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Jewish Medical Ethics

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ABSTRACT: Jewish medical ethics is a term coined by the late Lord Rabbi Immanuel Jakobovits in the mid-20th century. Its principles and emphases differ in some significant ways from the currently accepted axioms in Western secular ethics. The emphasis is less on autonomy and more on the value of human life and on communitarianism. The Israel Patient's Rights Law reflects these differences from the Western norms.

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I would like to start with some historical perspective. When I was at medical school in the United States some 60 years ago the word medical ethics was not even mentioned in the curriculum of my medical school. This was the case in most American medical schools, except for the five medical schools under Roman Catholic auspices which provided the students with the views of the Church on such issues as abortion and euthanasia. Not a single journal in the field existed then. The field of medical ethics, as an academic and practical discipline in the West, dates to the 1960s and has flourished almost exponentially since.

The term Jewish Medical Ethics is also a relatively new one, having been coined for the first time in the mid-20th century by the late Lord Rabbi Immanuel Jakobovits, then chief rabbi of Ireland, in his doctoral thesis on the subject. But the fundamental concepts of Jewish medical ethics go back in continuity for several thousand years. The late former Israeli associate chief justice and Talmudic scholar Menachem Elon pointed out that there are over 300,000 Jewish rabbinical responsa; these constitute the largest and most extensive continuous legal and religious case tradition in non-interrupted daily application over several millennia. These cases include many that can properly be classified as falling under the rubric of medical ethics. Rabbi Jakobovits mined these sources for their relevance, organized the materials, and created the basis for what has developed into Jewish Medical Ethics, which is widely recognized as a unique contribution to bioethics.

My intention in this brief paper is to present an overall glimpse at the foundational concepts of traditional Judaism towards bioethical issues. And then provide just a few examples of how these concepts play out in practice.

Before dealing with specific topics it is critical to understand that Judaism has a coherent worldview of humans and their environment which differs from that of its secular counterparts, and this worldview, in turn, leads to important consequences in daily practice.

First, there is the contrast between a philosophy of rights and one of duties. These fundamental differences have been elaborated in fairly great detail by two Jewish jurists, the late professor Moshe Silberg [1], senior judge of the Israeli Supreme Court, and subsequently by the late Robert Cover [2], a young professor at Yale Law School.

The concept of human rights is an outstanding product of Western thought since the Enlightenment in the 18th century. However, in the Jewish tradition this fundamental concept is expressed not in terms of rights, although historically the development of the concept of human rights is a direct product of that tradition, the Torah. The human being has special and unique rights, because he/she was created in the "image" of God according to the Bible. But in our tradition we prefer to talk about duties rather than rights; the child, in the vernacular of the Jewish tradition, has no *rights* to an education, while the parent and/or the community has a *duty* to provide education, and similarly for many other "rights."

There is then the logical and obvious question, "What difference does it make if the particular notion is expressed in terms of a right or of a duty?" In reply, I would ask you to think of an individual who wakes up in the morning aware of all the rights to which he/she thinks they are entitled. Rarely will that person at the end of the day achieve all of those rights and will thus be frustrated. Compare that individual to one who arises in the morning faced with an array of duties to be fulfilled. At the end of the day that person too will likely fall short. But compare a society of individuals who are frustrated by what they have not *received* to one comprising people who are dissatisfied because they have not carried out all of their required obligations. To quote the now classic summary from the late President John Kennedy's inaugural address, "Ask not

what your country can do for you. Ask what you can do for your country.”

How does this difference relate to medical ethics in general, and to Jewish medical ethics in particular? In the field of medicine, the secular world does not recognize a duty to care for one's own health or to seek medical care. The corollary of this deficiency is that one may not impose treatment on a competent person against his/her will, unless that person threatens the welfare of the public. There exists in the West the almost absolute right to “do one's own thing” even if it leads to degradation and death, as exemplified by the many homeless individuals freezing to death in major cities while refusing to enter available shelters that are offered.

Similarly, in the United States, there is no duty imposed on a physician to provide medical care, even in emergencies. What does exist are the so-called Good Samaritan laws which protect from liability of a physician volunteering assistance to a patient in an accident, but in almost none of the States is there a *requirement* to render such help.

In the Jewish tradition the duty to render medical care is unequivocal if a physician is called upon to do so by a patient. This duty is derived from a variety of biblical commands, both positive and negative. The reciprocal duty to care for one's own health and body, while not as unequivocal as the physician's duty to treat, is nevertheless currently accepted almost unanimously by all Jewish authorities. And were there a sovereign traditional Sanhedrin governing Jewish society, such a duty, like cessation of smoking, might be legally enforced.

A second major philosophical difference between the Jewish and the secular worldview relates to the ownership of the body. In the secular worldview a competent person has full rights over his/her body. Therefore, in most Western countries suicide is no longer classified as a criminal act. In Jewish thought the individual does *not* have absolute rights over one's body. Like everything else in the world, the body is the property of the Almighty. We are but stewards or guardians of someone else's property, as it were.

In the field of secular bioethics, there is a fairly widespread consensus as to the so-called four principles, often referred to humorously as the “Georgetown mantra” because they were coined by ethicists at Georgetown University and because they are repeated, mantra-like, during every discussion of medical ethical dilemmas. These principles – autonomy, beneficence, non-maleficence, justice – are all given consideration when dealing with ethical dilemmas. However, in the West, especially the United States, autonomy usually prevails and trumps all the other principles [3]. In its most extreme form, autonomy can justify suicide as the ultimate expression of unlimited autonomy. Even without going to that extreme, Western court systems are virtually unanimous in insisting on informed consent before any treatment is given to a competent patient. A violation of this requirement is both a civil and a criminal

offense. Robert Veatch [4], one of the more ardent exponents of autonomy, has stated categorically that he knows of no case in which patient welfare is so weighty that it could outweigh autonomy. He claimed that “no competent patient in the United States has ever been forced to undergo medical treatment for his or her own good. No matter how tragic, autonomy should always win if its only competitor is the paternalistic form of beneficence.”

It is interesting that the almost universally accepted principles do not include the principle of sanctity of human life – and the omission is not accidental because the concept of “sanctity” no longer exists in the vernacular of the secular. It is a contradiction in terms. One may argue whether or not the specific term “sanctity” is an original or unique Jewish term, yet the powerful imperative of *pikuach nefesh* (saving of human life) is indisputable in the Jewish tradition and permeates even secular Jewish and Israeli culture. This ethos is reflected in a number of manifestations, including the unusual phenomenon of rabbis in the Middle Ages who were also physicians, and in the impressive over-representation of Jews in the medical profession in almost all societies and eras. Other expressions of this culture include the relatively high percentage of Israeli patients on dialysis as compared to those in wealthier countries, the Israeli policy of placing physicians virtually on the front line on the battlefield in order to enhance the chance of saving the lives of wounded soldiers, and the major proportion of Israeli patients in transplantation centers around the world. Finally, there is a myriad of jokes confirming the perhaps exaggerated emphasis on life in the Jewish value system.

The Jewish culture is strongly pro-life, probably more so than its daughter religions, Christianity and Islam. This culture even among avowedly secular Jews is rooted in several millennia of Jewish tradition and is religious in origin. It is best expressed by the *Mishnah* in the Talmud: “Therefore was Adam created as a single individual – to teach us that one who destroys a single life is as if he destroys an entire world. And he who saves a single life is as if he saved an entire world. And so that one man should not say to his fellow man ‘my father is greater than yours’” – a clear rejection of racism.

Let me now illustrate some of these theoretical considerations with an example from current Israeli law. In 1996 Israel enacted the Patient's Rights law, much of which is non-controversial and is in keeping with Western ethical principles. It requires that informed consent be obtained before treatment, as expected and as practiced in most Western countries. However, one clause in the original proposal created considerable debate. What should a physician do when a competent patient refuses a treatment that is clearly lifesaving? The government's then chief legal advisor convened a meeting of about 30 physicians, philosophers, lawyers and clergy to discuss the issue. The civil libertarians in the group of course took the standard Western position, namely, that under no circumstances could therapy

be rendered against the will of a competent patient, unless the patient's illness threatened the welfare of others as in the case of certain communicable diseases. There were others, particularly the rabbis, who invoked the sanctity of human life in the Jewish tradition to support the possibility under certain circumstances of coercion of competent refusing patients. One of Israel's leading philosopher/ethicists said, "I have a conflict between my head and my heart. My head, my Western philosophy, says that a competent expressed will may not be overruled. Yet I am simply incapable of standing idly by and watching while somebody lies on the railroad track waiting for an approaching train in order to commit suicide without making an effort to push him off the track – even against his will." A vigorous debate ensued. The final compromise, which I believe is unique in the world, permits a competent patient to be treated against his or her expressed will if the legally constituted hospital ethics committee is convinced that there is reason to believe that after receiving the treatment the patient will give retroactive consent. In other words, in the spirit of the holy ambience of Israel, the ethics committee is expected to possess the skills of prophecy, which is quite a stringent requirement by any standard. I must confess that when I heard of this compromise which was enacted into law I considered it ridiculous. But I have since had occasion to reconsider my position, and I now believe that this compromise is indeed wise, humane, desirable, and in keeping with the Jewish tradition. An illustrative case occurred in an Israeli hospital when a young man was admitted with antibiotic-sensitive pneumococcal pneumonia and an almost 100% prognosis for cure. He began to experience problems of oxygenation and had difficulty breathing. Intubation and mechanical respiration were indicated, but he refused all efforts to convince him to be intubated. The house staff relented, and he died. The residents did not take advantage of the clause in the law that might have permitted imposition of intubation. This patient's death would be considered perfectly acceptable by most Western bioethicists, but I consider his death an unnecessary and preventable tragedy. Here was an acutely ill patient with a curable disease. We were not dealing with a patient who had been suffering from a terminal disease who was anticipating death as a salvation from his suffering. I would agree that the imposition of intubation and mechanical respiration to prolong his suffering would be unconscionable. The patient, while technically and legally competent, in all likelihood feared intubation, but had his life been saved he, and his family, would undoubtedly have been eternally grateful to the physician who had the courage to impose treatment. Interestingly enough, an almost identical case was described in the *New Yorker* magazine [5] by Dr. Atul Gawande, one of the medical profession's most talented writers. At the Brigham and Women's Hospital in Boston the staff treated a young man with pneumococcal pneumonia who reached a stage where he needed intubation, but he refused. In keeping with American

standards the physicians accepted his refusal, but when he lost consciousness a courageous woman chief resident did intubate him and ventilated him for a day or so. His first words upon awakening were "Thank you."

Why does Israeli policy diverge significantly from Western norms to which most of you are accustomed. I think there are several factors, whose relative weights are hard to quantify. First there is the Jewish culture which places an enormous emphasis on the value of human life. While the roots are religious, this cultural value permeates Israeli norms. In at least two Israeli court decisions the judges specifically stated that in our culture if there is a conflict between human life and either autonomy or dignity, human life takes precedence. Secondly there is a strong communitarian ethic that characterizes Israeli society. It is perhaps expressed in the classic statement "All Jews are responsible for each other," meaning no man is an island. An individual's death is not just his or her private and personal affair but diminishes the entire community. If a near or dear one of mine were headed deliberately and voluntarily for an obvious disaster, I could not be indifferent about it and would undoubtedly intervene. It is no accident that Israel is blessed with so many voluntary organizations for medical assistance. Also of interest is that the relatively new so-called communitarian movement in the USA was founded and is headed by an Israeli, Professor Amitai Etzioni.

Another dramatic example of our special approach is the issue of our Jewish requirement to come to the aid of even a stranger in danger. I remember distinctly my professor of surgery in medical school cautioning us not to stop at the scene of an accident lest we be sued. As I mentioned earlier, except for the so-called Good Samaritan laws, there is no requirement in almost all of the states in the United States to come to the aid of someone injured or in need of emergency assistance. I will illustrate this by the story of Kathy O'Dowd, the famous mountain climber. On one of her attempts to reach the peak of Mount Everest she and her partner came upon an injured climber in distress high up on the mountain. They had to choose between helping this disabled climber, perhaps saving his life, but thereby forfeiting their chance to reach the peak, or abandoning the injured climber to his death and continuing on to the peak. They chose the latter, leaving the climber to die. In a newspaper discussion of the event a noted American bioethicist and legal expert stated that they had no obligation to help a stranger whose predicament was not caused by them and who had no special personal relationship with them. Such an attitude is inconceivable by Jewish legal and ethical standards. There is a biblical command, "Do not stand idly by your fellow-man's blood." The Israeli Knesset in 1998 actually passed a law with that title from the biblical phrase, mandating every citizen, not only health care personnel, to come to the aid of an individual in sudden danger. I am proud to report that a few years ago an Israeli Everest climber, Nadav Ben Yehuda, came upon

a Turkish fellow-climber close to death near the peak. Nadav forfeited his own chance to reach the peak and at great danger and severe personal injury he carried his colleague on his back for 8 hours to safety, under the most incredibly difficult conditions. He was awarded the highest personal commendation for his heroism from the late then president Shimon Peres. In a similar vein, about 40% of Israel's current kidney transplants are carried out on a purely altruistic basis to non-related strangers, far ahead of any other country in the world.

There are numerous other areas in which the Jewish tradition carries unique emphases and directions. These include confidentiality, truth-telling, conflict of interest and many others. We can all benefit from the Jewish tradition's millennia of experience and input by studying it, arguing with it, and refining it to meet modern needs.

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