



## Biomedical Issues: A Jewish Perspective

30.11.2005 | Sherwin, Byron L.

**A presentation at the International Conference of the International Council of Christians and Jews, Chicago, July, 2005**

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**Rabbi Byron L. Sherwin**

In the immediate post-Vatican II years, as an article in the current edition of the *Hastings Center Report* points out, American Catholic scholars were at the forefront of developing the then emerging field of bioethics. Those Catholics who helped forge this field were inspired by the Second Vatican Council which urged Catholics to engage in dialogue with other religions and with the secular world. Yet, bioethics somehow did not become a central feature of the enterprise of Catholic-Jewish religious dialogue either before or after Vatican II. This may be because the impetus then was to focus on shared social concerns and at overcoming stereotypes, but also because Jews and Christians who then engaged in Catholic-Jewish dialogue realized that Catholics and Jews sharply disagreed on bioethical issues regarding the then most often discussed issues, such as abortion, reproductive biotechnology in the treatment of human infertility, and other such issues, and they may have seen discussion of such issues as too divisive in those early years of dialogue when the emphasis was on shared commonalities rather than dealing with differences. Also, the Jewish community was then focusing in interreligious dialogue on issues more central to the Jewish communal agenda, such as combating antisemitism, increasing Holocaust awareness, and trying to garner Christian support for the state of Israel. I would therefore suggest that despite the enormous strides made in recent decades in Catholic-Jewish relations since Vatican II, the Catholic Church and the Jewish community today remain sharply divided on issues related to bioethics, now including not only issues such as abortion, but increasingly on many ethical issues engendered by new and anticipated developments in bio-science such as those related to reproductive biotechnologies, genetic engineering, embryonic stem cell research and various forms of human cloning—both therapeutic and certainly reproductive.

In the United States, the current issue of new appointments to the Supreme Court is bound to stimulate renewed discussion in religious circles regarding abortion as an issue of public policy and bioethics. Recent cases like the *Shiavo* case and legislation in various states like Oregon and possibly soon Vermont on physician assisted suicide are also likely to provoke continued public discussion regarding various forms of euthanasia. However, rapid developments in genomics and bioengineering are likely to place the ethical implications of these developments at the forefront of concern in bioethical discourse, especially within religious communities as well as between religious communities. Consequently, within the orbit of Christian-Jewish dialogue, which has now matured to the point where we can confront our differences as well as celebrate our commonalities, issues of biomedical concern are likely to elicit more attention in the future than they have in previous years.

Like Christian ethics, Jewish ethics is a form of religious ethics based upon theological premises, though such premises inevitably may differ both in nature and application from those evoked by

various forms of Christian ethics. For example, both Jewish and Christian ethics may evoke claims such as the affirmation of the sanctity of human life. They may, however, differ both in the definition of human life and the application of the definition of human life and human personhood to issues such as abortion and embryonic stem cell research.

Jewish ethics tends to articulate itself in legal or halakhic terms. Yet, both the categories and applications of Jewish religious law differ from those of other systems of legal ethics. For example, in Anglo-American jurisprudence, questions are posed in terms of rights. What are my rights? What is the scope of my rights? What are the rights of another? What happens when there is a conflict of rights? For example, Anglo-American jurisprudence tends to pose the issue of abortion in terms of the right to life or the right to choice, which has framed the public policy debate on abortion in the United States. This, however, is not the approach of Jewish legal ethics. In Jewish jurisprudence, questions are posed in terms of obligations rather than rights. What am I obliged to do, permitted to do, or prohibited from doing in a specific situation? Ethical issues are decided through consultation with the vast corpus of Jewish legal, ethical and theological resources and precedents.

Jewish bioethicists tend to focus on the question of the purpose for the employment of various bioengineering technologies. For example, Jewish bioethicists—including the most traditional, tend to permit almost all forms of reproductive biotechnology for the purpose of procreation, i.e., in the fulfillment of the first biblical commandment to be fruitful and multiply. This includes everything from AIH (artificial insemination from the husband) to in vitro fertilization. Indeed, the vast majority of Jewish bioethicists permit even reproductive human cloning, once it meets certain standards of safety for the fetus and the mother. Similarly, cloning for potential therapeutic purposes, as in the creation of embryonic stem cells for research, has been endorsed by most Jewish bioethicists, with some even considering embryonic stem cell research and eventual therapies as obligatory and not merely permissible, given the enormous promise of the potential therapeutic use of embryonic stem cells. In this regard, it is relevant to note that in Jewish law, a human embryo may be considered a form of human life, but not a human person with correlative legal protections. Furthermore, in Jewish law, to be considered a human embryo, an entity must have gestated beyond 40 days AND must also be successfully implanted within a human womb. Since the entities used for the extraction of stem cells do not meet these criteria, they are not considered human embryos—much less human persons in Jewish law. Hence, destroying such entities to extract stem cells for potential therapeutic goals is not prohibited, and since it potentially can lead to the saving of millions of lives and the curing rather than simply the treating of many diseases, it can even be considered obligatory according to imperatives in Jewish legal ethics regarding the curing of the sick and the saving of existing human lives called *pikuah nefesh* in Hebrew.

Having only been able to discuss these important issues superficially because of time constraints, let me move on to focus on a final issue which can also only be dealt with only very superficially, i.e., the issue of the patenting of human tissue, human genes or fragments of human DNA called “expressed sequence tags.” Here, I think, Jewish bioethicists share the view of Catholics and other Christian bioethicists, though we may invoke different concepts and methodologies in reaching our conclusions. Like the Pontifical Academy of Life, Jewish bioethicists see a grave moral danger in the patenting of human genetic materials and genetic diagnostic tests. Not only are there questions of genetic determinism, individual privacy, and potential socio-economic and employment discrimination based on the results of genetic diagnostics, but there are also concerns about how such patents stifle further scientific research and development, how such patents give effective ownership to others of the genetic sequences in our own bodies, and how patent holders could restrict access to certain kinds of medical care whether by demanding exorbitant fees or by restricting access to genetic diagnostics and therapeutics that would not yield enough revenue for them. In the United States, only the 13th amendment to the Constitution, which forbids slavery, i.e., the ownership of one human by another, has prevented companies from patenting and hence owning the entire human genome.

Ashkenazic Jews, which constitute over 80% of American Jewry, because of centuries of inbreeding, have become the major control group in the United States for genetic research. Many of the currently known genetic diseases, such as Tay Sachs and Gaucher's disease, and mutations such as in the BRAC1,2 genes, i.e., mutations in the breast cancer genes, have a much higher incidence among Jews than among the rest of the American population. Hence, developments in genetics, especially in gene patenting—while a universal human issue, is an especially poignant issue for American and European Jews.

In conclusion, let me quote the old rabbinic adage that there is the bee which has both honey and a sting. Should we forgo the benefits of the honey out of fear of the sting? Like the bee, bioengineering offers us both honey and a sting, benefit and danger. Yet, the Talmudic rabbis nonetheless urge us to be careful of the sting while encouraging us to seek the benefits of the honey. For Jewish bioethics, the potential benefits of bioengineering, including the use of embryonic stem cells for research and eventual therapies, requires us to pursue every means to develop such therapies. For Jewish bioethicists, not to employ this research and eventually these therapies, would be immoral. It would be like refusing to use a fire extinguisher to save the lives of our children trapped in a burning house.

I look forward to the continued development of interreligious dialogue on issues of bioethical concern so that we can learn from one another, even on those issues about which we disagree.

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