

## **Jewish Ethical Teaching and Technological Advance**

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The aim of this presentation is to bring Jewish ethical teaching to bear on problems raised by recent technological advance. After some preliminary remarks about the nature of the Jewish ethical enterprise, I shall focus on the two extremities of modern bioethical discussion: the beginning of life, or more precisely, *in vitro* fertilization and embryo transfer; and the end of life, or more precisely, the comatose patient and euthanasia. A brief concluding comment will attempt to analyze how Jewish ethics works in the light of the two issues we will explore.

Perhaps the first matter to be noted with regard to Jewish ethics is that the term "Jewish ethics" was foreign to Judaism and unknown to Jewish literature prior to the latter half of the nineteenth century. Indeed, biblical and classical Hebrew have no term for "ethics." The creators of modern Hebrew perforce had to borrow *ethica* from the Latin or invest new meanings into the older Hebrew terms *musar* ("chastisement") and *middot* ("virtues").

The study of Jewish ethics, then, is in a sense anachronistic. When we speak of Jewish ethics, however defined, we are imposing a modern category of thought upon an ancient, yet still vibrant tradition. Classical Judaism did not imagine that one could isolate the ethical from all other strands comprising the complex matrix of Judaism. But this is precisely the basic assumption of modern scholarship: not only is it possible to isolate that strand which treats of Jewish ethics but, having

isolated that strand, scholars can proceed to examine it, categorize it, and make judgments about it. This enterprise is not without its dangers. By isolating one strand of values, namely Jewish ethics, and contrasting it with an alien configuration of values, namely contemporary ethical discussion, one risks losing still another configuration of values, namely Judaism. In the case of Jewish ethics, scholars risk falling into the trap of searching Judaism for its parallels to modern ethics, when in fact Judaism may be offering an alternative worldview, one which does not separate out ethics from law and theology.

Having said that, we affirm that the risk is well worth taking—for the scholarly benefits to Jew and non-Jew alike are salutary. First and foremost the pursuit of Jewish ethics is significant because its teaching is historically significant. R.G. Collingwood said it well: “The value of history, then, is that it teaches us what man has done and thus what man is.”<sup>1</sup> Judaism is a major repository of the ethical teaching of the past. We have much to learn from the Hebrew Bible and from the teachings of the rabbis in the Talmud and Midrash about ethical issues and about how they were resolved by the ancients. The point here is not that the Hebrew Bible and rabbinic teaching are necessarily authoritative for modern man. Rather, it is incumbent upon mankind to learn from its collective experience. If the Jews have preserved the protocols of four thousand years of ethical discussion and decision-making, it would be ludicrous for modern man to overlook such a treasure trove of ethical insight and experience. One can agree or disagree with the material; one cannot afford to ignore it. Secondly, as the precursor of the ethical teaching of Christianity and Islam, the Hebrew Bible introduced a basis for moral obligation that moves beyond prudence, reason, and nature. Why be ethical? Because ultimately one is held accountable for his deeds in this world. Other biblical teachings include the brotherhood of all mankind (all humans are created in the divine image) and moral duty (one must love one’s neighbor and come to his aid; it is not enough that he does not hate him and that he causes him no harm). These and many other teachings relating to ultimate values have been elaborated upon by the rabbis in every generation to this very day. A voluminous Jewish literature exists on almost every ethical issue. The best of this material should be made

available to, and utilized by, all scholars interested in contemporary ethical discussion. It is not enough to pluck fruits from the branches; one needs to examine the roots as well.

### In Vitro Fertilization

The first successful laboratory fertilization of human egg by human sperm—what is generally known as *in vitro* fertilization—was reported in 1969.<sup>2</sup> Since then progress has continued unabated and has led to the successful reimplantation of an *in vitro* fertilized human egg into the uterus of a previously infertile woman, resulting in childbirth. Such technological achievement was unthinkable before this century, and one would naturally be inclined to think that classical religious teaching would be ill-equipped to grope intelligently with the enormous ethical implications of such technological advance. I trust that the discussion that follows will persuade some, at least, that religious teaching is not quite as sterile as it is sometimes made out to be.

For heuristic purposes, I have found it convenient to structure this presentation in scholastic form, attempting to provide Jewish responses, however brief, to a series of questions. The answers to the last questions will, in effect, summarize several Jewish perspectives on *in vitro* fertilization and incorporate some personal opinion as well. At best, whatever I say is provisional, even with regard to Jewish teaching, for Jewish teaching is an ongoing process. And one can say with certainty regarding *in vitro* fertilization that more remains to be said than has been said.

The first question is whether *in vitro* fertilization and embryo implantation are not an interference with nature and thus, *ipso facto*, to be viewed with suspicion? Is not sexual intercourse the only natural setting for procreation? Will not *in vitro* fertilization and embryo implantation lead to various kinds of abuse, ranging from host-mothering for profit to the public auction of celebrity ova and sperm?

From a Jewish perspective, much of medical practice, and certainly surgery, is a kind of interference with nature. But such interference is welcome when it is therapeutic. In the Midrash

(Jewish homiletic literature from the second through the twelfth centuries) we are told about Ishmael and Akiba, two distinguished second-century Palestinian rabbis, who were walking through the streets of Jerusalem when they chanced upon a sick man. The sick man asked: "Masters, how can I be cured?" The rabbis responded: "Take such and such medicine and you will be cured." The sick man then asked: "And who afflicted me with disease?" "The Holy One, blessed be He," replied the rabbis. The sick man asked once again: "Do you then interfere in matters that are not your concern? God afflicted, and you heal?" The rabbis responded with a question: "What is your occupation?" The sick man responded: "I am a tiller of the soil, and I prune trees." "But who created the soil and the trees?" asked the rabbis. "The Holy One, blessed be He," answered the sick man. The rabbis continued: "Did you then interfere in a matter that is not your concern? He created the trees as they are, and you have the audacity to prune them?" The sick man responded: "Were I not to weed the field and prune the trees, it would bear no fruit." "So too," answered the rabbis, "with regard to the human body. Without proper medical care it cannot function properly."<sup>3</sup>

Another rabbinic passage tells the following story: When Hillel (a first-century rabbi and contemporary of Jesus) completed the lesson with his disciples, he accompanied them on their way. They asked him, "Master, where are you going?" He replied, "To perform a religious duty." "Which religious duty?" they asked. Hillel answered, "I am going to take a bath." "Is taking a bath a religious duty?" they asked. Hillel explained, "If the statues of the emperor in the public domain are regularly scraped and cleaned, how much more so should I, who am created in the divine image, take care of my body."<sup>4</sup> Thus, classical Judaism looked kindly upon the internal and external care of the body. Interference was welcome when it was beneficial to the patient.

While sexual intercourse was viewed as the natural setting for procreation, it was not the only one. Thus, Jewish sources from as early as the fourth century discuss efforts upon the part of some rabbis to create humans without engaging in sexual intercourse.<sup>5</sup> Indeed, the Talmud claims that the rabbis succeeded in their efforts! Regarding artificial insemination, the rabbis discussed its legal implications as early as the fifth

century of the common era.<sup>6</sup> The rabbis did not proscribe efforts to create humans without engaging in sexual intercourse, nor did they view artificial insemination as being unnatural in a pejorative sense. In general, it is worth noting that classical Judaism viewed sex and procreation as independent values.<sup>7</sup> Sexual intercourse during pregnancy, for example, was a wife's privilege and a husband's duty. It mattered not that she was pregnant. Similarly, procreation was viewed as a value independent of the sexual act.<sup>8</sup> Thus, it is not surprising that many contemporary rabbis find human *in vitro* fertilization palatable, when warranted. This is not to say that rabbis have no preferences. To be sure, they viewed natural sexual intercourse as the primary means of procreation; but they acknowledged other possibilities.

Regarding possible abuse, it would be the responsibility of the federal, state, and local governments to prevent or control serious abuse. But this should in no way lead us to throw out the baby with the bathwater. Drug abuse abounds in this country, but no one is seriously considering abolishing drugs. *In vitro* fertilization may be likened to a box of matches, a kitchen knife, or an automobile. When used properly, they are a boon to mankind; when used improperly, they are destructive. It is the manipulator, and not the object, that must bear the blame for any wanton destruction.

Human *in vitro* fertilization experimentation, as presently practiced, involves the fertilization of ova that will deliberately not be brought to term, thus raising the second question: Should such life be created and aborted in order to advance science? Should such life be created and aborted to enable the infertile to become fertile? Here, much depends on how one views the moral worth of the conceptus in its earliest stages. Some Jewish authorities rule that during the first forty days of gestation, the conceptus has little or no moral status, and therefore could be aborted for any constructive purpose, such as medical experimentation.<sup>9</sup> Other, more stringent Jewish authorities accord moral status to the conceptus from the moment of conception on. They advocate confining human *in vitro* fertilization to one ovum at a time (instead of the practice of extrapolating and fertilizing numerous ova), thus obviating the wanton destruction of unused fertilized ova.<sup>10</sup>

The next six questions are really all of a kind, serving to underscore the legal ambiguity that abounds in *in vitro* fertilization and in embryo implantation:

- If an ovum is provided by X, and is then fertilized *in vitro*, and then implanted in Y, who brings the fetus to term, who is its legal mother?
- In cases of surrogate mothers, who would have the right to decide for abortion or amniocentesis? Would either the provider of the ovum or the surrogate mother have a right of refusal?
- X and Y are sisters happily married to their respective spouses. X is infertile and, in order to procreate, agrees to the implantation into her uterus of a fertilized ovum of Y. X's husband has provided the sperm for the *in vitro* fertilization. Is the husband guilty of either an incestuous or an adulterous relationship?
- Assuming an *in vitro* fertilized ovum could be brought to term *in vitro*, would the donor of the ovum or the scientist who conducted the experiment be the legal mother?
- If a conceptus is brought to term *in vitro*, what would be his or her legal birthday? Consequences here can sometimes be a matter of life or death, e.g., determining whether or not it was a minor or an adult who committed a murder, or whether or not someone was eligible for the draft.
- If a scientist engages in *in vitro* fertilization without the prior consent of the male and female donors, who is legally and morally responsible for the conceptus when brought to term? Is rape possible *in vitro*?

In Judaism, no decision regarding such a weighty matter as *in vitro* fertilization would be rendered until all the legal consequences were explored and resolved. It seems to me that the Department of Health and Human Services should not approve a research application in these areas unless the desired or expected results are free and clear of legal encumbrance and ambiguity. Thus, if the desired result of an experiment is an embryo transplant which will be brought to term by a surrogate

mother, the legal status of the infant-to-be needs to be determined before the experiment is funded, not after. Similarly, if the desired result of an experiment is a conceptus brought to term *in vitro*, a new legal definition of birth needs to be promulgated before the experiment is funded, not after. Another sample of legal ambiguity comes from a less pressing area, but one that nonetheless merits mention here. I have seen numerous discussions of human cloning. Inevitably it is argued that one of the important benefits of human cloning will be the availability of spare parts for organ transplantation. If what is intended is the creation of human clones whose organs would be designated for transplantation purposes, I fail to see by what ethic or law any clone could be designated a donor rather than a recipient. And if experiments are being undertaken whose intended result is the cloning of a human being, we had better legislate now regarding the rights and privileges of such clones.

Instead of responding directly to each of the questions, which at this stage of Jewish discussion would in any event be premature, I should like to focus on the question of surrogate mothers, and hopefully a Jewish response to some of the questions will begin to emerge.

The earliest Jewish discussion relating to embryo implantation dates back to 1928 and was authored by an East European rabbi<sup>11</sup> who reports that the status of a child born from an ovarian transplant was discussed at a medical conference held in Chicago in 1911.<sup>12</sup> Was its mother the donor of the organ, or the recipient mother who brought the child to term? After drawing several dubious analogies to talmudic passages, the rabbi ruled (in theory, of course, since he was not involved in the case) that the recipient of the ovary was the child's legal mother. He reasoned that since in the case in question fertilization occurred after the transplant, clearly it was the recipient's ovum that had been fertilized. And in humans, "the seed of the father and the mother who is impregnated and gives birth is decisive." The learned rabbi was perhaps a poor biologist (for while it is clear that a transplanted ovary becomes the property of the recipient, it is by no means clear that an ovum fertilized after the transplant is to be genetically related to the recipient); but the principle he enunciated seems to be clear: parentage is determined by genes. The providers of the sperm and ovum that

form the zygote are the legal parents of the conceptus. Kamelhar did not envision the possibility that one mother could provide the genes and another could provide the locus for impregnation; nor is it altogether clear how he would have ruled in such a case. It may well be that he would have drawn a distinction between the implantation of a fertilized and an unfertilized ovum, motherhood being determined genetically in the former case and by locus in the latter case. Recent rabbinic discussion is divided on the issue,<sup>13</sup> but there is every indication that at least in the case of implantation of a fertilized ovum, the emerging consensus will be that motherhood is determined genetically.<sup>14</sup> This does not rule out surrogate motherhood. It simply indicates that from a Jewish perspective surrogate motherhood does not necessarily carry with it the maternal obligations and privileges (e.g., filial responsibility) that genetic motherhood does. Judaism clearly would not look kindly upon surrogate motherhood when it is resorted to "as a convenience in order to avoid the encumbrances of pregnancy."<sup>15</sup> But such moral judgments, it seems to me, are not the concern of public policy makers. It is the business of the United States government to protect the rights of, and to prevent tangible harm to, its citizens. It is not the business of the United States government to comment upon the morality or immorality of surrogate mothers-for-profit, so long as no one's rights are compromised and all agreements entered into are by mutual consent, and actionable in a court of law. From an American perspective, I see little difference between a wet nurse and a surrogate mother, assuming procedures are perfected so that there are no extraordinary dangers to the surrogate mother's health.

In recent rabbinic discussion, parallels are drawn between artificial insemination and embryo implantation.<sup>16</sup> Recipients of donated ova or sperm assume legal responsibility for their progeny only by contract.<sup>17</sup>

From a Jewish perspective rape and incest are crimes against persons; they are integrally bound up with sexual intercourse. Where there is no physical contact between male and female, there is neither rape nor incest.<sup>18</sup> Thus, the mad scientist who expropriates an ovum and fertilizes it *in vitro* has committed an actionable offense and can be sued by the mother and child for child support, and perhaps for other damages as well, but he has not committed rape.

The final questions pertain to the role of the government:

Should the federal government support human *in vitro* fertilization research? Should the federal government subsidize human *in vitro* fertilization and embryo implantation as a health care delivery service? Is infertility a disease requiring medical attention? Is making the infertile fertile therapeutic?

These bring me to my conclusions: Research in human *in vitro* fertilization for purposes of enabling the infertile to become fertile should be supported by the federal government if—

- appropriate preliminary research has been done on non-human primates;
- risk-benefit analysis is favorable—ideally, the state of the art should be that no greater risk be involved for the conceptus and the mother than in normal pregnancy and childbirth;
- informed consent of all participants is obtained;
- appropriate liability and compensation for research related injuries is assured;
- the legal consequences of the desired or expected results are free and clear of encumbrance or ambiguity;
- human zygotes and embryos are not destroyed wantonly.

The federal government should subsidize health care delivery services for the needy as, for example, through medicaid. These services should include *in vitro* fertilization and embryo transplant, if such procedures are necessary in order to render an infertile patient fertile, and if such procedures prove to be safe.<sup>19</sup> It would be a sad commentary on the American ethos if federal funds could subsidize the taking of human life (i.e., therapeutic abortion), but not the creation of human life (i.e., therapeutic conception). I am aware that some strict-constructionists will not view infertility as a medical need and its cure as therapeutic. They overlook the fact that it is to the physician that the infertile have turned for centuries seeking a cure. Now that physicians can, at least in some instances, administer the cure, it is hardly the time to label that cure nontherapeutic.

Surely, *in vitro* fertilization and embryo transplant are a cure for dis-ease, if not disease. The rabbis put it this way: Four are considered as if they were dead: the poor, the blind, the diseased, and the childless.<sup>20</sup>

### Euthanasia

If I had to select that area of scientific advance that has wreaked most havoc with traditional ethical teaching, it would be the new techniques available for prolonging life. Despite a landmark decision by New Jersey's Supreme Court—which ruled in 1976 that Karen Ann Quinlan's respirator could be disconnected with impunity if her attending physicians and a panel of hospital officials, an "ethics committee," agreed that there was no reasonable possibility that she would recover—the issues are hardly settled. For the purposes of our discussion, I should like to focus on four specific problems which will enable us to formulate a Jewish perspective on euthanasia in general and, more specifically, a Jewish response to the Karen Ann Quinlan case.

1. May a patient hasten or induce his own death in order to relieve physical suffering or in order to reduce the financial burden on the family savings?

This raises the issue of suicide in Jewish law. Do people have a "right to die" when and if they so choose, so long as they harm no one else while in the process of dying? The rabbinic response would be an unequivocal no. Jewish teaching proscribes suicide in no uncertain terms. Not only is suicide proscribed, but even the right to injure oneself. The rabbis derived these teachings from Genesis 9:5 ("for your lifeblood I will surely require a reckoning"), from Deuteronomy 30:19 ("therefore choose life"), and from elsewhere in Scripture. The underlying theory seems to be that man is created in God's image; to injure man, even oneself, is to diminish God's image. Moreover, since God provides man with body and soul, they are not man's possession to do with as he pleases. According to Jewish teaching, then, one is obligated to safeguard his personal well-being, to live, and to live well. While suicide in general was banned,

the rabbis were sensitive to the complexities of life and made it virtually impossible for anyone to be considered a legal suicide. The rabbinic attitude is reflected in the following:

Rabbi Akiba ruled: Neither praise nor blame a suicide.  
(*Semahoth* 2:1)

If one climbs the highest tree and falls to his death, or falls from the highest roof and dies, he is not considered a suicide. One is considered a suicide only if he declares, "I shall climb a tree or go up on a roof and leap to my death," and then witnesses see him carry out his threat immediately after the declaration.

(*Semahoth* 2:2)

Occasionally, the rabbis condoned suicide. An aggadic passage in the Talmud describes how four hundred Jewish children drowned themselves at sea rather than submit to rape at the hands of the Romans (*B. Git.* 57b). Despite their mass suicide, all were assured a share in the world-to-come. For our purposes, it is crucial to determine whether or not the rabbis considered physical pain a sufficient justification for suicide. In the Babylonian Talmud we read as follows:

The Romans found R. Hanina b. Tradyon sitting and occupying himself with the Torah, publicly gathering assemblies, and keeping a scroll of the Law in his bosom. Straightaway they took hold of him, wrapped him in the scroll of the Law, placed bundles of branches around him, and set them on fire. They then brought tufts of wool, which they had soaked in water, and placed them over his heart so that he would not expire quickly. His daughter exclaimed, "Father, woe to me that I see you in this state!" He replied, "If it were I alone being burned, it would be a hard thing to bear; now that I am burning together with the scroll of the Law, He who regards the plight of the Torah will also regard my plight." His disciples called out, "Rabbi, what do you see?" He answered them, "The parchments burn but the letters soar on high." "Open your mouth," they said, "so that the fire may enter into you." He replied, "Let Him who gave me my soul take it away, but one should not injure oneself." The executioner

then said to him, "Rabbi, if I raise the flame and remove the tufts of wool from your heart, will you guarantee me a share in the world-to-come?" "Yes," he replied. "Swear to me," he urged. He swore to him. He thereupon raised the flame and removed the tufts of wool from his heart, and his soul departed speedily. The executioner then leaped into the fire. An oracle exclaimed: R. Hanina b. Tradyon and the executioner have been assigned a share in the world-to-come.

(B. Abod. Zar. 18a)

Clearly, R. Hanina b. Tradyon did not consider physical suffering a sufficient justification for suicide. Hanina's view was codified in the thirteenth-century code of the Jewish pietists in Germany, called *Sefer Hasidim* (the *Book of the Pious*), where we read:

If a man suffers unbearable physical pain, and he knows that he is terminally ill, he may not commit suicide. We derive this ruling from the account of Rabbi Hanina b. Tradyon, who refused to open his mouth, lest he contribute toward his own death.

(ed. Wistinetzki, p. 100)

In sum, Jewish teaching proscribes suicide. Under extenuating circumstances it is sometimes condoned. Neither physical pain nor serious financial loss is considered sufficient justification for suicide in rabbinic sources. It follows, then, that a patient may not hasten or induce his own death in order to relieve physical suffering or in order to reduce the financial burden on his family.

2. May a physician hasten or induce the death of a patient for any of the above reasons? May he do so only with the patient's consent or even without the patient's permission?

This problem is easily resolved. From a biblical and rabbinic perspective, the prohibition against homicide applies despite the victim's consent. In general, human life is inviolate. In the rare instances where a life may be taken, such as capital punishment in biblical-rabbinical times, or self-defense to this very day, there must be sufficient warrant to take a life. Where there

is sufficient warrant, the victim's consent or lack of it is irrelevant. Conversely, if there is not sufficient warrant, life may not be taken even at the victim's request. And so the following ruling, also from the *Book of the Pious*:

If a man suffers unbearable physical pain and informs another party that he is terminally ill, and requests the other party to perform an act of euthanasia in order to relieve him of his pain, the second party may not do so.

(p. 100)

Similarly, Maimonides (in the twelfth century) and Joseph Karo (in the sixteenth century), in their respective codes, rule that "one who is near death is regarded as a living person in all respects. Whoever lays a hand on someone near death and hastens his death is guilty of shedding blood. To what may one who is near death be likened? To a flickering flame, which becomes extinguished as soon as one touches it."<sup>21</sup> Thus, a physician may not hasten or induce the death of a patient, even at the patient's request.

3. Should a patient suffering from severe brain damage, and having entered an irreversible comatose state, be maintained alive indefinitely by artificial means?

This problem addresses itself to the Karen Ann Quinlan case and is not easily resolved. A rabbinic consensus has yet to emerge, nor is one likely to emerge, as indeed no Protestant consensus has emerged. The stakes are much too high and the issues much too complex for a clear and simple resolution. Two approaches to the Quinlan case have been suggested in recent rabbinic discussion, and they merit mention here. The first approach, espoused by Rabbi J. David Bleich of Yeshiva University, views all humans as being either alive or dead. If not dead, runs the argument, every effort—however artificial—must be maintained in order to prolong life. Since Karen Ann Quinlan was alive physiologically by almost any definition of the term, her life must be sustained at all costs. The respirator should not have been turned off until such time that she was declared legally, which is to say halachically, dead.

A careful examination of the classical Jewish sources suggests a second approach, which I shall espouse here. Classical Judaism recognizes at least three stages in the life-cycle: life, dying, and death. While every effort must be made to prolong life, the rabbis saw no need to prolong the act of dying needlessly. The rabbis valued biological life, but it was not always sacrosanct in their eyes. There was still another more important value, namely, the quality of life. And so they ruled that a Jew must lay down his life rather than take an innocent life, engage in a sexually immoral act, or engage in idolatrous worship. Their devalued regard for the biological life of those in whom death was imminent, or for those who could no longer function in any meaningful way, expressed itself in their reluctance to engage in any activity which would prolong the act of dying. Thus, under certain circumstances, the rabbis tolerated passive euthanasia, that is, they were willing to allow nature to take its course. Let us examine the rabbinic evidence:

It once happened that a woman who had aged considerably appeared before Rabbi José b. Halafta [a second century C.E. tanna] She said, "Rabbi, I am much too old, life has become a burden for me. I can no longer taste either food or drink, and I wish to die." Rabbi José asked her, "To what do you ascribe your longevity?" She answered that it was her habit to pray in the synagogue every morning, and despite occasional more pressing needs, she had never missed a service. Rabbi José advised her to refrain from attending services for three consecutive days. She heeded his advice, and on the third day she took ill and died.

(*Yalqut to Proverbs*, §943)

I am not sure what the moral of this story is. Some will claim, no doubt, it teaches that if life becomes a burden one should stay away from the synagogue. Others, especially rabbis, will see here a clear indication that those lax in synagogue attendance are, in fact, courting death. In any event, Rabbi José's willingness to hasten biological death by means of inaction is clear. He did not deem it obligatory to prolong life needlessly.

One may not prolong the act of dying. If, for example, someone is dying, and nearby a woodcutter insists on chopping wood,

thereby disturbing the dying person so that he cannot die, we remove the woodcutter from the vicinity of the dying person. Also, one may not place salt in the mouth of a dying person in order to prevent death from overtaking him.

(*Book of the Pious*, ed. Wistinetzki, p. 100)

These rulings from the *Book of the Pious* have been incorporated into the standard Jewish codes of law.

The rabbis did not hesitate to pray for death when they felt it was warranted:

On the day that Rabbi Judah was to die the rabbis decreed a public fast and offered prayers for heavenly mercy. . . . Rabbi Judah's handmaid ascended the roof and prayed, "The immortals desire Rabbi Judah to join them, and the mortals desire Rabbi Judah to remain with them; may it be the will of God that the mortals may overpower the immortals." When, however, she saw how often he resorted to the privy, painfully taking off his *tefillin* and putting them on again, she prayed, "May it be the will of the Almighty that the immortals may overpower the mortals." As the rabbis incessantly prayed for heavenly mercy, she took up a jar and threw it down from the roof to the ground. The rabbis were distracted from their prayers, and the soul of Rabbi Judah departed to its eternal rest.

(*B. Ket.* 104a)

Rabbi Simeon b. Laqish died, and Rabbi Johanan was plunged into deep grief. Said the rabbi, "Who shall go to ease his mind? Let Rabbi Eleazar b. Pedath, whose disquisitions are very subtle, go." So he went and sat before him; and on every dictum uttered by Rabbi Johanan he observed, "There is a *baraita* which supports you." "Are you the son of Laqisha?" retorted Rabbi Johanan, "When I stated a law, the son of Laqisha used to raise twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law; while you say, 'A *baraita* has been taught which supports you.' Do you think I do not know that my dicta are right?" Thus he went on rending his garments and weeping, "Where are you, O son of Laqisha, where are you, O son of Laqisha?" He cried until his mind was turned, whereupon the rabbis prayed for him and he died.

(*B. B. Meş* 84a)



One day Honi was journeying on the road and he saw a man planting a carob tree; he asked him, "How long does it take for this tree to bear fruit?" The man replied, "Seventy years." He then further asked him, "Are you certain that you will live another seventy years?" The man replied, "I found ready grown carob trees in the world; as my forefathers planted them for me, so too I plant these for my children."

Honi sat down to have a meal and sleep overcame him. As he slept, a rocky formation enclosed upon him which hid him from sight, and he continued to sleep for seventy years. When he awoke, he saw a man gathering the fruit of the carob tree and he asked him, "Are you the man who planted the tree?" The man replied, "I am his grandson." Thereupon he exclaimed, "It is clear that I have slept for seventy years." He then caught sight of his ass who had given birth to several generations of mules, and he returned home. He inquired there, "Is the son of Honi still alive?" The people answered him, "His son is no more, but his grandson is still living." Thereupon he said to them, "I am Honi," but no one would believe him. He then repaired to the academy and he heard the scholars say, "The law is as clear to us as in the days of Honi," for whenever Honi came to the academy he would settle for the scholars any difficulty they had. Whereupon Honi called out, "I am he." But the scholars would not believe him, nor did they render him the honor due to him. This hurt him greatly, and he prayed for death and he died. Raba said, "Hence the saying: Either companionship or death."

(B. Ta'an. 23a)

From a rabbinic perspective, then, one could pray for divine intervention, one could in certain situations passively allow death to come, but one could not actively induce death. Under no circumstances would the rabbis allow the deliberate taking of innocent life.<sup>22</sup>

The crucial issue in the Karen Ann Quinlan case, from a halachic point of view, is her precise physiological as well as halachic status. Clearly, she was not dead by even the most liberal definition of the term. Was she among the living and to be accorded all the rights and privileges of any other ill patient, or was she moribund, i.e., one in whom death is imminent (and halachically termed a *goses*)? According to some halachic

authorities, Karen Ann Quinlan was clearly to be numbered among the latter. She was qualitatively in a transition state between life and death, i.e., she was dying, and as such, those rabbinic authorities would rule that there is no moral or legal obligation to keep her alive artificially, since there is no possibility of restoring her to a nonmoribund state. The physician's obligation is to heal, to restore to cognitive life, and not to prolong the act of dying. With regard to the moribund, many rabbinic authorities would allow the withdrawal of any and all devices prolonging death needlessly. While the physician and hospital staff would no longer be obligated to engage in therapeutic activity, they would be obligated to care for the patient, to make her end as comfortable as humanly possible.

4. Is there ever justification for turning off a respirator once such treatment has begun?

Regarding this last problem, the initial justification for the use of a respirator was therapeutic. If this justification falls away, i.e., if the physicians determine that she cannot be restored to cognitive life, the respirator is, in fact, prolonging the act of dying. As just indicated, many rabbinic authorities would allow the withdrawal of any and all devices prolonging the act of dying needlessly. Three options present themselves at this point, with regard to the Quinlan case.

- a. withdrawal of antibiotic treatment
- b. pulling the plug
- c. withdrawal of nourishment

Assuming Karen Ann Quinlan was a *goses*, many rabbis would sanction all these options, if necessary, with a clear preference for the withdrawal of antibiotic treatment, since it involves no direct action (such as pulling the plug) and allows for nourishment to continue until the end, an obligation some rabbis would extend to all the terminally ill, however advanced their moribund state. Since it is often difficult, well-nigh impossible to determine with certainty that a patient is moribund (i.e., halachically termed a *goses*), several rabbinic authorities have ruled that in all cases of doubt the patient's respirator be

placed on a timer. If the patient shows signs of being moribund and, when the timer turns the respirator off, he cannot breathe independently of it, the physician is no longer obligated to turn the respirator on. This procedure obviates the possibility of the physician engaging in active euthanasia.

Lest anyone have qualms about the absolute biblical-rabbinic prohibition against active euthanasia, let me remind you, as indeed Paul Ramsey reminded me, of the judgment of Dr. Leo Alexander, a leading historian of Nazi medical crimes: "Whatever proportion these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. . . . It started with the acceptance of the attitude . . . that there is such a thing as life not worthy to be lived . . . its impetus was the attitude toward the non-rehabilitable sick."<sup>23</sup> It is sometimes exceedingly difficult to distinguish between active euthanasia as an act of mercy and a violation of basic human rights. So long as confusion reigns in the minds of some, Jews will be in no hurry to come down on the side of the act of mercy.<sup>24</sup>

What can we say then about Jewish ethical teaching and how it is brought to bear on problems raised by recent scientific advance? It is, perhaps, safe to say—even judging from the two issues we have explored—that several elements inform Jewish ethical discussion.

1. *Reason*. The *sine qua non* for all Jewish ethical reflection is reason. Passages are analyzed to see whether or not they are analogous. All options are carefully considered; those most consistent with Jewish values are selected as optimal. In our discussion, relevant distinctions were made between sexual intercourse and procreation, and between prolonging life and prolonging dying. Reason is the vehicle that makes all the above possible.
2. *Principle*. Principles are invoked, especially those grounded in what the classical Jewish tradition considers to be authoritative texts: Scripture and Talmud. Thus, the scriptural principle "man is created in God's image" and the talmudic principle "we neither praise nor blame a suicide" were adduced in the discussion of suicide as it relates to euthanasia.

3. *Context*. Context is carefully considered. Motivations of participants are examined. Are *in vitro* fertilization and embryo transfer being engaged in for therapeutic purposes or for convenience? Is there a morally relevant difference between active and passive euthanasia? The situation itself will often color the Jewish response.

No one element reigns supreme. Unbridled reason alone does not account for all of a Jewish ethical stance. A gut reaction does not by itself determine the direction of a Jewish ethical response. Neither rigid legalism nor context, by themselves, accounts for a Jewish ethical decision. All these elements inform each other, and serve as a built-in system of checks and balances against rigidity, stagnancy, and capriciousness in Jewish ethical thought. Doubtless, these very elements are largely responsible for the resiliency and sobriety of a four-thousand-year-old ethical tradition as it brings its values to bear on modern technological advance.

## Notes

1. R. G. Collingwood, *The Idea of History* (New York: Oxford University Press, 1956), p. 10.
2. See Leon R. Kass, "The New Biology: What Price Relieving Man's Estate," *Science* 174 (1971): 780.
3. *Midrash Temurah* in A. Jellinek, ed., *Bet ha-Midrash* (Jerusalem: Wahrman Books, 1967), 1:107.
4. *Midrash Rabbah: Leviticus 34:3*, in H. Freedman and M. Simon, eds., *The Midrash* (London: Soncino Press, 1939), 4:428.
5. E.g., *B. Sanh.* 65b. In general, see A. Rosenfeld, "Religion and the Robot," *Tradition* 8, no. 3 (1966): 15–26.
6. E.g., *B. Hag.* 14b–15a. In general, see "Artificial Insemination in Jewish Law," in F. Rosner, *Modern Medicine and Jewish Law* (New York: Yeshiva University Press, 1972), pp. 89–106.
7. See D. M. Feldman, *Birth Control in Jewish Law* (New York: New York University Press, 1968), pp. 21–105.
8. See, e.g., Samuel b. Uri Shraga Phoebus (17th cent.). *Beth Shemuel* 1:10, in the standard editions of J. Karo, *Shulhan Arukh, Even ha-Ezer*, chap. 1.
9. Feldman, *Birth Control in Jewish Law*, p. 266, nn. 79 and 83.

10. J. D. Bleich, "The Problems of Creating a Test-Tube Baby from a Jewish Perspective" (Hebrew), *Or Hamizrach* 27 (1978): 14.

11. J. Kamelhar, *Ha-Talmud u-Madda'ey ha-Tevel* (Lvov: Czci-onkami Drukarni, 1928), pp. 44–45.

12. The rabbi gives no details regarding the identity of the medical society that convened the conference, nor does he provide the names of the participants. That ovarian transplantation was a topic of discussion in Chicago in 1911 is clear from F. H. Martin, "Ovarian Transplantation in Lower Animals and Women," *Surgery, Gynecology and Obstetrics* 13 (1911): 53–63. Martin practiced in Chicago, though the paper on ovarian transplantation was read before the American Gynecological Society on May 24, 1911, in Atlantic City. It may be that the rabbi (or his informants) mistook Martin's place of residence for the location of the American Gynecological Society conference.

13. See, e.g., B.Z. Safran, *Sheelot u-Teshuvot Harabaz* (Jerusalem: Mosad Harav Kook, 1962), pp. 204–225; M. Klein, *Sheelot u-Teshuvot Mishneh Halakhot* (Tel Aviv: Machon Mishne Halakhoth, 1970), vol. 4, responsum 249; E. J. Waldenberg, *Sheelot u-Teshuvot Tzitz Eliezer* (Jerusalem: Itah, 1970), vol. 10, responsum 25, chap. 26, par. 3, p. 167; I. Liebes "On Organ Transplantation" (Hebrew), *Noam* 14 (1971): 28–111; J. Gershuni, "The First Test-Tube Baby in the Light of the Halakhah" (Hebrew), *Or Hamizrach* 27 (1978): 15–21; M. Hershler, "Test Tube Babies According to Halakha" (Hebrew), in M. Hershler, ed., *Halakhah Urefuah* (Jerusalem: Machon Regensberg, 1980), 1:307–320; J. D. Bleich, "Maternal Identity," *Tradition* 19, no. 14 (1981): 359–360; M. Drory, "Human Cloning" (Hebrew), *Assia* 2 (1981): 105–116; A. Steinberg, "Test Tube Baby" (Hebrew), *Assia* 2 (1981): 99–104; and D.I. Frimer, "Maternal Identity," *Tradition* 20, no. 2 (1982): 174.

14. So personal communications from numerous rabbinic authorities, including Rabbi Dr. Moses D. Tendler of Yeshiva University. On the genetic determinant of motherhood, see especially A. J. Horovitz, *Sheelot u-Teshuvot Tzur Yaakov* (Bilgoray: Kronenberg, 1932), responsum 28, end, who writes: "Do the female generative organs create the baby? They are simply a means for housing the conceptus. The essential factor in the creation of a baby is the seed of the father and the mother, as spelled out in the Talmud."

15. J. D. Bleich, "Host-Mothers," in his *Contemporary Halakhic Problems* (New York: Yeshiva University Press, 1977), p. 106; see also his *Judaism and Healing* (New York: Ktav, 1981), pp. 85–95.

16. See the references cited above in nn. 10, 13, 14, and 15. In a recent responsum, E. J. Waldenberg argues strongly against the analogy between artificial insemination and embryo implantation. Indeed, he concludes that *in vitro* fertilization and embryo implantation are

sufficiently different from artificial insemination that, from a Jewish perspective, they must be proscribed. See E. J. Waldenberg and D. Maeir, "In Vitro Fertilization" (Hebrew), *Assia* 9, no. 1 (1982): 5–13.

17. See M. Feinstein, *Iggerot Moshe, Even ha-Ezer* (New York: Sinai Offset Company, 1961), responsum 10, end.

18. See M. Feinstein, *Iggerot Moshe, Even ha-Ezer* (New York: Gross Brothers, 1963), vol. 2, responsum 11. Some rabbinic authorities, however, allow for incest and adultery even when no act of sexual intercourse has taken place (e.g., in cases of artificial insemination). See the sources cited by E. J. Waldenberg, *Sheelot u-Teshuvot Tzitz Eliezer* (Jerusalem: Itah, 1978), vol. 13, responsum 97, pp. 192–195.

19. Cf. the opinion rendered by the Sephardic chief rabbi of Israel, Rabbi Ovadiah Yosef, as reported in the *Jewish Telegraphic Agency Daily News Bulletin*, August 16, 1978.

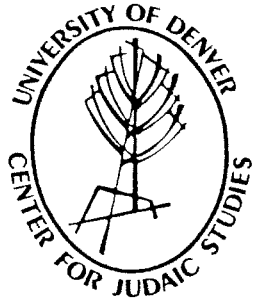
20. B. Ned. 64b.

21. *Mishneh Torah, Hilkhot Evel* 4:5.

22. *In extremis*, some rabbis condoned the deliberate taking of innocent life. See, e.g., I. Z. Cahana, ed., *Maharam of Rottenburg: Responsa, Rulings and Customs* (Hebrew) (Jerusalem: Mosad Harav Kook, 1960), vol. 2, responsum 59, p. 54; and J. J. Weinberg, *Sridey Esh* (Jerusalem: Mosad Harav Kook, 1977), vol. 2, responsum 78, pp. 196–201. Such exceptions prove the rule.

23. Quoted by Paul Ramsey in *The Patient as Person* (New Haven: Yale University Press, 1970), p. 164, from "Medical Science Under Dictatorship," *New England Journal of Medicine* 24, no. 2 (July 14, 1949): 44–45.

24. For further study, see G. A. Rabinowitz and M. Koenigsberg, "The Definition of Death and Establishing Its Occurrence According to the Halakhah" (Hebrew), *Hadarom* 32 (1971): 59–76; I. Jakobovits, *Jewish Medical Ethics*, 2d ed. (New York: Bloch, 1975), pp. 275–276 and notes; J. D. Bleich, "Karen Ann Quinlan: A Torah Perspective," *Jewish Life*, Winter 1976, pp. 13–20; A. Cohen, "An Analysis on Whether Pulling the Plug Is Ever Permissible Under Jewish Law," *Young Israel Viewpoint*, November 1976, pp. 5–15; I. L. Liebes, "Medical Issues According to the Halakhah" (Hebrew), *Perspective* 3 (1976): 50–60; E. J. Waldenberg, *Sheelot u-Teshuvot Tzitz Eliezer*, vol. 13, responsum 89, pp. 172–180; F. Rosner and J. D. Bleich, eds., *Jewish Bioethics* (New York: Sanhedrin Press, 1979), pp. 253–348; J. D. Bleich, *Judaism and Healing*, pp. 134–145; and E. J. Waldenberg, "On Shutting Off a Respirator" (Hebrew), *Assia* 3 (1982): 458–462.



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