

The subject of mercy killing is extraordinarily important in modern medical practice. It is a topic to which we will be frequently returning in the pages of JME.

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EUTHANASIA

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Euthanasia or mercy killing is a term used today with wide implications, where the suffering of the patient is not the only deciding factor. In many instances, the suffering or burden caused to the relatives, the hospital or institution in which the patient is placed, or even "society," are factors no less important. Recent judgements in the U.S., where the principle of the "best interest" or "reasonable person" judgement were invoked, i.e. what the court thought the patient would have wanted, had the patient not been unconscious or retarded, conferred on the court the combined status of prophet, prosecutor, judge and even god. The Nazis started by killing the old, the infirm and the insane. Was that euthanasia?! The Torah-observant doctor, nurse or medical aid is exposed to the ethical winds of today, derived from and based solely on what "society" or even the *individual* may accept as moral, but bereft perhaps of any understanding of, or even the need to consider the will of the Creator of all life as taught to us by the Torah and our Sages. Nothing can replace the knowledge gained first hand from a recognised *Posek*, and a discussion with him on each individual situation, together with a serious attempt to study and understand the sources on which decisions are made. Nevertheless, I shall try to put forward the Halachic viewpoint as taught to me by my revered teachers, in particular, Harav S.Z. Auerbach.

We have first to accept, and *then* try to understand three important and overriding principles:

1. The only situation in which one is allowed to kill another person is when the other is a potential murderer, and when only by such killing one might save one's own life or the life of another innocent individual. The Torah defines the potential murderer as a "rodef" (pursuer), and therefore he forfeits life. Consequently, killing someone whose existence is *not* a threat to the life of another is murder, be it a fetus, a newborn infant or an adult.

2. One has no absolute ownership rights on one's own body.¹ The Almighty gave each of us a body and soul for a given time, and it is our duty when the time comes to return both to our Maker, just as one is responsible for, and obligated to look after an article that is given for safe keeping. There are no rights to tamper with life unless for the purpose of preventing its destruction or loss.

3. Life, be it for one hundred and twenty years or a split second is itself of infinite value.² Thus, according to the *Minchat Ch'nuch*,³ even if the prophet Elijah himself were to tell us that a given individual had only a few minutes to live, the Torah does not differentiate between one who kills a child who otherwise might have lived for many years and one who kills a person one hundred years old with only a limited life expectancy. Even if the victim were in any case about to die, the killer is a murderer, in that life has been curtailed, be it only by one second. Defining life in this way means that the quality of life, whether during this second or during the full hundred years, does not alter its infinite value.

Certainly this definition and its corollary may be difficult to accept, when one is confronted with an individual who is suffering severe pain or mental agony, because of a fatal disease, and who prays for an end to life. It is well known that when Rabbi Yehudah Hanassi was dying in pain, his maid servant, contrary to the opinion of his disciples, prayed for his death.⁴ The *Ran*,⁵ based on this episode, actually rules that one may pray for the death of a suffering patient who is in such a condition. This decision is not ratified by many later authorities, or by the *Shulchan Aruch*.⁶ However, the *Tiferet Israel*⁷ and the *Aruch HaShulchan*⁸ both rule like the *Ran*, and one must also remember that the prophets Elijah⁹ and Yona¹⁰ both prayed to die, as did Honi Hama'agal.¹¹ See also the story of Rabbi Yochanan's death,¹² and the examples related in the *Talmud Yerushalmi*¹³ and the *Yalkut Shimoeni*.¹⁴ However neither the *Ran* nor any of the other sources quoted did more than advocate asking the Almighty to release the patient from suffering.

The *Igrot Moshe*¹⁵ writes: It is certainly forbidden to try and prolong the life of a dying person if this were to result in (additional) pain and suffering. To shorten life, however, even a life of agony and suffering is forbidden. If one does so, albeit for reasons of compassion, and even at the request of the patient, one is a murderer and punishable by death.

It is taken for granted that a patient in pain should be treated with any and as much pain-relieving medication, as is

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necessary. Under no circumstances, however, must such medication be administered in order to shorten life.¹⁶

This world is but a corridor to the world to come. It is not for us to question the ways of the Almighty. The enigma of the sufferings of the righteous and the bliss of the wicked remains for us unanswerable. See also the Talmud¹⁷ with regard to Rabbi Akiva's death and the Rambam.¹⁸

I recently treated a patient with end-stage emphysema. This 65 year-old man, who was hypoxic even on eight liters of oxygen per minute, fought for every breath. He painfully managed to gasp out his request that I inject "something to make him sleep forever." He was tired of suffering, tired of burdening his wife and family, and tired of the supreme effort of breathing. Two years previously he had been admitted to our respiratory ICU with pneumonia, and had to be intubated for many days. At the time he had written, "please let me die" (the note was still in his file). Truly an agonising, heart-breaking sight to see such mental and physical pain. Our conversation, on rounds, and in the presence of his wife, did not leave many dry eyes amongst us. What were the last two years like since the admission to the ICU? A living death, worth nothing. Do you have any grandchildren? Yes, four. Do they visit you? Yes, often (his face lights up). And, do you enjoy them? What a question! Every minute is Heaven! Worth living for? No answer. Were these two years wasted? No answer.

Halachah is quite clear and categoric on this point. Under no circumstances may the active killing of a patient be justified or condoned. No matter what, it is an act of murder. The fact that the patient pleads for this to be done does not alter the ultimate responsibility of the perpetrator of one of the three cardinal sins as enunciated in Judaism.

Even more, one is obligated to set aside all the Sabbath rulings by performing what are otherwise Torah-prohibited acts, if this be necessary, in order to save life. And thus writes Harav Auerbach:¹⁹ Though it is obvious to all that the life of a paralysed person is not a valuable life according to our simplistic ideas, and in spite of the very real suffering of the patient and family, nevertheless we are commanded to do everything in our power to prolong life. If such a person takes sick, it is our duty to do everything we can to save his life, even by setting aside the Sabbath. We have no yardstick by which to measure the worth and importance of life, not even in terms of its Torah and Mitzvoth. One must set aside the Sabbath even for one who is old and sick, who may be socially unacceptable because of a revolting external disease, who may be mentally retarded, and incapable of performing any Mitzvah. This is true even though the patient be a severe burden and source of suffering to members of the family, who are themselves thereby prevented from studying Torah and performing Mitzvoth, and even though the patient, in addition to causing others great suffering, imposes a severe financial strain on his family. Moreover, if the patient is suffering so much that it be a Mitzvah to pray for death (see Ran), nevertheless, while one prays to the Almighty that the patient die, one must simultaneously do everything in one's power to save the patient, even if by so doing the Sabbath is repeatedly set aside (see below).

The problem becomes more complicated when one considers passive euthanasia. "Allowing someone to die" can run the whole spectrum, from refraining from treatment or life-saving procedures on the one hand, to withholding food and drink on the other. Refraining from treatment may include not only withholding antibiotics for infection but also

withholding life-sustaining medication such as insulin, blood or oxygen. Which, if any, of these is permitted?

The underlying principle of passive euthanasia, i.e. the removal of causes that prevent the death of the dying patient is well documented. The famous episode of Rabbi Chanina ben Teradion²⁰ who agreed to have the soaking cotton wool removed from his chest so that his death by burning would not be prolonged, is well known. The *Shulchan Aruch* itself²¹ brings examples of what may be permitted in order to remove whatever may be causing the delay of death. As mentioned above, the Ran permits one to pray for a patient's death. The inhabitants of the city of Luz, where no one ever died, went outside the city wall when they tired of life.²² [This Gemara is at first sight difficult to explain since it describes a positive act in that the person walked outside the city walls in order to die. In fact this only led, indirectly, to death by "natural causes." Also, the Talmud merely states what they did, without discussing the rights or wrongs of their action.]

The problem, therefore, is to what extent and under which circumstances may one desist from treating a dying patient. It is obvious from what Harav Auerbach writes that a patient with Alzheimer's disease or with severe cerebral damage, whatever the cause maybe, is still a human being in the fullest sense of the word, and must be considered as such in the context of active euthanasia. Furthermore, according to his view²³ any procedure needed to nourish or sustain the patient must be carried out, even if this can only be carried out by artificial means. Thus, the patient must be given food and drink, even if this may be possible only by naso-gastric feeding tube, feeding jejunostomy or total parenteral nutrition -- exactly as one would do for any other patient who needed this and who had a full chance of recovery. Similarly, the daily insulin requirements must be given, just as one must give oxygen and blood when necessary. I was recently involved in a case of a 68 year old woman who had been on a hemodialysis program for some eighteen months, and who collapsed with a large intracerebral hemorrhage and cardiac arrest. She was intubated and resuscitated. I asked Harav Auerbach whether dialysis should be continued on such a deeply comatose respirator patient. His answer was an unqualified yes; since she was already on such a program this was for her a "normal" procedure.

Many years ago a 63 year old man with end stage diabetic nephropathy, neuropathy, cardiomyopathy and retinopathy was admitted to my care. This blind man who had had a below-knee amputation for gangrene two years previously was admitted with sepsis, congestive cardiac failure and moist gangrene of the other leg. The chances of him living more than a few days without surgical intervention, were obviously nil, but, in view of his extremely poor general condition, the surgeons put his chances of leaving the operating theater alive as small. The man himself refused operation, and wished to be left to die. Harav Auerbach decided that we should not insist on the operation, since this would not be curative of the underlying condition, was highly risky, and would only add to his physical and mental suffering; in addition the patient himself did not want the operation. He died a few days later.

The *Igrot Moshe*²⁴ also writes: If there is no known treatment available for the patient, and there are no means by which to relieve suffering, and all that can be done is to prolong a life of agony for a short while, one must not do so.

A general approach to the problem could therefore be summarized as follows:

- (1) All patients must be given food, drink, oxygen and



other normally accepted life-sustaining measures, even if they have to be given in an unusual manner.

(2) A patient with a chronic, incapacitating, but not terminal illness (i.e. where speedy death is not anticipated), must be treated exactly as any other patient, and full resuscitative measures must be carried out if so required, even if thereby life is likely to be prolonged for only a short while.

(3) A patient with a terminal illness (i.e. is dying), must also be treated, as any other patient, in terms of daily sustenance and accepted medical treatment. However, if the patient is in cardiac and/or respiratory arrest, or develops a complication that requires major treatment programs that will add to suffering, then:

(a) If the arrest is because of the terminal disease as expected in the natural course of the illness, one need not resuscitate, and indeed it may be wrong to do so. Also desperate major measures to prolong the final inevitable death process, which will only add further agony and suffering, are not called for.

(b) If, however, the arrest arises unexpectedly, from a cause unrelated to the underlying disease, or if a complication develops which is unconnected to the disease, full treatment must be given as for any other patient unless this will cause further suffering to the patient over and above that of his basic disease (see quote 21 above).

Thus, in summary, all patients must be given normal sustenance and treatment. The majority of patients should be treated, as indicated, even by major medical or surgical intervention including resuscitation. There will be a small minority of patients (group 3a mentioned above) in whom major intervention and resuscitation would not be appropriate.

Though it is obvious that no two patients and no two cases are alike, it cannot too strongly be made clear that every problem of decisions relating to life and death as enumerated above must not be made without prior consultation with a recognised Rabbinical authority. There is nothing more final than murder.

I must, at this point, add something that in my experience I have found to be easily forgotten or overlooked. The patient is suffering from a terminal illness and is about to die in a few hours or days (group 3a above), and for whom the medical profession has nothing further to offer. Such a patient should be made as comfortable as possible, and treated with the maximum of TLC – tender loving care, including morphine or its equivalent to *relieve pain*, but not for the purpose of *ending life*. Once such a stage, based on the realisation that nothing further of value can be done, has been reached, a second order must be passed on to all involved in the patient's care – no further tests or examinations! Is there any point in routine pulse, temperature or blood pressure recordings, not to speak of blood tests, once such a point has been reached when nothing further of value can be done regardless of any change in the patient's condition? Certainly, if done on the Sabbath, it would be a pointless desecration of the Sabbath. Finally, when close to death, the patient may not be moved or touched.²⁵ [This obviously does not apply to a patient who may still be viable.]

What about the baby born with an untreatable rapidly fatal heart defect? Or the anencephalic baby? Are they considered "alive" and therefore everything necessary to keep them alive must be done for them on the Sabbath? Or are they to be considered as already "dead" (since we know that they will not live for 30 days), meaning not only that nothing must

be done for them on the Sabbath, even if this involves a Rabbinical prohibition only, but also that organs may be removed from them for transplantation even in the presence of spontaneous respiration and heart beat? The Talmud²⁶ states: Under certain circumstances a baby born in the 8th month of gestation is likened to a stone, and may not be moved (on the Sabbath), but the mother may lean over him so that she may suckle, because of the danger. Rashi explains that "danger" refers to the mother, since excess of milk may lead her to illness. Thus, at first sight, we see that were it not for the mother's suffering, then at the time of the Talmud, a baby born, under certain circumstances, at eight months of gestation would not live for 30 days, was considered to be already "dead". Thus one may not desecrate even the Rabbinical ordinances of the Sabbath in order to feed it. However the *Yad Rama*²⁷ and Rashi elsewhere²⁸ both explain "the danger" as being applicable to both the baby or the mother. Therefore Harav Auerbach explains the Gemara to mean: (a) that only in such a case where the baby lay motionless and unresponding "like a stone", and (b) when it was premature; only in such a case would it be prohibited to desecrate the Sabbath even if by so doing one might prolong "life" by a few hours or days, remembering that we are referring to a baby who is held *definitely* to die within 30 days. However, if the baby moves and responds to stimuli, then it should be treated as normal even if it is certain that it will live for only a few days, and even if it means desecrating the Sabbath. This is all the more so if the baby were born at term.

The anencephalic child (both complete and incomplete) will certainly die within 30 days of birth, and 99%, within 72 hours. However, it will move its limbs, make crying noises and suck (all of these are spinal reflexes since no cerebrum is present). Harav Zilberstein has stated that it would be permissible to abort such a *fetus* since it is not considered alive, and is within the category of a "nevelah." His ruling is based on the Gemara²⁹ and Rambam³⁰ that such a fetus, when born, does not render the mother ritually unclean. What, however, is its status once born? The *Pitche Teshuvah*³¹ quotes the ruling of the *Tshuvah MeAhavah*, a member of the Beth Din of the *Noda BeYehudah* who ruled that the fact that a child does not render the mother ritually unclean as a result of its birth does not mean that one has the right to kill it. To kill it would be tantamount to murder, though this be brought about passively, such as by starvation. On the contrary, death by starvation would be worse, for the sin of cruelty would be added to the sin of murder. Harav Auerbach concurs with this ruling of the *Tshuvah MeAhavah*, and wrote me that even though it would probably be permissible to *abort* such a fetus, but once born, it may not be killed, and one would have to desecrate the Sabbath on its behalf if necessary, especially if it were born at term. However, if such a baby stopped breathing or suffered cardiac arrest, resuscitation need not be carried out.

As I have written above, there are many problems and apparent contradictions, just as life itself is full of contradictions. Our approach to these problems of life and death should be with humility, and the realisation of our fallibility and lack of absolute Knowledge, with complete acceptance of the tenets of the Torah as *expounded by our Sages*, with the readiness to listen to and put into practise what *they* tell us, and with the willingness to control our emotions, even those of pity and compassion, within the boundaries set by the Torah. Only thus may we again achieve the heights we all reached at Mount Sinai when as one, we

vowed "Naase VeNishma."

It behooves us all to read and read again what the Rambam writes:³² It is fitting to give thought to the Laws of our Holy Torah and to delve into their meanings to the best of our ability. And, if one does not find a logical reason for or does not understand something, it must not then become unimportant in one's eyes. One must not attempt to reach the understanding of the Almighty since this will surely lead to harm; neither must one think of the Torah with the same human "logic" with which one faces one's daily problems. Come and see how strict the Torah is with the Laws of wrongful use of things that were sanctified. If sticks and stones, dust and ashes, once a human being has dedicated them even by word of mouth only, become truly sanctified, and one who desecrates such sanctity is held guilty, and is required to bring a sacrificial offering, even if the act were

unintentional, then how much more so that the commandments that were given to us by the Almighty may not be transgressed and belittled, just because we do not fully understand their meaning, etc.

In the modern world of fast-moving technological medicine in which we live, where today's taboo is tomorrow's routine, and where yesterday's unthinkable becomes today's debatable and then tomorrow's unexceptional, we, as religious and believing Jews must strengthen and reaffirm our faith in the Almighty and His Torah, as the ultimate, and indeed the only way to lead and shape every part, not only of our lives, but also of our very thoughts. This is incumbent on us even if it forces us to reach the unpalatable realization and conclusion that we are fallible in our logic and understanding.

על כרחק אתה חי ועל כרחק אתה מת ועל כרחק אתה עתיד ליתן דין וחשבון לפני מלך מלכי המלכים הקדוש ברוך הוא

17	מנחות בט ע"ב. ברכות כט ע"ב.
18	רמב"ם הל' סוטה פ"ג ה"כ.
19	הלכה ורפואה ח"ג עמ' ס.
20	ע"ז יח ע"א. וראה בשו"ת אג"מ יו"ד ח"ב סי' קעד ענף ג חו"מ ח"ב סי' עג סע' ג וסי' עד סע' ב.
21	יו"ד סי' שלט סע' א ברמ"א.
22	סוטה מו ע"ב.
23	נשמת אברהם יו"ד סי' שלט ס"ק ה.
24	חו"מ ח"ב סי' עב וסי' עה.
25	יו"ד סי' שלט סע' א.
26	שבת קלה ע"ה.
27	כ"ב י ע"א.
28	יבמות פ ע"ב.
29	גדה כד ע"א.
30	איסור"ב פ"י ה"א.
31	יו"ד סי' קצר ס"ק ה.
32	סוף הל' מעליה.

1	שו"ת אג"מ יו"ד ח"ג סי' קמ.
2	גשר החיים ח"א פ"ב סע' ב הערה 3. הרפואה ויזהרות עמ' 152. ועיין גם בשו"ת שרידי אש ח"ב סי' עח.
3	מצוה לד.
4	כתובות קד ע"א.
5	נדרים מ ע"א.
6	שו"ת ציץ אליעזר ח"ה. רמת רחל סי' ה וח"ט סי' מז.
7	סוף יומא. בועז אות ג.
8	יו"ד סי' שלה סע' ג.
9	מלכים א, יט:ד.
10	יונה ד:ח.
11	תענית כג ע"א.
12	ב"מ פד סוף ע"א.
13	שבת פי"ט סוף ה"ב.
14	פ' עקב סי' תתעא. משלי סי' תתקמג.
15	יו"ד ח"ב סי' קעד.
16	נשמת אברהם יו"ד סי' שלט סוס"ק ד בשם הגרש"ו אויערבאך שליט"א. ועיין באסיא, סיון תשמ"מ עמ' 39.