless of the debate about who is being enticed by immodesty in public, both Artson and Plotkin recognize the need for a new approach.

Then what is our new social context teaching us to do? And how do we contextualize it in Jewish law? Plotkin observes that the *mitzvah* of feeding a baby can take precedence here over the concerns of modesty although it is preferred that the woman still act to breast-feed in a discreet, respectable fashion.<sup>543</sup> The need to help another human being is the overriding principle that guides that conclusion. One *mitzvah* (feeding a baby) comes before another (*tzni'ut*). Plotkin's dissenting opinion concludes that he may permit breast-feeding only if it is done with the proper discretion, with no possibility of exposure, and without interfering anyone

---

<sup>540</sup> *ibid*, 4-6

<sup>541</sup> *ibid*, 1

<sup>542</sup> *ibid*

<sup>543</sup> *ibid*, 10-11

else.<sup>544</sup> He calls for caution and sensitivity but does not rule against the practice. As the synagogues enact this legislation, Artson does leave a fair bit of discretion to the individuals and the community. Accepting a ruling based on a changing society must recognize that each society behaves differently and there is no one complete norm. Given the diversity of communal norms and standards, each community should translate this general principle in a manner appropriate to its membership and style.<sup>545</sup> So even though this case upholds the rights of the individual more than the following three cases, it does still consider social needs very highly in its conclusion.

As these cases proceed toward the more deleterious, we consider the case of compulsory immunizations. There should be no surprise that the Conservative ruling on this conversation comes down on the side of requiring such immunizations for the sake of *pikuach nefesh* and general health, as did the Reform responsum. But what is interesting about the ruling, and the halachic evidence brought forth, is that the argument is not made on the case of public health, but that it is each individual should be doing whatever possible to guarantee their own health, and the required nature of the immunizations assists them in achieving this goal.

First we must address the concept of a vaccine or immunization itself. A vaccine is a lesser form of the virus itself that minimizes the amount that the human gets sick, but gets sick nonetheless. Is this not causing yourself pain or endangering yourself? Rabbi Prouser, author of this responsum, cites a source from 1785. Rabbi

---

<sup>544</sup> Paul Plotkin, Response to Rabbi Bradley Artson's *Teshuvah* on Breast Feeding in Public - A Dissent, *Orah Hayyim* 75:1.2005b, 1

<sup>545</sup> Bradley Shavit Artson, The Woman Took the Child and Nursed It: A *Teshuvah* on Breastfeeding in Public, *Orah Hayyim* 75:1.2005a, 12

Abraham Danzig questioned if it was permissible to use a treatment that involves exposure to a minor risk in order to obviate a greater risk to come. He concludes that it is an act of "eager religious devotion" and reflects the *mitzvah* in Deuteronomy 4:15 to protect your well-being.<sup>546</sup> In fact, continues Prouser, a ruling is attributed to Rebbe Nachman of Bratslav requiring that children be given immunizations. This ruling was updated by Bratslav Chassdim for recent innovations in immunization.<sup>547</sup> So there is precedent for such a requirement.

The main question at hand according to these scholars is preventative medicine. Maimonides, Moses Isserles, Yosef Karo, and others speak about the importance of preventive health care and to what extent we should go to protect our health.<sup>548</sup> Therefore it is incumbent upon each Jew to take actions to prevent disease. Conservative *posek* Dorff states very strongly, "It would be a violation of Jewish law... for a Jew to refuse to be inoculated against a disease, at least where the inoculation has a proven track record of effectiveness. Jews, to the contrary, have a positive duty to have themselves and their children inoculated against all diseases where the preventive measure is effective and available."<sup>549</sup> The strong usage of the term "violation" notes the severity of such an expectation. Another Conservative scholar Rabbi Joel Roth contextualizes this requirement in biblical terms, "Vaccination against infectious disease is the pharmaceutical equivalent of *ma'akeh* – the biblically mandated parapet in Deuteronomy 22:8, designed effectively to

---

<sup>546</sup> Joseph H. Prouser, Compulsory Immunization in Jewish Day Schools, *Hoshen Mishpat* 427:8.2005, 11-13

<sup>547</sup> *ibid*, 14

<sup>548</sup> *ibid*, 16-18

<sup>549</sup> *ibid*, 15



shield potential victims from sudden fall, injury, and death. Immunization against infectious disease is thus logically rendered obligatory: For any hazard of mortal peril, it is a positive commandment to remove it, to keep away from it, and to be especially careful in regard to the matter... If one fails to remove the condition, leaving the hazards and the dangers they present in place, one has neglected a positive commandment and has violated 'Do not bring blood (upon your house).'<sup>550</sup>

But Prouser in his discussion does not limit the responsibility to the individual alone. He argues that it is society's responsibility to make the fulfilling of this *mitzvah*, protecting, as easy as possible. For example, Maimonides praises governments who go to considerable lengths to make medicine available to the public in anticipation of mortal peril.<sup>551</sup> A number of scholars are willing to take a more hard line on the importance of health in society. British Chief Rabbi Lord Immanuel Jakobovitz declares it is criminal negligence if parents do not vaccinate their children from smallpox.<sup>552</sup> The pre-eminent German scholar Rabbi David Tzvi Hoffman teaches that a two-thirds consensus in the medical community renders the life-saving procedure permissible and therefore obligatory.<sup>553</sup> Similarly, Rabbi Moshe Felder said "society is the expert to decide whether a risk is acceptable or not." For Jakobovitz, Hoffman, and Felder, social concerns are of greater value than individual and parental responsibility. It is the responsibility of the community to ensure the health of the greater group, and this requires certain medical behavior, i.e. immunizations upon all members of the population. The social health is more

---

<sup>550</sup> *ibid*, 21-22

<sup>551</sup> *ibid*, 18-19

<sup>552</sup> *ibid*, 18

<sup>553</sup> *ibid*, 24

important than the individual's choice. But not to sound too callous Prouser, through Rabbi Adin Steinsaltz, contextualizes this social requirement in terms of Torah. Steinsaltz and others, including Maimonides, use the principle *mipnei chashash l'vriuto* (because of the concern of his health) as a guideline that one must take care of his own body and health as to not impede his ability to study Torah. It is sinful for a Torah student to remain susceptible to disease by failing to be immunized, which compromises his studies.<sup>554</sup>

The issue of smoking is without a doubt a clear case about how *halacha* is forced to reconcile new scientific evidence. As we have already seen with the Reform scholars, and will see in great detail for a few select Orthodox *poskim*, the Conservative responsa is forced to contend with a negative behavior, but one that is entrenched in society. In the responsum written by Rabbi Seymour Siegel in 1986, the main argument that is used to argue against the permissibility of smoking is through a responsibility to preserving and better society. Unlike the Reform and some Orthodox cases, Siegel's responsum does conclude with a prohibition.

First and foremost, based on Deuteronomy 4:15 and Maimonides' *Mishneh Torah, Hichot Rotzeach* 11:4-5, it is concluded that the preservation of health is a *mitzvah*. One is required to remove stumbling blocks that could create danger or harm to oneself.<sup>555</sup> In fact, it is a *mitzvah* and a requirement to not put ourselves in harm's way. Rabbi Moshe Isserles in the *Rama Yoreh Deah* 116:5 states that "a danger to life is stricter than a prohibition.... One should be more concerned about a

---

<sup>554</sup> *ibid*, 26

<sup>555</sup> Seymour Siegel, Smoking: A Jewish Perspective, *Hoshen Mishpat* 427:9.1986, 1-2

possible danger to life than about a prohibition."<sup>556</sup> Isserles defines the prohibition that saying that just as observant Jew refrains from any eat that may have the slightest suspicion of being forbidden, so should he be just as careful about taking anything else harmful into his body, such as cigarette smoke.<sup>557</sup> Isserles is arguing that the law is not enough in this situation. If something is bad then one should not need a law to tell him or her that or encourage him or her to behave in a certain way. In fact, it is incumbent on the person to seek to protect his or her health. Isserles continues, "In these matters it is forbidden to rely on miracles." This teaches that one should not deceive himself or herself into thinking that, even though others were not harmed by a given action, such as smoking, we possess special merit and divine protection.<sup>558</sup>

Just in case the argument to protect oneself is not enough to make smokers break the habit, Siegel argues strongly that our responsibility to others should cause the law to prohibit the behavior. "Maimonides reflects the Judaic ethos which sees life as not being the exclusive possession of the individual. A person must avoid harm to self, and must also avoid being a source of harm to others. One should not feel that if self-inflicted harm affects oneself, it is of no concern to the community. We are all part of each other. The community has a stake in the well-being of the community. Both the community and the individual have responsibilities to the Creator. Life is too precious deliberately to expose it to dangerous and harmful

---

<sup>556</sup> *ibid*, 2

<sup>557</sup> *ibid*, 3

<sup>558</sup> *ibid*

effects."<sup>559</sup> Potentially one could argue that smoking affects a few people or its dangers are not immediately threatening. To that, this responsum would retort that the law does not take chances when health is on the line. "Even a minimal risk should not be taken. Life is too precious; health is too important; well-being is too vital to be risked." Even if a little bit of water is contaminated and only a few are affected, drinking of that water should be prohibited.<sup>560</sup> The law considers how deleterious actions affect the group, not just the individual.

This Conservative responsum recognizes that science has proven the dangers of smoking beyond a doubt, and it is evident that both the smoker and the non-smoker can be damaged or harmed by such an action. The action is dirty, harmful, and antisocial. In other words, there's no counterbalancing factor here. Since there is no good reason why one should smoke, we have less of a reason to worry that our prohibition violates the dignity of the individual or his or her freedom of decision. It should be prohibited for people and discouraged within synagogue space.<sup>561</sup> This responsum does not consider, nor express any compassion, for the many people who are already smokers and may have a difficult time breaking the addiction in light of this ruling. No exception is made to the prohibition. For the Conservative Committee who issued this ruling, there is no negotiating with health. Modern medical knowledge declares smoking to be dangerous, overriding a behavior that was once accepted, even widespread, was once socially and legally acceptable, even widespread. The law must reflect this sentiment. The importance of living longer

---

<sup>559</sup> *ibid*, 2

<sup>560</sup> *ibid*, 3

<sup>561</sup> *ibid*, 4

and healthier lives, both for the individual and for the community, demands that smoking be prohibited. "In doing so, we would be fulfilling our responsibilities to God and humanity."<sup>562</sup>

*Orthodox discussion and analysis:*

Of all of the examples presented in this chapter, none are better examples about Orthodox scholars changing opinions, or even changing *halacha*, in relation to modern medicine than the rabbinic position on smoking. Over the past few decades, the medical knowledge and related health statistics have swung widely. Public opinion and epistemology concerns have grown, including national campaigns against smoking, tax increases, reports and statement from the Surgeon General, and most recently laws against smoking in public places related to second hand smoke and public displeasure. In the social milieu, smoking has changed drastically from a social positive to a social ill. As a result, and from numerous different perspectives, Orthodox rabbis have grappled with this topic. Let us look at a few examples before studying the rabbinic responsa on smoking by Rabbi Moshe Feinstein and Rabbi Eliezer Yehudah Waldenberg in greater detail.

Dr. Fred Rosner and Rabbi Moshe D. Tendler, Feinstein's son-in-law and student, offer some textual examples about pre-modern responses to the idea of rabbinic prohibitions on smoking. Two Talmudic principles are commonly used to mitigate against a Rabbinic ban on cigarette smoking. Based on *Bava Kamma* 79b, it is argued that we must not impose a restrictive decree upon the community unless

---

<sup>562</sup> *ibid*

the majority of the community will be able to endure it. Based on *Shabbat* 148b, it is argued that it is better that they should transgress inadvertently rather than be deliberate sinners.<sup>563</sup> The *Bava Kamma* text would be used to avoid a prohibition up until recent times when public outcry against smoking reached a majority. The *Shabbat* text would also apply to earlier rulings when public knowledge about the health concerns of smoking was lesser known. As will be explained by Feinstein, this is no longer an acceptable reason. As a result, both Talmudic arguments are easily rejected in light of *pikuach nefsh* and the known danger of smoking. Smoking is an intentional act of oral gratification that leads to serious illness and possible death.<sup>564</sup>

However, Rosner and Tendler caution us to remember that modern knowledge about smoking was not the norm for thousands of years. For example, Rabbi Moshe Isserles ruled against a smoking prohibition. He “rejects the contention of many that smoking is allowable because ‘the Lord guards the simple,’ since he prohibits reliance on miracles. The fact that so many Jewish people smoke is no justification for this dangerous and life-threatening practice. If many Jews commit a transgression, others should certainly not follow; rather they should try to teach the sinners to repent from their evil ways. The ‘pleasures’ of adultery are not condoned by even the most liberal-minded Jew. Why then should the pleasures of smoking, which also invoke Biblical prohibitions (vide supra), be relegated to an inferior status, to be treated more leniently?”<sup>565</sup> Smoking was seen as a positive social

---

<sup>563</sup> Fred Rosner, *Modern Medicine and Jewish Law: Studies in Torah Judaism*, New York: Yeshiva University, 1972, 30

<sup>564</sup> *ibid*, 30-31

<sup>565</sup> *ibid*, 29

action. Smoking was a popular, and it is difficult, if not impossible to rule against something so many people do everyday.

Rabbi Moshe Feinstein released responsa about smoking at least three times before his death, in 1964, 1981, and 1985. Looking through these responsa we will see an evaluation in his thinking as the medical statistics become clearer. The 1964 responsa actually was written during Chanukah 1963 in the same month that the Surgeon General released a major statement warning against the dangers of cigarette smoking. He notes that there is a concern that one might become sick from cigarette smoking and therefore it is a good idea to be careful of the practice. However, he writes that it is a ritual prohibition only and he cannot legislate against the practice.

Feinstein offers two reasons why not. First, he invokes the principle *shomer pita'im hashem*, which we have already seen used in many other cases, to mean that it is a socially acceptable risk. For a proof text, Feinstein cites *Shabbat* 129b and *Niddah* 45a, both of which cite *shomer pita'im hashem*. In *Shabbat* 129b, the *Talmud* discusses how people go to a blood letter to heal them from various ailments, which was a dangerous act in itself. People used to often go on a Friday, right before Shabbat, even though the procedure was considered especially dangerous on Friday and was therefore forbidden. Since everyone ignored the warning and went anyway, with no malicious intention, and people generally survived the procedure, then it is permissible. In *Niddah* 45a, cases were mentioned when it was dangerous for a pregnant woman to take her child to full term. Instead of trying to deliver her child early, the woman accepted the risk and carried to full term anyway. Because they

happened and was socially accepted, even though not the best idea, then it is permissible.

Second, Feinstein recognizes that many of the great sages from Jewish history smoked, including even the most *machmir* (stringent or strict). These sages were considered praiseworthy and yet they still engaged in this behavior. If the *machmir* person is okay with smoking, you can be okay with not smoking for your own health and you should not criticize him for his actions. Furthermore, Feinstein says in this responsum that you are permitted to light someone else's cigarette, that this is not an act of intentionally hurting them.

To briefly summarize the 1961 responsum, smoking has the potential to cause harm to some. Yet the multitudes, i.e. a large portion of society, do in fact smoke. Furthermore, many of the great sages of the past smoked as well. Feinstein recognizes that smoking may make some sick and these reasons are strong enough to advise against the practice. Yet Feinstein cannot fully call for a prohibition.

In 1981, Feinstein returns to the subject. By this time, Feinstein takes the subject more seriously and writes that most people now accept smoking as a health risk. He again discusses the principle of *shomer pita'im hashem* and the proof texts from *Shabbat* and *Niddah*, but admits that people often ignore the warning signs that are clearly placed before dangerous acts in society. Even though it is considered a danger Feinstein warns that *shomer pita'im hashem* cannot be invoked for every potentially harmful in a society. Some dangers cause a greater concern, and at this time, smoking is not one of them. Feinstein still declares smoking to be an ordinary, not an extraordinary, danger.



Feinstein explains himself in this responsum using the example of unhealthy food. There are all sorts of foods, such as fatty or spicy foods, that may be a danger, but there is no clear and present danger. There can be no prohibition on the grounds that it might be dangerous to some more than others. Because a prohibition applies to everyone, Feinstein is trying to argue that something that is harmful to some and not the majority cannot apply the rule of *shomer pita'im hashem*. Feinstein cites Maimonides' *Mishneh Torah, Hilchot Deot, perek dalet*, the section of the text where Maimonides invokes his medical expertise when making halachic decisions. In this section of text, he describes foods and drinks that are bad for your health but does not take the additional step to rule that such unhealthy treats or vices are actually "prohibited by the Torah." Many people willingly eat fatty or spicy, or unhealthy foods, and many get pleasure from that act, even the vast majority. Feinstein speaks of only a fear of danger in regards to cigarette smoking, not a significant amount of danger, certainly not enough to prohibit entirely. Therefore, all you can do is inform the world so that people know that certain things are good or bad and to counsel them with those decisions. Feinstein further explains by using the language of habit. For those who have strong habits, it will be very hard for them to stop smoking. In fact, they may suffer even more without cigarettes, possibly bringing them physical discomfort. He does not use the word "addiction."

Lastly, Feinstein argues that the doctor who sent him this question about smoking has a skewed view of reality. In his question, the doctor tells Feinstein that smoking causes cancer and other horrible diseases. But, Feinstein retorts that such a claim is not accurate. Feinstein writes that he believes only a small minority of those

who smoke eventually get sicker, and furthermore, the amount of people who get cancer from smoking is an even lower percentage. Unfortunately Feinstein does not cite facts or statistics to back up these claims. Instead Feinstein tells this doctor that his view of society is skewed because he sees sick people more often than most. Only that small minority who get sick or cancer walks into his office or hospital. The remaining majority of smokers walk around society without getting sick. As a result of this skewed view, Feinstein concludes that the majority does not get sick. Therefore, he cites *shomer pita'im hashem*; the vast majority accepts the risks involved in smoking and the majority is not in any immediate danger. Our modern statistics may refute Feinstein's claims to this doctor but he lays out his argument of *shomer pita'im hashem* nonetheless.

Feinstein closes this 1981 responsum with a few changes from the 1963 version. Here he says that It's a good thing for everybody, especially those who study Torah, not to smoke, since there is a health risk involved here and no benefit to this. Also there is no enjoyment from being hooked on it and no positive reasons to smoke. So if you do not smoke, do not start. And there should be an effort made to prohibit people from smoking, even if there is no legal prohibition.

The third and final responsum, written by Feinstein in 1985 to his son-in-law Moshe Tendler, asks why smoking is permitted on *Yom Tov* (a festival day) but not *Shabbat*. There is no major jump forward in Feinstein's thinking but it solidifies a few key points from the 1981 version. In this responsum, Feinstein admits that the factual situation has changed. It used to be that smoking was done by everything but now because of the fear that cigarettes are dangerous, many do not smoke. Now

smoking is a habit of some and not the majority. Nonetheless, it is very difficult to make a halachic ruling that goes against the widespread practice and forbid it.

However, in this responsum, Feinstein now refers to smoking as a *sacannah* (danger), which makes it a more serious issue than before. He now presumes that the issue of physical danger is a real and live one, not just relevant to a small minority. Yet this is not still great enough of a factor to prohibit it for all.

As a contrasting opinion, let us look at the responsum written by Rabbi Eliezer Yehudah Waldenberg in his *Tzitz Eliezer*. Waldenberg, a medical authority in his own right, is very clear about his opposition to smoking. He writes, “It is clear beyond a shadow of a doubt that there is no excuse to lead yourself astray.” He does not reference Feinstein directly but he makes a veiled reference to him. He argues there is no excuse to use the principle of *shomer pita'im hashem* simply on the grounds that many people do it. Furthermore, he rebukes the proof from *Shabbat* and *Niddah* arguing that there was only a possibility of danger from those two examples. But in the most recent decades, in light of the various scientific and medical studies, we have discovered in astounding and frightening dimensions, the physical dangers that smoking causes. There is no longer a potential danger or a future danger, but a now a clear and present danger, according to Waldenberg. Waldenberg also does not cite his facts or statistics but it is clear that he sees them in a much different way than Feinstein. He argues that we cannot fool ourselves into practices that are bad but not dangerous. Now we can say smoking is dangerous. As such, Waldenberg rules to prohibit smoking entirely.

The *Nishmat Abraham* also went through an evolution of his rulings on smoking. In 1980, he initially ruled like Feinstein, "One should do ones utmost to avoid smoking, since this has been proven medically to be injurious to well-being, and dangerous to life."<sup>566</sup> However, Abraham notes that it is impossible to forbid smoking based on the phrase from Deuteronomy 4:9, "for your own sake therefore be careful," which warns us to not to cause damage to ourselves. Yet, citing Feinstein's argument regarding *shomer pita'im hashem*, because many things that contain risk cannot be fully prohibited.<sup>567</sup> In this 1990 updated version of the text, Abraham now states "since smoking has been proven, beyond any shadow of a doubt, to be injurious to health and dangerous to life."<sup>568</sup> However, Citing the responsa of Rabbi Waldenberg, Abraham writes, "smoking is (in light of present medical knowledge) an offense prohibited by the Torah."<sup>569</sup> This updated responsum also includes a clause, based on Rabbi Weinstein, prohibiting smoking in public places "since cigarette smoke has been proven to be injurious also to those in the vicinity of the smoker who inhale it." Unlike Waldenberg, Abraham still does not prohibit it for everyone but he does show how his opinions change with increased medical knowledge and he was willing to prohibit cigarette smoking to some degree in public.

Rabbi Bleich also cites the principle *shomer pita'im hashem*. He teaches that certain actions contain an inherent risk or danger but are still permissible, such as

---

<sup>566</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 6

<sup>567</sup> *ibid*

<sup>568</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 25

<sup>569</sup> *ibid*

crossing the street or driving a car. They are permissible based on the principle that "the multitude has trodden thereon." These dangers are accepted by society with equanimity. Bleich also references Rabbi Jacob Emden who argues between an immediate danger and a future danger. Emden argues that smoking should not be considered an immediate danger, because based on the medical statistics at the time, the majority of people who smoked were not immediately sick.<sup>570</sup> It is likely that an updated decision by Bleich would contain a similar evolution as Abraham and some recognition of smoking prohibition.

Let us conclude this very powerful case study about how medical advances and knowledge of smoking effects *halacha* by looking at the social implications. Rabbi Feinstein, with similar rulings by Waldenberg and Rabbi Ezekiel Grubner, recognize the dangers of passive smoking, i.e. second-hand smoke, and obligate the smokers to be in private or far removed from other people.<sup>571</sup> As seen above, Abraham ruled similarly. Rabbi Nathan Drazin asked why so few rabbis were prohibiting cigarette smoking based on medical knowledge. He concluded that it was high time, before more damage is done to the public, for the *poskim* to openly declare the use of narcotic drugs and cigarette smoking as evil practices forbidden by Jewish law.<sup>572</sup> "In 1976, the Sephardic Chief Rabbi of Tel Aviv, Rabbi Chaim David Halevy, declared cigarette smoking to be a violation of Jewish law. His prohibition on smoking was widely publicized in the press."<sup>573</sup> While social culture in Israel

---

<sup>570</sup> Fred Rosner, *Modern Medicine and Jewish Ethics*, New York: Yeshiva University, 1991, 396

<sup>571</sup> *ibid*, 598

<sup>572</sup> *ibid*, 599

<sup>573</sup> *ibid*

differs from the United States, Rabbi Halevy's ban is a partial response to Rabbi Drazin's concern.

At the time of their writing in 1991, Rosner and Tendler concluded that "Very few rabbis have to this day issued a prohibition against smoking, though most condemn the practice as foolhardy and dangerous."<sup>574</sup> It is likely that in today's times Drazin's concerns have been on the minds of many doctors, scholars, and parts of the general population for decades. Rosner and Tendler offer a bit of advice that may help the changing views about smoking. The recommendation is that both physicians and rabbis discourage the practice. Any physician or rabbi should give up smoking himself or herself in order to practice what they preach. Judaism should engage directly with society to stop advertisements and the general appear of something so harmful. The public needs to be retaught that the Torah values life and health to be sacred above all else.<sup>575</sup> If the evolution about rabbinic opinions is any proof, the rabbinic rulings on smoking will continue to change as medical evidence is further released. Smoking has only grown less popular in American society since the 1990's so the multitude may no longer be a justifiable control over the *halacha*. Whatever happens in the future, we have clearly witnessed many times an adjustment or rethinking, and perhaps a change, in *halacha* as a result of modern medical knowledge and understanding.

---

<sup>574</sup> *ibid*, 396

<sup>575</sup> Fred Rosner, *Modern Medicine and Jewish Law*, 31

### Is it Our Place to Heal?

The last discussion topic within this chapter deals with the larger moral responsibilities that all Jews have. We can attempt to change our physical bodies, our minds, our intellects, our societies, or even put ourselves at risk for future medical advancements, but is it our place to do so? Are these problems even ours to heal? All human beings are created in the image of God, the strong and the weak. Then we wonder if negative human behavior or general imperfections are meant to be or at least out of the realm for human technology to change. In order to see how the law reacts to these questions, we turn to laws regarding those with disabilities or who are mentally challenged to understand from the responsum what legal limits are placed on them. Then from these examples perhaps we can extrapolate how Jewish law may react to any advances in human behavior modification in the future. Can these situations serve as legal examples to be used with whatever medical science has around the next corner?

#### *Reform discussion and analysis:*

Solomon Freehof follows the examples of Conservative and Orthodox responsa in regarding a mentally deficient person as a child and as one not held culpable for violating the law. He does argue that one who is insane should be helped as much as possible to engage with the Jewish tradition. But there are many areas of Jewish law, such as marriage or divorce, to which they are not eligible and therefore not required to fulfill.<sup>576</sup> However, Freehof makes the point that just

---

<sup>576</sup> TRR, *The Mentally Retarded and the Law*, 10

because a mentally disabled person is not required to fulfill *mitzvot*, this does not mean that should prevent them from doing so. For example, even though a mentally disabled person is not required to maintain *kashrut*, we can still provide them with kosher food.<sup>577</sup> This would be considered an act of compassion, but not helping another person fulfill a *mitzvah*. From this conclusion we understand the Reform scholar to teach us that there are groups of people who are treated differently under Jewish law. But we note that the differences under the law regard civil issues, such as marriage and divorce, not necessarily criminal behavior. Therefore we cannot conclude that those who do not have full intellectual capabilities are exempt from being held accountable for any criminal actions before a court of law. Not being obligated to the entirety of *halacha* does not someone to commit illegal acts or live an immoral life. It is society's task to help a person understand what is right and what is wrong, even if they may not grasp the concept fully.

The CCAR Responsa Committee discusses mental illnesses in a later responsum and adds additional nuance to Freehof's understanding of seeing people in different legal categories. We must not be so quick to judge others. Human behavior is indeed a fickle thing and even though people classified with mental illnesses are not immune from actions and responsibilities. First, the CCAR Responsa Committee begins its argument by recognizing that the definition of insanity is defined based a variety of standards and on observed action. "Even a person who exhibits those behaviors (three or four specifics actions out of a host of others that are clearly symptomatic of serious mental disturbance) is not judged

---

<sup>577</sup> *ibid*, 9-11



insane by Talmudic standards unless they are performed in a manner that indicates *derech sh'tut* (insanity); thus, "insanity" is better understood as a manner of behavior, a state of mental disturbance that can express itself in any number of ways, rather than as a catalogue of several specific acts."<sup>578</sup> There is a debate in the *halacha* as to whether a diagnosis of "insanity" requires the specific behaviors cited in the Talmud as characteristic of the *shoteh* (idiot) or whether these behaviors are examples of a condition that can be diagnosed on other grounds. This responsum sides with the latter view, and that it is necessary to judge each case separately with the support of medical experts.<sup>579</sup> "We hold that the definition of mental illness is to be made by observation. It is a matter of medicine and psychology, properly determined by the accepted procedures of those disciplines."<sup>580</sup>

Let this be a call for clarity and delicately approaching each case of human behavior. The last thing we want to do is generalize humanity or declares whole groups of people to be in certain legal categories. In an effort to uphold the tradition, possibly at the expense of modern medical expertise, the CCAR Responsa Committee reminds us that medical terms are categories that describe general phenomenon. "The [medical] diagnosis, assuming it is an accurate one, cannot serve as a substitute for a careful examination of her character, her strengths and weaknesses, and her "defects" and her resiliency in overcoming or compensating for them."<sup>581</sup> The point is to find out if each individual human being has the mental competence we think is

---

<sup>578</sup> RRTFC, Conversion of a Person Suffering from Mental Illness, 5758.7, 131

<sup>579</sup> *ibid*

<sup>580</sup> *ibid*

<sup>581</sup> *ibid*, 132

necessary to make an informed and rational choice for Judaism.<sup>582</sup> So in summation to this argument, human beings do possess the intellect to recognize and even assign different mental designations and subsequent legal categories to different members of our society but we should never be so cavalier as to think that we understand all human behaviors and have a full grasp on how each person reacts or behaves. We are indeed still limited creatures.

From this conversation about the definition of mental illness or insanity we turn to responsum by Rabbi Jacob on a question in which a rude, disrespectful man wants to take part in synagogue honors but some perceive him of being unworthy for such actions. This responsum discusses of how we treat bad behavior in our congregation and society. Jacob seeks to understand the relationship between having an *aliyah* (honor of blessing the Torah) and how to show proper *kevod haTorah* (respect for Jewish tradition and law). Is the honor of being called to the Torah reserved only the learned or pious Jew, or is it a *mitzvah* for all Jews to perform?<sup>583</sup> That is, can this rude and disrespect man be called to the Torah? It all depends on how we understand the *aliyah*. If it is a *mitzvah*, then it is required for all Jews, even if they are a notorious slanderer. If it is a right, then it is a customary right, where those who are called, such *kohen*, *levi*, pious, mourner, rich etc. are both given that right above others within the community. The consequence of considering an *aliyah* as a right is that individuals may be hurt if not deemed not worthy of such a right. "The law does not make them firm rights, but a man can well

---

<sup>582</sup> *ibid*, 133

<sup>583</sup> ARR, Unworthy Man Called to Torah, 1962, 102

be aggrieved if he is denied them.<sup>584</sup> If the *aliyah* is a privilege, then the congregation's decision about who is called before the Torah and relates to *nipnei kevod hatsibur* (dignity of the congregation), and therefore it is a significant consideration and not to be taken lightly.<sup>585</sup> The recommendation in this responsum is to seek to understand the role of the honor within the Jewish community and to accommodate the disrespectful man the best that they can.

Jacob quotes Freehof's attempt to find a conciliatory way to resolve this situation, "a man of dubious reputation should not be called up for certain specific passages, where his character contradicts the reading." Similarly he should not be allowed to shame the congregation.<sup>586</sup> Jacob reaches the same conclusion, "In less heinous offenses, as long as the man isn't excluded or ostracized by the community, we should not 'shut the door' in his face." We should always consider the honor of the congregation, yet be lenient and avoid complete exclusion."<sup>587</sup> The question before the congregation is how it handles the situation of one who sits outside the normal boundaries of behavior. Jacob recommends the congregation recognize that bad behavior does not define the man, and he still is recognized as a member of the community. Like the person with mental illness, they are not defined by their limitations, but instead of still a person with an imbued holiness and legal standing with the community. We know the person, each person, and while we may decide for the sake of health, or society, or another reason to modify human behavior, we

---

<sup>584</sup> *ibid*, 103

<sup>585</sup> *ibid*

<sup>586</sup> *ibid*, 106

<sup>587</sup> *ibid*

never forget that our decisions are based on the limited scope of the human mind, which never will fully grasp the complexities of each human being.

*Conservative discussion and analysis:*

Technology can open many doors to guide in the performing of mitzvot, the preservation of our health and our bodies, and making our society a better place. But there is no doubt that we recognize that not all problems need healing. As noted with the Reform conclusions, just because a human being is not perfect does not mean that are in need of fixing. People with disabilities are likewise created in the image of God. The Conservative movement, while also seeking to uphold the dignity of each person, recognizes that these individuals cannot perform, and in some cases should not be permitted to, the full scope of mitzvot.

While medicine can help, we must be cognizant that it does not lead us to set others apart from within the community. The treating of medical, social, physical, and psychological ailments cannot prevent us from seeing the humanity and higher purposes to these rituals practices. A case in 2000 was brought before the Conservative *poskim* regarding if one must support the building of a group home for the “developmentally challenged” in his or her backyard. The implication of this question was that such a home was not desired and could be easily placed somewhere else. As we proceed through the ruling, let us consider the relevance to this chapter. It is conceivable that in our efforts to cure and heal we fail to see the Divine nature in each person. Instead they are patients to be fixed, genes to be repaired, or mistakes to be corrected. As responsum author Rabbi James S. Rosen

points out, it is not only our place to heal, but also our place to respect and love our neighbor, regardless of their so-called developmental challenges.

There is a discussion in the *halacha*, including an example given in *Mishnah Bava Batra* 2:4, about being aware of who your neighbors are and how this will affect your life, lending to some credence for the "in-my-backyard" argument.<sup>588</sup> But knowledge of one's neighbors does not give legal permission to judge, exclude, or dehumanize them. In *Biur Halachah*, it is taught that the slaying of a handicapped person is the same as the slaying of a non-handicapped person.<sup>589</sup> The principle of *mishneh habriyot* (respect for all human life) notes the variety of divine creations and this blessing makes no statement about divine justice. It celebrates the variety of God's creations, abled and disabled.<sup>590</sup> Beit Yosef and Moshe Isserles say that fathering a *soteh* (idiot), *cheresh* (deaf person), or *mamzer* (bastard) still counts toward the commandment to be fruitful and multiply.<sup>591</sup> We see from all these examples that all human beings are treated equally, challenge or not.

In fact, teaches Rosen, our first reaction should not be to distance ourselves from those who are challenged but to draw closer to them. Our Jewish tradition teaches us to seek them out and to help. "To visit and care for the sick is a fundamental expression of Imitatio Dei (imitating God) as the *aggadah* in *Sotah* 14a states. [We] also cite the source from *Sanhedrin* (17b), which states that a Torah scholar should not reside in a city where a physician is absent. This effectively

---

<sup>588</sup> James S. Rosen, *Mental Retardation, Group Homes and the Rabbi*, *Mental Retardation, Group Homes and the Rabbi*, *Yoreh Deah* 336:1.2000, 4

<sup>589</sup> *ibid*, 7

<sup>590</sup> *ibid*

<sup>591</sup> *ibid*

makes it every Jewish community's responsibility to furnish needed medical services."<sup>592</sup> Rabbi Rosen continues with a conclusion that is very appropriate for this chapter and this discussion. As our scientific eyes look toward the future, our Jewish eyes must never leave its human values and limits. "The Torah makes no distinction between fully competent and challenged individuals in declaring that all humans are created in God's image. The Torah prohibits any act that compromises the intrinsic worth of a handicapped person. We are forbidden to defame the character of such an individual nor place him or her in any situation where physical or psychological harm might take place."<sup>593</sup> When while our abilities to change the human body and cure disease continue to grow, our respect for all human beings never shifts. Just because we can do more, does not make us more divine.

Let us close our discussion about Conservative responsa relating to human behavior modification with a responsum that recognizes the limits of humanity but sees technology as a means to flourish and grow. This responsum addresses how halachic categories are drawn to properly understand who is responsible for what, but does not see these legal categories as restricting. The boundaries of medicine open the law to change in those categories. The question of this responsum is about the participation of Jews who are blind in the Torah service. Clearly, the blind are unable to perform many ritual acts. Consequently, Rabbi David Nevins argues that the blind are expected to follow the mitzvot as much as they can however they are not permitted to read directly from the scroll or from memory. They are permitted and encouraged to take part in the receiving and blessing of the Torah with an

---

<sup>592</sup> *ibid*, 8

<sup>593</sup> *ibid*, 7

*aliyah*, repeating after a translator, or repeating the *maftir* (concluding Torah reading) with a Braille text.<sup>594</sup>

But this simple categorization about what mitzvot they are or are not expected to perform does not end there. In this case, and many others, technology is the key. If the technology for an optical reader is expanded, approved, and made easier to use, then the CJLS would consider its use for weekday Torah readings. After all, magnifying glasses are permitted and this is an extension. Further research and development must be done before any conclusion is reached.<sup>595</sup> This responsum is actually a beautiful example of how the act of forming categories within the law is not rigid but is fluid with technology developments. The *halacha* would gladly welcome the performance of mitzvot by blind or disabled persons if technology and modern medicine gives them the opportunity. The Conservative position holds both together the future possibilities and benefits made available by the medical frontier with the value of preserving the law, with its precedents, principles, categories, and tradition.

*Orthodox discussion and analysis:*

Similar to the responsa of the Reform and Conservative scholars, the Orthodox *poskim* respect that many people are born with disabilities or difficulties that makes it difficult for them to interact with the world. As such, their engagement with and performance of the mitzvot is not simple black and white. But, as has been

---

<sup>594</sup> Daniel S. Nevins, The Participation of Jews who are Blind in the Torah Service, *Orah Hayyim* 139:2.2003, 17

<sup>595</sup> Daniel S. Nevins, The Use of Electricity and Electric Devices on Shabbat, *Orah Hayyim* 305:18.2021a, 48

stated throughout this section, modern science has produced technology that assist people in many ways. In some cases, it is our place to heal. In others, it is only our place to help. This look into the Orthodox perspective will focus on three cases: disabilities and medical conditions, mental illness, and a general look at human behavior and modern science.

Mental illness is treated very seriously by many Orthodox *poskim*. In their responsa they are not subtle about the limitations that result from such an illness, nor they are subtle about the danger that it may cause. As we will see, the rabbis do put legal limitations on those with mental illness and debate the validity of different ways to work with such people.

We will break this discussion up into the limits and the help provided. There are certainly halachic limitations on those who are mentally ill. The *Nishmat Abraham* first attempts to define who is normal and who is not. Abraham states that "a patient who is at times normal and at other times mentally disturbed is obligated to perform mitzvot like any other person during the times when he is normal."<sup>596</sup> That is, *da'at* (mental competence) is required of a person in order to hold him or her to be "obligated" under the mitzvot. However, in this specific line he does not state what responsibilities the patient has in moments when he is not normal. Either way, this implies there are moments when a person is not obligated to some mitzvot. In the next line, Abraham rules, "a severely mentally retarded person is not obligated to perform *mitzvot*." Therefore we could conclude that in the moments of

---

<sup>596</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 106



mental disturbance, his ritual and legal requirements are lessened.<sup>597</sup> Waldenberg also mentions that *halacha* limits the marriage of those who are mentally ill. There are multiple provisions in which a divorce is encouraged and even required in the case of schizophrenia or other severe mental illness.<sup>598</sup> These laws are so strict that a person may have no choice in the matter. "A woman with paranoid ideation who falsely accuses her husband of living with other women or other strange accusations is required to accept a divorce. If she refuses a divorce, he may remarry if the special conditions of one hundred rabbis and handing over her divorce papers and marriage contract payments to a court of law are met."<sup>599</sup> While the one hundred rabbis count is strict and is probably meant to deter this from ever happening, the provision still stands that a man may remarry without giving a *get* to his first wife. All of these examples represent an acknowledgment by the rabbis that some people are not in full control of their own abilities and are not expected to behave in the full manner of a normal person.

Even though the rabbis create limitations for the mentally ill, this does not necessarily mean that they are irresponsible or free to break laws or disrupt society at their leisure. Quite the opposite in fact is true. Great efforts are made to help those who are mentally ill, not to ignore them, separate them, or treat them with less respect in a society. To that end, Waldenberg teaches "It is permitted to desecrate Shabbat for a mentally ill patient. This applies however, only to a medical/psychiatric therapy but not to remedies that have no exact scientific

---

<sup>597</sup> *ibid*, 107

<sup>598</sup> Avraham Steinberg, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980, 131-132

<sup>599</sup> *ibid*, 132

basis."<sup>600</sup> Just as Shabbat may be broken to heal another person on the grounds of *pikuach nefesh*, the same principle applies here. The mentally ill are still people and deserve the same help. Help, according to Waldenberg, is defined here on the basis of medical science, distinctly separating them from, raising them over, other homeopathic cures. Abraham, using Rabbi Eliezer Waldenberg as his source, teaches that "*halacha* does not differentiate between physical and mental illness" therefore laws that can be set aside for a physical illness, such as for Shabbat, Yom Kippur, *kashrut*, etc. can also be set aside for the psychiatric patient."<sup>601</sup> This is a further elaboration on the permissibility to help the mentally ill. In an addition to the 1980 version, in 1990 Abraham notes that Shabbat laws are set aside to prevent serious mental illness that could endanger one's life. He does not elaborate on the circumstances that could cause such a case.<sup>602</sup>

Waldenberg speaks to the severity of mental illness, "Mental illness that may result in the patient harming himself or others is considered a life-threatening disease."<sup>603</sup> To that end, Waldenberg issues a ruling that is at the very heart of this whole chapter. He rules, "It is permitted to perform a psychosurgery on such a mentally ill patient, even if, as a result, his personality may be changed. Such surgery is permitted even though it involves exposing the patient to the risks of surgery."<sup>604</sup> With this *halacha*, we have a specific example of how an Orthodox rabbi permits the use of a modern medical procedure that modifies a human so much that they are a

---

<sup>600</sup> *ibid*, 46

<sup>601</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 106

<sup>602</sup> Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990, 135

<sup>603</sup> Avraham Steinberg, *Jewish Medical Law*, 130

<sup>604</sup> *ibid*

different person. Not only that, but he permits its usage even if a great deal of pain is involved. We can conclude from this *halacha* that Waldenberg sees mental illness as something real and something potentially dangerous, but also as something that can be healed through the power and technology of modern medicine.

Next we turn to the many advances that medicine and science have developed to assist the deaf, blind, disabled, or the like. Orthodox scholars both struggle to see the beneficial help that these new technologies provide while still ruling of their halachic permissibility. Specifically, these scholars accept anything that can help a person, but are most wary when it conflicts with Shabbat laws.

Regarding artificial limbs, the *Nishmat Abraham* permits its use on Shabbat in *Orach Chayim* 301, which claims that an artificial limb is officially part of the person's body, not carried separately.<sup>605</sup> Rabbi Abraham Steinberg, who recorded and collected the rulings of his teacher Rabbi Waldenberg, listed a few examples of medicines that are permitted on Shabbat. It is permitted to administer a smallpox vaccination on Shabbat if it cannot be postponed until after the holiday ends.<sup>606</sup> Regarding people with diabetes, it is permitted to give an intra-muscular or subcutaneous injection to a non-dangerously ill patient on Shabbat, such as subcutaneous insulin injections.<sup>607</sup> Waldenberg also discusses the use of hearing aids on Shabbat. He permits its use as long as it is turned on before Shabbat begins.<sup>608</sup> The hearing aid cannot be turned off during Shabbat.<sup>609</sup> Therefore, he

---

<sup>605</sup> Abraham S. Abraham, *Medical Halachah for Everyone*, 101

<sup>606</sup> Avraham Steinberg, *Jewish Medical Law*, 50

<sup>607</sup> *ibid*, 51

<sup>608</sup> *ibid*, 58

<sup>609</sup> *ibid*

recommends using an automatic hearing aid to avoid the risk.<sup>610</sup> All of these are examples of medicine and technologies that are easy to administer and provide help. The rabbis easily could have ruled against them arguing that they are artificial or electronic but instead they open the law to permit their use on Shabbat as a way to benefit the patient.

While the Orthodox cases brought forward thus far have argued in favor of the use of drugs, surgery, hearing aids, limbs, and other modern medical innovations to help human beings, science is not appropriate in every aspect of Jewish life. There are rabbinic limits about how far medicine and science can encroach on the law. For example, Waldenberg considers how science could change the practice of *niddah* (laws concerning female purity). He rejects such an idea saying, "One may not rely on scientific test in order to determine whether vaginal discharge or spotting contains blood in establishing the *niddah* state of a woman. Similarly, one should not rely on a color comparison chart to distinguish among colors of vaginal discharge or spotting. The guiding principle in this matter is expressed by the dictum, 'the judge is responsible only for what his eyes can see.'<sup>611</sup>" His ruling is not all too different from discussion in previous chapters about the halachic cognizance about microscopic organisms, i.e. genes or stem cells.

In addition, Waldenberg maintains that rabbinic knowledge about medical issues from the days of Talmud, while ignorant in many ways, cannot be completely discarded. "Diseases explicitly stated by the Talmudic Sages to be life-threatening retain that status regardless of modern medical opinion. Thus, one should approach

---

<sup>610</sup> *ibid*, 59

<sup>611</sup> *ibid*, 117

these diseases as possibly life-threatening and desecrate the Sabbath for them, although modern physicians consider them non-threatening."<sup>612</sup> Pretty much we, as modern scholars, should not throw out the baby with the bathwater just because we know more about the body.

But lest we close our main discussion with a statement that minimizes modern medical opinion, in that same chapter of *halacha*, Waldenberg offers another statement that embraces modern medicine and the new information it can teach us about our bodies. "Since according to modern medical conceptualization, isolated danger to a single organ rarely exists (because of hematogenous/lymphagenous spread or other mechanisms), it is permitted to desecrate the Sabbath in order to treat that organ as long as there is a possibility that extension of the local disease to systemic proportions may occur."<sup>613</sup> This *halacha* teaches that modern medicine and science have gained a great deal of knowledge, and it is partly the role of the rabbinic scholar to apply this knowledge to our modern context, modern society, and modern understanding about diseases and the body in order that we may do our best in order to help heal it.

---

<sup>612</sup> *ibid*, 43

<sup>613</sup> *ibid*, 44

## ***Conclusion***

### Intersection between Judaism and Science

"The study and occupation of medicine are essential for the benefit of mankind." This quote comes from Rabbi Abraham S. Abraham, citing multiple responsa by the Rabbi Shlomoh ben Aderet (the Rashba), Rabbi Jacob Emden, and others.<sup>614</sup> While the debates over halachic categories, integration of modern sociology, and upholding the overriding principle of *pikuach nefesh* are all woven throughout these many chapters and subsections, Abraham's statement stands as true for all movements within Judaism. Abraham continues explaining the centrality and importance of medical knowledge for the Jewish people. Citing Yoreh Deah, Abraham states the Torah permits medical treatment of the sick, declaring it a mitzvah. Avoiding such behavior would be equivalent to the "shedding of blood" (Leviticus 19:16).<sup>615</sup>

But as we have seen repeatedly throughout this thesis, there is a certain level of caution or hesitation that comes along with the growth in medical and scientific research and possibilities. And this concern is not limited to only the more traditional. Rabbis and scholars from across the movements preached carefulness and attentiveness when it comes to embracing what is new. The intersection

---

<sup>614</sup> Abraham S. Abraham, *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980, 108

<sup>615</sup> *ibid*, 110

between Judaism and science is ever-present. The rabbis always struggle with what to change within the law, what to uphold, and what to reject.

Reform Rabbi Solomon Freehof spoke positively about how science and Judaism could reconcile. He argues that it is not an issue of theology and all halachic issues can be reconciled.<sup>616</sup> This, however, does not mean rebuking the tradition. Let us offer an example about organ donation. The CCAR Responsa Committee wrote in 2003 that the Reform Movement should not define death to allow for more organs to be used for transplantation. The sanctity of human life is to be upheld above all else, even at the expense of some organs. We cannot delay a death through machines or therapeutic means. The physician's responsibility is to the patient, not the organ or potential recipient.<sup>617</sup> The relationship between science and Judaism within the Reform context does not tell us to forget our past, but encourages us to find ways for the fields to speak to each other.

The Conservative movement spoke with a greater degree of caution, but in many cases, happily and excitedly sought to find ways to embrace beneficial advances in medical science. There is not the sense that the Conservative movement wants to deny new technologies. Rather they just want to be sure that they are the right innovation to approve and fit into the right Jewish context. Rabbi Elliot N. Dorff writes that as one attains and uses new technology ... it is necessary to get to know and use such machinery before deciding how it does and does not fit with Shabbat

---

<sup>616</sup> NRR, *Halachah and Space Travel*, 243-246

<sup>617</sup> RRTFC, *Hastening the Death of a Potential Organ Donor*, 5763.3, 171-172

prohibitions.<sup>618</sup> Dorff's focus on Shabbat highlights that Jewish law and ritual is a central concept that should be preserved, not dismissed. Rabbi Avram Israel Reisner speaks similarly, "*Halachah* often extends and extrapolates the boundaries of a forbidden action well beyond its origins, but it cannot abandon an original prohibition in favor of an interpretation which prohibits new things and permits that which had been forbidden."<sup>619</sup> The nature of an original rabbinic concept does not change if we use new technology or innovations.<sup>620</sup> The intersection of science, innovation, and technology with Jewish tradition is open and welcome, as long as it does not upset the Jewish order of tradition.

Orthodox scholars John D. Loike and Moshe D. Tendler speak about their willingness to see science and Judaism together as part of a Divine direction. They write, "The parallel and complementary motifs of Torah and science reflect the statement in the *Zohar* I, 134a, that 'God looked into the Torah and created the universe.' As the supreme genetic engineer, God creates the genetic underpinnings of evolution, which may be applied to fulfill moral imperatives and from which we may derive moral insights or have them reinforced."<sup>621</sup> In this quote we see an embracing of science as part of the natural world, part of God's intention for this world, and as part of Judaism. The main difference here, being clear that we cannot generalize this quote for the entirety of the Orthodox community, is that God is driving the process. Science and Judaism are not equals in partnership here.

---

<sup>618</sup> Elliot N. Dorff, Concurring Opinion with Rabbi Daniel Nevins' Responsum on Electricity on Shabbat, *Orah Hayyim* 305:18.2021b, 2

<sup>619</sup> *ibid*, 1

<sup>620</sup> *ibid*, 2

<sup>621</sup> John D. Loike and Moshe D. Tendler, Molecular Genetics, Evolution, and Torah Principles, *Torah u'Madda Journal*, 2006, 14



## Social Responsibility and *Tikkun Olam*

But the rabbis in the various movements did not see the relationship between science and Judaism as an intellectual or theological exercise alone. There are practical applications and positive benefits that we gain from medicine and science. In this regard, the need to change, or at least modify our interpretation of, the law maintains an eye toward what new development in society will help the community and are part of the natural order of the world.

The CCAR Responsa Committee wrote that impediments to healing, here a focus on insurance and liability, are detriments to the Jewish community. They wrote that a physician's refusal to heal on the basis of malpractice concern or liability frustrates the goal of *tikkun olam* (repairing the world), and *pikuach nefesh* for the sake of healing the whole community.<sup>622</sup> However, there are exceptions in that a physician can be exempt from practicing if such malpractice sends him or her into financial ruin, based on *mipnei tikkun olam* (out of concern for the betterment of public life and welfare).<sup>623</sup> For these Reform scholars, there is an emphasis on social justice and holding both physicians and us to a high ethical standard. The Reform movement believes "in the principles and insights which give meaning to the individual rulings and which serve as the moral and religious goal toward which all halachic decision ought to strive. Stated differently, we do not believe that the *halacha* can exist separately and apart from its higher aspirations. In this case, those aspirations surely demand from us the answer we have reached."<sup>624</sup> In a separate

---

<sup>622</sup> TFN, Medical Confidentiality, Malpractice and Moral Responsibility, 5753.2, 312

<sup>623</sup> *ibid*

<sup>624</sup> *ibid*, 315

responsum writing on the compulsory use of vaccines, the Committee declares, "We currently rely on 'the overwhelming viewpoint' that vaccines are healthy and safe to use. "We do not hesitate to adopt 'the overwhelming view' as our standard of guidance in this and all other issues where science is the determining factor.<sup>625</sup> Our moral and social responsibilities are a major impetus to reread Jewish law in ways that permit the breakthroughs of medical science to help the community.

Conservative Rabbi Aaron Mackler, writing on in vitro fertilization, also writes about the value of *tikkun olam* and seeking technology to help a social community. He writes that the donation of eggs is important to preserve the social order, even if the halachic status of the embryo is based on the birth mother. This relates to the values of *tikkun olam*, improving the world and maintaining the social order, and *darchei shalom*, the ways of peace. This creates balance between a Jewish community that donates and accepts embryos, and creates a harmonious relationship with non-Jewish donors as well.<sup>626</sup> The concept of balance is a very appropriate idea to consider. The scholars weigh tradition vs. technology, precedent vs. possibility, and the quest to follow Jewish values vs. the quest to heal.

Orthodox scholar David J. Bleich spoke on this topic on a deeper theological level. He writes, "Unlocking the secrets of the natural order serves as a harbinger of the messianic era... Perfection of the universe lies in the opening of the 'gates of Heaven' and in showering pure scientific wisdom upon mankind."<sup>627</sup> While this comment is far more theological than those by the Reform and Conservative

---

<sup>625</sup> RRTFC, Compulsory Immunization, 5759.1, 113-114

<sup>626</sup> Aaron L. Mackler, In Vitro Fertilization, *Even HaEzer* 1:3.1995, 15-16

<sup>627</sup> J. David Bleich, Biomedical Dilemmas: A Jewish Perspective Volume II, Brooklyn: A Targum Press Book, 1998, 99-100

scholars, it certainly speaks to the connection between science, Judaism, and the natural order through an Orthodox point of view. This quote also speaks to the concept that was seen throughout this thesis that Orthodox scholars maintain an eye to the theological to a very high degree, even when faced with social and community concerns.

### Final Comments

We conclude this thesis with final comments from each of the three movements about the perspective on changing Jewish law to accommodate the frontier of medical science. This thesis presented a wide-range of issues grouped around three main topics and intended to elucidate the various legal, social, ethical, and moral quandaries that are part of the halachic decision-making process. There is no one single answer about when the boundaries of Jewish law will bend and when they will stand firm. As a result each movement can only follow its own principles and react to each new issue.

The concluding words from the Reform Movement come from the CCAR Responsa Committee in a 2008 responsum on Human Genetic Modification. The Committee aptly explains its desire to find possibilities through God given knowledge, not restriction through halachic limits. This quote is specifically about human reproduction that relates more to the first two chapters of this thesis but the underlying philosophy is key.

"We need not refrain from intervening in matters relating to human reproduction. And this thinking has guided contemporary halachic

authorities, including those representing the Reform responsa tradition, who have generally supported the use of advanced techniques to assist human reproduction (artificial insemination, in vitro fertilization), as well as such procedures as human stem cell research and cloning. Every one of these technologies could be viewed as a violation of the natural order, an imposition of human will upon that which ought to be reserved for Divine authority. Yet the affirmative rabbinical attitudes suggest that we Jews do not necessarily view them as such. Rather, we can perceive them as the application of human reason, itself gift of God, toward finding remedies for human infertility and treatments for disease."<sup>628</sup>

The words of Rabbis Miriam Berkowitz and Mark Popovsky through the Rabbinical Assembly's Committee Jewish Law and Standards conclude the Conservative perspective. In a jointly written responsum on Contraception, Berkowitz and Popovsky write about the balance between innovation and tradition in Jewish law, "New scientific or medical information need not always trump halachic precedent, but it must be addressed directly by halachic authorities lest the tradition sever itself from the world which it governs... For us not to follow in this path would represent an abdication of our responsibility to employ all of our faculties for the sake of making proper halachic judgments."<sup>629</sup> Embedded within these thoughts is the preservation of Judaism at the core of each halachic decision. New information does not completely push out or make obsolete old ideas, even if those old laws or traditions seem nascent or uninformed. The new and old must

---

<sup>628</sup> NYP, On Human Genetic Modification, 5768.3, 2

<sup>629</sup> Miriam Berkowitz and Mark Popovsky, Contraception, *Even HaEzer* 5:12.2010, 30

speak to each other. Berkowitz, in a separate responsum on Reshaping the Laws of Family Purity in the Modern World, speaks about the cautious acceptance that her and others feel toward embracing medical knowledge in the Jewish law and community, "Changes in scientific knowledge do not always or automatically lead to change in *halacha* – even if the knowledge is universally applicable and undisputedly correct. Rather, the knowledge becomes a base for the rabbis of the time to draw halachic conclusions."<sup>630</sup> Science is an inspiration for Jewish scholars to advance health and healing in the Jewish community.

Orthodox scholars John D. Loike and Moses D. Tendler, speaking more specifically about genetic research, share their insight about the potential offered by scientific knowledge. Multiple times throughout this thesis, such as with the debate on prohibiting smoking, the halachic experts strongly considered the impact of new discoveries and information on Jewish law and community. Loike and Tendler write, "Genetic investigations are a critical obligation of human beings. They are included in the mitzvah of *ve-nishmartem me'od le-nafshoteikhem* (taking vigilant care of our health, Deuteronomy 4:15) and in Rabbi Joseph B. Soloveitchik's understanding of "*ve-kivshuhah*" in Genesis 1:28. According to Rabbi Soloveitchik, we are to conquer and master nature for the sake of improving human welfare. These mandates challenge Jews to examine the potential of any new technology or scientific principle."<sup>631</sup> Soloveitchik speaks of challenge, which is an appropriate term to use. New knowledge does not require law to be stringent but instead offers it an

---

<sup>630</sup> Miriam Berkowitz, Reshaping the Laws of Family Purity for the Modern World, *Yoreh Deah* 183.2006dm 17

<sup>631</sup> Loike and Tendler, *Molecular Genetics, Evolution, and Torah Principles*, 9

opportunity to improve health within the community. The Orthodox rabbis seek medical tools and discoveries that are beneficial to those around them.

Can rabbis across the spectrum meet the test presented by the frontier of medical science? How well have they accomplished this task? This thesis concludes that they are doing quite well, considering their use of sources, both thousands of years old and recently discovered by doctors and scientists. It is a work in progress but the rabbis will always have their last word. We end with a quote presented by Rabbi J. David Bleich citing the famous halachic scholar and physician Maimonides. He leaves us with a message about how the intersection between science and Judaism is a positive, even though often times contentious, relationship that can enrich the Jewish community:

"...Maimonides' elucidation of the *mitzvah* of "And you shall love the Lord your God" (Deuteronomy 6:5) as formulated in *Hilchot Yesodei ha-Torah* 2:2. For Maimonides, "love" and "knowledge" are synonymous terms. The commandment "And you shall love the Lord your God" as well as the commandment "the Lord your God shall fear" (Deuteronomy 6:13) are fulfilled by acquiring knowledge of God in the only way that man can know God, viz., through His wondrous works. Thus, mastery of the theoretical postulates of the pure science is not merely salutary; it is a *mitzvah*. As the secrets of physics, chemistry and the life sciences are unraveled, the mystery

of creation is better understood; correspondingly, the knowledge – and hence love – of God becomes more intense."<sup>632</sup>

---

<sup>632</sup> Bleich, *Biomedical Dilemmas*, 100

## ***Guide to Sources and Bibliography***

### **Reform Responsa and Sources**

Each citation is identified in footnotes by volume abbreviation (see below) responsum name or title, responsum number or date published (if applicable), and page number(s).

Central Conference of American Rabbis (CCAR) Responsa abbreviations:

*(listed chronologically by publication date)*

**RR** – Reform Responsa, Solomon Freehof, 1960.

**RRR** – Recent Reform Responsa, Solomon Freehof, 1963.

**CuRR** – Current Reform Responsa, Solomon Freehof, 1969.

**MRR** – Modern Reform Responsa, Solomon Freehof, 1971.

**CoRR** – Contemporary Reform Responsa, Solomon Freehof, 1974.

**RRT** – Reform Responsa for our Time, Solomon Freehof, 1977.

**NRR** – New Reform Responsa, Solomon Freehof, 1980.

**ARR** – American Reform Responsa, Walter Jacob, ed, 1983.

**CARR** – Contemporary American Reform Responsa, Walter Jacob, ed, 1987.

**TRR** – Today's Reform Responsa, Solomon Freehof, 1990.

**NARR** – New American Reform Responsa, Walter Jacob, ed, 1992.

**TFN** – *Teshuvot* for the Nineties: Reform Judaism's Answers to Today's Dilemmas, W. Gunther Plaut and Mark Washofsky, eds, 1997.

**RRTFC**– Reform Responsa for the Twenty-First Century: *Sh'eilot Ut'shvot*, Vol 1 and 2, Mark Washofsky, ed, 2010.

**NYP** – *Not Yet Printed*, responsa published by the CCAR Responsa Committee, but not yet in bound collections. For this thesis, such responsa are from <http://ccarnet.org/rabbis-speak/reform-responsa/index/> and accessed on January 7, 2013. All page numbers relate to a PDF document version of the website.

All responsa written by Rabbi Solomon Freehof from Reform Responsa (1960) through Today's Reform Responsa (1990), are his own private opinions. All of Freehof's books were published by The Hebrew Union College Press in Cincinnati.

All other responsa, beginning with American Reform Responsa (1983), is the work of the CCAR Responsa Committee, edited respectively by Rabbis Walter Jacob, W. Gunther Plaut, and Mark Washofsky. All CCAR Responsa Committee books were published by the Central Conference of American Rabbis in New York.

More information on the published CCAR Reform Responsa Collection can be accessed online at [http://ccar-ebook.com/Reform\\_Responsa\\_Collection/](http://ccar-ebook.com/Reform_Responsa_Collection/).



### **Conservative Responsa and Sources**

Each citation is identified in footnotes by author(s) name, responsum title, responsum number (which includes category and the date it was published), and page number(s). Page number(s) are based on the downloaded PDF documents.

Committee on Jewish Law and Standards (CSJL) categories:

*(listed order and category descriptions taken directly from the CSJL's website)*

**Orah Hayyim** – prayer, synagogue, Shabbat, and holidays

**Yoreh Deah** – *kashrut*, conversion, mourning, and family purity

**Even HaEzer** – marriage, divorce, and interpersonal relationships

**Hoshen Mishpat** – financial responsibility, business, and public responsibility

All responsa are from the Rabbinical Assembly's CSJL, published at

<http://www.rabbinicalassembly.org/jewish-law/committee-jewish-law-and-standards>. All responsa for this thesis were accessed and downloaded as PDF documents on August 28, 2013. All page numbers relate to the PDF documents.

More information on the Rabbinical Assembly's Committee on Jewish Law and Standards can be accessed online at the website above.

Additional sources:

*(listed alphabetically by author)*

Elliot Dorff, *United Synagogue Review*, United Synagogue of Conservative Judaism, 2004.

Moshe Halevi Spero, *Judaism and Psychology: Halakhic Perspectives*, New York: Ktav Publishing House Inc. and Yeshiva University Press, 1980.

### **Orthodox Responsa and Sources**

*(listed alphabetically by author)*

Abraham, Abraham S., *Medical Halachah for Everyone: A comprehensive guide to Jewish medical law in sickness and health*, New York: Feldheim Publishers, 1980.

Abraham, Abraham S., *The Comprehensive Guide to Medical Halachah*, New York: Feldheim Publishers, 1990.

Bleich, J. David, *Biomedical Dilemmas: A Jewish Perspective Volume II*, Brooklyn: A Targum Press Book, 1998.

Bleich, J. David, *Judaism and Healing: Halakhic Perspectives*, Jersey City Ktav Publishing House, Inc., 2002.

Eisenberg, Daniel, *Judaism and Cosmetic Surgery*, Aish.com, <http://www.aish.com/ci/sam/48955041.html>, accessed on December 4, 2012.

Eisenberg, Daniel, *Stem Cell Research in Jewish Law, Jewish Law Articles: Examining Halacha, Jewish Issues, and Secular Law*, 2001,

- <http://www.jlaw.com/articles/stemcellres.html>, accessed on December 4, 2012.
- Ellenson, David H., "How to Draw Guidance from a Heritage: Jewish Approaches to Mortal Choices," *A Time to be Born and a Time to Die*, ed. Barry Kogan, New York: Aldine De Gruyter, 1991.
- Jachter, Chaim, *Cosmetic Surgery: A Review of Four Classic Teshuvot – Part 1*, *Kol Torah*, January 8, 2005, <http://www.koltorah.org>, accessed on December 4, 2012.
- Jachter, Chaim, *Cosmetic Surgery: A Review of Four Classic Teshuvot – Part 2*, *Kol Torah*, January 15, 2005, <http://www.koltorah.org>, accessed on December 4, 2012.
- Levin, Fajtel, *Halacha, Medical Science and Technology: Perspectives on Contemporary Halacha Issues*, New York: Maznaim Publishing Corporation, 1987.
- Loike, John D. and Moshe D. Tendler, *Molecular Genetics, Evolution, and Torah Principles*, *Torah u'Madda Journal*, 2006.
- Plaut, W. Gunther and Mark Washofsky, *Teshuvot for the Nineties: Reform Judaism's Answers to Today's Dilemmas*, New York: Central Conference of American Rabbis, 1997.
- Rosner, Fred, *Modern Medicine and Jewish Law: Studies in Torah Judaism*, New York: Yeshiva University, 1972.
- Rosner, Fred, *Modern Medicine and Jewish Ethics*, New York: Yeshiva University, 1991.
- Rosner, Fred, *Biomedical Ethics and Jewish Law*, Hoboken: Ktav Publishing House Inc., 2001.
- Rosner, Fred and Moshe D. Tendler, *Practical Medical Halachah*, Northvale: Jason Aronson, Inc., 1997.
- Schiff, Daniel, *Abortion in Judaism*, Cambridge: Cambridge University Press, 2002.
- Steinberg, Avraham, *Jewish Medical Law: A Concise Response*, Compiled & Edited from the *Tzitz Eliezer*, trans. David B. Simons, Jerusalem: Gefen Publishing, 1980.
- Steinberg, Avraham, *Hikhot Rofim U'refu'ah*, Jerusalem: Mosad Harav Kook, 1978.
- Tendler, Moshe Dovid, *Responsa of Rav Moshe Feinstein: Translation and Commentary, Vol. 1: Care of the Critically Ill*, Hoboken: Ktav Publishing Inc., 1996.
- Tendler, Moshe Dovid, *Stem Cell Research and Therapy: A Judeo-Biblical Perspective, Ethical Issues in Human Stem Cell Research, Volume III: Religious Perspectives*, September 1999.
- Washofsky, Mark, *Jewish Living: A Guide to Contemporary Reform Practice*, New York: UAHC Press, 2001.