The Jewish Tradition

Religious Beliefs and Healthcare Decisions

By Elliot N. Dorff

The Jewish tradition traces its roots to Abraham. The patriarchal stories of the Bible reflect the migration of the ancient Hebrews from Mesopotamia to Canaan and from there to Egypt. Jewish history continues with the Exodus from Egypt; the Sinai event; the gradual conquest of Canaan during the period of Joshua, the Judges, and the Kings; the building of the First Temple and, with it, the first Jewish commonwealth under Solomon; the splitting of the Jewish commonwealth into northern and southern kingdoms around the year 930 B.C.E.; the defeat of the northern kingdom by the Assyrians in 722 B.C.E.; and the conquest and exile of the Jews of the southern kingdom by the Babylonians in 586 B.C.E., and, with that, the destruction of the First Temple and the first Jewish commonwealth. All of these events are familiar from their biblical accounts.

Jews established a strong community in Babylonia (modern-day Iraq) that continued to exist for another fifteen hundred years under the Persians and then the Muslims. A number of Jews returned to rebuild the temple in 516 B.C.E., and with their return the second Jewish commonwealth was born. It continued to exist in Israel through Greek and Roman conquest until 70 C.E., when the Romans destroyed the Second Temple. Jews continued to exist in what is now Israel in fairly large numbers for the next three hundred years, but their situation became increasingly dire, and the
focus of Jewish history shifted to the community in Persia. The Persian Jewish community was at the forefront of world Jewry through the Muslim period, extending to approximately 1050 C.E., but there were sizable Jewish communities in Israel, North Africa, and southern Europe during that time.

From around 1000 C.E. to the fifteenth century, the Jewish communities of North Africa and western Europe became the major centers of Jewish culture. Jews, expelled from the western Mediterranean region and western Europe in the fourteenth and fifteenth centuries, moved to eastern Europe and the eastern Mediterranean basin, where they were concentrated until the late nineteenth and early twentieth centuries. At that time, because of persecution in Russia and the development of Zionism—a movement to reconstitute Jewish national life in the ancient homeland—many Jews moved to America and Israel, although the majority of them remained in eastern Europe until they were slaughtered in the Nazi Holocaust.

The largest Jewish community as of 1997, the last year for which figures are currently available, lives in the United States (approximately 5.7 million Jews), and the second largest lives in Israel (approximately 4.7 million Jews). There are also Jewish communities (in order of size) numbering in the hundreds of thousands in France, Canada, Russia, the United Kingdom, Argentina, Ukraine, and Brazil, and there are sizable but somewhat smaller Jewish communities in Australia, South Africa, Germany, Hungary, Mexico, and Belgium. It can be said truthfully that Jews live in almost every country of the world, including some that are currently hostile to Judaism and Israel. This wide distribution is the result of the remarkable fact that Jews lived without a homeland for close to nineteen hundred years, the only people to survive under those conditions. Although it is difficult to determine exactly how many Jews there are in the world today, demographers estimate that there are about thirteen million.¹

GENERAL TENETS OF JEWISH BELIEF AND PRACTICE

Jewish belief centers on the revelation of God at Sinai contained in the Torah (the five books of Moses) and on the historical relationship of God to the Jewish people from the time of Abraham through the Exodus and into the present day. Traditional Jews consider themselves bound by the commandments of God as articulated in Jewish law. Because Jewish law gives Judaism a distinctly activist cast, even those Jews who do not observe the law often are actively involved in many projects for the improvement of life on earth. Jewish values concentrate on the life of the family and the community, education throughout life, historical rootedness, and hope for a Messianic future when all peoples will come to know God and follow Jewish law. In that way, Jews understand themselves as having a mission—that of demonstrating morality to the world and being, in Isaiah's terminology, "a light unto the nations" (Isaiah 49:6).² For Jews, the land of Israel is the Jewish homeland not only because many of the critical events in the birth and development of Judaism took place there, but also because, according to Scripture, God gave the land to the Jews. Although Jews understand themselves as having a divine mission, that mission is to be carried out by example rather than by actively pursuing converts; in fact, Judaism has historically been reluctant to accept converts.

While Jewish law specifies many particulars about the actions of Jews, Jewish belief is much less determined. Consequently, Judaism has a long history of lively intellectual debate on philosophical issues, and rabbis have taken theological positions ranging from supernaturalism to naturalism, from rationalism to mysticism, and from a community-based revelational understanding of Jewish law to an individualistic, existential understanding of it.

Traditional and liberal manifestations of Judaism exist in most countries. In the United States there are four movements: the Reform Movement, the Reconstructionist Movement, the
Conservative Movement, and the Orthodox Movement. Orthodox Jews, constituting approximately 20 percent of affiliated American Jews, believe that the Torah is the literal word of God and that Jewish law is to be determined by reference to the codes and responsa (literally, "queries and replies"); the rabbinic term denotes the exchange of letters in which one party consults with another on a matter of Jewish law) of the past. Conservative Jews, who include some 41 percent of affiliated American Jews, believe that all Jewish sources must be understood in their historical context and that Jewish law developed historically as well. Therefore, while Conservative Jews consider Jewish law binding, they are more willing than Orthodox Jews to make changes in its content in response to modern needs. Reconstructionist and Reform Jews do not consider Jewish law to be binding, although many voluntarily choose to observe sections of it. The Reconstructionist Movement, approximately 2 percent of American Jewry, has historically possessed a greater sense of community than the Reform Movement has manifested and hence offers more encouragement to adopt the folkways of the People of Israel. Autonomy is a central value for the Reform Movement, which represents about 35 percent of American Jewry. (The remaining percentage consider themselves "just Jews.") Thus for Reform Jews the law is at most a resource that the individual may choose to consult in making a decision; it is certainly not the authoritative command of God.

One set of rules requires us to take reasonable care of our bodies. That is why a Jew may not live in a city where there is no physician. It is also the reason rules of good hygiene, sleep, exercise, and diet are not just recommendations but commanded acts that we owe God. So, for example, bathing is a commandment (mitzvah) according to Hillel, and Maimonides includes his directives for good health in his code of law, making them just as obligatory as other positive duties like caring for the poor.

Just as we are commanded to take positive steps to maintain good health, so are we obligated to avoid danger and injury. Indeed, Jewish law views endangering one’s health as worse than violating a ritual prohibition. So, for example, anyone who cannot subsist except by taking charity but refuses to do so out of pride is...
shedding blood and is guilty of a mortal offense. Similarly, Conservative, Reform, and some Orthodox authorities have prohibited smoking as an unacceptable risk to our God-owned bodies.

Ultimately, human beings do not have the right to dispose of their bodies at will (that is, commit suicide), for that would be a total obliteration of that which belongs to God. In the laws of all American states, suicide is not prohibited, although abetting a suicide is forbidden in all except Oregon. It is frankly difficult to construct a cogent argument that it is in the state’s interest to prohibit suicide, especially if the person is not leaving dependents behind. In Judaism the theoretical basis for this prohibition is clear; we do not have the right to destroy what is not ours.

THE BODY AS MORALLY NEUTRAL AND POTENTIALLY GOOD

The second major principle underlying Jewish medical ethics is that the body is morally neutral and potentially good. For Judaism the body is as much the creation of God as the mind, the will, and the emotions are. Its energies, like those of our other faculties, are morally neutral, but they can and should be used for divine purposes as defined by Jewish law and tradition.

Within that structure, the body’s pleasures are God-given and are not to be shunned, for that would be an act of ingratitude toward our Creator. The body, in other words, can and should give us pleasure to the extent that doing so fits within its overriding purpose of enabling us to live a life of holiness.

The Jewish mode for attaining holiness is to use all of our faculties, including our bodily energies, to perform God’s commandments. Eating, for example, is an act we do as animals, but it takes on a divine dimension when we observe Jewish dietary restrictions and surround our meals with the appropriate blessings. Some bodily pleasures are positively commanded.

Thus, unless Yom Kippur falls on Saturday, one may not fast on the Sabbath, and one must have three meals in its celebration. Similarly, one is supposed to bathe and wear clean clothes in honor of the day. Sexual intercourse in marriage is not only commanded for purposes of procreation; it is also a duty that each of the spouses has toward the other for their mutual enjoyment. Marital union thus not only produces the next generation, but also establishes the environment in which it can be nurtured and educated in the Jewish tradition.

According to the rabbis, it is actually a sin to deny oneself the pleasures that God’s law allows. Bodily pleasures, though, are most appropriately enjoyed when we intend to enhance our ability to do God’s will, as Maimonides explains:

He who regulates his life in accordance with the laws of medicine with the sole motive of maintaining a sound and vigorous physique and begetting children to do his work and labor for his benefit is not following the right course. A man should aim to maintain physical health and vigor in order that his soul may be upright, in a condition to know God . . . Whoever throughout his life follows this course will be continually serving God, even while engaged in business and even during cohabitation, because his purpose in all that he does will be to satisfy his needs so as to have a sound body with which to serve God. Even when he sleeps and seeks repose to calm his mind and rest his body so as not to fall sick and be incapacitated from serving God, his sleep is service of the Almighty.

The medical implications of this understanding are clear. Jews have the obligation to maintain health not only to care for God’s property, but also so that they can accomplish their purpose in life, that is, to live a life of holiness. Moreover, since pain is not a method of attaining holiness, it is our duty to relieve it. Perhaps the most pervasive corollary of Judaism’s insistence on the divine source of our bodies is its positive attitude toward the body and medicine.
THE HUMAN DUTY TO HEAL OURSELVES AND OTHERS

God's ownership of our bodies is also behind our obligation to help other people escape sickness, injury, and death. It is not for some general (and vague) humanitarian reason or for reasons of anticipated reciprocity. Even the duty of physicians to heal the sick is not a function of a special oath they take, an obligation of reciprocity to the society that trained them, or a contractual promise that they make in return for remuneration. It is because all creatures of God are under the divine imperative to help God preserve and protect what is his.

That is neither the only possible conclusion nor the obvious one from the Bible. Since God announces himself as our healer in many places in the Bible, perhaps medicine is an improper human intervention in God's decision to inflict illness or bring healing. Indeed, an act of human hubris.

The rabbis were aware of this line of reasoning, but they counteracted it by pointing out that it is God who authorizes us and, in fact, requires us to heal. They found that authorization and that imperative in two biblical verses. According to Exodus 21:19-20, an assailant must insure that his victim is "thoroughly healed," and Deuteronomy 22:2 requires the finder to "restore the lost property to him." The Talmud understands the Exodus verse as giving permission for the physician to cure. On the basis of an extra letter in the Hebrew text of the Deuteronomy passage, the Talmud declares that that verse includes the obligation to restore another person's body as well as her property, and hence there is an obligation to come to the aid of someone else in a life-threatening situation. On the basis of Leviticus 19:16 ("Nor shall you stand idly by the blood of your fellow"), the Talmud expands the obligation to provide medical aid to encompass expenditure of financial resources for this purpose. And fourteenth-century Rabbi Moses ben Nahman (Nahmanides) understands the obligation to care for others through medicine as one of many applications of the Torah's principle, "And you shall love your neighbor as yourself" (Leviticus 19:18).

Medical experts, in turn, have special obligations because of their expertise. Thus Rabbi Joseph Caro (1488-1575), the author of one of the most important Jewish codes, says this:

The Torah gave permission to the physician to heal; moreover, this is a religious precept and is included in the category of saving life, and if the physician withholds his services, it is considered as shedding blood.

The following rabbinic story indicates that the rabbis recognized the theological issue involved in medical care, but it also indicates the clear assertion of the Jewish tradition that the physician's work is legitimate and, in fact, obligatory:

Just as if one does not weed, fertilize, and plow, the trees will not produce fruit, and if fruit is produced but is not watered or fertilized, it will not live but die, so with regard to the body. Drugs and medications are the fertilizer, and the physician is the tiller of the soil.

This is a remarkable concept, for it declares that God does not bring about all healing or creativity on his own, but rather depends upon us to aid in the process and commands us to try. We are, in the talmudic phrase, God's agents and partners in the ongoing act of creation.

INSTITUTIONAL AUTHORITY AND INDIVIDUAL CONSCIENCE

The Jewish tradition, perhaps more than any other, has used legal methods to make moral decisions. The underlying Jewish belief is that God declared his will at Sinai and specifically commanded that we not add or detract from it legislatively but that we apply it to concrete situations judicially (Deuteronomy 4:2; 13:1; 17:8-13; see also Exodus 18 and Deuteronomy...
1:9–18). The rabbinic tradition understood that judicial mandate broadly, with the result that rabbinic law is much more voluminous and detailed than biblical law is. The Torah (the five books of Moses), in other words, is the constitution of the Jewish people, and rabbinic interpretations and rulings function as legislation and judicial rulings do in American law. Custom is also an important source of Jewish law.23

Most decisions that Americans would call moral, then, are part and parcel of the legal system in Judaism. So, for example, if one wanted to know whether it is moral to abort a fetus or to withdraw life-support systems, one would ask one’s rabbi, the local expert in Jewish law, and he (or she, in recent decades) would look up the question in the legal resources of the Jewish tradition. If there is some disagreement among previous or contemporary rabbis who ruled on such cases, or if there are complications in the specific case at hand, the rabbi would use standard legal methods in deciding that specific case. The rabbi might also consult another rabbi with acknowledged expertise in the area. The lay Jew, then, would follow the ruling of her rabbi for both communal and theological reasons.

That methodology and rationale still holds for Orthodox and Conservative Jews, at least in theory and often in practice, for both of those branches of Judaism hold that Jewish law is binding. The Reform movement, however, champions individual autonomy, so moral decisions are totally a matter of what the individual thinks is right. He may consult a rabbi, but the rabbi’s words will not be authoritative law but an individual’s advice—albeit an individual with expertise in the Jewish tradition.

There are also moral norms that require us to go beyond the limits of the law. Such moral norms are as binding as the law is. Even those who conscientiously abide by Jewish law, then, might feel moral imperatives beyond what the law requires. For that matter, the rabbi might rule on the basis of such imperatives in addition to the specific sources of the law, for ultimately we are commanded to “do what is right and good in the eyes of the Lord” (Deuteronomy 6:18).24

THE RELATIVE AUTHORITY OF THE PHYSICIAN AND PATIENT

Because the body belongs to God, each person is duty-bound to seek both preventive and curative medical care and to follow the expert’s advice in preserving one’s health. Physicians, in turn, are required to elicit the patient’s cooperation by ensuring that the patient understands and agrees to the therapy. When several forms of therapy are medically legitimate but offer different benefits and burdens, the patient has the right to choose which regimen to follow, as long as it fits within the rubric of Jewish law.25

On the other hand, patients do not have the right to demand of their physicians forms of treatment that, in the judgment of the physicians, are medically unnecessary, unwise, or futile or that violate their own understanding of Jewish law. That is, physicians are just as much full partners in medical care as are patients. So, for example, if a patient asks for an amniocentesis in order to know the gender of the fetus so that she can abort it if its gender is undesirable, the physician not only may, but should refuse both the amniocentesis and the abortion when those are the only grounds.

CLINICAL ISSUES

Self-determination and informed consent
In general, the respect that we must show each other as people created in God’s image would
require that physicians take the time to inform their patients about both the preventive and curative steps necessary for their care so that they can make informed decisions. At the same time, physicians need not inform their patients of alternatives that are, in their estimation, medically futile. To this point the Jewish and American traditions agree.

The two traditions, however, address these matters to different degrees. American law puts great emphasis on patient autonomy; physicians must, therefore, inform patients of every possible mishap for fear of being sued if the patient consented to the procedure without that knowledge. The Jewish tradition trusts physicians more than contemporary American law does; indeed, suits against physicians are virtually unheard of in the annals of Jewish law. Moreover, Jewish sources are concerned about the patient's mental health as much as her physical health. Consequently, the Jewish tradition would advise against physicians telling their patients absolutely everything that might go wrong in a procedure. When the probability of problems occurring is slight, maintaining the patient's good spirits would generally outweigh the need to provide information about unlikely outcomes.

Truth-telling and confidentiality
Judaism strongly values telling the truth, and the Bible itself admonishes, “stay far away from any lie.” At the same time, Judaism teaches that truth is not the only value, nor is it an absolute one. In hard cases, truth-telling must be weighed against other moral goods. So, for example, when telling the truth will only harm a person and not produce any good, one must choose to remain silent or even gild the lily. A bride, then, is to be described on her wedding day as beautiful no matter how she looks, for tact in such circumstances takes precedence over truth. On the other hand, when writing a letter of recommendation for a job, the writer must reveal the applicant's weaknesses relevant to the job, for those may have a practical effect on the welfare of others.

Similar guidelines apply to the caregiver-patient relationship. By and large, patients do better when they know what to expect; they feel infantilized and undermined when relevant factors about their disease are hidden from them or misrepresented. In general, then, patients should be told the truth calmly, clearly, and tactfully.

If the patient's disease is incurable, he should be told; caregivers should describe how the patient's family, friends, rabbi, and other caregivers can help him cope physically, emotionally, and spiritually. The patient's welfare, however, takes precedence over the truth in such cases. Thus, it is reasonable when the physician—or parents in the case of a child—decide that the patient would be better off not knowing. Due care, though, must be given when considering what is best for the patient.

Proxy decisions (advance directives) and living wills
Jewish law would allow Jews to write an advance directive nominating someone else to make medical decisions for a patient when she cannot do so personally. The proxy, of course, would have no more authority in Jewish law to make medical decisions than the patient would have, and here it is important to remember that Jewish sources give the physician, as the medical expert caring for God's property, more authority relative to the patient or the surrogate than American law does. Still, Jews may appoint representatives to guide their health care.

In addition, Jews may fill out a living will to indicate how they would want decisions to be made in a variety of circumstances. In fact, all of the denominations of American Judaism have published such documents for the use of their constituents. Each reflects the particular denomination's understanding of the content and degree of authority of Jewish law.
FAMILY, SEXUALITY, AND PROCREATION

UNDERLYING PRINCIPLES

Marriage and children are the epitome of blessing in the Jewish view.28 "Our Rabbis taught: A man without a wife lives without blessing, without life, without joy, without health, and without peace."29 A later mystical source carries this one step further: "The divine presence can rest only upon a married man because an unmarried man is but half a man and the divine presence does not rest upon that which is imperfect."30 So important is it for a man to take a wife that "One may sell a scroll of the Torah for the purpose of [having enough money to] marry."31

Sexual relations have two distinct purposes, both rooted in biblical commands. The very first of the Torah's commands is that given to Adam and Eve, "Be fruitful and multiply." Procreation, then, is a commandment. It is also a blessing. In rabbinic interpretation, for exegetical and probably economic reasons, it is the man who bears the responsibility to propagate, even though men obviously cannot do so without women. A man fulfills that obligation when he fathers at least two children. Because we are supposed to model ourselves after God, we should create as God did in the first chapter of Genesis (1:27), that is, create at least one male and one female child. Two children, though, is a minimum; couples are supposed to have as many children as possible.32

Sexual intercourse is also understood to be a vital part of the pleasure and companionship of marriage. The Torah therefore declares that when a man marries a woman, "her food, her clothing, and her conjugal rights he may not diminish" (Exodus 21:10). Contrary to most other ancient traditions, then, Judaism from its earliest sources recognized that women have sexual needs as much as men do and legitimated the satisfaction of those needs within marriage.33

CLINICAL ISSUES

Masturbation
With the importance of marriage and children in mind, one can understand that traditional Judaism looked askance at interruptions in the process of conception and birth. Normally one was supposed to marry and have children. Masturbation, birth control, sterilization, and abortion were, both physically and ideologically, counterproductive.

Jews historically shared the abhorrence of masturbation that characterized other societies, but legal writers had difficulty locating a biblical basis for it. Maimonides claimed that it could not be punishable by the court because there is not an explicit commandment forbidding it.34 As he makes clear, the prohibition was based in part on assumptions about the medical consequences of ejaculation and also on concerns about self-pollution and murder of unborn generations.35

In modern times, many Orthodox Jews retain these beliefs and prohibitions, but Conservative, Reform, and unaffiliated Jews largely do not. To date there have not been official positions of these movements validating masturbation, but in practice any prohibition with regard to it is largely ignored.

Contraception
Despite the command to have two children and the ideal of having more, and despite the traditional prohibition against "wasting the seed," contraception is permitted and even required under certain circumstances. In general, the tradition understands the command to procreate to be the obligation of the male and not the female. This, together with the prohibition against masturbation, means that male forms of contraception are generally not permitted, but female methods sometimes are.36

In contemporary times, when many men and women pursue extended education and initiate a career before getting married, modern move-
ments have varied widely in their response to the desire for family planning. Some allow couples to use contraception even before they have children, and this has been the practice of the vast majority of Jews. Because of the loss of one-third of the Jewish population during the Holocaust, however, and because of the high rate of intermarriage and the extremely low birth rate among Jews, Jewish religious leaders have increasingly stressed the need for Jews to procreate. Moreover, couples are well advised to begin childbearing by their late twenties, if possible, to avoid the increased chances of infertility and birth defects that come with age. These factors have tempered an otherwise liberal approach to contraception on the part of many non-Orthodox rabbis and most Jews. As we shall see, Judaism restricts the legitimacy of abortion to cases where the life or health of the mother is at stake, and so those forms of contraception that prevent conception in the first place (e.g., diaphragm, pill) are preferred over those that abort the fertilized egg cell (zygote) after the fact (e.g., RU-486).

Sterilization
The same concerns govern the issue of sterilization, although there another issue arises, namely, the prohibition against a person mutilating his body in light of the fact that the body is really God's property. Vasectomies and tubal ligations are rather new procedures, and so only a few responsa deal with them. Both traditional and liberal respondents forbid male sterilization on the basis of the rabbinic interpretation and extension of Deuteronomy 23:2, “No one whose testes are crushed ... shall be admitted into the congregation of the Lord” or Leviticus 22:24, “That which is mangled or crushed or torn or cut you shall not offer unto the Lord; nor shall you do this in your land.” They are more permissive about female sterilization, both because a woman does not come under those prohibitions and also because she is not legally obligated to procreate.

All sources agree, however, that even male sterilization is permitted and perhaps even required if necessary to preserve the man's life or health. Moreover, even though I am not aware of any written opinion that would allow this practice, since vasectomy is far easier and safer than tying a woman's tubes, I could imagine an argument consistent with Jewish law and principles that would permit a vasectomy when pregnancy would entail a severe risk to the man's wife. After all, vasectomy does not amount to castration or to crushing the testes, and so the biblical verses cited above are not directly violated by the operation. The question, though, would be whether pregnancy could be effectively prevented by other means that would not endanger the woman and would not even possibly violate the verses cited. If so, then such means would undoubtedly be preferable.

Abortion and the status of the fetus
In conflict situations, there is a clear bias for life within the Jewish tradition. Indeed, it is considered sacred. Consequently, although abortion is permitted in some circumstances and actually required in others, it is not viewed as a morally neutral matter of individual desire or an acceptable form of post facto birth control. Contrary to what many contemporary Jews think, Judaism restricts the legitimacy of abortion to a narrow range of cases: it does not give blanket permission to abort.

Judaism does not see all abortion as murder because rabbinic sources understand the process of gestation developmentally. According to the Talmud, within the first forty days after conception the zygote is “simply water.” Another talmudic source distinguishes the first trimester from the remainder of gestation. These demarcations effectively make abortion during the early periods permitted for more reasons than during the rest of pregnancy.
The fetus does not attain the full rights and protections of a human being until birth, specifically when the forehead emerges or, in a breech birth, when most of the body emerges. The mother, of course, has full human status. Consequently, if the fetus threatens the life or health of the mother, then it may and in some cases must be aborted, as the following Mishnah graphically stipulates:

If a woman has [life-threatening] difficulty in childbirth, one dismembers the embryo in her, limb by limb, because her life takes precedence over its life. Once its head [or its “greater part”] has emerged, it may not be touched, for we do not set aside one life for another.

While all Jewish sources would permit and even require abortion in order to preserve the life or organs of the mother, authorities differ widely on how much of a threat to a woman's health the fetus must pose to justify or require an abortion. Based on a responsa by Rabbi Israel Meir Mizrahi in the late seventeenth century, many modern authorities also permit an abortion to preserve the mother's mental health, and this has been variously construed in narrow or lenient terms in modern times. To the extent that Jewish law makes special provision for an unusually young or old mother, an unmarried mother, the victim of a rape, or the participant in an incestuous or adulterous union, abortion is construed to preserve the mother's mental health.

There is no justification in the traditional sources for aborting a fetus because of the health of the fetus; only the mother's health is a consideration. As a result, some people object to performing an amniocentesis, especially when the intent is to determine whether to abort a malformed fetus. Others reason in precisely the opposite direction; they justify abortion of a defective fetus on the basis of preserving the mother's mental health where it is clear that the mother is not able to cope with the prospect of bearing or raising such a child.

Many Conservative and Reform rabbis, and even a few contemporary Orthodox rabbis, have handled the matter in a completely different way. They reason that traditional sources recognize only threats to the mother's health as grounds for abortion because until recently it was impossible to know anything about the genetic or medical make-up of the fetus before birth. Our new medical knowledge, they say, ought to establish the fetus's health as an independent consideration.

Abortion is particularly problematic for the contemporary Jewish community because Jews are barely reproducing themselves in Israel and are falling far short of that in North America, where the Jewish reproductive rate is approximately 1.6 or 1.7 children per couple. Consequently, even rabbis who are liberal in their interpretation of Jewish abortion law are also calling for Jews to marry and to have children.

NEW REPRODUCTIVE TECHNOLOGIES

Artificial insemination
Since Judaism prizes children so much, it is no wonder that rabbinic authorities have permitted recourse to artificial assistance in having them. Nevertheless some have objections to some of the procedures.

When the semen of a man is united artificially with his wife’s ovum, there are no objections whatsoever. This may be done by inserting the man’s sperm into the woman’s uterus directly or by uniting their sperm and ovum in a test tube and then inserting the fertilized egg cell into the woman’s uterus. Because of Judaism’s appreciation of medicine as an aid to God, there is no abhorrence of such means merely because they are artificial. The only issue is the means by which the husband’s sperm is obtained: some Orthodox rabbis prefer that it be collected from the vaginal cavity after intercourse rather than through masturbation to insure that there is no “destruction of the seed in vain,” and others require that the man wear a condom with some
small holes in it during sexual intercourse so that there is at least a chance that his wife would be impregnated through their intercourse. Most others, however, permit masturbation for this purpose on the ground that the man's ejaculation to produce semen for artificial insemination of his wife is not "in vain." The matter becomes more complicated when the donor is not the husband. Some rabbis object to such procedures on grounds of adultery. For others, however, it is called adultery only when the intercourse is conventional, rather than a laboratory procedure where the intent to have an illicit relationship is absent.

More commonly, the objection to donor insemination is based on the fear for the next generation: that the progeny of the act may commit unintentional incest—a violation of the Torah's laws against incest (Leviticus 18, 20). Even for those who would invoke the lack of intent to excuse the couple from those laws, there still remains a critical health concern—namely, the increased likelihood among consanguineous unions of genetic diseases transferring from one generation to the next; this was a prime concern of the Conservative Movement's Committee on Jewish Law and Standards.

This issue dissolves if the semen donor is known or if the donor would not likely be a marital partner for someone in the Jewish community. It was on this latter basis that prominent Orthodox Rabbi Moshe Feinstein ruled that donor insemination would be permissible if the donor were not Jewish, decreasing sharply the likelihood that progeny would meet and marry because, in his community, intermarriage between Jews and non-Jews was rare. Those Orthodox Jews who will use donor insemination will therefore often require that the donor be a non-Jew.

The Conservative Movement's Committee on Jewish Law and Standards has approved my rabbinic ruling, according to which donor insemination is permissible if the identity of the donor is made known or, lacking that, enough is known about him so that the child can avoid unintentional incest in his or her choice of sexual partners (married or not) and can know as much as possible about his or her family traits, both medically and characterologically. In view of the psychological problems, however, that may ensue for the child, the donor, and the parents who raise the child (the "social parents"), all parties to the insemination should seek and receive appropriate counseling.

Some Orthodox rabbis have voiced concern about an entirely different matter—namely, the morality of using someone else's body or semen in this way. Others worry that artificial insemination will increase the prospects of widespread licentiousness. Rabbi Jakobovits, former Chief Rabbi of the British Commonwealth, voices these moral concerns in strong language:

If Jewish law nevertheless opposes A.I.D. [artificial insemination by a donor] without reservation as utterly evil, it is mainly for moral reasons, not because of the intrinsic illegality of the act itself. The principal motives for the revulsion against the practice is the fear of the abuses to which its legalization would lead, however great the benefits may be in individual cases. By reducing human generation to stud-farming methods, A.I.D. severs the link between the procreation of children and marriage, indispensable to the maintenance of the family as the most basic and sacred unit of human society. It would enable women to satisfy their craving for children without the necessity to have homes or husbands. It would pave the way to a disastrous increase of promiscuity, as a wife, guilty of adultery, could always claim that a pregnancy which her husband did not, or was unable to, cause was brought about by A.I.D., when in fact she had adulterous relations with another man. Altogether, the generation of children would become arbitrary and mechanical, robbed of those mystic and intimately human qualities which make man a partner with God in the creative propagation of the race.

Needless to say, this was not the view of the morality of donor insemination embedded in my rabbinic ruling, primarily because the procedure
most often is used for the sacred moral purpose of having a child when that is not possible through the couple’s sexual intercourse.

Egg donation
The considerations described above with regard to donor insemination apply as well to egg donation. If the identity of the egg donor remains confidential, the same problems arise with regard to possible unintentional incest in the next generation, and the same solutions by the various rabbinic authorities apply. Specifically, either the egg donor’s identity should be shared with the couple who will raise the child and ultimately with the child herself, or the woman should be a non-Jew, or enough about the biological mother must be shared with the couple and child to enable the child to avoid unintentional incest and to know about her biological roots. Moreover, psychological counseling is appropriate for all concerned before the procedure and if problems arise in its aftermath.

Egg donation, though, raises some additional problems. Donor insemination poses virtually no medical risks to the semen donor, but that is not true of the egg donor. In order to procure as many eggs as possible during each attempt, the donor must be hyperovulated with drugs, and there is some evidence that repeated hyperovulation increases the risk of ovarian cancer. This is especially troubling since the donor herself will not, by hypothesis, be gaining a child of her own but will rather be helping another couple have a child. For as much as Jewish law prizes procreation, it values the life and health of those already born even more. Consequently, while otherwise healthy women may undergo the procedure to donate eggs once or twice, they should not do so much more than that, unless subsequent studies allay the fear of increased cancer risk.

Normally, a child is defined as Jewish in traditional Jewish law if born to a Jewish woman. In cases of egg donation, however, some rabbis have maintained that it is the donor of the gametes who is the legal mother. Most, though, have ruled that even if the egg comes from some other woman, as it does in egg donation, it is the bearing mother whose religion determines whether the child is Jewish or not, and this has been the stance adopted by the Conservative Movement’s Committee on Jewish Law and Standards.

In vitro fertilization (IVF), gamete intrauterine fallopian transfer (GIFT), zygote intrauterine fallopian transfer (ZIFT)
When a couple cannot conceive a fetus through sexual intercourse, even when assisted by timing their intercourse, by stimulating the ovaries, or by surgery to correct a problem in either the man or the woman, and when the couple prefers to use their own gametes to those of donors, they may try any of a number of new techniques, some of which are listed in the title of this section. Since the Jewish tradition does not frown upon the use of artificial means to enable people to attain permissible ends, much less sanctified ones like having a child, the mechanical nature of these techniques is not an issue. On the contrary, the important thing to note in recent Jewish rulings is that infertile couples are not obligated to use these means to fulfill the man’s duty to procreate, even though they may choose to do so.

Surrogate motherhood
Surrogate motherhood is really two different forms of overcoming infertility: traditional or ovum-surrogacy, in which the surrogate mother’s own egg is fertilized by the sperm of the man in the couple who are trying to have a baby (presumably not the husband of the surrogate); and gestational surrogacy, in which both the egg and the sperm are those of the couple, and the surrogate mother’s womb is used to carry and deliver the baby. Since in ovum-surrogacy the surrogate mother supplies her own gametes (genetic materials), her claim to the baby is greater than that of a gestational surrogate. Custody battles so far in American law, although few, have therefore given some consideration to the claim of an
ovum-surrogate for custody of the child but virtually none to a gestational surrogate.

From a Jewish perspective, this method of overcoming infertility, or at least something much akin to it, is among the oldest ways recorded in the Jewish tradition. Sarai (later Sarah), after all, gives her handmaid Hagar to Abram (later Abraham) specifically to conceive a son who would be attributed to Sarai, and Rachel and Leah likewise have their handmaids conceive children with their husband Jacob.61 These handmaids are all, in modern terminology, ovum-surrogates, and even so, because the handmaid belonged to the man’s wife, the Bible attributes the child to the wife.

Unlike these biblical cases, modern surrogates choose to serve in that role, but surrogate motherhood nevertheless raises difficult emotional and legal problems. These include the following: (1) What happens if the surrogate mother changes her mind in the middle of the pregnancy and wants to keep the baby? (2) Can a woman make a binding contract to terminate her parental rights to a child not yet conceived with full intent and with no equivocation, as required by Jewish law?62 (3) In light of Jewish law’s strong insistence on preserving one’s health and life, may one legally bind oneself in Jewish law to a course of action involving physical danger? (4) Is surrogacy just another form of baby buying? (5) Should there be any relationship between the surrogate mother and the couple, or should their identities be withheld from each other? Should there be any relationship between the surrogate mother and the offspring? (6) Should the child undergo the rites of conversion to assure his or her Jewish identity?63 (7) If the woman who is to serve as the surrogate mother is married, does implanting another man’s sperm in her (in traditional surrogacy) or the gametes of both members of a couple (in gestational surrogacy) constitute adultery, and is it therefore prohibited?

All of these issues, then, raise some concerns about the way in which a surrogacy arrangement should be handled, but they do not ultimately prohibit it. Specifically, the couple must abide by civil law in their region and, in light of the recency of this matter in most systems of law, the couple must be informed of the possibility of legal challenges.64 Furthermore, Jewish law would require that steps be taken to insure that the surrogate mother has full and informed intent to abide by the agreement—perhaps, in ovum-surrogacy, at least, by giving her a period of time (usually thirty days) after birth to cancel the agreement.65 The surrogate mother must not have physical or other conditions that would make pregnancy dangerous for her beyond the risks normally associated with pregnancy. In ovum-surrogacy, the child must either be told the identity of the woman whose gametes he inherited or at least be given enough information to be able to avoid incest and to know about his physical and characterological background. Within these parameters, the few rabbis who have written on the subject have generally permitted surrogacy.66

There are undoubtedly other problems that will arise as reproductive medical procedures become more sophisticated. On the other hand, as medicine learns more about how to help infertile couples, some of the new procedures may become unnecessary, and whatever moral problems they raise will then become moot.

While rabbis have sanctioned the new, artificial methods of conception in varying degrees, they clearly prefer methods that will help the couple have children through their own sexual intercourse—as the couples undoubtedly prefer as well. Then the emotional values of coitus and reproduction can be preserved, and the medical intervention is solely to aid a natural process.

Adoption

When a couple cannot have children, adoption is an available and honored option. Rabbinic law did not have the institution of adoption as such, but it provided for the approximate equivalent. The Rabbinic court, “the father of all orphans,” appoints guardians for orphans and children in need, and the guardians have the
same responsibilities as natural parents have. They are credited by the Talmud with doing right at all times:

“Happy are they who act justly, who do right at all times” (Psalms 106:3). Is it possible to do right at all times? . . . Rabbi Samuel bar Nahmani said: This refers to a person who brings up an orphan boy or girl in his house and [ultimately] enables the orphan to marry.68

Contrary to modern adoption, however, in Jewish law the natural parents continue to have the same obligations to the child as does the guardian, and the personal status of the child in matters of Jewish identity, ritual, and marriage depends upon the status of the natural parents.69 One Rabbinic source, however, states that the people who raise the child, and not the natural father and mother, are called the parents,70 and the Conservative Movement’s Committee on Jewish Law and Standards has ruled that both the biological and the social parents are to be considered the child’s parents, although in different respects.71

Prenatal diagnosis and treatment
Both for their own good and for that of their fetuses, pregnant women should seek and get prenatal care. They should also take the preventive measures that modern medicine recommends to insure a healthy baby, by avoiding alcohol, smoking, and some prescription drugs; avoiding toxins (for example, in paints) and people with specific diseases (for example, German measles) that have been shown to cause fetal damage; and adopting generally health-promoting habits of eating, hygiene, exercise, and sleep. Since women untrained in medicine may not be aware of the special risk factors for pregnancy inherent in certain conditions, women should be sure to share with their obstetricians as much information about their medical history and everyday life as possible so that appropriate steps can be taken to avoid problems for both themselves and their fetuses.

More on this whole topic will be discussed in the section on genetics below.

Care of severely handicapped newborns
Once children are born, they are full-fledged human beings and must be treated in their health care like all other human beings. That is true for disabled newborns (or adults, for that matter) just as much as it is for those with no disabilities. The image of God in each of us does not depend upon our abilities or skills; in this respect, the Jewish way of evaluating life is distinctly at odds with the utilitarian way.

Heroic measures need not be employed, however, to keep alive children born with severe disabilities that threaten their lives. Here the same rules that govern the withholding and removal of life-support systems from any human being apply to newborns, with all of the diversity of opinion among rabbis noted in that section below (see “Forgoing life-sustaining treatment”). Some rabbis, however, are more lenient with respect to the treatment of newborns than they are regarding people dying later on in life because of the possibility, noted in Jewish law, that the child was born prematurely. Specifically, until the child is thirty days old, she is not considered to be a person whose life is confirmed (a bar kayyana). Therefore, while we certainly may not do anything actively to hasten the child’s death, we may, according to these authorities, do less to sustain it than we would be called upon to do with regard to individuals who lived beyond thirty days. Thus even those who would insist on artificial nutrition and hydration for most dying people would not require it for life-imperiled infants less than thirty days old—except, of course, if the intervention holds out significant promise of curing the infant of the disease or condition. Some would require incubators, but most would not require surgery or medications beyond those necessary to relieve the child of pain.72