Ari Schick

Jewish bioethics as Practice; or, How I Learned to Stop Worrying and Love Particularism[[1]](#footnote-1)

What is Jewish bioethics? What is it that renders a mode of bioethical inquiry Jewish, and what I it that makes some instance of Jewish legal or ethical inquiry part of bioethics? Instead of addressing Dr. Jotkowitz’s questions and Dr. Goldberg’s responses directly, Let us step back for a moment to look at the basic structure of the discourse as it has been presented and how it implicitly answers the question “what is Jewish bioethics?” On the one side are bioethical questions and on the other is the corpus of Jewish law and lore, and mediating between them are rabbis, theologians, Jewish ethicists, and the various methodologies at their employ. Out of this we expect to emerge general principles, conceptual distinctions, and answers to particular questions. This is supposed to constitute authentic Jewish Biomedical Ethics.

In this scheme Jewish bioethics is a Jewish form of bioethics because it parallels an image of what professional bioethics—at least on paper—has become. On the one side are the same questions, on the other are various philosophical approaches with their basic texts (Kant, Mill, Aristotle and their modern interpreters) and mediating between them are the bioethicists. What they are supposed to produce are principles, conceptual distinctions, and answers to particular questions.

Many of the issues that Dr. Jotkowitz brings up arise when you line up the two and look for areas where the Jewish version appears lacking, comes into conflict with, or looks too much like secular bioethics. However, let us suppose instead that “secular bioethics” (the term “consensus bioethics” is more accurate) and Jewish bioethics are not parallel projects, and that thinking of them as such draws us into an artificial confrontation with these questions. Let us instead suppose that bioethics and Jewish bioethics are distinct practices.

If the question “what is Jewish bioethics?” is somewhat vexing, the question then “what is bioethics?” is no less so. Is it defined by a set of problems, methods, professional roles and so on? Any attempt that seeks to define bioethics by a set of constitutive criteria is bound to either be too vague to be useful or too constricting to be adequate. There are simply too many different kinds of questions, methods, participants, texts, etc. A promising alternative to answering this question is to view bioethics as a practice.[[2]](#footnote-2) The idea of a “practice” in this specific sense is drawn from Alasdair MacIntyre’s reconstruction of virtue ethics.[[3]](#footnote-3) MacIntyre describes a practice as a coherent and complex socially established human activity through which goods internal to that form of activity are realized. Applied to bioethics, this concept helps to establish the virtues which must be realized by its practitioners. Questions of methodology and the like therefore become secondary in thinking about what constitutes bioethics; it is defined by the goods and forms of excellence which bioethics aspires to—some of which may make sense primarily within the practice of bioethics itself. The virtues of bioethics might include formulating very general principles most citizens of a liberal state would in principle endorse. It might see eclectic pragmatism as a virtue rather than hewing closely to one moral system or another, and it might likewise view the ability and desire to achieve consensus as virtuous. Given the nature of a diverse liberal society, it might understandably regard enabling patients—who often find themselves relatively powerless within the medical system—to make choices which correspond to their own conceptions of value as a virtue as well. These virtues, along with many others, sustain the practice of bioethics as we know it today.

Jewish bioethics as a practice situated within the historical tradition of Judaism, does not need to answer to the demands of bioethics generally. We should not expect it to address the exact same needs nor possess similar sets of virtues. As a practice (or set of related practices) Jewish bioethics ought to have its own internally coherent set of goods which can be entirely and unabashedly particularistic. I will leave it as a necessary project for Jewish bioethicists to explore the virtues of the practice of Jewish bioethics in detail. But as constitutive of the larger Jewish tradition it should be thought of as one of many practices which help to sustain the tradition as it has evolved into the form (or forms) of life we now call Judaism; making possible, full, good, human lives as Jews. Today these practices include everything from the traditional realms of Halakhic discourse, Torah study, and ritual, to modern historiography, politics, and beyond.

Following MacIntyre, an account of the virtues of the practice known as Jewish bioethics lies in understanding its unique contribution among the cluster of contemporary Jewish practices in sustaining the communities in which the practice has arisen. In seeking to answer the question “what is Jewish bioethics” one finds much discussion of methodology, but little discussion of its function and purpose. I would argue that a good deal of the puzzlement surrounding Jewish bioethics comes from the fact that it has become a catchall term referencing many different practices. I therefore want to first describe the core of Jewish bioethics, which is distinct from the cluster of practices that tend to be subsumed under the term, but have little that is specifically bioethical about them.

What is Jewish bioethics? By the very fact that it is identified as such it is clearly something which arose as a Jewish counterpart to contemporary bioethics, itself only about fifty years old. It is novel in that it responds to needs generated within a modern society in which a good portion of our lives is now spent in contact with the health care system; and in which medicine and technology, for better or worse, mediate a good deal of our self-understanding. The practice of Jewish bioethics therefore aims to enable members of the community and the community as a whole to sustain Jewish modes of self-understanding in response to the exigencies of modern biotechnologies and medical practices. Our tradition has something to say—frequently in a multiplicity of voices—about what it means to be healthy or ill, able-bodied or dependent; what it means to be a parent, a child, a spouse, a caregiver; what it means to be embodied with a godly image; what it means to be a patient or healer; and what it means to be born, grow old, and die. Living full and good lives as a member of a Jewish community and as a part of an ongoing tradition requires that we continually explore these meanings as the contexts in which they are realized rapidly change. Let’s call this practice *communal* Jewish bioethics

There is a second practice which has a legitimate claim to being called Jewish bioethics, but its orientation is outside of the community. Bioethics did not arise solely as a result of biomedical innovation, it emerged in response to the increasingly heterogeneous political and cultural landscape as a means of navigating through (or more often than not, around) the tensions that arise when values come into conflict. American-style bioethics became adept at simultaneously inviting participation from diverse perspectives—both secular and religious—while pushing fundamental disagreements to the side and finding mid-level points of consensus. Where disagreements still remained it tried to make room for dissent and accommodation. In the multicultural milieu of the modern liberal state *public* Jewish bioethics raises its hand and says that we, as a faith community, also have something important to say, and a point of view to contribute to public deliberation. No doubt this helps us feels good about ourselves and raises the esteem of the community—and surely we do have something to bring to the table—but the insights which are particular to the community’s self-understanding are not universal; and in seeking the universal which we can bring into the public sphere we often ignore the particular. Public and communal Jewish bioethics are therefore often non-complementary practices.

Why is this so? The answer lies in the close ties between self-understanding within a religious community and ritual. Among its other functions, ritual helps to give personal and historical narrative shape to the course of our lives. Through ritual we understand our place in the world, the meaning of joyous and tragic events, and the degree to which our lives have continuity with the lives of our parents and grandparents stretching back through the ages, and those of our children and grandchildren to come. Ritual concretizes the metaphysical truths which vivify religious lives. But ritual, unlike abstract Halakhic and ethical principles, cannot be universalized. Once ritual has been left behind in the quest to present a public Jewish bioethics, what remains is at best only tenuously religious. Rabbi Joseph B. Soloveitchik presents the general predicament starkly:

Religion is always typified and described not so much by its ethos as by its ritual and cult. The existence of an ethical norm is a common denominator in all religious systems. The unique character of a particular religion, however, appears only in ritual. Positive religion must always be measured by the yardstick of ritualism, not by that of the ethos. This does not mean that religion can, in any way, dispense with the ethos. Far from it. Both ritual and ethos inhere in the religious act… The dissociation of the religious act from its non-rational worship and ritual is identical with the resolution of the religious experience into a secular morality and mundane ethical culture.[[4]](#footnote-4)

According to this view there is a fundamental difference between Jewish religious ethics and Jewish ethics simpliciter, as the former is always tied to ritual. If that is the case then the absence of discussions of ritual in Jewish bioethics (from Lord R. Jakobowitz on down) is a symptom of a Jewish bioethics that is less concerned with the needs of Jewish communities, and much more vested in presenting the ethical perspective of Judaism to the public. When we take this form of universalized Jewish bioethics and offer it back to the community, the result is that we present ethical perspectives grounded in Jewish sources, without stimulating religious modes of experience or self-understanding.

If the practice of communal Jewish bioethics has inadvertently fallen by the wayside, what can we do to revive it? We can emphasize that its primary concern should be the exploration, interpretation, and extension of ritual practice in its many manifestations in ways that help us to make sense of our experiences in a modern technological and technocratic society. To do so it will need to begin with a much more anthropological approach to understanding the changing nature of these experiences and the meanings attached to them.[[5]](#footnote-5) Thus far little of what is typically referred to as Jewish bioethics has attempted to do this in a sustained manner. Elsewhere I have explored one area where I think it can do so to good effect,[[6]](#footnote-6) and I look forward to reading Dr. Jotkowitz’s article on deathbed confession, which promises to do so as well. We also must be far more open, in the Orthodox community in particular, to accepting that there are legitimate processes of ritual innovation and change which occur outside of the Halakhic process. Even when this is seen as patently obvious from a descriptive standpoint, its normative significance is often ignored. Just as transformative historical events can beget ritual, transformative life events can as well.[[7]](#footnote-7)

The practice of communal Jewish bioethics—or at least my vision of it—is distinct from and often at odds with the orientation of public Jewish bioethics; both, however, should be distinguished from the practices which they draw from. A taxonomy of the practices which are often thrown together under the rubric of Jewish bioethics will help to clarify the nature of the questions posed by Dr. Jotkowitz and where to seek appropriate answers. The first two items are not practices which are distinctly practices of bioethics; they are practices which predate modern bioethics and whose standards of excellence are not shaped by the same exigencies which gave rise to modern bioethics—Jewish or otherwise.

1. Halakhic discourses on issues in modern medicine and biotechnology (a religious/communal project).
2. Jewish Theological and Philosophical discourses on issues in modern medicine and biotechnology (a religious/communal project).
3. Communal Jewish bioethics as I have described it (a religious/communal project drawing partly from the above).
4. Public Jewish bioethics which also draws from the first two, and may involve, in varying combinations:
   1. Offering a universalized Jewish ethics for the benefit of the larger society (an ethical goal).
   2. Offering a universalized Jewish ethics as a means of demonstrating the relevance of Judaism and the Jewish community in the public sphere (a political goal).
   3. Presenting the particularistic approach of Judaism to an issue so that the state does not intrude on such practices (a political goal).
   4. Presenting the particularistic approach of Judaism to an issue so that others may derive some benefit from being exposed to them (an ethical goal).[[8]](#footnote-8)

From the preceding discussion I offer the following regarding Dr. Jotkowitz’s specific questions: In my reading many of the issues he raises are asking, in effect, “what are the virtues of Jewish bioethics?” (i.e., what are the characteristics of Jewish bioethics done well) which can only be answered by first identifying which of the practices falling under the name Jewish bioethics we are talking about. Instead of asking “how we develop a Jewish approach” to some bioethical issue, and what it is that makes such an approach an “authentic Jewish ethical response,” we need to first ask what practice we are engaging in. Once the practice is understood we can determine whether it is necessary at all, what standards it should be judged by, and which virtues these responses should instantiate.

Question 1.

First, we need to identify the virtues invoked in the question as they are appropriate to different practices. The two which stand out are authenticity and (implicitly) legitimacy. Next we need to identify the practices: the “development of normative law” (Halakha); and the production of “Jewish ethical response(s)”. The former corresponds strictly to 1), the latter to 2) and 3). (I am setting aside 4) for now).

Questions of authenticity and methodological legitimacy are not internal to Halakhic discourse itself (which is not itself an aspect of as Jewish bioethics). To the extent that it deals with questions which *must* be answered from a Halakhic perspective (in particular cases we need to know—or know that we do know—who the parents of a child are; or if life-sustaining treatment can be withdrawn) it might even be said to be immune from such challenges. Present Halakhic questions need to be addressed by Halakhic methods. Halakhists have no choice but to do their creative best in seeking a ruling.[[9]](#footnote-9) The question of authenticity is a meta-discourse on modernity and discontinuity. Louis Newman’s point that precedent is not out there in the text, but always an act of interpretation is also, in a sense, part of that same meta-discourse. Asking these questions *within* a Halakhic discourse would be akin to questioning one’s own intelligibility.[[10]](#footnote-10)

If this is true for Halakha itself, it should be no less true for Jewish philosophical discourses and the practice of communal Jewish bioethics. Questions of authenticity and legitimate methodology can be set off from the discourse itself—and with it the offhand assertion that Talmudic sources and precedent are necessary. The well-formulated use of Talmudic sources and Halakhic precedent is a virtue of Halakhic discourse. Labeling it, along with everything else, “Jewish bioethics” forces one to transpose this virtue from one practice to another. The practice of Jewish Philosophy has its own virtues, as do the two practices constituting Jewish bioethics.

The lack of Halakhic precedent or Talmudic sources is not problematic for Jewish Philosophy and Theology, which have ample resources outside of those (there are ideals and values embedded throughout the Jewish tradition) , and Jewish bioethics therefore has much to draw upon when Halakha is silent. The idea that Jewish bioethics should optimally be modeled after and draw upon Halakhic practices is partly the result of conflating it with the practice of Halakhic discourse, and partly the result of expecting it to have the same function as regulatory bioethics, which must ultimately decide whether a certain activity is within the range of what the state will permit—just as much of Halakhic practice is aimed at this type of regulatory end. However, as Nachmanides pointed out long ago, between that which is permitted and that which is prohibited, there is ample room for us to lose our sense of moral direction, making ethics a necessity.

As I mentioned earlier, Halakhic practice has a default claim to methodological legitimacy when addressing questions that demand Halakhic responses. But not all bioethical questions require Halakhic responses; Halakhic treatments are ill-suited for some kinds of questions and distorting when applied to others. The idea that halakhah is flexible enough to deal with any situation is a virtue when needed in practice, not as an exercise in theory. The cases listed by Dr. Jotkowitz are prime examples. Finding no clear Halakhic prohibition on cloning or creating human-animal chimeras does not render these practices good or advisable (nor would finding them prohibited on halakhic grounds explain entirely why they are wrong). Speculative explorations into the Halakhic status of cloned people and chimeric organisms do not provide moral guidance either. If anything they give the impression that such practices are inevitable or should be welcomed. The critique that Daniel Callahan applied to regulatory bioethics has a striking resonance for the potential pitfalls of an overreliance on Halakhic discourse in Jewish bioethics; it too often shows “enormous reluctance to question the conventional ends and goals of medicine, thereby running a constant risk of simply legitimating ... the way things are.” The critical mode which Callahan urges us to pursue, “prophetic bioethics,” is more likely to find its voice in Jewish philosophy and theology.

Issues of public health and environmental ethics, and public policy more generally, are not just areas lacking Halakhic precedent; they may be areas where halakhah, lacking the wide legislative authority it might once have had at its disposal, is now ill-suited for rendering coherent policy decisions at the national or international level. We not only have the problem of lack of precedent, but the more serious issue of dubious precedents, and Halakhic principles that can be applied in scattered cases without too much difficulty, but would be unworkable on a larger scale. When taking up issues that involve the wellbeing of the entire state or the entire planet we need not be embarrassed if Halakha or Jewish bioethics remain silent, and we instead look to philosophical traditions that have more to say about public reason and collective action.

Question 2.

Before we ask why *they* should care, we need to ask why we want to be heard. If we look back at the breakdown of public Jewish bioethics there are a number of different goals and motivations possible, and we ought to determine which are operative in a given situation. If the goal requires producing a universalized Jewish view then we should also consider what gets lost in translation and whether the result makes a truly unique contribution to public bioethical deliberation.

At another level this question reflects a deep problem with bioethics generally, beyond the scope of the present discussion.[[11]](#footnote-11)

Question 3.

As I mentioned earlier, autonomy is a value central to bioethics because in a diverse liberal society people should be able to make choices in line with their own conception of the good. Autonomy, understood as non-coerciveness by those in positions of power within the medical system, is therefore only an instrumental good. (How it came to be caricatured in a manner that lends itself to all sorts of silly claims is a story for another time). Claims that Jewish and secular bioethics have some deep conflict over autonomy are profoundly confused. If a person wants to have a rabbi weigh in on, or even have the ultimate say over, the choices before him then the principle of autonomy is supposed to accommodate that as much as the person who does not identify with a rabbinic judgment and therefore chooses to do something else. Those are issues between the patient, the rabbi, and God. I’m not sure what bioethics has to do with it.[[12]](#footnote-12)

R. Rackman’s statement refers to precisely the issue I brought up earlier: Halakhah does not offer guidance in every situation. Autonomy (in the deeper sense of having the ability to make choices which one identifies with) is therefore a moral burden for a person making those kinds of life and death decisions, as he cannot simply turn to halakha for guidance or justification.

Question 4.

The question itself stems the conflation of Halakhic practice with the practice of bioethics. Achieving consensus, essential to the practice of bioethics, is not a primary virtue of the Halakhic process. As far as public Jewish bioethics, the lack of consensus in Halakhic positions can be an impediment depending on the purpose for which it is undertaken. If the purpose is to offer a united front in the public sphere then claims that there is one single Jewish view regarding virtually any issue will lack legitimacy. But who says that such claims are part and parcel of any form of Jewish bioethics? Perhaps the public is best served by seeing that a multiplicity of voices can coexist within one faith tradition; surely then, the same can happen in the multicultural state.

As far as communal Jewish bioethics, what the lack of consensus among Halakhic decisors opens up is a space for what I earlier referred to as a prophetic voice which draws on sources outside of the standard Halakhic canon. My sense is that if you examine key bioethical issues on which there are conflicting rabbinical views of similar import and stature, you will find that by and large the position which offers the least resistance to the goals and ends of medicine as it is now practiced is the one which will have become the most widely accepted. Whether this ultimately constitutes a genuine Jewish ethical response or a capitulation cannot always be determined within the Halakhic process itself.

Question 5.

I could not agree more with including these as desiderata for Jewish medical ethics, and see it as integral to my conception of communal Jewish bioethics.

1. Though tongue-in-cheek, the title reflects many years of development in my thinking about bioethics and its relationship to Judaism, during which I did, in fact, come to appreciate the value of particularism. [↑](#footnote-ref-1)
2. Judith Andre, *Bioethics as Practice* (The University of North Carolina Press, 2004). A similar approach is taken by Howard Brody, *The Future of Bioethics* (Oxford University Press, 2009). [↑](#footnote-ref-2)
3. Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (University of Notre Dame Press, 1981). [↑](#footnote-ref-3)
4. Joseph B. Soloveitchik, Halakhic Mind, (New York: Macmillan, 1998), 69-70 [↑](#footnote-ref-4)
5. It might also take more inspiration from writers who have engaged in anthropological forms of theology, such as Soloveitchik and Heschel. [↑](#footnote-ref-5)
6. Ari Schick. Death, Mourning, and Organ Donation: Rethinking a Discourse on Religious Ethics. In Z. Farber (ed.) *Brain Death and Organ Donation* (Koren/Maggid, Forthcoming) [↑](#footnote-ref-6)
7. I leave it to others to explore this line of thinking, but since I have already mentioned R. Soloveitchik, it is worth pointing to his hostility to ritual innovation of all kinds and religious populism more generally as a challenge that needs to be addressed [↑](#footnote-ref-7)
8. These last two are somewhat rare so it might be worth offering brief examples. Rabbis testifying before congress regarding Judaism’s concern with animal suffering and the humaneness of shechita are not trying to convince the world that it is the best or only humane way to kill animals intended for consumption; only that it is both Jewish and humane and therefore should be protected. The final category might include offering the wider public a description of Jewish burial practices and the reasons why they have been adopted within the community. Other combinations of these four are possible as well. For instance, Rabbi J.D. Bleich’s virtuoso dissent from the New York State Task Force on Life and Law report on brain death was both a universalized argument founded on his reading of the Halakha, as well as an argument intended to protect Jewish practice in this area from interference. [↑](#footnote-ref-8)
9. Whether the use of a source or an inference is legitimate within a Halakhic discussion depends on considerations internal to the nature and purpose of that discourse and what is demanded of it. If a Halakhist turns to a Talmudic discussions of grafted trees to decide the status of a baby born from a gestational surrogate, the question is whether he is right or wrong (or more precisely, whether his approach will be accepted or rejected by his peers) not whether his methodology is authentic, or whether his use of analogy is really more of a highly creative interpretation. Within the community, questions of authority, legitimacy and normativity have much more to do with who is speaking and rather little to do with methodology. Sustained discussions of methodological legitimacy within Halakhic discourses are therefore understandably few and far between. [↑](#footnote-ref-9)
10. Thus, we do find invocations of authenticity and methodological legitimacy between those speaking from radically different ideological positions. But often they will effectively not be speaking the same language. [↑](#footnote-ref-10)
11. See Daniel Callahan, ‘Religion and the Secularization of Bioethics’, *The Hastings Center Report*, 20 (1990), 2–4; Daniel Callahan, ‘Why America Accepted Bioethics’, *The Hastings Center Report*, 23 (1993), S8; Courtney S. Campbell, ‘Prophecy and Policy’, *Hastings Center Report*, 27 (1997), 15–17; John H. Evans, *Playing God?: Human Genetic Engineering and the Rationalization of public Bioethical Debate* (University of Chicago Press, 2002). [↑](#footnote-ref-11)
12. The exception being here in Israel where the coercive power of the rabbinate actually does set up a conflict between the free exercise of one’s values and a theocratic sub-régime. . [↑](#footnote-ref-12)