

2005

Book Review: "Jewish Biomedical Law: Legal and Extra-Legal Dimensions"

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Recommended Citation

Tovino, Stacey A., "Book Review: "Jewish Biomedical Law: Legal and Extra-Legal Dimensions"" (2005). *Scholarly Works*. Paper 397.
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JEWISH BIOMEDICAL LAW: LEGAL AND EXTRA-LEGAL DIMENSIONS. By Daniel B. Sinclair. Oxford University Press 2003. Pp. 267. \$87.95. ISBN: 0-198-26827-0.

Three extra-legal themes—the influence of morality upon Jewish law (*halakhah*), the growing awareness and implementation of the value of patient autonomy, and the role of scientific progress in the shaping of halakhic decisions—distinguish Daniel Sinclair’s work from others in the field of Jewish biomedical law. Students and lawyers new to Jewish biomedical law may struggle with Sinclair’s decision to reserve until the final chapter his theories regarding how biomedical *halakhah* works. However, advanced students and scholars in the field will appreciate the opportunity to understand Sinclair’s three extra-legal themes in context and his decision to root his final analysis in halakhic material, rather than Western theories of legal analysis.

In keeping with his organization, Sinclair introduces the relationship between universal, rational morality and biomedical *halakhah* in several early chapters, but does not expressly delineate the relationship’s contours until the conclusion. There, Sinclair provides a nuanced discussion of how universal, rational morality has an affinity, but not quite an identity, with natural law, and how morality exerts a significant, although indirect, influence on *halakhah*. Sinclair examines the role played by morality within the interstices of the law in the contexts of non-life-saving abortions of defective fetuses, the halakhic responses to new technologies in the areas of human reproduction and genetic manipulation, and the killing of a fatally ill person, or *terefah*.

Although Jewish law has never aspired to maximize personal autonomy, Sinclair identifies a limited, historic role for autonomy in cases in which *halakhic* and moral norms compete. For example, *halakhah* places a supreme value on human life and generally prohibits self-endangerment. One assumption, then, is that an individual must forego a risky medical procedure that threatens immediate life expectancy. However, Sinclair discusses a ruling that would allow an individual to choose a risky procedure in an attempt to gain five to ten additional years of life. According to the ruling, *halakhah* allows the patient to elect the procedure because the preservation of short-term existence conflicts with a morally justified, life-enhancing course of action, namely a greatly improved quality of life. A second example

involves individuals who risk their lives to earn a living. Sinclair explains that individuals may undertake perilous callings because the halakhic prohibition on self-endangerment competes with a morally justifiable activity, namely the choice of livelihood. With these examples as background, Sinclair explores contemporary halakhic views regarding life-sustaining treatment and concludes that the scale favors a limited concept of patient autonomy in terminal cases.

Students and lawyers new to Jewish biomedical law will enjoy Sinclair's comparison of patient autonomy in common, constitutional, and Jewish law. Both the common law and the constitutional right to privacy protect the right of a competent adult to refuse medical treatment, and the courts allow the concept of autonomy to express itself as fully as possible. Although Sinclair refutes the idea that Jewish law lacks any concept of patient autonomy, he argues that Jewish law could expand its current, limited use of autonomy and encourages rabbis and patients to use autonomy when the opportunity arises. However, Sinclair departs from champions of strong autonomy in his belief that acknowledgement of the dependence of the patient on the physician can encourage a more realistic legal approach to patient decision-making and consent issues.

Advances in science always seem to raise new legal and ethical issues, and Sinclair is at his best when he explores how Jewish law has attempted to address these issues in cases involving the definition of death, heart transplants, the donation of cadaver organs for research, and the allocation of scarce medical resources. In each case, Sinclair shows how different thinkers assign different weights to science in the halakhic decision-making process. Sinclair's discussion of the disputed halakhic position on the definition of death in relation to cardiac transplantation is a nice example. Some thinkers believe that irreversible dysfunction of the brain stem is a definitive sign of death, and Sinclair aligns these thinkers with Maimonides, a strong advocate of synthesizing science and *halakhah*. Other thinkers, who do not regard the harmonization of science and *halakhah* as an important value in Jewish law, reject the irreversible cessation of brain-stem function as a test for death.

Sinclair's discussion of the range of views regarding the permissibility of organ donation is a second example of the complications created by scientific advances. A minority of thinkers believe that the *halakhah* prohibits live organ donation because the invasive surgery potentially threatens the life of the donor. A majority of thinkers believe that the *halakhah* endorses, but does not require, live organ donation because modern medicine has significantly reduced its

risks. A third group of thinkers believe that low-risk blood donations, bone-marrow transplants and even some kidney transplants are halakhically required by compatible live donors.

Sinclair's discussion of halakhic attempts to strike a balance between the obligation to save life and the obligation to respect the bodies of the dead is particularly interesting. In the eighteenth century, the halakhic response was to permit autopsies only if their purpose was the direct and immediate saving of human life. However, twentieth-century authorities have difficulty satisfying this test because information derived from autopsies might not result in direct and immediate therapeutic value, although it may contribute to future curative efforts if shared with the research community. After presenting a range of views that demonstrate the difficulty of striking a balance between the preservation of halakhic norms and medical progress, Sinclair recommends the establishment of guidelines designed to respect the claims of both Jewish law and medical science.

In his section on the rationing of scarce medical resources, Sinclair reviews a number of Talmudic passages to demonstrate how saving an individual's life can conflict with the welfare of a community. Sinclair concludes that rationing life-saving resources to benefit the community appears to be legitimate under Jewish law, although he references modern authorities who believe that rationing should not be implemented in cases involving patients who have already commenced life-sustaining treatment. According to such authorities, patients who have commenced life-sustaining treatment are in direct and immediate need of treatment and their needs are superior to the needs of the majority.

Comprehensively footnoted with a range of ancient and contemporary sources, *Jewish Biomedical Law* explores some of the most basic moral issues encountered by society today. Sinclair's three extra-legal themes contribute to a deeper understanding of biomedical *halakhah* and clarify the complex legal and moral factors involved in biomedical decision making.

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