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SELECTED REFORM RESPONSA

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DANGERS TO HEALTH
CORRECTING CONGENITAL DEFORMITIES
BY SURGERY

QUESTION: A dentist has told me that my child has a syndrome, a disorder which is a congenital illness. It is fatal in a severe form. It has appeared in my child's nasal cavity. The child is disturbed and he suffers from many other ailments. Surgery would correct some of these problems. It has appeared. A social service worker has been assigned for it.

SELECTED REFORM RESPONSA

The responsa on the following pages represent a selection taken from a century of American Reform responsa. They have answered questions from members of the Reform community and its rabbis. We are grateful to the Central Conference of American Rabbis Press for permission to republish these responsa. They have been presented as previously published with no effort to change the Hebrew transliteration or their style; minor corrections have been made.

Additional large selections of responsa on medical and health related issues may be found in the volumes *The Fetus and Fertility in Jewish Law – Essays and Responsa* and *Death and Euthanasia – in Jewish Law – Essays and Responsa*.

ANSWER: A number of different questions have been asked in this case. The first is the extent to which one should know or believe for an operation whose results, because they are primarily psychological, will not be known in advance. The social agency which will pay for the extensive surgical procedure, it is felt, should be beneficial. However, the patient and his mother have their doubts each for different reasons.

Jewish tradition indicates that one should not wound one's self or endanger one's life. In fact, it is probable that an individual should remove all possible dangers from himself (Deut. 4:2, 15; Ber. 52b; B.K. 91a, Yom. 81a, Rosh Hashana 16a, Sukka 11a, Hil.

SELECTED REFORM RESPONSES

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DANGERS OF SURGERY CORRECTING CONGENITAL CRANIOFACIAL MALFORMATIONS

QUESTION: A twenty-six year old man was born with Apert's syndrome, a disorder which is known as craniofacial dysostosis. This illness is found in a severe form in my patient, Albert. His strange appearance frightens children. He cannot chew food properly. His nasal airway is small, so he cannot breathe through his nose. He is disturbed and he suffers from many colds, etc. due to poor breathing. Surgery would correct some of these problems and improve his appearance. A social service agency favors surgery and would pay for it.

It is not entirely clear whether this individual wishes to have the surgery. His intelligence is limited as he is educably retarded. His mother is very much dependent on him for companionship and transportation, and has cared for him all his life. The risks of the operation are formidable and might lead to blindness, meningitis, seizure disorder and coma, or even death. The issues in this situation are the following: Albert, due to his limited intellect and his long standing physical deformity, may experience little impact from this extensive surgery and its attendant risks. In addition, the potential sacrifice and suffering the mother will experience are also disquieting. Finally, the expenses to achieve this result will be tens of thousands of dollars, and perhaps more if there are complications. Is it appropriate to proceed? (Dr. L. Hurwitz, Pittsburgh, Pa.)

ANSWER: A number of different questions have been raised by this case. The first is the extent to which one should risk someone's life for an operation whose results, because they are principally psychological, will not be known in advance. The social agency, which will pay for the extensive surgical procedure, feels that it will be beneficial. However, the patient and his mother have their doubts, each for different reasons.

Jewish tradition indicates that one should not wound one's self or endanger one's life. In fact, it stipulates that an individual should remove all possible dangers from himself (Deut. 4.9; 4. 15; Ber. 32b; B K 91b, *Yad Hil. Rotzeah Ushemirat Hanefesh* 11.4; Hil.

Shevuot 5.57; Hil. Hovel Umaziq 5.1). However, later responsa agree that even if there is considerable risk in the surgical procedure, it may be taken if there is a small chance that a cure will be effected (Jacob Reisher, *Shevut Yaakoq*, III 75; Hayim Grodzinski *Ahiezer*, Yoreh Deah 16). The recent Chief Rabbi of Israel, Untermann, sanctioned such an operation solely on the grounds that the chance of success was greater than possible failure (Address to the Congress of Oral Law, Jerusalem, August, 1968; several articles in *Noam* have also discussed this matter (Vol. 12, 13, etc).

The patient may, therefore, undergo the operation even if the risk involved is considerable as long as some medical benefit is likely.

The second question deals with the relationship of mother and child. What role should this play in our decision? We shall view this first from the point of view of the child's continued responsibilities to his parent. There is considerable discussion in the traditional literature on this matter. It deals with two aspects of a child's responsibility toward parents. One is the fiscal responsibility. This rests upon children generally, but of course, not in this case. The other aspect deals with the emotional dependence of the parents upon the child. Conflict in this area often became acute when an adult child moved away from his parents for marriage or another reason. Our tradition stressed the child's independence through comments in biblical tales that dealt with this theme, as for example Genesis 2.24, "Therefore shall a man leave his father and his mother..." and on God's command to Abraham, "Get yourself out of your country and from your family and from your father's house..." (Gen. 12.1). The rabbinic interpretation of these citations provided for independence of the child from his parents, although the rabbis felt the need to defend Abraham (M Ber., 6.4; *Genesis Rabbah*, II p. 369). The medieval *Sefer Hassidim* stated that any son who had made financial provisions for his parents was free to move (#564, p. 371). When dealing with a sick parent, or one who was mentally incapacitated, there was a difference of opinion between Maimonides and Rabad. Both agreed that the son may need to leave the parents, but Rabad felt that the obligation of emotional support remained with the son (*Derishah* to *Tur* Yoreh Deah 240). The *Shulhan Arukh* followed Maimonides in this matter (Yoreh Deah

240.10). Clearly the son remains responsible for the physical and mental welfare of his parents unless an extraordinary difficult situation makes this impossible.

The normal situation of a child leaving a home in order to marry presents potential problems. It is a *mitzvah* for a father to ensure the marriage of his children (Kid. 29a ff; Ket. 52b; San 93a). We will not consider the matter of choice of mate, which has been discussed at great length in the literature. Marriage, with the normal move from the original home, is considered a *mitzvah* (Kid. 29a), and the traditional literature insists that a father is obligated to guide the child toward independence. In our case, the mother is similarly dutybound to ensure her son's independence, or at least to take him as far as possible. He, in turn, must continue to support his mother emotionally and help her according to his ability. The mother's fear of the child's independence should not be a factor in any decision about this operation.

The third issue concerns the resources to be expended upon this individual. The social agency obviously feels that the money spent in this fashion will enable him to be less of a public charge both now and later in life. Jewish tradition lauds expenditures for this purpose. When Maimonides listed degrees of charity, the highest prepared the individual to be independent (*Yad Hil. Matnat Aniyim*, 10.7 ff).

Some doubts have been expressed whether the individual involved would actually be able to benefit from the operation and make the psychological adjustment to his new, improved status. That clearly is a matter of judgment that only a physician with considerable experience can decide. However, the surgeon should see himself primarily as the agent that sets the stage for possible future improvement. Unless this has been done, no improvement is possible. This willingness to take a chance and to risk failure is a basis of many aspects of life and religious life. For example, the entire notion of atonement connected with the *yamim naraim*, and especially *Yom Kippur*, suggests that we may be forgiven for past errors and begin anew; yet, there is no guarantee of such improvement. True repentance is sought, but the goal remains elusive (*Yom. 86b; Yad Hil. Teshuvah 1.1 ff*).

Tradition would have us note the problems connected with this operation. However, if the surgeon feels that it will be successful, and beneficial to the patient then the risk should be taken.

February 1984

Walter Jacob, *Contemporary American Reform Responsa*, Central Conference of American Rabbis, New York, 1987, pp. 128 ff.

BANKS FOR HUMAN ORGANS

QUESTION: Is there any objection to the establishment of repositories for organs like kidneys, heart, liver, cornea, and segments of skin, so that they can be used to help victims at the proper time? It is now possible to store organs only for a short period. Would Reform Judaism object to long term storage as it becomes feasible in order to save lives? Skin banks now help burn victims survive (Rabbi M. Beifield, Jr., Raleigh, N.C.)

ANSWER: Tradition has demanded the quickest possible burial of the dead and considers it shameful to leave a body unburied overnight unless the delay is for the honor of the dead (Deut. 21.23; San. 46b; M.K. 22a; *Shulhan Arukh* Yoreh Deah 357.1). Burial according to the talmudic discussion in *Sanhedrin* is an act of atonement and also prevents any dishonor to the corpse. The thought of atonement through burial is based on the biblical verse, "And he makes atonement for the land of his people." In other words, burial in the earth will make atonement for the individual (Deut. 32.43). In addition it prevents the ritual impurity of the priests (*kohanim*) who are to have no contact with the dead (Lev. 21.2 ff; *Shulhan Arukh* Yoreh Deah 373.7 f; Greenwald, *Kol Bo Al Avelut*, pp. 249 ff).

Burial of limbs is carried out by extension and was known by talmudic sources (Ket. 20b). Almost all authorities that discuss burial of limbs, however, indicate that it is done only to prevent ritual impurity of the *kohanim* (M. Eduyot 63), and that the other two motivations for general burial i.e. (*Yad Hil. Tumat Hamet* 2.3), atonement and the honor of the dead, are not applicable (Jacob Reisher, *Shevut Yaaqov*, Vol. II #101; Ezekiel Landau, *Noda Biyehudah*, Vol II, Yoreh Deah #209). Maimonides limited the possibility of ritual impurity to a limb that had been completely preserved with skin, sinew, and so on. He felt that other sections of the human body like liver, stomach, or kidneys, did not transmit ritual uncleanness (*Yad Hil. Tumat Hamet* 2.3).

It is clear from this discussion as well as recent response that there is no obligation to bury the vital internal organs as they do not transmit ritual uncleanness. That is true for traditional

Jews, and of course, for us as Reform Jews. As the *kohanim* have no special status among us, the precautions connected with them have no significance for us.

There are no problems about the removal of the organs, but we must now attempt to define the turning point when "independent life" has ceased and can best do so by looking carefully at the traditional Jewish and modern medical criteria of death. The traditional criteria were based on a lack of respiratory activity and heart beat (M. Yoma 8.5; *Yad Hil. Shab. 2.19*; *Shulhan Arukh Orah Hayim 329.4*). Lack of respiration alone was considered conclusive if the individual lay as quietly as a stone (*Hatam Sofer Yoreh Deah #38*).

All this was discussed at some length in connection with the provision by the *Shulhan Arukh*, that an attempt might be made to save the child of a woman dying in childbirth even on *shabbat*, a knife might be brought to make an incision in the uterus to remove the fetus (*Shulhan Arukh Yoreh Deah 339.1*). If one waited until death was absolutely certain, then the fetus also would be dead.

Absolute certainty of death, according to the halakhic authorities of the last century, had occurred when there had been no movement for at least fifteen minutes (*Gesher Hayim 1,3, p. 48*) or an hour (*Yismah Lev Yoreh Deah #9*) after the halt of respiration and heart beat. On the other hand, a recent Israeli physician, Jacob Levy, has stated that modern methods permit other criteria, and the lack of blood pressure, as well as respiratory activity, should suffice (*Hamayan, Tamuz 57.31*).

This discussion was important in connection with the preparation for burial, as well as other matters. When death was certain, then the preparation for burial must begin immediately (*Hatam Sofer Yoreh Deah 338*; Y. Z. Azulai, *Responsa Hayim Shaul II, #25*). In ancient times, it was considered necessary to examine the grave after a cave burial to be certain that the individual interred had actually died. This was recommended for a period of three days (M. Semahot 8.1). This procedure was not followed after mishnaic times.

In the last years, it has been suggested that Jews accept the criteria of death set by the ad hoc committee of the Harvard Medical School which examined the definition of brain death in 1978 (*Journal of American Medical Association*, Vol. 205, pp. 337 ff). They recommend three criteria: (1) lack of response to external stimuli or to internal need, (2) absence of movement and breathing as observed by physicians over a period of at least one hour, (3) absence of elicitable reflexes, and a fourth criterion to confirm the other three, a flat or isoelectric electroencephalogram. They also suggested that this examination be repeated after an interval of twenty-four hours.

Several Orthodox authorities have accepted these criteria while others have rejected them. Moshe Feinstein felt they could be accepted along with turning off the respirator briefly to see whether independent breathing was continuing (*Igrot Mosheh Yoreh Deah II*, #174). Moses Tendler has gone somewhat further and has accepted the Harvard criteria (*Journal of American Medical Association*, Vol. 328, #15, pp. 165.1 ff). Although David Bleich (*Hapardes*, Tevet 57.37; Jacob Levy, *Hadarom*, Nisan 57.31, Tishri 57.30; *Noam* 5.30) vigorously rejected those criteria, we can see that though the question has not been resolved by our Orthodox colleagues, some of them have certainly accepted the recommendations of the Harvard Medical School committee.

We are satisfied that these criteria include those of the older tradition and comply with our concern that life has ended. Therefore, when circulation and respiration continue only through mechanical means as established by the above mentioned tests, then the suffering of the patient and his family may be permitted to cease, as no "natural independent life" functions have been sustained.

1. Acceptance of total cessation of brain-stem function as a criterion of death in keeping with *halakhic* standards for determining death, provided the Harvard Criteria are met.

2. The Committee expressed confidence in the medical profession's ability to provide needed safeguards and to set proper standards.
3. Our support of this new legislation is necessary to correct the lack of uniformity presently found among hospitals and staff in determining the fact or moment of death. This legislation is, therefore, viewed as a "tightening up" of standards.
4. The neurological definition of death serves an important function in view of the widespread introduction of respiratory-assist technology in hospitals.
5. Radiological methods for determining cessation of blood flow to the brain's respiratory centers are considered a particularly valid test for neurological (i.e., brain-stem) death," (M.D. Tendler, ed., *Medical Ethics*, 5th ed., 1975, with addendum 1981). *Hanaah*, the problem of "benefiting from the dead," has been discussed by Solomon B. Freehof (W. Jacob, *American Reform Responsa*, #86). A transplant lies outside the scope of what tradition has normally understood as *hanaah*; this potential objection does not exist.

As we view the traditional reluctance in this matter, we feel that the desire to help a fellow human being, especially in these dire circumstances of *piquah nefesh*, is of primary significance. From our liberal understanding of the *Halakhah*, this is the decisive factor. The act of donating organs does honor to the deceased; many of those about to die would gladly forgo any other honor and donate organs for this purpose (Kid. 32; *Shulhan Arukh* Yoreh Deah 364.1, 368.1; Isserles *Responsa* #327). As the donation of an organ will help to save the life of another human being, storage until the time of proper use presents no problem. Progress in the future may raise new issues of use and lead us to

reexamine this matter. At the present time we should insist that storage and handling be done with appropriate respect and that the disposal of organs that are not used be done with reverence.

March 1986

Walter Jacob, *Contemporary American Reform Responsa*, Central Conference of American Rabbis, New York, 1987, pp. 128 ff.

Ultimately that habit may be as destructive
Silberman, New York, N.Y.)

ANSWER: As noted in your previous question, there is surprisingly little material in the vast literature that deals with the use of addictive drugs (W. Jacob, *Contemporary American Reform Responsa* #82). As you have indicated, there is a need for a rabbi's policy rather than a specifically Jewish one. The question asks ourselves what are we trying to accomplish. The rabbis do not, somewhat curtail the spread of AIDS. They do, however, attempt the problem of drug abuse and do nothing to help the addict overcome his/her addiction. Can we in good conscience stand along this partial path and ignore the larger problem of drug addiction and its harm to the individual as well as to the broader society?

The use of drugs whose harmful effects are known has, of course, been prohibited by Jewish law (Pes 113a; Eruv 54b, Nid 30b). No person is to endanger his/her life in any fashion (Gen 4:9; 4:13; Ber 32b; B K 91b; Yal 19; Korban Ushenit 11a; Hil Shevot 5:57; Hil Novel Umazig 3:1). Even the use of experimental drugs whose benefit is uncertain has been permitted reluctantly, and only with the full consent of the ill person and if there is reasonable chance that healing will occur. In this instance an additional factor is created by the involvement of health authorities in the use of drugs. In other words, making it easier for those addicted to continue their habit.

Those considerations are negative and would lead us to a negative conclusion. There is, however, another side to this question. AIDS is a fatal disease for which no cure is now known.

the machine the matter. At the present time we should install that storage and handling facilities for these organs in respect and dignity. The disposal of organs that are not used should be done with respect and dignity.

3. Our support of this legislation is not only in support of the lack of uniformity found among hospitals and in the Conference of American Medical Societies, but also in support of the American Medical Association's position on the issue.

4. The neurological definition of death serves an important function in view of the widespread acceptance of respiratory and circulatory criteria in hospitals.

5. Neurological methods for determining cessation of blood flow in the brain's respiratory centers are considered a particularly reliable method for determining brain death (M.D. Fenichel, M.D., *Medical Ethics*, 5th ed., 1975, with addendum 1981). Through the problem of "harvesting from the dead" has been discussed by Solomon B. Feinberg (W. Jacob, *American Reform Response*, 1980). A transplant list outside the scope of what medicine has normally understood as *human*; this potential objection does not exist.

As we view the traditional reluctance in this matter, we feel that the desire to help a fellow human being, especially in these dire circumstances of *pipah nefesh*, is of primary significance. From our liberal understanding of the *Halakhah*, this is the correct view. The act of donating organs does honor to the deceased; many of those about to die would gladly forgo any other body and donor organs for this purpose (Kid. 32; *Shulhan Arukh*, *Yoreh Deah* 364:2, 368:1; *Baieles Response* #327). As the *Shulhan Arukh* will help to save the life of another human being, every word the time of proper use presents no problem. The *Halakhah* in the future may raise new issues of use and lead us to

AIDS AND FREE NEEDLES FOR DRUG ADDICTS

QUESTION: The spread of AIDS takes place in a number of ways. Among them is through infected needles shared by drug users. Among the suggestions of public health officials has been the providing of free needles for drug users. This somewhat curtails the spread of AIDS. Is it ethical to utilize this method which after all enables drug addicts to continue their habit? Ultimately that habit may be as destructive as AIDS (Leonard Silberman, New York N.Y.).

ANSWER: As noted in some previous responsa there is surprisingly little material in the vast response literature about the use of addictive drugs (W. Jacob, *Contemporary American Reform Responsa* #82). As you have indicated, this is a matter of public policy rather than a specifically Jewish issue. We must ask ourselves what are we trying to accomplish. The free needles may somewhat curtail the spread of AIDS. They do, however, continue the problem of drug abuse and do nothing to help the addict overcome his/her addiction. Can we in good conscience move along this partial path and ignore the larger question of drug addiction and its harm to the individual as well as to the broader society?

The use of drugs whose harmful effect is known has, of course, been prohibited by Jewish law (Pes 113a; Eruv 54a; Nid 30b). No person is to endanger his/her life in any fashion (Deut 4.9; 4.15; Ber 32b; B K 91b; *Yad* Hil Rotzeah Ushemirat Hanefesh 11.4; Hil Shevuot 5.57; Hil Hovel Umazig 5.1). Even the use of experimental drugs whose benefit is uncertain has been permitted reluctantly, and only with the full consent of the ill person and if there is reasonable chance that healing will occur. In this instance an additional factor is created by the involvement of health authorities in the use of drugs. In other words, making it easier for those addicted to continue their habit.

Those considerations are negative and would lead us to a negative conclusion. There is, however, another side to this question. AIDS is a fatal disease for which no cure is now known.

Individuals who suffer from this syndrome can be helped for some time, but eventually death is certain. Use of drugs may also kill, but it is possible to be cured of this habit and only a serious overdose or very long-term use will kill. Most deaths result from side effects of the drugs or crimes connected with drugs. Therefore drugs, although a major evil in our society, are the lesser evil for the individual.

We may therefore defend the providing of free needles to known drug users on the grounds that we are helping them to preserve their lives. They will be less likely to be afflicted by AIDS, and so will not spread this disease to others. Furthermore the possibility of a cure from their drug problems, although unlikely, exists. We may therefore say that to prevent a greater evil we will condone a lesser evil, and we do so on the grounds that saving a life permits anything accept murder and adultery. In this instance the life saving factor becomes predominant, and we would condone, albeit reluctantly, the distribution of free needles for this purpose.

June 1989

Walter Jacob, *Questions and Reform Jewish Answers*, Central Conference of American Rabbis, New York, 1992, pp, 273 f.

TAHARAH AND AIDS

QUESTION: At the present time the funeral director of the local Jewish funeral home refuses to permit *taharah* for AIDS victims. Are there circumstances under which *taharah* may be withheld? For example, those who died of dangerous infectious disease or should we insist that he treat AIDS victims like all other dead? (Rabbi Norman M. Cohen, Hopkins, Minn.).

ANSWER: The fact that this question is asked at all indicates the progress of modern medicine in removing the danger of most infectious diseases. Through most of our long history the grave danger of plagues and major epidemics was, of course, recognized even while the danger of infectious diseases was not. Special precautions were occasionally initiated during major epidemics, but those who died from any disease were treated alike and were provided with the same preparation before burial. In fact crises like epidemics and plagues led to the creation of new burial societies and to renewed devotion to proper burial. (I. Abrahams, *Jewish Life in the Middle Ages*, pp. 355 ff). Special burial preparations were made only for those who were murdered or those who died in childbirth (For a summary see J. Grunwald, *Kol Bo al Avelut* p 49 ff; and *Sedei Hemed IV*, Avelut #141).

There was, of course, considerable discussion in the rabbinic literature about the reaction to plagues. Flight from the affected areas was encouraged (*Shulhan Arukh*, Yoreh Deah 116.5; and commentaries; see also J. Preuss, *Biblical and Talmudic Medicine*, pp. 151 ff. Solomon ben Simon Duran (*Responsa Maharil* #195) approached the whole matter from a philosophical point of view and asked whether flight would be successful if an individual had already been destined for death. Isaac Luria devoted an entire chapter to the question (*Yam Shel Shelomo* 6.26). A large number of responsa deal with contagious diseases and ways to escape epidemics (H.J. Zimmels, *Magicians, Theologians, and Doctors*, pp. 99 ff. 193 ff.). Flight was the principal remedy.

Those who were not fortunate enough to escape and died were to be buried in the appropriate manner. It might be possible to

throw quicklime on the grave to avoid the spread of the plague (*Shulhan Arukh Yoreh Deah 374 Pithei Teshuvah*; Jacob Reischer *Shevut Yaakov* II #97). Furthermore, the laws of mourning could be modified or suspended in these sad times (*Shulhan Arukh Yoreh Deah 374.11* and commentaries).

Although these modifications were readily undertaken, the basic rites of burial were followed as closely as possible. In other words, there is no doubt that in times of mass deaths, when a large proportion of the community had fled, some normal honors accorded to the dead were no longer possible. Yet there was no question about *taharah* or any matter connected with burial or the preparation for burial.

The local funeral director is obligated to perform *taharah* and to treat AIDS victims as all other dead in accordance with local custom and the specific wishes of the family. The funeral director would be encouraged to take all possible precautions to prevent infection by AIDS.

April 1988

Walter Jacob, *Questions and Reform Jewish Answers*, Central Conference of American Rabbis, New York, 1992, pp. 279 ff.

JEWISH INVOLVEMENT IN GENETIC ENGINEERING

QUESTION: May a Jew genetically alter a mouse or may a Jew use a mouse if it has been genetically engineered by a Gentile? What is the status of animals in Jewish law? (Arthur P. Gershman, Arlington, Va.)

ANSWER: Genetic engineering is a field still in its infancy, but we can expect major advances in this area in the future. At the moment it is possible to introduce permanent genetic changes in plants, animals and human beings. There are many questions about the control that need to be exercised and the dangers that may arise from new, altered, or hitherto unknown, substances formed through these methods. Unusual safeguards have been proposed by the scientific community, national and international agencies. Such caution is wise and we should proceed carefully even when we are dealing with animals. This responsum is not intended to discuss genetic engineering in human beings.

We will, perhaps, begin with the question of the status of animals in relation to human beings and the turn to genetic engineering. The biblical statement in Genesis (2.26) placed people above animals and enabled them to rule them and therefore to use them in any way that seemed appropriate and certainly to save a life (*pikuah nefesh*). So, for example, cattle could be used for food or for various kinds of work (B M 86b; Hag 3b; Meila 13a; A Z 5b, etc). Consumption or sacrifice was limited to those deemed clean (Lev 11.3 ff); the list included animals, birds, as well as fish. Other animals that were unclean could be used by man in various ways. There were few limits on the manner of catching or housing animals as long as it was humane, so various means of catching birds were discussed in the *Talmud* (B M 42a; *Taanit* 22a; Sab 78b; Ber 9b; etc). Animals that endangered human beings such as wolves and lions could be destroyed (Ber 13a). This was even more true of pestilent insects such as grasshoppers, mosquitoes or scorpions and ants. Crop eating field mice and rats could also be destroyed (*Taanit* 19a; 14a; Sab 121b; M K 6b). The *Midrash* that sought to

find a use for some such animals as fleas and mosquitoes stated that they were created in order to plague evil people (*Midrash Rabbah Vayikra* 189).

Animals could be used by man as long as they were treated kindly. It is prohibited to consume a limb from a living animal (B M 32b). An animal that was threshing may not be muzzled; it must be permitted to eat as freely as a human being (Deut 23.25 f; B M 87b, 90a; *Yad Hil Zekirut* 13.3; *Shulhan Arukh Hoshen Mishpat* 338). Furthermore, one should not consider acquiring an animal unless one has the means to feed it (J Ket 4.8), and a person should then feed his animals before feeding himself (Git 62a; *Yad Hil Avadim* 9.8).

Unnecessary pain may not be inflicted on animals (Ex 23.5; B M 32a; *Yad Hil Rotzeah* 13.9; Solomon ben Aderet *Responsa* #252 #257). Some of the medieval scholars who were concerned with the protection of animals felt that those precautions needed to be stricter than with human beings, as animals do not have the intelligence to care for themselves or to take a longer view of matters (*Yad Hil Zekirut* 13.2; David ibn Zimri *Responsa* I #728; Yair Hayim Bacharach *Havat Yair* #191; *Shulhan Arukh Hoshen Mishpat* 337.2). Biblical law prohibited the killing of a mother with its young (Lev 12.28; Hul 83a; *Yad Hil Shehitah* 13; *Shulhan Arukh Yoreh Deah* 16). The later Jewish codes also insisted that a seller inform a buyer of the relationship between any animals sold so that a mother and its offspring would not be slaughtered together on the same day. A similar kind of provision forbade the taking of both a mother and a chick from the same nest (Deut 12.6; Hul 138b *Shulhan Arukh Yoreh Deah* 292).

Kindness to animals included the lightening of the load from an overburdened animal (Ex 13.5). Domestic animals were required to rest on *shabbat* as human beings (Ex 20.10; 23.12; Deut 5.14). Provisions were made for animal care on *shabbat*; for animals normally milked, arrangements for this to be done by a non-Jew were to be made. If an animal needed to be rescued it was to be done even on *shabbat* (Shab 128a; *Yad Hil Shabbat* 25.26; 1 *Shulhan Arukh Orah Hayim* 305.19).

We should also note that the castration of animals was prohibited, and this has always been considered as a form of maiming, which was forbidden (*Shelat Yaabetz* 1.11). We may summarize this by relating that our tradition demands kind treatment of animals. They may be used by human beings but not treated cruelly. We should note that the medieval discussion by some Jewish philosophers about the soul of animals was left as a speculative issue.

Now let us deal with genetically induced changes in mice that are to be used as experimental animals. Systemic genetic changes are a recent scientific achievement. The only area that approached this field in the past was controlled breeding. Our tradition had very little to say about breeding animals as long as no attempt was made to do so with unlike species. There was a great interest in maintaining species of both plants and animals separately, based in part on Biblical verses (Lev 19.19; Deut 22.10). An entire section of the *Mishnah* (*Kilaim*) dealt with the problem of sowing various kinds of seeds together, grafting one plant onto another and interbreeding of animals. This segment of the *Mishnah* contains eight chapters that dealt with various kinds of mixtures such as the prohibition against interweaving wool and linen and with the cross-breeding of certain species of animals or plants. The *Mishnah* and *Tosefta Kilaim* indicated a fascination with mixtures and sought to explain the natural world from this perspective. The *Mishnah Kilaim* presented two points of view according to a recent scholarly volume by Avery-Peck. The circle of Yavneh argued that species were to be kept separate, as God created order in the Universe and it was Israel's duty to maintain this separation.

Those of Usha argued that Israel imposed order on the natural world and Israel now had to maintain it. Neither group ultimately included nonedible plants in their scheme. (A.J. Avery-Peck *The Mishnah's Division of Agriculture*).

When the *Mishnah Kilaim* dealt with animals, it was mainly concerned about unlike species harnessed together or interbred. Neither the *Mishnah* nor later Jewish literature prohibited

ownership of animals bred in such a manner. Interest in this subject, however, diminished and so there was no Babylonian Talmud to these chapters of the *Mishnah*, and later discussion of this material is sparse.

The chief biblical section that deals with this issue, aside from the legislation mentioned above, is the story in Genesis in which the young Jacob promised to maintain the flock of Laban and as payment asked for the speckled, spotted, and dark-colored sheep and goats. He then proceeded to influence the breeding in that direction. Ostensibly this was done through the placement of shoots of poplar, almond, and plane trees but there has been some speculation that he possessed some knowledge of genetics that helped him to his goal of a large flock. That theory has been advanced by Judah Fliks ("Yorashah Usvivah Bemaaseh Yaakov Betzon Lavan" *Tehumin*, Vol. III pp. 461 ff). We should note that the Biblical commentators do not single this story out for special comment and to the best of my knowledge do not use it as an example of animal breeding.

There were occasional commentaries like Ramman's that stated that human beings should not change nature as that would imply imperfection in God's creation (Ramban to Lev 19.19). That medieval view was found frequently in church literature. It has not been followed by Jewish thinkers.

Jewish law said nothing about changing the characteristics of a particular species or breed. Throughout the centuries every effort was made to assist nature and to produce animals suited to specific purposes as well as plants that would yield abundantly. Despite Jewish involvement in agriculture through the centuries, this matter to the best of my knowledge, has not been discussed in the older response literature. In modern times these efforts have been accelerated through selective breeding and an understanding of the genetic process. Most recently cloning of plant tissues has been used successfully to produce plants that are absolutely true; this method holds great promise as well as potential dangers.

Genetic engineering of plants or animals within a species poses few old *halakhic* problems though it raises many other issues.

Human beings have selectively bred plants and animals since the beginning of herding and agriculture to adapt them to specific human needs and environments. Genetic engineering will vastly accelerate this process. This may eliminate poverty, famine and disease but may also bring scourges and problems that we cannot foresee.

We are standing at the edge of a new scientific era. We certainly wish to utilize the potentials of genetic engineering for the benefit of humanity. That may be partially within our power. It is not within our power to stop the scientific experimentation. The human yearning to understand the divine creation and everything in it as fully as possible cannot be halted, nor can the desire to alleviate the problems of hunger, disease, and poverty.

As we learn more about the nature of genetic engineering we must discuss its moral implications both with regard to animals and human beings. We realize that the line between plants, animals, and human beings is thin and in some ways does not exist at all. So we must proceed with caution. In consort with others we must set limits and provide direction. We have, of course, become especially sensitive to all these issues since the Holocaust and the terrible medical experimentation that occurred then.

We may be ready to accept genetic changes made for medical purposes and experimentation, as *pikuh nefesh* is an overriding consideration (Shab 132a; Yoma 85b; *Tosefta* Shab 17 and Alfes; *Shulhan Arukh* Orah Hayim 328.1; Hatam Sofer *Responsa* Hoshen Mishpat #185). Human life must be saved if it is at all possible and even some pain to animals is permitted for this purpose. Economic reasons, however, could not justify such a course of action. These should always be reviewed carefully.

When dealing with experimental animals we should be quite certain that they are not subjected to pain or used for frivolous reasons, as for example, cosmetic experimentation.

A mouse engineered genetically for a specific set of experiments, which will eventually help human beings, lies within the boundaries of utilizing animals for the benefit of human beings.

Naturally, the humane treatment of the animals in accordance with our tradition must be observed. It would be appropriate for Jews to be involved in this kind of genetic engineering and to use the animals that they themselves have genetically changed.

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Walter Jacob, *Questions and Reform Jewish Answers*, Central Conference of American Rabbis, New York, 1992, pp. 247 ff.

PATENTING GENETIC ENGINEERING

QUESTION: May genetically engineered changes in a mouse designed for medical experiments be patented? (Arthur Gershman, Arlington, Va.)

ANSWER: The members of the Responsa Committee that discussed this question felt a high degree of discomfort with patenting changes in a living creature. The animal itself should not be patented. An animal, in contrast to a plant, possesses an additional element of the sacred (although the medieval discussion of whether an animal possesses a soul was inconclusive and left to the "days of the Messiah"). According to our tradition, animals possess a special relationship with human beings.

Social policy has led to plant patents. This has protected the livelihood of individuals and made a more abundant human existence possible. Patenting an animal, however, leads us in a direction not conducive to respect for life. The Holocaust has made us aware of the dangers of dehumanization, the process, that is the genetic change, may be patented but the mouse itself should not be patented.

If we look at patents and the protection they offer within Judaism, we realize that the notion of protecting an idea or a newly created work is fairly new. There were periods in our history when the originator of a new work sought to make it seem old and thereby give it a greater acceptance. That was true of large anonymous sections of the Bible that have been added to various prophetic books, the apocryphal books, and of such works as the *Zohar*. In modern times we have sought to protect the creative efforts of individuals. We may link this to the traditional concern for protecting an individual's livelihood. It was always considered important to ensure the livelihood of craftsman, artisans, teachers and tradesmen in the community by limiting the access of others or prohibiting it entirely. This was carefully balanced throughout the ages with a concern for the economic well being of the community and concern about a potential monopoly that might drive prices excessively high (M B M 4.5; B B 21a; Kid59a and commentaries;

Yad Hil Zekia Umatanah 1.14; *Tur* and *Shulhan Arukh Hoshen Mishpat* 156; Meir of Rothenburg Responsa #544; etc).

Even in conjunction with "sacred" areas as the teaching and interpretation of the written and oral law, great care was exercised to protect the jurisdiction and status of rabbis and teachers. Some authorities like Isserlein and Weill permitted competition and felt that it was good for the community (Weill, *Responsa* #151; Isserlein, *Terumat Hadeshen* #128). Israel Isserlein made his decision on the basis of encouraging the study of *Torah*. Some later authorities agreed with them. Many scholars felt that the appointed rabbi of the community had a right to protect his status, both as a teacher and a judge. He could also protect the income from these and other sources (*Avnei Nezer Yoreh Deah* 312.37; *Meshiv Davar* 18, 9; *Hatam Sofer Hoshen Mishpat* #21; *Mayim Amuqim* #70). The *Shulhan Arukh* and its commentaries present both points of view (*Shulhan Arukh Yoreh Deah* 245.18 ff). This equivocation on the part of the medieval authorities was intended to encourage strong scholarly leadership.

Matters changed when the modern rabbinate became a profession and the rabbis' livelihood depended upon services rendered to the congregation. Under these circumstances, it was forbidden to trespass on another rabbi's territory (Moses Sofer *Hatam Sofer Hoshen Mishpat* #21; *Yoreh Deah* #32; *Meshiv Davar* #8). Some disagreement remained on the right of a newcomer to teach, as this is a *mitzvah* and its fulfillment should not be denied to anyone (Elijah ben Hayim *Mayim Amuqim*, #70; Akiva Eger, *Responsa Tanina* #12; Abraham Mordecai Halevi *Ginat Veradim Yoreh Deah* 3.7). Livelihoods were protected and the matter under discussion is related to this question.

Similarly books of prayer that were in the public domain and which could be considered part of the divine tradition were protected through copyright. So, for example, the first edition of the famous Heidenheim *Mahzor*, printed by Roedelheim contained statements by four prominent rabbis granting a copyright. When a printer in Sulzbach proceeded to republish the work, a special statement warning against its purchase was issued by Pinhas Horowitz of Frankfurt (final page Heidenheim *Mahzor* 1832).

Many responsa subsequently have dealt with copyrights. The main consideration was the effort and investment made in the work; without protection publishers would be unwilling to undertake such risks (Moses Sofer *Responsa Hoshen Mishpat* #41; etc). All these instances indicate that protection of an invention is permitted and may be considered necessary as well as desirable.

We can see that the pattern of tradition intended to protect someone's livelihood and reflected social policy. As we look at this social policy in connection with medical experiments we must always ask ourselves whether this enhances or diminishes the respect for human life and all life.

In conclusion we have many reservations about patenting an animal and would reject that concept. We also have reservations about the implications of patenting the genetic change. We would tentatively agree to patenting the process.

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March 1989

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