

## COSMETIC SURGERY

**Rabbi Dr. Jonathan Sacks**

Three responsa have appeared in recent years on the subject of plastic surgery for cosmetic purposes. The halachic issues involved are not new ones, and have been discussed before. Nonetheless, the new responsa are important contributions to the subject.

The central question is, of course: what are the limits of the legitimate use of surgical treatment. In one direction stands the permission to employ medicine for therapeutic purposes: the 'permission of the doctor to heal' (*Berachot 60a*). In the other direction is the prohibition against self-inflicted injury (*Baba Kamma 90b*; *Rambam, Hovel u-Mazik 5:1*). Man is not the owner of his body. He has the duty to preserve it and not to harm it. The issue is therefore, to what extent can cosmetic surgery be regarded as therapeutic; to what extent must it be seen as unwarranted interference with the body? If the alleviation of pain is sufficient warrant in Jewish law for at least some kinds of medical treatment, and if the removal of mere embarrassment is not, where is the line to be drawn between them?

These and other questions have hitherto been discussed in the literature (for summaries, see *Sir Immanuel Jakobovits, Jewish*

*Medical Ethics*, 2nd edition, p. 284; *J. David Bleich, Contemporary Halakhic Problems*, pp. 119-123). The main conclusion reached were the following:

- (1) R. Mehasheh Klein (*Mishnah Halachot* 4:246, 247) distinguished between cosmetic surgery undertaken (a) to improve personal appearance, (b) to remove a specific 'blemish'. He allowed the latter, not the former. The definition of 'blemish' is not an open-ended one. It covers only such disfigurements as would have invalidated a priest or constituted grounds for divorce in a wife if she was betrothed on condition that she was free from physical defects.
- (2) R. Yehiel Yaakov Breisch (*Helkat Yaakov* 3:11) ruled that surgery was permitted to alleviate pain; and following Tosafot (*Shabbat* 50b, s.v. *bishvil*) included in the category of pain, 'being ashamed to mix with other people'.
- (3) Both authorities ruled that where cosmetic surgery is permitted for women it is permitted for men. Although the rule that "a man shall not put on a woman's garment" (*Deuteronomy* 22:5) includes acts of beautification such as dyeing one's hair, which are normally only done by women, here there are

two grounds for permission. The first: the halacha allows surgery only to alleviate distress, not for the improvement of appearance alone. The second: in practise, cosmetic surgery is standardly performed on men as well as women, so that convention does not label it a specifically feminine activity.

(4) May one place oneself in danger to undergo cosmetic treatment? Here the opinions diverge. One side of the argument is that every surgical procedure is accompanied by some risk. If the halacha sanctions therapeutic surgery it does so despite the factor of risk. So whenever cosmetic surgery is intrinsically permitted, and is not seen as self-inflicted injury, then the risk-factor does not count against the permission. But others (*R. Jacob Emden*, *R. Abraham Bornstein*) are inclined to forbid any procedure which involves risk to life if undertaken merely to alleviate pain.

What then is added to the debate by the more recent contributions?

### **R. Eliezer Waldenberg**

In the course of an extensive discussion of the scope of the physician's rights and duties, R. Eliezer Waldenberg mounts a sweeping attack on all forms of cosmetic surgery (*Responsa Tzitz Eliezer* 11, 41). He considers the view of one authority (*Responsa Shaarei Zedek*, *Yoreh Deah*, 143) that there is no right in Jewish law to perform or undergo medical treatment to alter any congenital condition. This position, he contends, is not to be accepted in its entirety. There is, for example, warrant to treat a woman for infertility. Nonetheless it does apply to non-therapeutic plastic surgery. The Torah gives the doctor the right to heal. It does not give him the right to beautify. Instead we should have the faith to accept that the form the Creator gave us is that which we should bear.

In general the duty not to injure someone else is overridden, in the case of surgery, only

by the contrary duty to restore to a patient his expectation of life. To perform surgery merely to improve his appearance is therefore both a forbidden act of injury, and a form of impiety: "to contradict the decree of the Ruler of the world".

Moreover, on wider grounds, the pursuit of physical beauty as such runs against the spirit of Judaism: "Grace is deceitful. Beauty is vain. A woman who fears God — she is to be praised" (*Proverbs* 31:30).

R. Waldenberg adds, as an interesting footnote, that the Talmud records a cosmetic improvement — brought about not through surgery but through prayer — which had unfortunate results. R. Mani used to complain of various things to R. Isaac b. Eliashab, who would put them right by prayer. The following is recorded:

R. Mani complained: My wife is no longer acceptable to me. R. Isaac asked him: What is her name? He answered: Hannah. R. Isaac then said: May Hannah become beautiful. She became beautiful. He then complained: She is too domineering for me. R. Isaac then said: If so, then let Hannah revert to her former ugliness. And she became once again ugly. (*Taanit* 23b).

*At the very least, the episode is illustrative of the unpredictable consequences of changes in appearance. R. Waldenberg also draws attention to the impiety of calling into question the beauty of the Creator's handiwork, something which is also well illustrated by a Talmudic narrative:*

R. Elazar, son of R. Shimon, once met an exceedingly ugly man who greeted him, 'Peace be with you, sir'. R. Elazar did not return his greeting, but said instead, 'Good for nothing, how ugly you are. Are all your fellow townsmen as ugly as you?' The man replied, 'I do not know, but go and tell the craftsman who made me, "How ugly is the vessel which you have made"'. (*Ta'anit* 20a-b).

In the opinion of R. Waldenberg, therefore, there is not only no permission to perform or undergo plastic surgery, but there is also something deeply questionable behind even the desire to do so.

### **R. Hayyim David Halevi**

In the latest of his wide-ranging volumes of responsa, *Asei Lecha Rav* (vol. 4,65), R. Hayyim David Halevi includes a brief statement on the subject under review. He makes two major distinctions. First: the nature of the risk involved. The main variable here is whether the anaesthetic necessary is general or local. Second: there is a difference between men and women. As far as men are concerned, improvement of appearance alone is not a relevant warrant for an operation. Halevi refers to the prohibitions against male concern with appearance which come under the heading of "a man shall not put on a woman's garment" (*Yoreh Deah* 156:2 and 182). The only justification in the case of a man is to remove a disfigurement which seriously impairs interpersonal relationships. Halevi here, like Breisch, follows Tosafot in judging an inability 'to mix with other people' because of shame to be considered as pain (see *REMA, Darkhei Moshe, to Yoreh Deah* 156).

Accordingly he rules as follows.

- (1) For a man, cosmetic surgery is permitted only if two factors are both present; the first, that it be to remove a major disfigurement, the second, that only a local anaesthetic is required.
- (2) For a woman, it is permitted if only a local anaesthetic is required, even if the purpose is not to remove a serious disfigurement, so long her present condition causes her serious anxiety.
- (3) If a general anaesthetic is involved, then Halevi is reluctant to give any general guidelines. Each case must be decided by a rabbinical authority in terms of the specific factors present.

### **R. Moshe Feinstein**

The most weighty contribution to the argument is that provided by R. Moshe Feinstein in a responsum directed to the question of whether an unmarried girl might undergo plastic surgery to make her more attractive to men (*Halacha u-Refuah*, ed. R. Moshe Hershtler, 1980, pp. 323-327). The author considers afresh the nature and limits of the prohibition against self inflicted injury. Is it a categorical prohibition, or is it restricted to cases where the injury is destructive in intent?

On the one hand, the Tosafot write that it is forbidden even in cases of necessity (*Tosafot, Baba Kamma* 91b, s.v. *ha-hovell*). If this is so, then it would be difficult to create a distinction between minor and major need in the absence of strong Talmudic proof.

However, Rambam in his codification of the law against inflicting injury to oneself or others uses the phrase "by way of strife", or in a textual variant, "by way of contempt" (*Hovel u-Mazik* 5:1). Accordingly, surgery undertaken for a positive purpose would lie outside the prohibition. It is done neither out of contention nor out of contempt.

Support can be brought for the Rambam's restriction from what the Talmud tells of Rav Hisda, that "whenever he had to walk between thorns and thistles he would lift up his garments. He would say that for the body, nature would provide a cure, but for torn clothes nature would not supply a cure" (*Baba Kamma* 91b). Evidently he allowed himself to be scratched and stung in order to save his clothes from getting torn. And the injury to himself, though unintended, was inevitable. Yet it seems to be permitted to act in this way, since the exposure to injury would not have been self-contempt, but rather motivated by the positive desire to protect his clothes.

What, then, becomes of Tosafot's rule that even in a case of need, self-inflicted injury is forbidden? R. Feinstein suggests that this



refers to a situation where what is desired is the pain itself. An instance would be where someone deliberately injured himself to express, or intensify, his grief in mourning. Even here, though, we must distinguish such a case from one where a mourner physically afflicted himself in order to *assuage* his grief. For it is said of R. Akiva that he “beat his flesh until the blood flowed down upon the earth” when R. Eliezer died (*Sanhedrin* 68a); yet there is no suggestion that he transgressed the rule against injuring oneself (see *Tosafot ad loc*, s.v. *hayah*).

Further proof can be brought for Rambam’s limit on the prohibition from the episode related in the Book of Kings:

And a certain man of the sons of the prophets said unto his neighbour in the word of the Lord, Smite me, I pray thee. And the man refused to strike him. Then he said to him, Because you have not obeyed the voice of the Lord, behold, as soon as you are departed from me a lion shall slay you (*I Kings* 20:35-36).

The Talmud cites this as an instance of ‘one who disregards the words of a prophet’. It then asks why the man was punished for disregarding the request. The answer given is that the prophet was well-established. And the proof offered for the obligation to obey a well-established prophet is that, were it not so, Isaac could not have allowed himself to be offered as a sacrifice by Abraham, nor could the people have allowed Elijah to proceed with a sacrifice on Mt. Carmel, outside the Temple (*Sanhedrin* 89b).

R. Feinstein argues that the Talmud should have brought a proof not from Abraham or Elijah but from the very incident under discussion. If it were forbidden under all circumstances to inflict injury on others even with their consent, then the fact that a man was punished for refusing to do so at the request of a prophet should serve as a clear proof of the duty to heed the prophet even

when he orders a transgression. The fact that the Talmud does not use this episode as proof demonstrates that there is in fact no prohibition in injuring others when done for a constructive purpose, in this case ‘in the word of the Lord’.

Moreover, even if we choose not to follow the restrictive ruling of Rambam, there are still grounds for permitting any operation which is done for the benefit and with the consent of the patient — at least as far as the rule against injury is concerned. For the law that “Thou shalt love thy neighbour as thyself” establishes that we are forbidden to do to others only what we would normally wish to be done to ourselves (*Rashi*, *Sanhedrin* 84b). Although there is a dissenting opinion in the special case of a son performing an operation on his father, the logic is clearly applicable in all other cases.

R. Feinstein therefore concludes that in the case presented to him the girl would be permitted to undergo cosmetic surgery. He does not limit his permission, as did Klein and Breisch, to the removal of ‘blemishes’ or to major disfigurements which precluded normal social mixing. His argument, if accepted, paves the way for a more lenient approach to the question in general.

### ASEI LECHA RAV

Over the last five years, four volumes of responsa have appeared under the title of *Asei Lecha Rav*. Written by the Chief Rabbi of Tel Aviv, Hayyim David Halevi, they are somewhat different in nature and style from the usual responsa collections. Broad, informal and simply written, they concern themselves with wide areas of faith and doubt, with contemporary problems of belief and attitude, and with social, political and ethical issues. Even when dealing with conventional halachic problems, Halevi delivers his views with a directness and lucidity that makes these volumes readable and accessible with little

prior knowledge. Many of his subjects are concerned with how to view contemporary developments in Israel from the perspective of faith. Others relate to transcendent and metaphysical themes. Yet others concern the kind of question that a congregant might ask a rabbi, or a pupil his teacher, by way of conversation; the broad search for guidelines in daily life which might have been thought too straightforward, or perhaps too vague, to merit a written response.

The following are some examples taken from the latest volume, published last year. Their usefulness lies in their demonstration of the broad horizons of halachic concern, or of *da'at Torah*. Halevi's books could well be used as teaching aids for teenagers or adults, in communicating the way in which the halachic mind goes about answering questions of all kinds, not only those which are conventionally considered 'religious' issues.

### 1. Birthday celebrations

Is there any place in Judaism for the practise of celebrating a birthday and for giving birthday presents, or is it an essentially non-Jewish custom, forbidden under the rule of "You shall not walk in their practises" (*Leviticus 18:3*)?

Halevi replies (*Asei Lecha Rav, IV, no. 26*) that there is no direct source in Jewish tradition for birthday celebrations as such. The only place in the Torah in which they are mentioned is in relation to the kings of Egypt: "And it came to pass on the third day, which was Pharaoh's birthday, that he made a feast for all his servants" (*Genesis 40:20*). The Mishna also mentions the royal birthday as a known day of celebration amongst the nations: "These are the festivities of the idolators ... the anniversary of accession to the throne, and (the royal) birthday and anniversaries of deaths" (*Mishna, Avodah Zarah, 1:3*). Rashi explains that the royal birthday was a public festivity on which all the

subjects used, each year, to bring sacrificial offerings. It may be that in antiquity only the birthdays of kings were the subject of special celebrations. However R. Moses Margolis (*Pnei Moshe, to Yerushalmi, Avodah Zarah 1:2*) writes that the Talmud Yerushalmi understands the Mishna as referring to both the public celebration of the royal birthday and domestic celebration of ordinary birthdays.

Thus far it is clear that birthday festivities were known to the rabbis as occasions of idolatrous worship amongst neighbouring peoples. However it does not follow that it is forbidden for Jews to celebrate their birthday. For the prohibition of "You shall not walk in their practises" only applies to a non-Jewish custom which is either immoral or irrational in character. It does not include things which, divested of religious connotation, are functional or rational (*see Sanhedrin 52b; REMA, Yoreh Deah 178:1; Resp. MAHARIK, no. 88*).

Therefore there is nothing forbidden in merely celebrating a birthday. What was idolatrous in the festivities referred to in the Mishna was the accompanying idolatrous worship. Equally, though, there is no positive religious value in birthday celebrations as such, unless they are made the context of a *se'udat mitzvah* — a festive meal with words of Torah and thanks to God for having given this year of life.

In this form there are distinguished precedents. The Talmud relates that R. Joseph, when he reached the age of sixty, made a festive day for the sages (*Moed Katan 28a*). The reason was that by then he had passed the age of premature death which is one of the forms which the punishment of *karet* may take. R. Yair Bacharach was of the opinion that one should make the full blessing of *shehecheyanu* on reaching the age of seventy (*Resp. Havvot Yair, no. 70; and see ibid. for an extensive consideration of what constitutes a*



*se'udat mitzvah*). R. Hayyim Azulay ruled that the blessing should be made without God's name or Kingship, since no other authority mentions that it should be said on this occasion (*Shiurei Beracha, Orach Chayyim* 223, note 2). Others suggest that to eliminate doubt, a new fruit should be provided, and the blessing said over that (see *Kaf Ha-Chayyim, Orach Chayyim* 223, note 28). R. Yosef Hayyim mentions the custom of making a yearly celebration not on a birthday but on the anniversary of one's *brit* (*Ben Ish Chay, Re'eh*, 17). Another custom was to celebrate each birthday after the age of seventy.

So, Halevi concludes, a birthday celebration is commendable if it is made the occasion of a festive meal at which words of Torah are said, and in which thanks are given to God for the year which has passed.

## 2. Is it permitted to mislead others for their own benefit?

One questioner wished to know the following. His family were notoriously unpunctual. This created unpleasantness when they were late in arriving at meals to which they had been invited. Accordingly he adopted the strategy of setting his watch forward, or of telling them that they had been invited for an earlier time than was the case. The result was that now they arrived more or less on time. But was his action permissible, or was it forbidden under the heading of *genevat da'at*, misleading others?

Halevi (*ibid.* no. 61) begins by reviewing the gravity of the offence of misleading others. There are those who hold that it is Biblically forbidden, by the verse, "You shall not steal, nor shall you deal falsely, nor shall you lie to one another" (*Leviticus* 19:11). This includes deception without intent to steal, as we find in the Sifra: 'You shall not steal' with the intention of causing pain; 'You shall not steal'

with the intention of paying back double. Rashi (*Baba Metzia* 61b) explains: the wider prohibition of stealing refers even to someone who intends to give the object back, and merely wants to cause anxiety to the person who thinks he has been robbed; even to someone who wants to make a gift to the other person which he knows he will not accept, and therefore steals from him knowing that the law will force him to repay twice the amount he stole. Malbim explains that any instance of concealment is called theft. Indeed although the Bible usually uses the expression 'to steal the heart' in such cases — "And Jacob stole the heart of Laban the Aramean in that he did not tell him that he was about to flee" (*Genesis* 31:20) — sometimes it calls it stealing *simpliciter*, as in Laban's complaint to Jacob, "Why did you flee secretly and steal from me and not tell me?" (*ibid.* v. 27). The Targumim and most of the commentators understand Laban's 'steal' to mean 'deceive'.

There is some dispute amongst the early medieval authorities as to whether *genevat da'at* is Biblically or only rabbinically forbidden. Nonetheless the Tosefta says "There are seven kinds of thieves and the worst of all is he who deceives his fellow" (*Tosefta, Baba Kamma* 7:3); and amongst the list are counted instances of theft which are definitely biblically forbidden.

In the present instance, however, there is certainly no suggestion that the deception has been practised to obtain some advantage over others. How widely, then, does *genevat da'at* extend? The Talmud includes instances where there is no such intention. One should not urge a friend to come for dinner when you know that he will not accept, or offer him presents that you know he will not take, or do something which he will suppose is being done in his honour when it would have been done anyway (*Hullin* 94a; *Tur and Shulchan Aruch, Choshen Mishpat* 228). This kind of bluffing also comes within the ambit of *genevat da'at*.

All of these instances do, though, share the feature that one is trying to appear more generous than one is. This would not apply to deliberately giving the wrong time. Maimonides, however, extends the prohibition still further when he says that performing conjuring tricks is amongst other things forbidden as *genevat da'at* (*Sefer Ha-Mitzvot, negative command 32*). It would seem then that deception per se is forbidden.

The Talmud does make one exception. To offer to do something for someone which you know he will not accept is permitted if “the purpose is to show him great respect” — to show everyone, as Rashi explains, that you hold this person dear to you. The Shilchan Aruch codifies this provision (*Choshen Mishpat 228:7*). However Maimonides omits it. Instead he writes, “Even a single word of flattery or deception is forbidden. A person should always cherish truthful speech, an upright spirit and a pure heart free from all indirectness and perversity” (*Hilchot Deot 2:6; see Kesef Mishne ad loc*). Thus, according to him it seems that even for the other person’s benefit we should not mislead him.

The conclusion to be drawn is that one should not continue to use the strategy of getting the family there on time by putting watches forward or misrepresenting the invitation. One should choose the straightforward means of stressing the importance of punctuality.

Halevi adds a footnote. There is after all one exception. The Talmud mentions that the preparation of vegetables is permitted on Yom Kippur so that one should be able to eat as soon as the fast has ended. It adds: they were doing so in Rabbah’s household, but they were doing it too early. So he said to them: ‘A letter has come from the West in the name of R. Johanan saying that this is forbidden’. (*Shabbat 115a*). Rashi and Meiri imply that it was not in fact so, but that Rabbah said so in order that they should listen

to him. Thus, if the question were not punctuality in general, but for example not being late in saying prayers, then there would be permission to carry on as he had been doing. It seems that one may mislead in order to prevent a transgression.

### 3. A TELEPHONE CONVERSATION ON MOTZEI SHABBAT

A man lives in Israel. He has family in America who are not observant. He answers the telephone on Motzei Shabbat and discovers that it is one of his relatives from America, where it is still Shabbat. Is it permitted for him to carry on with the conversation, knowing that they are breaking Shabbat? They are doing wrong; he is not. What should he do?

Halevi answers (*ibid. no. 32*) that once the receiver has been picked up, the most serious acts have already been done. It is the dialling and the lifting of the receiver that are the primary prohibitions involved. Clearly it was not wrong for the man in Israel to answer the phone, since he had no idea that the call was coming from abroad.

There is, though, a distinction to be made. If the conversation is for the benefit of the caller — he wants to know the latest news about the family; there is some information he needs — then the person in Israel is receiving no benefit from the call and there is no reason as far as the laws of Shabbat are concerned to discontinue it. He should, for other reasons, try to educate his family that they should not break Shabbat in this way in future.

If, though, the situation is the other way round — the person in Israel wants to hear about the family in America — then one should not continue the call. It is a transgression being committed for his benefit, which he must not allow. Of course, one may not put the phone down immediately: it may

be that the news involves a matter of life and death. But as soon as it has become clear that it is not urgent, one should end the conversation and not continue to benefit from work being done on Shabbat.

---

*Rabbi N. Jonathan Sacks is lecturer in Jewish Philosophy and Talmud in Jews' College, London, and Minister of the Golders Green Synagogue, London.*

---