

# Toward a Methodology of Reform Jewish Bioethics

*Philip M. Cohen*

In this paper I intend to inquire into Reform Judaism and bioethics.<sup>1</sup> By what method, or methods, do liberal Jews make decisions and come to opinions regarding newly emerging bioethical matters that are true to Judaism? What I have in mind here is to raise the question that must be asked of an ancient religious tradition confronting a radically new situation. By what means do we address the issues raised by, for instance, genetic engineering, means both ethically instructive and, in a significant sense, “Jewish”? By what means do we take an ancient tradition that could not have foreseen cloning or highly technical machinery with the ability to prolong life?

Keep in mind that if one is going to seek the answers to methodological questions from the perspective of any Western religious tradition, the questions are necessarily shot through with theological implications, as must be their answers. In a religious tradition that bases itself on a covenantal relationship with God, how we Jews make ethical decisions reflects upon our view of the Covenant, that is, our notion of our responsibility to God, and simultaneously our understanding of God and of God’s will and God’s responsibility to us.

Let me put this a different way. The Jewish tradition makes numerous claims about the interrelationship of human beings, God, and the world. Within that configuration, the Jews have always claimed for themselves a particular formulation of that relationship, one that makes particular demands upon both parties to that relationship. Because of the manner in which we liberal Jews understand the origins of the sources that tell the story of the Covenant, for close to two centuries now we have lacked the theological certainty of our ancestors regarding the specificity of that divine-human relationship.<sup>2</sup> What we do assert is the faith claim that the Covenant

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PHILIP M. COHEN, Ph.D. (N83) is rabbi of Temple Anshe Sholom, Hamilton, Ontario.

exists but without certainty, broadly speaking, as to specific content. The primary point of embarkation for the modern understanding of the Covenant is relational, that is, as a dynamic term mediating between the Jewish people and God where the only certainty is the term itself.

This requires one critical addition. Jewish theology, Jewish thought about God, is always primarily ethical, always primarily conceived as the moral interaction between humans where the divine always plays a role. From ethics all else flows in Judaism, but the starting point is the ethical. In times of uncertainty, specific morals may not be easily known; what is known, however, is that the search for what is good is primary, and the search for the good inevitably entails the inter-human. Our postmodern conundrum is that we are unable to turn to any particular literature or set of exegetical principles and identify either as a reified source of the divine will.

Having said that, it must be added immediately that all we have as the source for defining the community and its norms is the text. We are a people rooted in a scripture and in its interpretive unfolding through the ages. When we remove the sefer Torah from the ark, in most synagogues, we liturgically acknowledge its divine origin. Postmodern is not post-textual. That is to say, regardless of Wellhausen and the postmodernist challenges, we Jews genuinely find our connection to one another and to God through the stories we tell. This represents a hermeneutic issue that asks: What or who determines what text to read and how to read it? This is initially a question of authority, of who gets to read and interpret the text, but develops into the methodological question: With what intellectual tools does one read the text?

We thus find ourselves in the following quandary. Though it is difficult, impossible really, to imagine Judaism without Torah, it has become difficult, perhaps impossible, to establish a method that would determine how to utilize the Torah tradition to make contemporary decisions that are methodologically acceptable to all quarters of the community. While in some sense unanimity of decision was hardly ever likely, modernity for the Jews means in this regard a historically unprecedented splintering of methodologies. All we have is the text and a faith community dedicated to understanding it and living by it.

Two general ways that Judaism addresses ethical concerns include two types of Jewish thinking, what I will call here aggadah and halakhah. Aggadah in the broad sense that I am using it is the

avenue of Jewish inquiry that tends to extrapolate and explicate values, but whose pronouncements are not legal in orientation, and are often open-ended and non-binding. The sources for aggadic opinions include all Jewish literature. Aggadah may offer opinions on given matters, but does not couch these opinions in legal terms, that is, unequivocally, though it may well utilize legal sources in its analysis and presentation. This is the arena of Jewish philosophy and mysticism, of midrash and midrashic method. Occasionally a talmudic aggadah will be used for the purpose of establishing a legal precedent, which at least has the appearance of utility in making legal pronouncements on significant matters.<sup>3</sup> But the word is being used more broadly here, applying it to all Jewish ethical writing that is not explicitly halakhic in nature. Aggadic reasoning in this sense is a hermeneutic act, the participation of the writer with the text in a way that preserves the literalness and hence the continual utility of the text, while at the same time creating new contemporary meanings from the text. This meaning, although real, is self-reflective, perhaps momentary, and emergent from the particular community engaged in the text's study.

Aggadic reasoning is the rather more open-ended manner of Jewish thought. It is the method that can tolerate multiple views existing simultaneously. Aggadah is therefore the means through which we can enter into dialogue with one another as a community consisting of multiple views. I am not unaware that the Talmud routinely preserves multiple views as befits a dynamic legal system. My response is that, in the sense that I am using "aggadah," that aspect of talmudic discourse might be aggadic. But the use to which that discussion is put is ultimately to adjudicate, to come to a decision. This also befits a legal system.

The second avenue, the halakhic method, constitutes the legal means through which Jews have traditionally addressed questions of import. This is hardly the place to attempt a grand summary of the halakhic tradition. However, for the sake of this inquiry a few words are appropriate. Halakhic decisions concerning new phenomena are generally made through the complex use of analogy. The halakhah's pronouncements are often assumed to be universally applicable for the case at hand (though it would be disingenuous to claim that there is no controversy among halakhic researchers). Although values often underlie a halakhic decision, those values are rarely explicated in normative halakhic discourse. Very often the specific entailments of Jewish values are difficult to observe.

Reform Jews have always had an ambivalent relationship to the authority and therefore the content of halakhah. The Reform movement was born at a time of communal dissolution and, in large measure, as a movement, either rejected much of the halakhah outright or sought to alter many of its tenets, always outside the bounds of normative halakhic consideration. This does not mean, however, that Reform as it evolved removed halakhah from its method of decision-making entirely. Indeed, the basis for Reform Judaism is inevitably Rabbinic Judaism. That is, the formal foundation of Reform, when considered seriously, is ever and always that form of Judaism from which it has evolved and to which it frequently returns. More, as is well known, the Reform movement in America has for many decades issued wide-ranging responsa that by their very nature are crafted within a halakhic framework of responsa, and that have been collected and published over the years in several excellent volumes.

Reform from its inception to the present day does not and, by definition, cannot grant the halakhah commanding authority over Reform decision-making. Note the characterization given the Responsa Project at the CCAR website:

The Reform responsa provide answers to questions about Reform Judaism and Jewish living. ...*Responsa provide guidance, not governance.* As a body of literature, the responsa published by the Reform Movement reveal a broad consensus as to mainstream Reform Jewish thinking on important issues facing contemporary Judaism. Individual rabbis and communities retain responsibility, however, to make their own determinations as to the stance they will take on individual issues.<sup>4</sup>

Within the confines of Reform Judaism, halakhah possesses an authority one might call epistemic;<sup>5</sup> in this way it has an advisory status and not a commanding status. Functioning from within a Reform purview means granting halakhah its due, but it does not and cannot mean eliminating independent criteria in making judgments. This does not mean avoiding the hard questions posed by halakhic reasoning. But it does mean that being confined to halakhic conclusions, or halakhic methodology, is constitutionally the diametric opposite of the Reform self-understanding. In that sense, Reform Judaism has been post-halakhic since its founding. It also

means that Reform ethical decision-making is always in search of an effective methodology.

Indeed, most Reform Jews, and many secular Jews, make few of their life's decisions halakhically. When it comes to certain personal issues, surrounding death for example, Jews may seek the guidance of the tradition to lead them through the mourning process. But on the whole, when it comes to the lives they lead or their opinions concerning ethics or politics, these Jews generally do not turn to halakhah for advice.

This point, obvious as it is, does not in and of itself prove that such Jews do not have any obligation to consult a body of knowledge that has served the Jewish people for centuries, or obviate its value. *Prima facie*, it means only that many Jews do not engage in such consultation. Still, the operant reason the founders of Reform Judaism rejected the authority of halakhah is that they believed that the law significantly failed to address critical existential concerns as they arose in modern times. Whether concerned with dietary practices, personal status, such issues as who is a Jew, Shabbat and holiday observance, the gender or the sexual orientation of rabbis, the status of a *mamzer*, and the like, the traditional authority ascribed to halakhah for all intents and purposes has long been, at best, advisory to Reform decision-making.

If, as seems to be the case, there has been in recent decades a serious growth of interest in a more complete hearing of the halakhic sources within Reform circles, this can only be for the good. Halakhah can and should function as an epistemic authority for thoughtful Jews. However, this is a soft form of authority. It involves the search for meaning from a given source but with the *à priori* assumption that, once understood, one is obliged to perform a second level of analysis that queries the meaning of that meaning, including the assumed ability either to revise outside the traditional halakhic sphere or reject the law outright.<sup>6</sup>

### **Bioethics and Reform Decision-Making**

Sometime in the last ten years, while I was sleeping, it seems a new world of biomedical possibilities arrived and hit the street running. The elements of this world include the use of embryonic human stem cells for treating disease; genetic engineering, whose uses include altering the structure of plants to altering the characteristics of our babies; cloning embryos to make sheep and, in combination

with human ova, various organs and tissues and even (possibly) human beings. Although many of these technologies, especially stem cell and cloning technologies, are in their infancy, their promise is real and nothing short of fantastic. Biology has, indeed, come of age, and those of us not well versed in the sciences can only gape with amazement tempered by moral concern.

To mention these newer technologies is not to ignore medical practices that, by now, are ancient history, such as in vitro fertilization and its many possibilities. These include taking an egg from a woman, using the sperm donated by someone other than the woman's husband to make an embryo, and implanting this embryo in a woman's uterus—not the egg donor's—for delivery to the egg donor some nine months later.

And if this latter is ancient history, we must further take into consideration other bioethical issues that are prehistoric but press upon us with a certain urgency nonetheless. I refer here to organ transplantation and the issue of triage with regard to the availability of organs. I further refer to our generally increasing ability to extend human life even when the quality of the individual life we might be extending has declined.

These many and varied developments give rise to numerous important questions. We might think of these questions as being arranged on a hierarchy occupying three and a half levels.

At the first level, we raise questions concerning specific issues: Are embryonic stem cells derived from a murdered human being?<sup>7</sup> Is the genetic engineering of plants inherently dangerous? Is it ethical to "design" babies based on genetic engineering techniques, and, if so, with what limitations, if any? Is a cloned infant an ensouled human being? What is the moral status of "mixing and matching" sperm and egg with a host uterus for the sake of making babies and making parents? And who, indeed, are the mother and the father? Do we recognize the doctrine of "quality of life" in order to raise the possibility that we might permit the premature ending of the life of an individual whose physical and mental conditions have gravely deteriorated and, if so, in what ways may we assist?

On the level beneath these challenging questions lies a second set of broader concerns such as: How do we ensure distributive justice in the allocation of new (and older) therapies to guarantee that they are made as widely and fairly available as possible? How do we as a Jewish community function in American society, voicing our communal opinions on these matters, America being a place in

which many, often strongly contrary, voices on these matters are to be heard? How in our pluralist environment do we conceive the complexities of responsibility of one human being to another, Jewish or not, and make manifest their implications?

Beneath these questions lies the third level, the more abstract but nonetheless pressing bedrock questions of the nature and meaning of human life, its beginning and its end. The answers to the multiplicity of questions implied by the phrase "nature and meaning of human life" are enormously complex. And at this level we must ask where and how in the midst of all this might we encounter God and comprehend God's will? I mean, how do we seek God as a guide for our actions certainly in several arenas, including the realm of justice understood both abstractly and concretely, as well as the broadly existential arena?

These and many other questions require our attention. As Jews we are obliged to examine the moral and, I would add, inevitably spiritual issues that arise as our society moves into new contexts that ask new moral questions, or at least moral questions of these new contexts.<sup>8</sup> As Jews we possess a tradition that offers the means through which we can ask and, we hope, find answers to these questions. They further require our attention because as American Jews we demand that the voice of Jewish tradition be heard in the public discourse that occurs on any of these issues. We want our voice represented as laws are passed and as public policy is developed both to protect our interests and to have influence on the common weal. As a concomitant to that desire, we want to give the best articulation of that view its public hearing.

It is, then, all the more important that we address the thorny issue that lies at the bottom of this assemblage of quandaries. This is the half-level mentioned earlier. It is a methodological question, perhaps *the* methodological question for these issues: How do we as Jews, specifically as Reform Jews, make Jewish decisions? In a post-modern, post-halakhic world, what are the epistemological tools at our disposal to interrogate Jewish sources and think creatively and originally about bioethical matters in a way that will influence the conversation both within the community and to the general American public as well? More narrowly, but nonetheless critical to this inquiry, is a matter of personal relevance to individual Jews: How do we empower Jews to engage in the discussion for the sake of their own Jewish decision-making and for the quality of their Jewish lives?

On the whole, these questions, in some sense hardly new but which find themselves being asked in a new, challenging environment, are concerns I think Reform Jews may be in a unique position to grapple with. This is so because of Reform Judaism's historical commitment to struggle creatively with the tradition and apply the fruits of that struggle to matters of public interest.

So our question remains an old one, how to make Jewish decisions that are Jewish but not necessarily halakhic? Below I present a case for how this might be possible in the bioethics conversation.

In the final section of *Renewing the Covenant*,<sup>9</sup> Eugene Borowitz makes what I believe is one of the most articulate statements of the liberal Jewish conundrum: how to be true both to the Jewish tradition and to the long-standing liberal claim to the right of independence from the tradition on essentially rational grounds. This independence is usually referred to as "autonomy." Autonomy in the sense that Borowitz uses the word is not the same as the Kantian use of the term, as will be explained below.

Borowitz assumes that for non-Orthodox Jews, halakhah is no longer understood as a system undergirded by an absolute assumption of its being the articulation of God's will. When that understanding ceased to be an operant fact of Jewish life, Jews began to demand the right to question critically the foundations of the halakhic tradition. With that right demanded and granted—within the liberal Jewish community—freedom from the boundedness of halakhah became axiomatic. One possible response is a rejection of Jewishness *in toto*. But to Borowitz this outright rejection is wrong for a set of existential reasons. Beginning with the rejection of the rejectionist premise, but not arguing for a rejection of the modernist claim, Borowitz couches his argument in terms of the tension that lies between the Jewish and the autonomous aspects of the selfhood of the Jew. To accomplish this interpretive task, Borowitz unpacks the interrelationship between the three words "autonomy," "Jewish," and "self," in order to reveal the dynamics of the concept underlying those words.

Borowitz's first premise is that a Jew is obligated to take the Jewish tradition with the utmost seriousness. This is the Jewish side of the autonomous Jewish self. To be true to one's Jewish side is dutifully to attend to it; one ought not reject it outright in favor of a self that stands without a specific religio-ethnic identity. "Instead of positing an axiomatic universal selfhood in whose terms we then seek to validate Jewishness, we seek to interpret our elemental

Jewishness by the culturally compelling metaphor of selfhood, that is, by explicating the nature of a Jewish self."<sup>10</sup>

Borowitz's second premise is the existence of an independent means of judgment concerning the truth emerging from some aspect of the Jewish tradition. Does a given point within the tradition stand up to independent examination? In other words, having studied the tradition on a given matter, one is equally obliged to test the tradition according to the light of one's own reason.

I believe that Borowitz intends that much of the time, conceivably even most of the time, a given point within the tradition will stand up to independent examination.<sup>11</sup> However, since there is an independent criterion attached to the process, the answer can be "no." How few or many times the answer is, in fact, "no" is irrelevant. What is critical is that one has the obligation to include the autonomous side of the equation in the determination of one's Jewish identity.

Further, for Borowitz, this notion includes an individuation. That is, he sees the phenomenon of the self living in a time of philosophical and theological uncertainty regarding certain truths, making judgments individually, that is, *qua* self as opposed to *qua* community member, within the framework of the Covenant. Though it is the self that is under consideration, the term "autonomous," with its Kantian resonance, might at first glance appear to have a universalizing sense to it, that is, that all selves, being rational, will make the identical determination in parallel cases. For Borowitz this is not the case. As implied in the subtitle of the book, *A Theology for the Post-modern Jew*, in this construct, "autonomous" is not intended to lead to a collectivity of selves, but only to the individual Jewish self. It is intended to lead to a range of possible Jewish responses, a world of Jewish selves differentiated by their own application of autonomy, but in dialogue by virtue of shared covenantal commitment. The operant notion here is that the self, to be authentic, must apply both its Jewish and autonomous sides. Though the autonomous side is the final arbiter of the case, the Jewish side is always under consideration by virtue of the innate Jewishness of the self making the decisions.

The individuation flows immediately from Borowitz's notion of what he calls

the compelling selfhood of the Jewish self... Yet despite the others with whom it is so intimately intertwined—God and the Jewish

people, present, past, and future—it is as a single soul in its full individuality that the Jewish self exists in Covenant....The self, free and self-determining, must then be given its independent due even though as a Jewish self, its authority will be exercised in Covenantal context. At any given moment it is ultimately I who must determine what to make of God's demands...as I, personally, seek to live the life of Torah in Covenantal faithfulness. For the Jewish self, then, Covenant means Covenant-with-one's-self.

Now the question automatically arises: How does this concept work itself out as an applied theology? More specifically, how can this concept be applied to bioethical matters?

In what follows, I will present two models posed by two writers that conform to the general framework delineated above. I do not claim that the two writers I present are consciously disciples of Borowitz. On the contrary, they indicate in the writing under consideration no awareness of Borowitz's construct of the Jewish self in Covenant, though it is likely that they are aware of Borowitz's theology. Their methods appear to reflect a similar process of thought as Borowitz insofar as they do not confine themselves to the Jewish tradition's dictates in making decisions that they nonetheless view as "Jewish." They take the Jewish tradition with utmost seriousness. The first writer, Ronald Green, offers a model based on his reading of Jewish tradition in contradistinction to normative halakhah. The second writer, Benjamin Freedman, applies his understanding of the Jewish tradition to a model to be used in ethics consultations in a hospital setting.

In "Jewish Teaching on the Sanctity and Quality of Life,"<sup>12</sup> Ronald Green argues with his reading of contemporary Orthodox bioethicists on the matter of the issue of "sanctity of life" over and against the issue of "quality of life." Green believes, and I concur, that much of contemporary halakhic writing claims that Jewish legal precedent argues for the "sanctity of life" over the "quality of life."<sup>13</sup> "Sanctity of life" is that doctrine that affirms that human life under all circumstances is equally holy and equally worthy of continuing until the moment when God alone decides to end that life. There are no permissible admissions of any human life's taking priority over any other human life, nor can any life be said to be degraded in any substantive way. In this view, it is unimaginable that the death of any human being, save a human life in a state of *gesisah*,<sup>14</sup> can be shortened through human action. These Orthodox writers (Green

cites J. David Bleich and Immanuel Jacobovitz as primary representatives of this view) argue that the tradition does not entertain the notion that there exists such a concept as quality of life. As stated by J. David Bleich, "Judaism teaches that human life is sacred from the moment of generation of genoplasm in the gonads until decomposition of the body after death."<sup>15</sup>

Embedded in the notion of "quality of life" is the claim that a given human life, because of advanced illness, concomitant degrading of abilities, and suffering, may be in such a state of decline that such a person has lost much of his or her abilities to live a normal life. In such a situation the individual might judge that ending that life, allowing that diminished life to end, might well be desirable and at least not to be judged immoral. Note that "sanctity of life" is an absolute category, which once accepted as an operant notion would be applied uniformly in all cases. "Quality of life," on the other hand, is highly subjective in the sense that applying this category to an individual's situation requires autonomous judgment that one's "quality of life" has been seriously compromised. With a different individual in a parallel situation the question about assessing the quality of life may well not even be considered, much less applied.

In the face of contemporary halakhic judgment, Green argues in favor of a Jewish view of quality of life. In that argument, Green takes traditional Jewish texts and, through the application of an independent judgment, re-reads those texts, as it were, to testify against contemporary halakhic writing.

First, Green cites classic Jewish texts concerning the status of the fetus and embryo<sup>16</sup> to demonstrate that there exists a means within traditional Jewish legal writings to claim a "graded appreciation of the developing moral status of human life, especially during its prenatal stages."<sup>17</sup> The traditional Jewish view of the human embryo is that it has a status analogous to "mere fluid."<sup>18</sup> This does not denude the fetus of all claims, but these claims are relatively few, certainly far fewer than a person living outside the womb. The fetus beyond the forty-day period possesses legal status greater than that of the embryo, but this status is still significantly less than that of the mother. In Jewish law, should there arise a conflict between the life of the fetus and the life of the mother, the life of the mother consistently takes precedence over the life of the fetus.<sup>19</sup> This is not the place to rehearse the entire case concerning the status of the embryo and fetus over and against the mother. Green gives a thorough account of this viewpoint.<sup>20</sup> From this study he arrives at the conclu-

sion that, Bleich and others notwithstanding, from the view of the rabbis, it is demonstrable that “human life is not equally sacred at all its stages.”<sup>21</sup>

Green uses this claim and an independent judgment to come to a decision about human life at its end stages: It is possible, he says, to argue on Jewish grounds for a doctrine of quality of life. First, he says, we can see from rabbinic judgment concerning the beginning of life that there is at least one important period in the development of life when there is a gradation of holiness attached to life. In this case, it is in fact possible, perhaps even mandatory, to take one life (that of the fetus) out of consideration for the greater right of the other (the mother) when certain conflicts between the two arise.

Second, Green applies an independent judgment. He cites an opinion by Bleich, who claims that a person who can be sustained on life support indefinitely is not considered by contemporary halakhic judgment to be a *goses* (an individual whose death is expected within seventy-two hours), since in this situation death is not imminent. To this Green replies,

I am confident that even the most conservative classical rabbis who defined the status of the *goses* would be shocked by this mode of reasoning. Certainly, their concepts of compassion for the dying and respect for basic human dignity did not extend to the virtually unending preservation of biological functioning that technology now makes possible.<sup>22</sup>

The severe view of some modern *poskim*, Green argues, flies in the face of the overwhelmingly compassionate spirit of traditional rabbinic thought. The rabbis, Green believes, out of compassion, would be far more lenient about allowing the lives of those who suffer to end before their natural moment.

Green bolsters this argument with the personal story of a ninety-four-year-old relative who injured himself and fell into a coma and lost functioning of vital organs. The family allowed this individual to die rather than continue aggressive efforts to keep him alive. “He was not a *goses* in Rabbi Bleich’s terms. He was not immanently [sic] and unavoidably dying. But a humane decision was made to cease rescue efforts and to allow him to die peacefully.”<sup>23</sup>

Note that this is a historical and extra-halakhic, empirical argument. The compassion expressed by rabbis at an earlier time in an era with a primitive medical technology, Green says, ought not to be

applied literally in our contemporary time when medical technology is radically different. Based on our observation of contemporary conditions, rather, we should understand the spirit of their era and apply that spirit in our era. Green implicitly argues, if I could bring the rabbis who made the original rulings about *geisiah* to the present moment, they would disagree with Bleich and the others and agree with me, because they and I understand the deeply humane spirit in which those early rulings were made. Naturally, this feat is impossible. What is possible is the assertion of the right to express the opinion that such would be the case, and to judge accordingly. Green's view, given his methodology, constitutes a perfectly legitimate move. Thus armed, Green argues in favor of Jewish support for a quality of life doctrine.

To arrive at this point Green steps outside normative halakhic discourse, makes an independent judgment based on an extra-halakhic, empirical assumption, and arrives at a conclusion at variance with the view with which he is in dispute. In other words, although eminently respectful of the tradition (as evidenced by the fact that he goes through considerable labor to present the tradition when he could simply have ignored it), Green is perfectly comfortable with the notion that he has the right to enter into an autonomous dialogue with the tradition and diverge from it when his independent judgment tells him he ought. He begins his inquiry with the *à priori* assumption that his right to a careful but individuated reading of the texts is legitimate.

One need not agree with Green's conclusion. For our purposes here it is important to see his method and to observe that it falls within the parameters laid out by our reading of Borowitz's Jewish self. One need only observe the dialectic unfolding to observe that Green, carefully and effectively, sets aside the normative decision-making structure of the tradition while at the same time respectfully utilizing the tradition as a tool to come to a decision. That is to say, by assuming the right to apply his own autonomous reason, Green makes a decision he views as both ethical and Jewish, and adjudicated ultimately by his Jewish self.

Benjamin Freedman was both a practitioner and a theoretician. He served as clinical bioethicist at the Sir Mortimer B. Davis Jewish General Hospital and professor of medicine and philosophy in the Biomedical Ethics Unit at McGill University. An Orthodox Jew who died in 1997 at age forty-six, Freedman developed in his book *Duty and Healing*<sup>24</sup> a theory of Jewish bioethics based on the assumption

that the Jewish tradition understands its role in the hospital through the application of the word “duty.” It is interesting to observe that one of Freedman’s opening assumptions bears similarity to Green’s claim above. He says of Jewish literature that it “sometimes adopts a reductive and parochial stance to issues, one that fails to mobilize the extremely rich resources of Jewish legal and moral reasoning deposited over many centuries of inquiry.”<sup>25</sup> The theory Freedman develops utilizes Jewish sources

whose appeal is to reason (although almost always buttressed by Scripture), and which may be, for that reason, of more than parochial interest. In particular...[Freedman chose] to concentrate upon those Jewish sources that deal with *mitzvot bein adam l’chaveiro* [interpersonal commandments] that have been relatively neglected in rabbinic discussions of the ethics of medical care.<sup>26</sup>

Freedman modestly asserts that he developed in this book a Jewish bioethics that does not purport to be the only possible Jewish bioethics, but only one reading of the Jewish tradition as seen from the eyes of an ethical consultant.

Freedman teaches that the dominant means through which ethical situations are resolved in the hospital setting are through adjudication of a concatenation of rights: doctors’ rights, family rights, but primarily the rights of patients to be informed in order to determine the course of their treatment, including cessation of treatment.

On this view, the task of the ethics consultant is “to discover who has the right to decide an ethical issue and to preserve that person’s autonomy.”<sup>27</sup> In this approach, “the job of the clinical ethics consultant becomes one of helping to understand and, perhaps, reconcile conflicting claims of rights.”<sup>28</sup> Ethics consultations on this model begin in conflict and conclude, therefore, with someone winning and someone losing at the moment when it has been decided whose rights supersede whose. While there is nothing inherently wrong with this model, the image projected by it is one of individuals at loggerheads who likely remain separated at the end of the process. Rights are served by the nature of this model, but possibly at the cost of human relationships at a critical moment in the life of an individual.

Freedman says most situations in hospitals, in point of fact, do not entail resolution of “gritty social ethical questions of irreconcilable conflict.”<sup>29</sup>

Rather, the issues at hand are relational in nature, dealing specifically with the duty toward the patient, such as, "it is a duty to seek the right course of action in treating the patient."<sup>30</sup>

Freedman cites the case of an elderly woman, Mrs. A., who is dying from advanced cancer. Her children do not want to inform her of her situation because they fear an adverse reaction ("It will kill her."). After Mrs. A.'s health-care team discusses with the family what her rights are in this matter, the team questions Mrs. A., who makes it quite clear that she wants her family and the health-care team to make decisions for her without informing her.<sup>31</sup> This case illustrates the conflict between "right" and "duty." Mrs. A. has the *right* to know the details of her condition, for the law so stipulates; but the health-care team does not have the *duty* to so inform her. Their duty lies in assessing a good that might or might not accord with what her right is. In this case, the greater good is to follow her wishes and those of her family.

Freedman's understanding of "duty" emerges from the term *mitzvah*, which permeates Judaism. At its core, *mitzvah*, at least mitzvot of social duty, demands relationship. Relationship underlies the obligation of *mitzvah*; the inherent nature of *mitzvah* is a recognition by all parties engaged in a given relationship of the relational status of the other. Indeed, the individual who peers into the world through the lens of duty has relationships imposed upon him. Freedman claims that the Jewish framework of duty, by its very nature, refuses to isolate persons. Instead, beginning with the Bible, commandments of social duty, in contrast to ritual commandments, describe individuals through the very language of relationship. "Your duty to another is always described as your duty to your *ach*, your *amit*, your *reia*; roughly translated, your brother, your friend, your neighbor."<sup>32</sup> That is to say that the Covenant inexorably imposes on Jews the obligation to perceive the other as if that person bears a familiarity either of neighborly proximity or a relationship of blood. Jewish duty requires that I approach persons with whom I have a social duty at all times as though I were in a close relationship with that person. This attitude will radically affect the manner in which I deal with that person.<sup>33</sup>

From the general observation of the relational nature of social *mitzvot* comes the observation that duty requires specificity for moral guidance. One explanation for the Talmud's passion for exploring every possible avenue suggested by case or rule is that "one oriented toward duty seeks more, rather than less, moral guid-

ance, whether provided through a more specific rule, through easier access to assistance in interpreting the rule, or otherwise.”<sup>34</sup> As such, the remainder of *Duty and Healing* plays out the question of duty across a significant range of issues.<sup>35</sup>

Even given the acknowledgment of the need for specificity, it is clear that the category of duty is intended to be dynamic, defined primarily by the individuals involved in a particular decision. Duty’s reliance on the inter-human as the means for arriving at decisions regarding patient care requires the ability both to work within an attitude (that is, that I have a duty to you is the beginning of the decision-making process) and to seek Jewish guidance as to the specifics required to make decisions.

With regard to Borowitz’s concept of the self, two countervailing issues arise. On the one hand, it is easy to see how the relational aspect of Freedman’s thought yields a dynamic interaction with social *mitzvot*. On the other hand, the relational construct is necessarily inter-human and, as such, yields a decision-making process that cannot be autonomous in the sense Borowitz uses the term. Decisions must be made with all the parties involved. But in either event, the individual selves involved in the collective decision are free to reflect their own standards and their own opinions as determined by their own individuated process. How those individual views become one collective view will depend upon the interaction among the individuals in the process.

Working within a framework of duty attenuates conflict and maximizes the sense of responsibility of all parties involved. Further, one can imagine working this theory out across a number of bioethical issues, from how we distribute medical resources to issues raised by stem cell research.

### Conclusion

Green’s and Freedman’s models of non-halakhic dialogue with the Jewish tradition have their difficulties, the most obvious of which is that, by their nature, their process cannot yield unanimity. By its nature, this process is aggadic, necessarily yielding multiple readings of the same texts through multiple hermeneutic methods. However disconcerting this may be at first blush, in point of fact the Reform decision-making process from its very beginnings has fit this description.

Rooting ourselves aggadically in Jewish text is a commitment to a multiplicity of hermeneutic acts with the potential to constitute a Jewish ethical community even as this community testifies to multiplicity. The tradition forms a centripetal force providing the means to seriously approach bioethical problems as they confront us and we them. Borowitz's concept of the Jewish self provides a framework within which to work, while Green's approach to textuality and Freedman's notion of duty as emerging from the innate relational structure of social *mitzvot* give us some guidance as to how to move specifically within bioethical territory.

The next step in the enterprise requires creating a series of Reform Jewish responses to the issues that confront us. The tools at our disposal will enlarge the discussion and provide a lively opportunity to confront the issues that face us.

#### Notes

1. I owe a debt of gratitude to Rabbi Jeffrey Marx and to Prof. Eli Hirsch, whose readings of this text helped clarify both my thinking and my language.
2. It is both naïve and a disservice to the tradition to assume that it ever functioned monolithically. Its functions, those made consciously and those that are historically conditioned, are enormously complex. Within a time period and ranging across time, halakhic scholars would frequently disagree on significant matters. Yet, the pre-modern belief in *Torah mi-Sinai* more narrowly circumscribed the breadth of opinion among Jews than can be said to be the case in our day. More, as shall become clearer, the modern break with the belief in the divine origin of Jewish law dramatically affects how one denying the divinity of Jewish law will approach it.
3. One well-known example is the story from *TB Bava Batra* 131a in which Yehudah HaNasi's handmaid brings on the rabbi's death when she throws a jar from the roof of his house, momentarily interrupting the prayers of his students. This story is used to make pronouncements about end of life issues.
4. <http://www.ccarnet.org/resp/>, italics mine.
5. By "epistemic authority" I mean that halakhah as an authority in Jewish life is a great source of religious thought. Its role is advisory and heuristic but is not granted binding authority.
6. There is the further matter of interest that halakhah does or does not provoke in the Reform community. If halakhah were to become of greater interest to the Reform community, one would expect a rise in the creation of halakhic materials on par with, at least, what appears to

be of interest to the Conservative movement. For example, consider the recently published Aaron Mackler, ed., *Life & Death Responsibilities in Jewish Biomedical Issues* (New York: Jewish Theological Seminary, 2000). On page 1, Mackler says that the articles in this book have been “discussed and authorized by the Rabbinical Assembly’s Committee on Jewish Law and Standards, halakhic guide for the Conservative (centrist) movement...” The Introduction contains the following: “In the Jewish tradition, the central means of addressing these [biomedical] concerns is through halakhah, or Jewish law” (p. 1).

7. I chose that language intentionally in order to inject into the discussion the tone applied to stem cell technology by some of its opponents. One might have easily asked, “Is an embryo a human being?” In this particular area of bioethical inquiry, language is especially important, for one person’s cell is another’s ensouled human being.
8. It occurs to me that “spirituality,” a term possessing much currency in our day, as always is best applied to the ethical in general and to the area of bioethics in particular. It is in the inter-human, whether or not biological and/ or medical technology is part of the equation, that we best understand God and are best able to test our beliefs about the divine-human encounter.
9. Eugene B. Borowitz, *Renewing the Covenant* (Jewish Publication Society, Philadelphia, 1991).
10. *Ibid.*, 288.
11. “There are compelling reasons to give the tradition a strong hearing. Among these are ties to Jewish ethnicity, ties to the Jewish past, ties to the future, and the recognition that one lives in covenant with God.” *Ibid.*, 288–95.
12. In *Jewish and Catholic Bioethics* (Washington, D.C.: Georgetown University Press, 1999), 25–42.
13. It is important to acknowledge that much contemporary halakhic writing found within the Orthodox community is marked by a level of creativity that seeks to deal with issues such as what is under discussion. Nevertheless, the approach that Green offers, drawing conclusions by stepping outside the bounds of halakhah, suggests a method appropriate to our current discussion. The reader should keep in mind that there are voices within the halakhic world that differ, for instance, from J. David Bleich, whose voice plays a part in the current argument.
14. That is, a person whose death has been judged to be imminent, within seventy-two hours.
15. J. David Bleich, “Survey of Recent Halakhic Periodical Literature: Treatment of the Terminally Ill,” *Tradition*, 24/4 (1989): 71.
16. Green, *op. cit.*, 28–33.
17. Green, *op. cit.*, 33.
18. *Maya b’alma*, *TB Yevamot* 69b.
19. *Mishnah Oholot* 7:6, *The Code of Maimonides in the Mishneh Torah*, 19 vols. (New Haven: Yale University Press, 1949), vol. 11, 96.

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20. Green, op. cit., 28–33.
21. Green, op. cit., 33.
22. Green, op. cit., 35. Green states this judgment elsewhere. “Despite their authority and their erudition, these writings are not genuinely representative of the Jewish tradition as a whole. Not only the available secondary discussion of Jewish bioethics, but many of the contemporary Rabbinic (sic) discussions upon which they rest, display a markedly conservative tendency that is out of keeping with much of the spirit of the earlier tradition...” Ronald M. Green “Contemporary Jewish Bioethics: A Critical Assessment,” in E. E. Shelp, ed., *Theology and Bioethics* (Dordrecht: D. Reidel, 1985), 245–66; p. 262.
23. Green, op. cit., 36.
24. Benjamin Freedman, *Duty and Healing* (New York: Routledge, 1999).
25. *Ibid.*, 13. His approach, presumably, will use those same sources more dynamically while remaining within a “Jewish” framework.
26. *Ibid.*, 19.
27. *Ibid.*, 32. Note that the use of autonomy in this context is not directly related to either Borowitz’s or Kant’s use of the term. Here “autonomy” is synonymous with “independence.”
28. *Ibid.*, 36.
29. *Ibid.*, 39.
30. *Ibid.*, 45.
31. *Ibid.*, 45–48. Freedman’s detailed account of this case leaves no doubt that this situation was handled with utmost respect and integrity.
32. *Ibid.*, 55.
33. The similarity of this thinking with Buber’s I-thou concept is unmistakable. Neither Buber nor Levinas—who also comes to mind—is mentioned by Freedman, however. His thinking emerges from other directions. Moreover, in the paragraph following, a kind of Jewish specificity comes into play that is less congenial to Buber. Nevertheless, the relational aspect of Freedman’s concept of duty is unmistakable, and hence tied into the Buber-Levinas tradition.
34. *Ibid.*, 58.
35. Unfortunately, this is not the place to discuss that detailed and fascinating presentation; that will have to await another occasion. Further, it is most regrettable that the world lost such a vital and original voice at such a young age.

Who is a Jew? Reform's position is that the same requirements must be applied to establish the status of the child of a mixed (interfaith) marriage, regardless of whether the mother or the father is Jewish. Therefore, in 1983, the CCAR issued the following resolution: The Central Conference of American Rabbis declares that the child of one Jewish parent is under the presumption of Jewish descent. A Mitzvot leading toward a positive and exclusive Jewish identity will include entry into the covenant, acquisition of a Hebrew name, Torah study, bar/bat mitzvah, and Kabbalat Torah (Confirmation). For those beyond childhood claiming Jewish identity, other public acts or declarations may be added or substituted after consultation with their rabbi.