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978-1-107-02466-3 - Jewish Bioethics: Rabbinic Law and Theology in their Social and Historical Contexts

Yechiel Michael Barilan

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## **Jewish Bioethics**

### *Rabbinic Law and Theology in Their Social and Historical Contexts*

This book presents the discourse in Jewish law and rabbinic literature on bioethical issues, highlighting practical problems in their sociohistorical contexts. Yechiel Michael Barilan discusses end-of-life care, abortion, infertility treatments, the brain death debate, and the organ market. Barilan also presents the theology and spirituality of Jewish medical law, the communal responsibility for healthcare, and the charitable sick-care societies that flourished in the Jewish communities until the beginning of the twentieth century. In addition to the representation of Jewish bioethics to practitioners, the book couches rabbinic law in contemporary legal philosophy and social history, offering insights into the very nature of religious law and its functions in society.

**Yechiel Michael Barilan** is a practicing clinician, expert in internal medicine, and associate professor of medical education in the Sackler School of Medicine, Tel Aviv University. He received his medical degree from the Israel Institute of Technology (Technion) and his master's degree, in bioethics, from the University of Leuven. His first book, *Human Dignity, Human Rights and Responsibility*, was published in 2012.

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YECHIEL MICHAEL BARILAN

*Sackler School of Medicine, Tel Aviv University*



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## An Overview, Explanations about Style, and Acknowledgments

This is a scholarly book on medical ethics in Jewish law (*Halakhah*). My field of inquiry is rabbinic or Orthodox halakhic discourse, which is a body of normative knowledge and modes of reasoning that have been developing for many centuries and whose teachings have ramifications in the lives of hundreds of thousands of Jews worldwide and in Israeli law. Healthcare providers, ethicists, chaplains, patients, and their families will find in this book a brief yet comprehensive and up-to-date survey of the rabbinic discourse, teachings, and rulings on healthcare. Here and there, the book also delves into theoretical questions about the nature of religious law and its relationship with morality, and with other manifestations of the religious phenomena.

The book proposes internal and external explanations. Internal explanations are based on those modes of reasoning internal to the halakhic discourse as a relatively discrete discipline; external explanations call on history, sociology, and similar extra-halakhic sources to shed light on the halakhic texts and the actual advocacy and practice of those who adhere to the traditional ways of Jewish life. But the understanding of “tradition” is tricky. Most bioethical problems are quite new, and, as I will show, many of the “traditional” teachings rely on novel – sometimes counterintuitive – hermeneutics of old sources.

This book is not concerned with such questions as the identification of Biblical leprosy or the medical sciences of Maimonides. Nor is this a story about Jewish doctors or the Jewish contribution to medicine; rather, it is about the ways rabbis have guided ordinary, observant Jews in coping with illness and with the regulation of healthcare. Through the prism of legal and theological writings, it might also be possible to get a glimpse into the social reality of Jewish life – the behaviors and modes of thinking of ordinary Jews in the past, when virtually all Jews belonged to autonomous religious communities, and in the present, when hundred of thousands of Jews seek to color with religious values their healthcare choices in democratic and multicultural industrial societies.

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Bioethical problems reach to the fundamentals of human existence: the struggle between life and death, the expression and regulation of sexuality, intergenerational relationship of control and care, the complexities of body and soul, the individual facing the powers of state and finance, communal responsibilities for the vulnerable, the meaning of suffering, and the boundaries between reason and unreason, order and disorder, self and others. Some topics, such as mental illness, have been left out owing to lack of space; other subjects, such as care for minors, are elaborated in a scattered manner, as secondary themes of the main lines of discussion. By the end of the book, I hope the reader will have been informed about specific issues (e.g., disconnecting life support from terminal patients), as well as background values (e.g., personal autonomy in rabbinic thought) and have gained some theoretical insights imported from legal theory, cultural studies, comparative theology, moral theory, and similar academic disciplines.

At its heart, so I have come to learn, studying ethics is about helping people, as well as ourselves, in living the good life through reflection, proper conduct, and good decision making. Bioethics is committed to the same goals, but through engagement with the hardships of common humanity, as well as through confrontation with and acceptance of human finitudes seen through a broad intercultural and pluralistic lens and combining respect for human life and dignity with shared solidarities and responsibility for the vulnerable. Therefore, this book might be of interest to every person who cares for personal and spiritual growth through critical learning, contemplative thinking, and genuine participation with the human condition by means of reflection on a historically unfolding body of knowledge, value, and practice.

I owe much to my father, who is a rabbi and who has helped extensively with my work on Jewish bioethics, especially in its first phase, from 2000 to 2006. Father–son and teacher–student relationships are complex matters. God knows how much each word and each sentence in this book expresses emulation, rebellion, inspiration, criticism, or some mixture of them all. Tuvia Shlomo, my youngest brother, who is a student of rabbinic law, has helped with finding and clarifying many sources. Cécile Bensimon, Hagar Weinberger, and Joseph Lehman assisted in proofreading the final manuscript. Sharon Neeman has always been helpful with questions of language, style, and translation. I thank my research assistants in this project, Rabbi Avishai Elboim and Ms. Theresa Sophie Fuchs. My patients, students, and colleagues are also present in every page of this work.

I thank Rabbi Prof. Avraham Steinberg, Rabbi Dr. Mordechai Halperin, Rabbi Shabbtai Rappaport, Rabbi Tendler, Rabbi Yuval Cherlow, and Rabbi Shlomo Aviner for their time and willingness to give interviews and answer questions.

The seeds for this book were planted in my contributions to the *Encyclopedia of Judaism*. I thank Alan Avery-Peck and Jacob Neusner for entrusting me with these commissions. A generous grant by the Simma Lior Memorial Fund for Medical Research, Sourasky-Tel Aviv Medical Center, allowed me to transform the encyclopedia essays and other papers into this book. The chapters on clinical



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and nursing ethics and the final editing of the book were supported by the Israeli Scientific Foundation (ISF grant 197/10). The sections on public health were supported by a grant from the Israeli Ministry of Science (2011). My acquisition editor, Lewis Bateman, was especially kind and encouraging. I wish to express similar gratitude to Cherline Daniel and the whole team at Cambridge University Press.

Studying and writing on rabbinic law and ethics have forced a critical and creative confrontation with my own formation; this book is dedicated to the person who is most responsible for my own transformation, and happiness – Margherita Brusa.