

JUDISM AND STEM CELL RESEARCH

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Abstract: The duties to heal and to save lives, coupled with the fact that embryos or aborted fetus are not legally protected under Jewish law, allow stem cell research under Jewish law and in some instances may even make this type of research obligatory under the duty to heal.

In understanding the stance that many Jewish theologians take regarding stem cell research, one needs to know that the Jewish tradition uses both Jewish theological convictions and Jewish law to give moral guidance.¹ Under Jewish law, a fetus has no legal status until 1) the fetus is implanted in a uterus and 2) the fetus has gone through 40 days of gestation.² According to several interpretations of the Talmud, a fetus that has not reached 40 days of gestation, or quickening as defined by the common law, is afforded the status of “simply water.”³ Thus, since embryonic stem cell research is performed on stem cells from embryos that have not been implanted, under Jewish law, there are no ethical implications in either discarding excess embryos or using them for embryonic stem cell research.⁴

¹ Rabbi Elliot Dorff, Ph.D., National Bioethics Advisory Commission, *Ethical Issues in Human Stem Cell Research*, Volume III, *Religious Perspectives*, C-3(2000).

² *Id.* at C-4. In Hebrew, the body of Jewish law is referred to as halacha, which means walk with, advance, progress. European Network of Scientific Co-operation on Medicine and Human Rights, *The human rights, ethical and moral dimensions of health care* 76 (Council of Europe Publishing 1998).

³ Rabbi Elliot N. Dorff, Ph.D., *supra* note 1, at C-4. *See also* Rabbi Moshe Dovid Tendler, Ph.D., National Bioethics Advisory Commission, *Ethical Issues in Human Stem Cell Research*, Volume III, *Religious Perspectives*, H-3(2000).

⁴ Rabbi Elliot N. Dorff, *supra* note 1, at C-4. However, the use of stem cells from cloned embryos is not supported by most rabbinical authorities. According to a letter from the Union of Orthodox Congregations of America and the Rabbinical Council of America to President George W. Bush, they do not support the creation of embryos for the sole purpose of conducting research on them. Union of Orthodox Jewish

A brief explanation of the sources of the Jewish religion is in order. The Hebraic Bible is divided into three parts, the Torah, the Neviim and Ketuvim. Oral teaching was espoused to explain the written tradition. This oral tradition was also written down and is referred to as the Talmud. The Talmud is divided into two sections, the Mishnah and the Gemara. Additionally, allegorical and symbolic commentaries were added to the Talmud which are called the Midrash.⁵

Under Jewish law, during most of its development, a fetus is seen as only a part of its mother's body and has a lesser importance of that of its mother.⁶ Thus, if the fetus is endangering the mother's health or life, under Jewish law, an abortion must be performed to protect the woman, who is a full-fledged human being while the fetus is only a part of the woman's body.⁷ Therefore, if a fetus is aborted and that abortion is allowable under Jewish law, there is no prohibition to using germ stem cells from the aborted fetus for

Congregations of America and the Rabbinical Council of America, to President George W. Bush (July 26, 2001) at <http://209.67.0.195/public/statements/2001/nate34.htm> (last visited November 14, 2001).

⁵ European Network of Scientific Co-operation on Medicine and Human Rights, *The human rights, ethical and moral dimensions of health care* 74 (Council of Europe Publishing 1998).

⁶ Rabbi Elliot N. Dorff, *supra* note 66, at C-3. This stance on the status of a fetus comes directly from biblical text. The Bible states:

If two men fight, and wound a woman who is pregnant (and is standing nearby) so that her fruit be expelled, but no harm shall befall (her) then he shall be fined as her husband assesses, and the matter placed before the judges. But if harm befall her, then shalt give life for life.

Laurie Zoloth, Ph.D., National Bioethics Advisory Commission, *Ethical Issues in Human Stem Cell Research, Volume III, Religious Perspectives*, J-13(2000)(quoting Exodus 21:22).

⁷ Rabbi Elliot N. Dorff, *supra* note 66, at C-3

research purposes.⁸ This is because Jewish law highly values efforts to preserve the life and health of others.⁹

The Torah has been interpreted to establish a duty from God to heal and save lives.¹⁰ This duty is so important that it can sometimes even override the duty not to perform any kind of work on the Sabbath.¹¹ Similarly, the duty to heal is so valued that the Talmud prohibits the levying of money damages upon a doctor for mistreatment.¹² This mandate to heal is derived from the Torah text of Deuteronomy, which states, “How do we know [that one must save his neighbor from] the loss of himself? From the verse: And thou shall restore him to himself.”¹³ Furthermore, this ability to heal could be said to

⁸ *Id.*

⁹ *Id.*

¹⁰ Stephen J. Werber, *Cloning: A Jewish Law Perspective with a Comparative Study of Other Abrahamic Traditions*, 30 SETON HALL L. REV. 114, 1137-1140 (2000).

¹¹ *Id.* at 1137. For instance, the Mishnah, states:

If debris falls on someone [on the Sabbath] and it is uncertain whether he is ...alive or dead...one must probe the heap [of debris] for him. If he is found to be alive, one must remove [the debris] for him. If he is found to be dead, he is left there [until after the Sabbath].

Id. at 1137 (quoting Mishnah Yoma 8:7).

¹² Werber at 1140.

¹³ Laurie Zoloth, Ph.D., National Bioethics Advisory Commission, *Ethical Issues in Human Stem Cell Research*, Volume III, *Religious Perspectives*, J-16(2000)(quoting Deut. 22:2). Other commentators have even gone as far to say the duty to heal is obligatory. They quote a Midrash text concerning a sick farmer who is helped by two rabbis. The farmer asks why the rabbis are helping him since it was God’s will that he is sick. The rabbis respond by pointing out that his work as a farmer also alters a world that God created and goes against what one would think was God’s will. The text further states:

[The farmer answers to them] ‘If I did not plow, sow, fertilize, and weed, nothing would sprout.’ Rabbi Akiva and Rabbi Ismael said to him, ‘Foolish man...Just as if one does not weed, fertilize, and plow, the trees will not produce fruit, and if fruit is produced but is not watered or fertilized, it will not live but die. So with regard to the body. Drugs and medicaments are the fertilizer, and the physician is the tiller of soil.

come directly from God and should not be wasted. A Jewish blessing is often evoked in praise of God for making human wisdom tangible, “Blessed are You, Ruler of the Universe, who has given of Your Knowledge to human beings.”¹⁴ The duties to heal and to save lives, coupled with the fact that embryos or aborted fetus are not legally protected under Jewish law, allow stem cell research under Jewish law and in some instances may even make this type of research obligatory under the duty to heal.

Id. at J-16 (quoting Dorff, *A Jewish Approach to End-Stage Medical Care* 43 THE JOURNAL OF CONSERVATIVE JUDAISM (1991).

¹⁴ Laurie Zoloth, Ph.D., National Bioethics Advisory Commission, *Ethical Issues in Human Stem Cell Research*, Volume III, *Religious Perspectives*, J-26(2000).