Jewish Perspectives on Death and Dying

Fred Rosner, M.D., F.A.C.P.*

INTRODUCTION

Because of advances in medical technology, some people, who in an earlier era would have died, are today alive and well. Others who would have died are now alive but in a coma or a chronic vegetative state. Medical technology has created as many problems as it has solved.

Often dying occurs in the lonely, mechanical, dehumanized atmosphere of the hospital rather than the privacy of one's own home, surrounded by friends and family. The physician should perhaps make "terminal illness rounds" just as he makes medical or surgical or chart rounds. Such rounds would not save all the moral dilemmas surrounding death and dying. The new technology denies the physician a simple physiological end point for death. When is a person dead so that his organs may be removed for organ transplantation? Is it ethical to infuse mannitol into a patient dying of a head injury to preserve his kidneys for grafting? Dare we remove kidneys from a donor whose heart is still beating? Is it "cruel" in the presence of a fatal disease, in the agonizing hours, to prolong life (or death) by the use of life-support machines?

What should be done and what should not be done for a terminally ill patient? Is an eighty-year old man with terminal prostatic cancer to be treated differently from a child with leukemia? Who is to weigh the value of a few more days of life? Are these questions within the realm of human decision making?

One basic question seems to be the extent to which any individual owns his own body. Does a person have the right to select how and when he will die? Is such a decision by the patient akin to suicide? What is an individual's responsibility for his life and health? Jewish teaching is that life is a gift from G-d to be held in trust. One is duty bound to care for one's life and health. Only G-d gives life and hence only G-d can take it away. This individual responsibility for the preservation of one's life and health is apart from the duty of one person (including a physician) toward another's life and health, and society's responsibility concerning the life and health of its citizens.

The doctor-patient relationship is no longer what it used to be because of a variety of factors. There are legal forces, such as the medical malpractice issue, that may interfere with the physician's best clinical and ethical judgment. There are professional forces that may force a physician to act to protect himself from peer review. Patients are better informed and are becoming more vocal. The physician's own religious and ethical values, his own experiences, and his teaching by preceptors all play a role in deciding how he approaches a dying patient. Ultimately, to whom is the physician responsible? To himself? To the patient? To society? Or to G-d?

This article addresses Jewish perspectives in death and dying and focuses on the subjects of euthanasia, hazardous medical or surgical therapy for the terminally ill, when not to use heroic or extraordinary measures to prolong life, the definition of death in Jewish law, and Living Wills.

EUTHANASIA

Arguments in favor and against euthanasia are numerous, have and continue to be heatedly debated in many circles, and I will only touch on some of them. Opponents of euthanasia say that if voluntary, it is suicide. Jewish religious teachings certainly outlaw suicide. The answer offered to this argument is that martyrdom, a form of suicide, is condoned under certain conditions. However, the martyr seeks not to end his life primarily but to accomplish a goal, death being an undesired side product. Thus, martyrdom and suicide do not seem comparable.

It is also said that euthanasia, if voluntary, is murder. Murder, however, usually connotes premeditated evil. The motives of the person administering euthanasia are far from evil. On the contrary, such motives are commendable and praiseworthy, although the methods may be unacceptable.

A closely-related objection to euthanasia says that it transgresses the biblical injunction *Thou shalt not kill*. To overcome this argument, some modern biblical translators substitute "Thou shalt not commit murder" and, as just mentioned, murder usually represents violent killing for

*Director, Department of Medicine, Queens Hospital Center Affiliation of the Long Island Jewish Medical Center; Professor of Medicine, Health Sciences Center, State Univeristy of New York at Stony Brook.

purposes of gain, or treachery or vendetta and is totally dissimilar to the "merciful release" of euthanasia.

G-d alone gives and takes life as it is written in Deuteronomy 32:39: *I kill and I make alive* and Ezekiel 18: *Behold, all souls are Mine.* The difficulty with this point about the Divine predetermination of one's life span, however, seems to be the question of definition as to whether euthanasia represents shortening of life or shortening of the act of dying.

To complete the religious argumentation, it is said that suffering is part of the Divine plan with which man has no right to tamper. This phase of faith remains a mystery and is best exemplified by the story of Job.

Let me present the classic Jewish sources which relate to euthanasia.[1] In Genesis 9:6, we find: *Whoso sheddeth man's blood, by man shall his blood be shed.* In Exodus (20:13), it is stated: *Thou shalt not kill* and further in the next chapter, Exodus 21:14, *And if a man come presumptuously upon his neighbor, to slay him with guile; thou shalt take him from Mine alter, that he may die.* In Leviticus 24:17, is the phrase, *And he that smiteth any man mortally shall surely be put to death* and four sentences later: And he that killeth a man shall be put to death. In Numbers 35:30, it is stated: *Whoso killeth any person, the murderer shall be slain at the mouth of witnesses.* Finally, in Deuteronomy 5:17, the sixth commandment of the decalogue is repeated: *Thou shalt not kill.* Thus, in every book of the Pentateuch, we find at least one reference to murder or killing. These citations, however, all relate to intentional homicide and not to mercy killing.

Probably the first recorded instance of euthanasia concerns the death of King Saul in the year 1013 B.C.E. At the end of the first book of Samuel (31:1-6), we find the following:

> Now the Philistines fought against Israel, and the men of Israel fled from before the Philistines and fell down slain in Mount Gilboa. And the Philistines pursued hard upon Saul and upon his sons; and the Philistines slew Jonathan and Abinadab and Malchishua, the sons of Saul. And the battle went sore against Saul and the archers overtook him and he was greatly afraid by reason of the archers. There said Saul to his armor-bearer: "Draw thy sword, and thrust me through therewith, lest these uncircumcised come and thrust me through and make a mock of me." But his armor-bearer would not; for he was sore afraid. Therefore, Saul took his sword and fell upon it. And when the armor-bearer saw that Saul was dead, he likewise fell upon his sword and died with him. So Saul died and his three sons, and his armor-bearer, and all his men, that same day together.

From this passage it would appear as if Saul committed suicide. However, at the beginning of the second book of Samuel (1:5-10) when David is informed of Saul's death, we find the following:

> And David said unto the young man that told him: "How knowest thou that Saul and Jonathan his son are dead?" And the young man that told him said: "As I happened by chance upon Mount Gilboa, behold Saul leaned upon his spear; and lo, the chariots and the horsemen pressed hard upon him. And when he looked behind him, he saw me, and called unto me. And I answered: Here am I. And he said unto me: Who art thou? And I answered him: I am an Amalekite. And he said unto me: Stand, I pray thee, beside me, and slay me, for the agony hath taken hold of me; because my life is just yet in me. So I stood beside him, and slew him, because I was sure that he would not live after that he was fallen ..."

Many commentators consider this a case of euthanasia. Radak (Rabbi David Kimchi, 1160-1235) specifically states that Saul did not die immediately on falling on his sword but was mortally wounded and, in his death throes, asked the Amalekite to hasten his death. Rashi (Rabbi Solomon ben Isaac, 1040-1105) and Ralbag (Rabbi Levi ben Gershon, 1288-1344) also support this viewpoint, as does Metzudat David (Rabbi David Altschuler, 18th century). The Mishnah, or compilation of oral law, dating approximately to the second century states as follows:[2] "One who is in a dying condition (Hebrew: *gossess*) is regarded as a living person in all respects." This rule is reiterated by later codifiers of Jewish law including Maimonides and Karo as described below.

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The Mishnah enumerates acts which were performed on the dead to delay putrefaction of the body.[3]

> One may not bind his jaws, nor stop up his openings, nor place a metallic vessel or any cooling object on his navel until such time that he dies, as it is written (Ecclesiastes 12:6): *Before the silver cord* [Midrash interprets this as the spinal cord] *is snapped asunder.*
>
> One may not close the eyes of the dying person. He who touches them or moves them is shedding blood because Rabbi Meir used to say: this can be compared to a flickering flame. As soon as a person touches it, it becomes extinguished. So too, whosoever closes the eyes of the dying is considered to have taken his soul.

The fifth century Babylonian Talmud cites the following[4]: "He who closes the eyes of a dying person while the soul is departing is like a murderer [literally, he sheds blood]. This may be compared to a lamp that is going out. If a man places his finger upon it, it is immediately extinguished." Rashi explains that this small effort of closing the eyes may slightly hasten death.

The twelfth century Code of Maimonides treats our subject matter as follows:[5]

> One who is in a dying condition is regarded as a living person in all respects. It is not permitted to bind his jaws, to stop up the organs of the lower extremities, or to place metallic or cooling vessels upon his navel in order to prevent swelling. He is not to be rubbed or washed, nor is sand or salt to be put upon him until he expires. He who touches him is like one who sheds blood. To what may he be compared? To a flickering flame, which is extinguished as soon as one touches it. Whoever closes the eyes of the dying while the soul is about to depart is like one who sheds blood. One should wait a while; perhaps he is only in a swoon...

Thus, we again note the prohibition of doing anything that might hasten death. Maimonides does not specifically forbid moving such a patient, as does the Mishnah, but such a prohibition is implied in Maimonides' text. Maimonides also forbids rubbing and washing a dying person, acts which are not mentioned in the Mishnah. Finally, Maimonides raises the problem of the recognition of death.

The code of Jewish law, the *Shulchan Aruch*, compiled in 1564 by Rabbi Joseph Karo (1488-1575) devotes an entire chapter[6] to the laws of the dying patient. The individual in whom death is imminent is referred to as a *gossess*. R. Karo's code begins, as do Maimonides and the Mishnah, with the phrase: "a *gossess* is considered as a living person in all respects," and then R. Karo enumerates various acts that are prohibited. All the commentaries explain these prohibitions: "lest they hasten the patient's death." The general explanation in the Codes of Jewish Law is that "the rule in this matter is that any act performed in relation to death should not be carried out until the soul has departed." Thus, not only are physical acts on the patient such as described forbidden, but one should also not provide a coffin or prepare a grave or make other funeral or related arrangements lest the patient hear of this and his death be hastened. Even psychological stress is prohibited.

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Is there no circumstance where euthanasia might be condoned in Judaism? Rabbi Judah ben Samuel the Pious, putative author of the thirteenth century work, *Sefer Chassidim*, states[7]: "... if a person is dying and someone near his house is chopping wood so that the soul cannot depart then one should remove the [wood] chopper from there..."

Based on the *Sefer Chassidim*, Rabbi Moses Isserles (1510-1572), known as *Rama*, in his glosses on the *Shulchan Aruch*, states[8]:

> If there is anything which causes a hindrance to the departure of the soul such as the presence of a knocking noise such as wood chopping near the patient's house or if there is salt on the patient's tongue, and these hinder the soul's departure, then it is permissible to remove them because there is no act involved in this at all but only the removal of the impediment.

Examples of such removal of impediments are cited in the Talmud. In one famous passage[9] a distinction is implied between the deliberate termination of life and the removal of means which artificially prolong the painful process of death. The passage describes the martyrdom of Rabbi Chanina ben Teradyon, who was the victim of the Romans during the Hadrianic persecutions of the second century C.E. The martyr was wrapped in the scroll of the Torah from which he had been teaching, and placed on a pyre of green brushwood. His chest was covered with woolen sponges, drenched with water, to prolong the agony of dying. His disciples advised him to open his mouth so that he might be asphyxiated and have a quicker end to his suffering. He refused to do so saying: "It is best that He who has given life should take it away; no one may hasten his death." He did, however, allow the executioner to remove the wet sponges; the fire could then consume at its natural, unimpeded pace. This act of removing hindrances to natural death was deemed meritorious.

The sum total of this discussion of the Jewish attitude toward euthanasia seems to indicate, as expressed by Great Britain's Chief Rabbi, Lord Immanuel Jakobovits,[10] that: "... any form of active euthanasia is strictly prohibited and condemned as plain murder... anyone who kills a dying person is liable to the death penalty as a common murderer." At the same time, Jewish law sanctions the withdrawal of any factor – whether extraneous to the patient himself or not – which may artificially delay his demise in the final phase." R. Jacobovits is quick to point out, however, that all the Jewish sources refer to a *gossess* who is an individual in whom death is expected to be imminent, three days or less in Rabbinic references. Thus, passive euthanasia in a patient who may yet live for weeks or months may not necessarily be condoned. Furthermore, in the case of an incurably ill person in severe pain, agony, or distress, the removal of an impediment which hinders his soul's departure, although permitted in Jewish law, may not be analogous to the withholding of medical therapy that is perhaps sustaining the patient's life albeit unnaturally. The impediments spoken of in the Code of Jewish Law, whether far removed from the patient as exemplified by the noise of wood chopping, or in physical contact with him such as the case of salt on the patient's tongue, do not constitute any part of the therapeutic armamentarium employed in the medical management of this patient. For this reason, these impediments may be removed. However, the discontinuation of instrumentation and machinery which is specifically designed and utilized in the treatment of incurably ill patients might only be permissible if one is certain that in doing so one is shortening the act of dying and not interrupting life. Yet who can make the fine distinction between prolonging life and prolonging the act of dying? The former comes within the physician's reference, the latter does not.

HAZARDOUS OR EXPERIMENTAL THERAPY FOR THE TERMINALLY ILL

A cardinal principle in Judaism is that human life is of infinite value. The preservation of human life takes precedence over all biblical commandments, with three exceptions: idolatry, murder and forbidden sexual relationships such as incest. Life's value is absolute and supreme. Thus, an old man or woman, a mentally retarded person, a handicapped newborn, a dying cancer patient and their like, all have the same right to life as you or I. In order to preserve a human life, the Sabbath and even the Day of Atonement may be desecrated or set aside and all other rules and laws, save the above three, are suspended for the overriding consideration of saving a human life. The corollary of the principle is that one is prohibited from doing anything that might shorten a life even for a very short time since every moment of human life is of infinite value.

How are these basic principles applied when a physician is confronted with the following dilemma? His extremely ill patient will, under normal circumstances, die shortly, perhaps in a few days or weeks. His patient's only chance for survival is dangerous and/or experimental surgery or therapy. However, if the surgery or therapy fails

to heal, the patient may die immediately. What should the physician do? Should the risk of administering drastic treatment and thereby possibly shortening the life of the patient be taken in the hope that the patient may be cured and life thereby be prolonged? In other words, should the physician abandon the *definite* short life span of the patient in favor of the *possible* significant prolongation of his life?

In his famous responsum, Rabbi Moshe Feinstein states[11] that one is permitted to submit to dangerous surgery even though it may hasten death, if unsuccessful, because of the potential, however small, of the operation being successful and affecting a cure. Israel's former Chief Rabbi Shlomo Goren writes[12] that one should use hazardous experimental therapy in a case not only where the patient will certainly die without the medical or surgical therapy, but also where the possibility exists of prolonging the patient's life by the therapy. Britain's Chief Rabbi, Lord Immanuel Jakobovits, also agrees that hazardous therapy may be applied to patients if it may be potentially helpful to the patient, however remote the chances of success are.[13]

Two earlier rabbinic sources also clearly enunciate the Jewish legal view concerning hazardous therapy for the dying. Rabbi Chayim Ozer Grodzinski (1863-1940) was asked about the permissibility of performing a dangerous surgical procedure on a seriously ill patient. He answered[14] that if all the attending physicians, without exception, recommend such an operation, it should be performed, even if the chances for success are smaller than those for failure. A similar pronouncement is made be Rabbi Jacob Reischer (1670-1733) with regard to dangerous medical therapy for a seriously ill patient.[15] R. Reischer permits such therapy since it may cure the patient although it may hasten the patient's death. R. Reishcer also requires the concurrence of a group of physicians in the decision.

The basic tenet of Judaism is the supreme value of human life. This principle is based in part upon our belief that man was created in the image of G-d. Therefore, when a person's life is in danger, even when there is no hope for survival for a prolonged period but only for a short time, all commandments of the Torah are set aside. Any act which can prolong life supersedes all the biblical commandments except the three cardinal ones.

HEROIC OR EXTRAORDINARY MEASURES

The Medical Ethics Committee of the Federation of Jewish Philanthropies of New York deliberated for nearly a year on the subject of "when not to treat the terminally and incurably ill" and concluded[16] that a patient in a coma, but able to breathe without mechanical assistance, is to be afforded all the care and concern due any ill person. The imminence of death in no way exempts the family or medical team from fully supporting such a patient. Hydration via intravenous infusion, antibiotics to treat infections, and other pharmacological agents to maintain good organ function, must be provided. Whereas a comatose or chronic vegetative state patient may be a serious burden to his family and society, he is not so to himself, being free of physical pain or psychic trauma.

For a non-comatose patient, when a cure is possible, the only limiting factor is availability of the treatment modality. Neither technological complexity nor financial expense should be spared: these are easily justified by the benefit to be accrued – the saving of human life of infinite worth. If cure is not possible and life prolongation is achieved only at great financial burden, the distinction between extraordinary and usual ceases to be an ethical issue at the patient-physician level and becomes a problem of availability of resources with its sociological implications. Extraordinary or heroic methods that do not cause discomfort or introduce new risks of morbidity and fatality, can be offered for patients of very limited life span. However, the physician heals under a divine license which is not without restrictions. These restrictions are defined by various factors, such as the nature of the patient and his condition, the methodology of treatment, the risk-benefit ratio, etc. Where the physician cannot effect a cure, his role becomes one of palliation.

Do heroic or extraordinary measures constitute impediments to dying? How does one define heroic measures? What was heroic ten years ago may be standard practice today. What may be considered heroic for a terminally ill cancer patient may be standard therapy for an otherwise healthy person. When, if ever, may treatment be withheld? May not a terminally ill patient request that his agony not be prolonged? Must a patient in deep coma but breathing without mechanical assistance be afforded all the care and concern due any ill person including hydration via intravenous infusion, antibiotics to treat infections, and optimum care to maintain good kidney, liver and cardiac function? Jewish tradition answers the latter question in the affirmative in view of the supreme value of human life whose preservation takes precedence over virtually all other considerations. Human life is not regarded as a goal to be preserved as a condition of other values but as an absolute basic good.

THE DEFINITION OF DEATH

The definition of death in Jewish law[17] is based on a passage in the Babylonian Talmud[18] which enumerates circumstances under which one may or must desecrate the Sabbath:

> ... every danger to human life suspends the [laws of the] Sabbath. If debris [of a collapsing building] falls on someone and it is doubtful whether he is there or whether he is not there, or if it is doubtful whether he is alive or whether he is dead.... one must probe the heap of the debris for his sake [even on the Sabbath]. If one finds him alive, one should remove the debris but if he is dead, one leaves him there [until after the Sabbath].

The Talmud[19] then explains as follows:

> ...How far does one search [to ascertain whether he is dead or alive]? Until [one reaches] his nose. Some say: Up to his heart... Life manifests itself primarily through the nose as it is written: *In whose nostrils was the breath of the spirit of life* [Genesis 7:22]...

Rashi states that if no air emanates from his nostrils, he is certainly dead. Rashi further explains that some authorities suggest the heart be examined for signs of life, but the respiration test is considered of greatest import.

The Palestinian Talmud[20] quotes certain authorities who require searching "until one reaches the navel," but this is a minority viewpoint.

The above rule establishing absence of spontaneous respiration as the definition of death is codified by Maimonides[21] as follows:

> If, upon examination, no sign of breathing can be detected at the nose, the victim must be left where he is [until after the Sabbath] because he is already dead...

The *Shulchan Aruch*[22] states:

> Even if the victim was found so severely injured that he cannot live for more than a short while, one must probe [the debris] until one reaches his nose. If one cannot detect signs of respiration at the nose, then he is certainly dead whether the head was uncovered first or whether the feet were uncovered first.

Neither Maimonides nor R. Karo seem to require examination of the heart or navel, both mentioned as minority opinions in the Babylonian and Palestinian Talmuds, respectively. Cessation of respiration seems to be the determining physical sign for establishing death.

RECENT RABBINIC WRITINGS ON THE DEFINITION OF DEATH

Recent rabbinic opinions support the classic Jewish legal definition that death is established when spontaneous respiration ceases. Rabbi Moses Schreiber, who asserts that if a person is motionless like an inanimate stone and has no palpable pulse either in the neck or at the wrist, and also has no spontaneous respiration, his soul has certainly departed. But one should wait a short while to fulfill the requirement of Maimonides, who was concerned that the patient may only be in a swoon.[23] Rabbi Sholom Mordechai Schwadron states that if any sign of life is observed in limbs other then the heart and lungs, the apparent absence of spontaneous respiration is not conclusive in establishing death.[24]

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On the other hand, Rabbi Isser Yehudah Unterman states that one is dead when one has stopped breathing. Thus, most talmudic and post-talmudic sages agree that the absence of spontaneous respiration is the only sign needed to ascertain death. A minority would also require cessation of heart action. Thus a patient who has stopped breathing, says R. Unterman, and whose heart is not beating is considered dead in Jewish law.[25]

Rabbi Eliezer Yehudah Waldenberg also defines death as the cessation of respiration and cardiac activity.[26] One must use all available medical means to ascertain with certainty that respiratory and cardiac functions have indeed ceased. A flat electroencephalogram in the face of a continued heartbeat is not an acceptable finding by itself to pronounce a patient dead. Even after death has been established one should wait a while before moving the deceased. Rabbi Moses Feinstein states that if the brain is not functioning, death will occur because breathing will stop.[27] The Talmud and the codes of Jewish law do not indicate, continues R. Feinstein, that the signs of life are in the brain, and it is illogical to say that the nature of man has changed, since even in talmudic days the brain controlled all life-sustaining functions (i.e. respiration). But cessation of brain activity was not considered to be the definition of death. Although the respiration test is paramount, it is clear that "the nose is not the organ which gives life to a human being, nor is it the organ of respiration; rather the brain and the heart give life to man." The nose is the easiest place to recognize the presence of life, concludes R. Feinstein, since a very weak pulse may not be detectable and brain activity is not easily measured on physical examination alone.

A similar conclusion is expressed by Rabbi Immanuel Jakobovitz, who states, in part, that "the classic definition of death as given in the Talmud and Codes is acceptable today and correct. However, this would be set aside in cases where competent medical opinion deems any prospects of resuscitation, however remote, at all feasible".[28]

Rabbi Aaron Soloveitchik, in a very novel approach, states that death is a process which begins the moment spontaneous respiration ceases and ends when all bodily functions emanating from the controlling center, i.e. the brain, end.[29] This means that when a person in whom death is imminent no longer shows signs of respiration but other bodily organs such as the brain are potentially operative, such a person is no longer completely alive but he is not yet dead; death has begun but the death process is not complete until the brain and heart completely cease to function. During this period, a person is in a state of semi-living, not fully alive but not fully dead. Anyone who kills such a person or who hastens his death is therefore, guilty of murder. This is the reason why Maimonides rules that one is not allowed to move a dying person while his soul is departing until after one waits a while. Maimonides refers to a person who is motionless and who has no spontaneous heartbeat or respiration. One must wait half an hour because his brain may still be operative and the patient potentially resuscitable. This "dying" person is in a semi-living state and, therefore, one is prohibited from doing anything which may hasten death.

Rabbi J. David Bleich eruditely traces the Jewish legal attitude concerning the definition of death from talmudic through recent rabbinic sources.[30] He points out that brain death and irreversible coma are not acceptable definitions of death insofar as Jewish law is concerned, since the sole criterion of death accepted by Jewish law is total cessation of both cardiac and respiratory activity. Even when these indications are present, continues R. Bleich, there is a definite obligation to resuscitate the patient, if at all feasible.

TOTAL BRAIN DEATH IN JUDAISM

Rabbi Moshe David Tendler introduced the concept of physiologic decapitation or brain stem death in Judaism as an acceptable definition of death even if cardiac function has not ceased.[31] The thesis at that time was that:[32]

> Absent heartbeat or pulse was not considered a significant factor in ascertaining death in any early religious source. Furthermore, the scientific fact that cellular death does not occur at the same time as the death of the human being is well recognized in the

earliest biblical sources. The twitching of a lizard's amputated tail or the death throes of a decapitated man were never considered residual life but simply manifestation of cellular life that continued after death of the entire organism had occurred. In the situation of decapitation, death can be defined or determined by the decapitated state itself as recognized in the Talmud and Code of Laws. Complete destruction of the brain, which includes loss of all integrative, regulatory, and other functions of the brain, can be considered physiological decapitation and thus a determinant per se of death. Loss of the ability to breathe spontaneously is a crucial criterion for determining whether complete destruction of the brain has occurred. Earliest biblical sources recognized the ability to breath independently as a prime index of life... destruction of the entire brain or brain death, and only that, is consonant with biblical pronouncements on what constitutes an acceptable definition of death, i.e. a patient who has all the appearances of lifelessness and who is no longer breathing spontaneously. Patients with irreversible total destruction of the brain fulfill this definition even if heart action and circulation are artificially maintained.

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Thus, if it can be definitely demonstrated that all brain functions including brain stem function have ceased, the patient is legally dead in Jewish law because he is equated with a decapitated individual whose heart may still be beating. Brain stem function can be accurately evaluated by radionuclide cerebral angiography at the patient's bedside.[33-36] This is a simple, safe, highly specific and highly reliable indicator of absence of blood flow to the entire brain thus confirming total, irreversible brain death. "The absence of cerebral blood flow is presently considered the most reliable ancillary test in diagnosing brain death".[37] Other presently used tests to confirm brain death are the apnea test[38,39] evoked potentials[40], transcranial Doppler studies[41], xenon-enhanced computed tomography[42] and digital subtraction angiography.[43] The electroencephalogram is not a reliable index for the establishment of brain death since it only indicates activity of the cerebral cortex and does not clarify brain stem function at all. Furthermore, electroencephalographic activity can be observed for many hours after "brain death" in both adults[44] and children.[45]

The aforementioned position that complete and permanent absence of any brain-related vital bodily function is recognized as death in Jewish law is supported by Rabbi Moshe Feinstein[46] whose responsum on heart transplantation begins with a discussion of decapitation. Feinstein quotes Maimonides[47] who states that a person who is decapitated imparts ritual defilement to others because he is considered dead even though one or more limbs of the body may yet move spastically, temporarily. The situation is comparable to the severed tail from a lizard which may still quiver temporarily but is certainly not alive.[48] Rabbi Feinstein asserts that "someone whose head has been severed, even if the head and the body shake spastically, that person is legally dead." The requirement of Maimonides, cited earlier in this essay, to wait a while when death is thought to have occurred (i.e. when the patient has no spontaneous respiratory activity) is needed, according to R. Feinstein, in order to differentiate between true death and the situation "where the illness is so severe that the patient has no strength of breath." Since only a few minutes of absent breathing is compatible with life, if the patient is observed for fifteen minutes with no spontaneous respirations, he is legally dead (unless a potentially reversible cause of respiratory absence is present such as hypothermia or drug overdose).

A more recent responsum of Rabbi Feinstein[49] further supports the acceptability of "physiologic decapitation" as an absolute definition of death. He again reiterates the classic definition of death as being the total irreversible cessation of respiration. He then states that if by injecting a substance into the vein of a patient, physicians can ascertain that there is no circulation to the brain, meaning no connection between the brain and the rest of the body, that patient is legally dead in Judaism because he is equivalent to a decapitated person. Where the test is available, continues R. Feinstin, it should be used.

R. Tendler interprets Rabbi Feinstein's written responsa to indicate that Jewish law clearly recognizes that death occurs before all organs cease functioning. Cellular death follows organismal death. Jewish law defines death as an organismal phenomenon involving dissociation of the correlative or coordinating activities of the body. Thus, the only valid definition of death is brain death. The classic respiratory and circulatory death is in reality brain death. Irreversible respiratory arrest is indicative of brain death. A brain dead person is like a physiological decapitated individual. The requirement of Maimonides to "wait awhile" to confirm that the patient is dead is that amount of time it takes after the heart and lung stop until the brain dies, i.e. a few minutes.

In summary, all Rabbis agree that the classic definition of death in Judaism is the absence of spontaneous respiration and heartbeat in a patient with no bodily motion. A brief waiting period of a few minutes to a half hour after breathing has ceased is also required. In the present era, when it is recognized that hypothermia or drug overdose can result in depression of the respiratory center with absence of spontaneous respiration and even heartbeat, this classic definition of death is insufficient. Hence, wherever resuscitation is deemed possible, no matter how remote the chance, it must be attempted. Total brain death is not accepted by all rabbinic scholars to be a criterion for establishing death other than to confirm death in a patient who already has irreversible absence of spontaneous respiration and no heartbeat. The only exception may be the situation of decapitation where immediate death is assumed even if the heart may still be briefly beating. Whether irreversible brain stem death as evidenced by sophisticated medical testing is the Jewish legal equivalent of decapitation is presently a matter of intense debate in rabbinic circles.

THE LIVING WILL

The living will is a method available in many jurisdictions of the United States that recognizes the right of

an adult person to prepare a written directive instructing his physician to withhold life-sustaining procedures in the event of the person's inability to do so while in a "terminal" condition. The living will is designed to promote patient autonomy while removing onerous decision-making from physicians and the patients' families. Experience with the living will indicates that it can either help or hinder clinical decision-making.[50]

The Jewish physician may ponder the moral and ethical considerations involved in the living will: since it is extremely difficult to accurately prognosticate for critically ill patients and to determine whether or not the patient is irreversibly ill and whether or not death is imminent, the provisions of the living will may be activated prematurely. Alternatively, the existence of a living will may deprive the patient of the full efforts of the medical team who might not utilize the usual vigor and aggressive approach dictated by the patient's condition.

If the patient changes his mind during the period when the living will is in effect, yet fails to formally rescind the declaration, it may be activated without proper "informed consent." Moreover, since intractable pain is often a major cause for activating the living will, medical science may be then have developed better methods to deal with such pain. A patient who signs a living will thinks that he is opting for a painless, conscious, dignified, decent, comfortable, peaceful, natural death. In fact, what the patient perceives as his "right to die" may backfire.[51] The living will only protects refusal of treatment but does not guarantee a peaceful easy death. As one writer aptly stated:

> The patient who earlier wished not to be "hooked up on tubes" now begins to experience difficulty in breathing or swallowing. A tracheotomy will relieve his distress but the living will said, "no tracheotomy!" The bowel cancer patient experiences severe discomfort from obstruction, and gives permission for decompression or reductive surgery after all [contrary to or rescinding the provisions of the living will!]. In some cases, the family may engineer the change of heart because they find dying too hard to watch. Health care personnel may view these reversals with satisfaction: "See," they may say, "he really wants to live after all." But such reversals cannot always be interpreted as a triumph of the will to live; they may also be an indication that refusing treatment makes dying to hard.

In essence, Judaism is opposed to the concept of the living will in that the patient may not have the "right to die." He has an obligation to live. Only God gives and takes life. Man does not have full title over his life or body. He is charged with preserving, dignifying and hallowing that life.

CONCLUDING REMARKS

The complexities of the issues relating to death and dying, mercy killing, withholding treatment, heroic measures, discontinuation of life support systems, and the living will, among others, are many. Related issues such as organ transplantation, autopsy, embalming, cremation and suicide in Judaism[52] are beyond the scope of this article.

Jewish tradition views death as inevitable and just. It differentiates between the body and the soul, acknowledging resurrection for the former and immortality for the latter. Respect for death is mandated. Jewish law requires the physician to do everything in his power to prolong life, but prohibits the use of measures that prolong the act of dying. To save a life, all Jewish religious laws are automatically suspended, the only exceptions being idolatry, murder, and forbidden sexual relations such as incest. In Jewish law and moral teaching, "the value of human life is infinite and beyond measure, so that any part of life – even if only an hour or a second – is of precisely the same worth as seventy years of it. Just as any fraction of infinity, being indivisible, remains infinite. Accordingly, to kill a decrepit patient approaching death constitutes exactly the same crime of murder as to kill a young, healthy person who may still have many decades to live...".[13]

"However much Judaism cares about the mitigation of pain, what it does not sanction is the purchase of relief from suffering at the cost of life itself. Any sanction of euthanasia would cheapen life by making its preservation contingent upon considerations of expediency or relative merit."[10] How does Judaism resolve the conflict between the sanctity of life and the relief of human suffering? The concern for the patient's physical and mental welfare remains supreme to the end, and everything must be done to preserve both.

Euthanasia is opposed without qualification in Jewish law, which condemns as sheer murder any active or deliberate hastening of death, whether the physician acts with or without the patient's consent. Some rabbinic views do not allow any relaxation of efforts, however artificial and ultimately hopeless, to prolong life. Others, however, do not require the physician to resort to "heroic" methods, but sanction the omission of machines and artificial life supporting systems that only serve to draw out the dying patient's agony, provided, however, that basic care such as food and water and good nursing and other supportive care is provided.

EPILOGUE

The phrase "quality of life" or "quality of existence" embodies within it a concept of worthiness with connotations of personal character and social status. Should a decision as to whether life is worth living be determined on the basis of pain, suffering, and, as some today suggest, from a consideration of its deviancy from normal? When a person's intellect ceases to function because he is in coma, that person is intellectually dead. When a person cannot function in society because he is mentally deficient or physically malformed, he is socially dead. Should such individuals not be allowed to live because they lack "worthiness"[53]?

Emotional and financial burdens are frequently cited as justification for decisions about "heroic" measures or life support systems for a dying infant or child, a vegetative adult, or a terminally-ill cancer patient. Social costs should remain divorced from such decision-making. The public should rightly assume the fiscal burden associated with maintaining incompetent patients such as Karen Ann Quinlan whose lives are being preserved, albeit in a vegetative state.

Suffering of the family is another reason offered for allowing a patient to die by removing artificial life supports. Precisely because of their closeness to the situation, the family may not be capable of reaching a detached, dispassionate, and objective decision. On this basis, the sanctity of life as a pre-eminent value is being threatened. Evil has small beginnings. When the quality of life replaces the sanctity of life, society has done itself irreparable harm.

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