

Hebrew law - *Ham Istra'el* - of Israeli people is the law of a tormented population, running away from Egypt and slavery.

We are talking about a population that has always had to fight for its own self-determination, carrying a culture that is different from neighbour countries but still featured by a special autonomy: everything relating to everyday life is strictly connected to the environment.

For starters, we have analysed the sources of Hebrew law, mainly Torah ones. The Hebrew word *Torah*, deriving from the verb *jarah* 'to teach, to train', expresses the meaning of teaching, guiding. It is not a preceptive system that is normatively and juridically binding, but a complex of behavioural instructions. In particular, written *Torah*, *Torah shebiklav*, is the instruction that G.d has given to Israel on Mt. Sinai and contained in Pentateuch. Israeli wisemen believed that, beyond this revelation, Moses had received another oral instruction: the oral *Torah*, *Torah shebe'alpeh*.

Hebrew law sources are useful in order to better understand the theme we are about to study: bioethics. The term bioethics has acquired a growing diffusion and has earned a well defined epistemological meaning, so that it's mainly connected to ethical problems related to scientific and technological developments. Bioethics is wrongly defined as 'ethics of life', but, in reality, it is that field that operates a strict reference to that part of ethics that determines the boundaries between lawful and unlawful set by the development of scientific knowledge and technological conquests in biomedicine and social-sanitary contexts.

The term 'biolaw', instead, is of more recent coining, and has had a quick spreading on a national and international level.

It is important to specify that with 'biolaw', a term that tends to approach bioethics, we don't have to refer to the 'right to life', because it is a complex of behavioural and social rules that need to be adopted when it comes to bioethics.

It is commonly believed that biolaw is the consequence and result of bioethics, because the scientific-technical development binds to juridically rule all uncommon techniques.

In particular, new adulteration and modification techniques for both human and non-human life have given birth to normative questions, leading to the conclusion that not everything that is scientifically and technologically possible is also juridically and ethically lawful. Even if there is not an official definition, 'bioethics' has been described as the subject that systematically analyzes the behavior and moral and ethical behavior of humans facing the subject of life and health culture.

Because of the delicacy and sensibility of the matter, we have recorded different and unflexible currents that, infact, dare and risk to impair human dignity and the consideration of justice principles, causing a stop to juridical development.

The doctrine, and in particular the Italian one, agrees in having a double and alternatively opposite definition of bioethics: catholic and laic one.

The Hebrew issue, that we think is common to any religious issue, is to undestrand if diseases, that have a divine justification, can or cannot be healed by men or not.

What we have just stated inevitably suggests that Hebraism funds its own tradition on biblical texts and rabbinic teachings.

These kinds of teachings, biblical and rabbinic, are set in a place of reciprocity that develops a neverending succession and extension.

Ethical and bioethical questions are set, inevitably, with the persistent tradition that has a sacred and autoritative connotation.

Moreover, since we are talking about a past and outdated trasition, that is not able to give answers to new ethical and bioethical problems determined by new technologies, it is important to relate to rabbinic solutions.

But there is more. Since there is no central rabbini authority, that is able to give common solutions, there is a diversification of opinions and verdicts, justified by several juridical mechanisms regarding the same controversies. That being considered, the general principle on which the bioethical thinking is founded lies within the biblic prescription of "not killing" that, as a consequence, binds to respecting the sacritude of human life. In Hebrew tradition, man and woman are equally necessary and

indispensable so to constitute that core named family through matrimony. Family is the first core in which G.d gives his blessing: «G.d blessed them and said: Be fertile and multiply, fill the Earth; dominate it and reign over [...] every living being».

The meaning of this small social unity is to transmit and protect Hebrew tradition, and get married, like it is said within the *Torah* and several biblical texts: it is a *mitzvah*, a commandment. As a consequence, family is an excellency symbol of Hebrew lifestyle and constitutes the first religious prescription that was given to men by G.d. That means that procreation is strictly connected to the topic of family because it grants its existence and allows the continuity of human life. The order of “proliferating and multiplying” is repeated two times in the *Torah*, first to Adam and Eve and then to Noah’s family: the meaning of the precept is that the world «was created to be inhabited».

Given the importance that the command of procreation has in Hebraism, it is important to find solutions to the incapability of a couple to have children.

What emerged is that there are not, like in our juridical system, straight oppositions to medical technologies that are meant to help conceiving and solving infertility problems. The majority of rabbi authorities, infact, expresses a favour for those practices that help conceiving when the ovum and male semen come from two members of a regularly married couple.

Several problems emerge when it comes to medical methods and the juridical status of the child conceived in a way that is different from the natural one. The duty of procreation is the first precept that is found in the first book of the Bible.

Fecundation is at the top of the reproductive system and consists in some processes in which two gametes coming from different sexes are subdued to some transformations that allow the fusion.

Whenever there are difficulties to conceive, it is possible to appeal to medically assisted fertilization, that should not be confused with that regarding just the fertilization of the ovum by a spermatozoon.

With the expression ‘medically assisted reproduction’ we mean any procedure that means to ease the encounter of the spermatozoon with the ovum, achieving a positive result.

Assisted procreation techniques are of two different types: in vitro fertilization and in vivo fertilization. The Italian lawmaker has regulated assisted fertilization with the law n. 40, february 19th 2004 (caled “Norms regarding medically assisted procreation”). The choice of circumscribing the access to assisted procreation techniques only to cases of sterility or infertility (art. 4) is a sign of the necessity to state that the use of that techniques needs to satisfy the need to become parents. That is the reason why there is a clearprohibition for heterologous fertilization, that constitutes an expression of the supremacy principle in order to aid the interest of the minor in the face of the wish to have a child of ‘his own’.

The right to appeal to assisted procreation, indeed, is meant for adult couples of heterogeneous sex people, married or in a domestic partnership, in a potentially fertile age, that are both alive, which means that it’s forbidden to make artificial *post mortem* fecundation.

In the European panorama the Italian law on medically assisted procreation is the most restrictive when it comes to techniques use. The Magisterium has faced this topic proclaiming itself as contrary to any artificial intervention on procreation. In Hebrew tratidion, on the contrary, since it is vital to procreate, most of the bioethical discussion has been focused on the research of possible solutions to the incapability of the couple to conceive. It is important to underline that in the Babilonian *Talmud* was contemplated the chance for a woman to get pregnant without having sex: it was the ipotesis of a man that ejaculated in the bathub and his sperm penetrated inside the body of a woman that had taken a bath after him. In that case, the problem regarding the fact that the High Priest of Israel could officiate only the matrimony of a virgin was solved positively because no sexual act had been consumed.

A similar case is recalled in the *Midrash* which talks about the birth of Ben Sira, son of Jeremy the Prophet and his daughter, who was not considered incestuous because was not born from a sexual act.

The major rabbi opinion, which does not call for adultery without a sexual act, forbids heretologous fecondation with the semen of an Hebrew donor.

We need to clarify that with adultery we exclusively mean the sexual act with a man that is not the husband.

In the Italian panorama, the Constitutional Court, with the famous sentence april 9th - june 10th 2014, n. 162, declared the constitutional illegitimacy of articles 4, 3rd paragraph, 9, 1st, 3rd and 12th paragraphs of law n. 40, february 19th 2004, regarding the prohibition of heterologous medically assisted procreation. The Council considered that kind of procreation as the same of homologous procreation, a *species* of the same *genus*, and that can be regulated by law 40/2004.

As for assisted extra uterine procreation, we need to state what follows.

The artificial procreation technique is a kind of insemination that is made outside of the body of a woman. Hebrew problems regarding this kind of insemination are the same than the first one and lead to the same conclusions. In case of extra uterine procreation, maternal functions will be developed by different women. So we need to ask ourselves if, according to *Helachò*, who can be considered the mother of the child: the biological one or the one who delivered.

If biological paternity always matches with genetic paternity, because its only function is the donation of the semen, for what regards maternity there are several contrastating opinions. Some rabbi authorities allow extra uterine insemination only when there are no other solutions to procreate, but the semen needs to come from the husband or, in some exceptions, according to Rav Feinstein, from a non-hebrew.

Art. 14, par. 1, of law 40/2004 doesn't allow embryo freezing, the so called 'cryopreservation', even if the international scientific community considers this method as effective in order to prevent OHSS. Voluntary pregnancy interruption in Italy is regulated by law 194/78: 'Norms regarding social protection of maternity and voluntary interruption of pregnancy'. Even if there are discordant opinions about considering the unborn as *adam* (man), it is unanimously considered as *adàm baadàm*, meaning 'a man inside a man'.

Considering the religious aspects of Hebrew law, abortion is generally considered as forbidden.

Art. 32 of the Italian Constitution sets the principle of autodetermination of the patient, according to which no sanitary treating can be developed without explicit consent by the interested. For Hebrew

law, in the relationship between doctor and patient, there is the duty of helping people and saving them from harms and diseases: «*Lo ta'amod al dam re'ekha*» (Don't sit on your friend's blood).

More specifically, the juridical, religious and medical dispute regards the value that needs to be attributed on that extenuation made by a subject that is not able to express its own will on the matter of sanitary treatments.

On the most rigorous vision in *Torah* and *halakhab*, body preservation is the same than soul preservation. Some Israeli Priests think that the *Guf* (body) can be compared to a vest that G.d created for the soul and that gave us to be handled during existence. Which means that, since we are given a full body from when we are born, a man needs to keep it full until he dies. Human self-protection of the body encounters several limits when there is a physical or mental disease that compromises the self right to auto-determination. In the Hebrew thought, the starting point is to understand what is licit and what is not.

According to the aforesaid principle, which states that life and body are presents that were given to us and need to be preserved, the consequence is the prohibition of suicide and any kind of active euthanasia.

On the general sense, even with different shades depending on several philosophical currents, rabbi authorities support and aid the necessity to give anticipated prescriptions that are in line with Hebrew principles: it is undeniable that the position regarding euthanasia is negative.

More specifically, there is the absolute prohibition of practicing the so called "sweet death": so, whoever causes the death of a dying man, commits a murder, and, on the other hand, who makes it on themselves commits suicide.

The Italian juridical system, as a vaguely religious system, considers life as sacred. In Hebrew tradition, the position towards euthanasia is rhetorically negative. In the Bible there are not specific prescriptions or indications on the matter, apart from the generic prescription of "not killing anyone".

On the biological side, and generally, death can be considered as the extinction of a being, and, more specifically, of the correlations between organs and functions.

There are two kinds of death: clinic death and brain death. The first case, which can be reverted, happens whenever there is an absence of certain life signs, like heartbeat; the second, irreversible, consists in the ceasing of brain life functions. After the Harvard report of 1968, Italy has applied the second definition of death, the *whole brain death*.

Even certain Hebrew lawmakers consider the brain as an organ that allows to operate a *discrimen* between life and death: the death of a brain equals the death of an individual. Others, instead, consider that since the element that defines life or death according to traditional sources is the breath, an absence of breathing equals death even if there is still cardiac activity going on.

The official Hebrew position is more concrete and states that death happens when there is the contemporary absolute absence of cardiac, lung and reactive activity.

The latest topic that I have studied is organ transplant, consisting in the substitution of a broken human organ with a healthy one, from a donor to a receiver.

In our law system, the law April 1st 1999, n. 91, called "Norms regarding withdrawals and transplants of organs and tissues", sets the main criterion according to which death is considered as brain death, and works through three different criteria for transplant: transparency, equal opportunity of transplant and equity in organ distribution. According to the aforesaid law, in order to proceed to transplant, we need two conditions: brain death and a corporal condition that allows an explantation.

The major difficulties regard heart and liver transplant because, in order to make this kind of explantation it is necessary for the heart to be still beating. So we would face an agonizing individual, in a state that is midway between life and death, and who has the same rights of a living human. That being considered, the consequence would be the prohibition of organ withdrawal from a subject that has his own heart still beating.

In order to solve this problem, there is the scientific criterion of brain death. But since there is no Central Rabbi Authority, there are different solutions regarding the problem of liver transplantation. Even the Catholic vision, according to Hebrew one, transplant is legitimate only if the individual is dead.