

Some Modern Responsa on Medico-Moral Problems

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3. Plastic Surgery on Down's Syndrome Children

By new methods of plastic surgery, it is now possible to give the faces of Down's Syndrome children an almost normal appearance. The ethical issues involved were discussed at a conference of medical experts and social workers held at Ravenswood Village on June 26, 1983. Among the participants was Professor Gottfried Lemperle, of the Clinic for Plastic and Reconstructive Surgery, Frankfurt, the pioneer of the operation. The text below, an abridged transcript of my contribution, is taken from the Report of the Conference edited by Professor Stanley Segal, O. B. E.

... While in America, in 1961, I was invited by the American Society of Facial Plastic Surgery to contribute to a symposium by representatives of the three major denominations—Protestant, Catholic and myself—on the attitudes of their respective religious beliefs and teachings to cosmetic surgery. In defining our Jewish response to the moral and ethical problems thrown up by the skills we now command in performing such operations, there are, I stated, four major considerations. These then have to be related to the specific issue of performing such operations in Down's Syndrome cases.

These four are the possible objections that can be raised in the light of Jewish law. First, there is the risk factor. Every operation involves a degree of risk, especially the anesthetic and its effects. Under normal conditions we are not permitted to set our lives at risk, even if the risk is remote, because we are meant to be guardians of our health. For us it is a religious duty to protect our health and to prevent any threat to life. Second, there is our extremely insistent objection to any mutilation of the human body. We regard it as a grave religious offense to inflict an injury not only on others, but equally on ourself. The human body is Divine property. As such we must not violate its integrity. That objection can only be overcome on urgent medical grounds or other overriding reasons. Third, there is the theological argument that by any recourse to medicine we defy the Will of God. This argument has led some to oppose applying Jenner's discovery of vaccination and others to object to the use of chloroform to

ease the pain of childbirth as acts "flying in the face of Providence." We have never accepted this. We recognize the validity of the argument, but we answer it by claiming that in the Bible itself—after all, the source of all rights as well as their restriction—there is an express sanction given to us to apply medical skills in an effort to overcome suffering. Since in connection with the infliction of injuries the second Book of Moses states: "You shall surely cause him to be healed," this provides divine sanction for us to interfere with nature in order to overcome the disabilities created by nature. Therefore we have not been troubled with this problem.

Finally, a factor which also carries considerable weight in connection with plastic surgery would be the aversion of Judaism to any form of vanity. Anything done purely to promote one's vanity, especially by males, is frowned upon. In fact there is an early rabbinic source which speaks of two men whose beauty is especially mentioned in the Bible—Joseph and later Absalom, son of David—and both came to grief on account of their vanity.

Bearing in mind, then, these four considerations, and relating them to cosmetic surgery, I came to the conclusion that such operations could probably, according to Jewish law and principles, be sanctioned only under two major conditions: to facilitate matrimonial prospects or maintaining the happiness of a marriage, if a disfigurement would be an impediment. That would then be a consideration overriding the objections which I have listed to plastic surgery. Secondly, if otherwise suffering from this disability a person would be prevented from playing a constructive role in society, and in particular from being employed and earning a living to maintain himself and his family in decent comfort.

Above all, of course, if the operation is carried out on purely medical grounds as a therapeutic means to undo an injury inflicted, say, in a car accident, and you therefore apply plastic surgery not to improve nature as it is, but in order to correct a damage done to nature, then it would be an act of healing, and as such it comes under the general sanction mentioned earlier ...

The same consideration would, broadly speaking, have to be transferred to our specific area of Down's Syndrome. One

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would presumably have to analyse and define very carefully who is to be the main beneficiary of such operations. Is it the patient himself, the afflicted child? Do we improve the child's opportunity for living a normal existence, relating better to those around him, his family and society? Or is the objective primarily not the child at all but others, the family who will feel it easier to cope, or his environment who would feel more at ease by the patient having certain deformities corrected through plastic surgery?

Now, under no circumstances would we ever sanction such a procedure unless the primary beneficiary would be the patient himself. You cannot carry out an operation on one person to make life easier for others. So let us assume that it is done primarily with focus on the patient. Now again we must very carefully define here what are the objectives in relation to that child to make sure that what we hope to achieve is to "correct" nature, by facilitating his integration, his acceptance by society, or perhaps even his usefulness in terms of the contributions to others he might more easily make due to plastic surgery. If, however, these objectives are not served, then we would be hesitant to countenance the operation. I have not had the chance to read the professional literature on the subject or to hear the argument in favor of it. I am merely analysing here the pros and cons as they strike me. If it transpires that this is not related to easing that child's life, as expressed in its relationships, its acceptance and possibly its usefulness within the family and society around him, then it would be highly questionable whether the operation is justified in being imposed on the child for the sake of the benefits achieved.

I gather that as of now marriages in Down's Syndrome children have not taken place or are certainly not the norm. But if it were scientifically feasible to contemplate removing such a disability, by making possible the establishment of unions which under existing conditions are partly ruled out by physical appearance, then again this would be a very major consideration in favor, just as it is in the application of cosmetic surgery in general. On the other hand, it may well be that as a result of carrying out such an operation the temptation to marry or to be married, will be so increased as to make the tensions greater rather than smaller in not being able afterwards to fulfil the desire for marriage. In other words, you may only add to the agony, if in fact marriages could not be contemplated for other reasons, and plastic surgery would only increase the natural urge for sexual intimacies.

So these are the pros and cons which have to be weighed very carefully to make quite sure that, far from benefiting the patient, one would not aggravate the condition of the patient, by creating circumstances in which a resistance to temptation is rendered harder.

Let me conclude by setting forth the moral criteria to be considered in a broader perspective. As you may know, certain genetic conditions are found particularly acutely among members of the Jewish community. For instance, Tay-Sachs is a hundred times more prevalent among Ashkenazi Jews than among others. Some time ago, I

appeared on a BBC television symposium on the subject of Tay-Sachs and genetic counselling generally. In the course of the discussion, I also related to some wider implications of the issues raised. I mentioned that certainly from my limited experience, my pastoral experience as a Rabbi, I find that if we speak about the quality of life in terms of contributions a person can make towards society, then no one should say that those who are helpless and merely passively receive the care and attention of others, do not thereby make a contribution to the betterment of society. Indeed they may well contribute more to human ennoblement than any other so-called normal person. Maybe that having tenderly to care for such a child, the parents, the family or the professional staff, not to mention institutions as magnificent as Ravenswood and others are immensely enriched. Maybe that such children contribute an element of nobility to refinement of the human heart, to the cultivation of compassion that would not otherwise exist. Therefore, who is going to tell that such children do not make an enormous contribution, enriching the human experience, helping to bring out of the recesses of our hearts, qualities of virtues that would otherwise remain locked and undiscovered in the human psyche? We cannot simply use, say, industrial output as the gauge by which to assess the value of a human being, in that he happens to be productive by occupying some important position, either on the factory floor, or, for that matter, in the professions, by using his brain power, or whatever.

Following that remark on television there was a radio "phone-in" program on what I had said, and I will say that the reactions were widely diverse. Some parents of afflicted children under no circumstances were prepared to accept that there was a redeeming feature, a contribution by way of ennoblement in the immense suffering inflicted by the existence of such a child. But the majority of parents went along and said, yes, we discovered something in ourselves by having to take care of such a child, that we did not know we had in us. They agreed that this was a legitimate argument that they themselves could testify to having become finer, nobler, morally more sensitive than they would have been without these children.

Therefore, to the extent that by using all the ingenuity of man, all the skills of modern medicine and surgery in order to ease the lot of those affected, but above all the patients themselves, there could be no objection to plastic surgery on Down's Syndrome children, provided every reasonable precaution is taken obviously to ensure that the risk factor is reduced to a minimum. But the moment that we find that the anticipated benefits do not materialize then our real concern transcends the considerations mentioned. We would have the gravest hesitation in sanctioning any intervention with nature which, far from reducing the actual suffering of the patient concerned, might add to it, whether in psychological or physical terms.

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D. THE GENERATION OF LIFE

1. Birth Control for Newlyweds

Pursuant to an enquiry from a medical consultant, the Jewish Marriage Council asked about the use of contraceptive precautions for several months following a marriage until an inoculation could take effect to prevent the birth of an abnormal child in the event of German measles being contracted early during pregnancy. (The chances of an abnormal birth vary considerably. It is now possible to detect an affected embryo by an amniotic fluid test during pregnancy. Some rabbinic authorities, against the view of others, are inclined to permit an abortion once the test has revealed a definite abnormality, particularly if the mental health of the mother may otherwise be seriously affected.) I answered as follows:

... clearly no blanket permission can be given for newlywed couples to practise birth control for the first six months simply because the wife has had neither rubella nor an inoculation against it.

Where medical or psychological indications so dictate, it would be easier to contemplate an amniocentesis test in the event of pregnancy than simply to defer the raising of a family on such an indiscriminate basis on what are bound to be rather remote fears (which to some extent affect every pregnancy, whatever the circumstances).

Hence, it would certainly be improper to give an impersonal permissive ruling of such a sweeping nature. But individual couples who are seriously agitated over this risk should by all means be advised to consult a competent Rabbi on the strength of whatever medical advice they receive.

2. Down's Syndrome Infanticide Acquittal

This celebrated case, which aroused much public debate, prompted me to issue a statement which was publicized in part in The Times and in full in The Jewish Chronicle. In explaining the Jewish attitude, I had argued, inter alia, that "the tragedy of a defective child may open up otherwise inaccessible resources of selfless love and other spiritual virtues and a supreme objective value of a cruelly afflicted may well lie in the refining influence such a life exercises on those charged tenderly to protect it." This elicited various responses drawn from personal experience, some wholeheartedly in agreement and others highly critical. An irate doctor altogether questioned my right to interfere with the prerogatives of his profession and strongly disputed other assertions I had made. I answered him:

I am with you in principle when you dispute my right, as a Rabbi, "to tell doctors what their functions and duties should be when caring for their patients." But where surely religion has a right and a duty to speak up is when there is a public debate not on caring for patients but on killing them (or deliberately causing them to die). This clearly is a moral rather than a purely medical issue, and religious leaders would betray their faith—especially a pioneer of the moral law as acutely concerned with the sanctity of life as Judaism—if they abdicated their responsibility to proclaim and explain their teachings.

Of course I recognize that doctors are "human beings with minds and feelings," but that does not necessarily qualify them as moral experts to decide who is to live or to die, which is a purely moral issue. As for your claim that the medical practice which I am counselling is "bad medical practice," I can only tell you that I know of numerous doctors of the highest repute and distinction who strictly abide by the rules of Jewish ethics as I try to present them. As for your question on relieving suffering in a terminally ill patient with drugs which may possibly shorten life, Jewish law does view this sympathetically and with compassion, provided the drug is not calculated to induce death but simply to relieve pain, even if this may unintentionally have fatal results.

No, I do not advocate "some official medical Sanhedrin." These grave life-and-death judgments cannot be made by some blanket ruling, however eminent the tribunal. Each situation must be individually judged on its merits, and all I urged was that completely disinterested judicial and/or moral experts be consulted in reaching such capital verdicts, at least for such doctors and patients as wish to be guided by the moral dictates of their faith.

Finally, you inform me, having practiced medicine for forty years, you have looked on a great deal of suffering. I can assure you that as a practising Rabbi for exactly the same period, I too have witnessed much suffering, whether in hospital wards, institutions for the severely handicapped (which I have visited all too frequently) or in broken homes and broken spirits revealed in the privacy of my office and home. It is out of these constant encounters with suffering, often of the most acute nature, that I can testify that there are people who are ennobled by the ordeal, though I readily grant that there are others who are degraded by it. I too seek to pursue "a noble art," and in this capacity it is my duty and my privilege to search out and enhance what is noble in man. Moreover, I believe I am heir and spokesman of a religious tradition which has not acquitted itself too badly in promoting nobility of spirit and compassion of heart over the ages.

Another critical letter came from a mother in Switzerland, herself stricken with a seriously handicapped child. I wrote to her:

Your letter touched me deeply, and I wish I could offer you more than mere words of sympathy and understanding.

Let me concede at once that I know your sentiments are shared by many others in similar circumstances. But by the same token, you must believe me when I assert that many parents have told me they had found "sublime happiness being generated out of the ordeal of caring for an incapacitated child." Indeed, the correspondence columns of our national press, lately filled with letters on this subject, also affirmed numerous personal examples of such ennoblement of life, though admittedly others dispute this.

Hence, I think I was justified in stating as a fact that such tragedies may open up otherwise inaccessible resources of spiritual virtues. I obviously did not compose my carefully worded statement for readers who, as you write, "may well overlook the all-important little word may."

More importantly, my charge as a Rabbi, in an intense public debate on a profoundly moral issue of the most acute concern to Judaism, is to present Jewish teachings as I find them, and then to explain them as best I can ...

What distressed me most in your letter was your bitterness in the face of the indifference of the community of which you write. It was precisely in answer to your plea that I should "appeal for understanding, acceptance of the ways of God, kindness and unprejudiced help for the families concerned," that I insisted on "the duty of society to provide financial or institutional help" where this was needed, adding the words which I hoped would bring comfort to those affected: "Where there is life, there may not always be hope; but there is always the spark of a uniquely precious soul radiating warmth and compassion by its very existence."

But realizing now how my words may be misread, "overlooked" or otherwise create a false impression of my true feelings, I will certainly bear your comments in mind in any future public reference to this immensely tragic subject, and I thank you for communicating your perfectly justified sensitivities to me. The last thing I would want to do is to add pain instead of providing some balm of comfort. It is this balm which, I assure you, I wish to extend to you and your family from the depths of my heart.

3. Abortion after Rape

Following a speaking tour in America earlier in the year, which included lectures on Jewish medical ethics at a leading Jewish hospital in Los Angeles and at the Massachusetts Institute of Technology in Boston, some professional members of the large audiences addressed several specific enquiries to me. One was on the attitude to abortion in cases of rape. I replied:

On your question regarding abortion after rape, you will find some references in my book *Jewish Medical Ethics* on differences of opinion in rabbinic responsa going back to Rabbi Yaakov Emden (who dealt permissively with a *mamzer* conception some two hundred years ago). Present views still differ, though several leading authorities incline towards a lenient verdict, particularly when the mental health of the mother might be seriously affected. Also a consideration in favor of an abortion would be a rape committed on a married woman or involving other forms of capital immorality (i.e. adultery or incest). What I have written is for your general guidance. It should under no circumstances be used for practical decisions on such life-and-death issues without consulting a competent Rabbi on the precise circumstances in each individual case.