

Euthanasia

Until relatively recently, medical science offered all or nothing in its treatment of virtually all illnesses and defects. Either the patient responded to treatment, when treatment was available, and was cured, or else he succumbed as a result of his malady. Such dichotomous situations generated few moral dilemmas for the medical practitioner. Patients, by and large, sought treatment and physicians strained to do all that was in their power in order to effect a cure. To be sure, theologians and ethicists agonized over such questions as the moral legitimacy of euthanasia for patients who found continued existence too painful to bear and the extent to which the patient was obliged to seek extraordinary means in effecting a cure; but the number of people with regard to whom such perplexities were germane was rather small.

In recent years medical science and technology have made tremendous strides. Some diseases have been virtually eradicated; for others, effective remedies have been found. Concomitantly, ways and means have been developed which enable physicians to sustain life even when known cures do not exist. While heretofore untreatable conditions now respond to medical ministrations, such response is often less than total. In such cases, questions with regard to the value of the life which is preserved become very real.

The physician's practical dilemma can be stated in simple terms: to treat or not to treat. In deciding whether or not to initiate or maintain such treatment, the physician is called upon to make not only medical, but also moral determinations. There are at least two distinguishable components which present themselves in all such quandaries. The first is a value judgment. Is it desirable

that the patient be treated? Should value judgments be made with regard to the quality of life to be preserved? The second question pertains to the personal responsibilities of the physician and of the patient. Under what circumstances, and to what extent, is the physician morally obligated to persist in rendering aggressive professional care? Is the patient always obliged to seek treatment for prolonging of life even though a cure is not anticipated?

Jewish teaching with regard to these questions is shaped by the earlier stated belief that not only is human life in general of infinite and inestimable value, but that every moment of life is of infinite value as well. Accordingly, obligations with regard to treatment and cure are one and the same, whether the person's life is likely to be prolonged for a matter of years or merely for a few seconds. An exception is made only for the case of a person in a state of *gesisah*, i.e., a moribund patient (as defined by Halak-hah) in whom the death process has actually begun. Thus, even on the Sabbath, efforts to free a victim buried under a collapsed building must be continued even if the victim is found in such circumstances that he cannot survive longer than a brief period of time.¹ Sectarians such as the Sadducees, who lived during the period of the Second Commonwealth, and the Karaites of the Geonic period, who challenged these provisions of Jewish law and, by implication, the value system upon which they are predicated, were branded heretics.²

Life with suffering is regarded as being, in many cases, preferable to cessation of life and with it elimination of suffering. The Talmud, *Sotah* 22a, and Maimonides, *Hilkhot Sotah* 3:20, indicate that the adulterous woman who was made to drink "the bitter waters" (Numbers 6:11-31) did not always die immediately. If she possessed other merit, though guilty of the offense with which she was charged, the waters, rather than causing her to perish immediately, produced a debilitating and degenerative state which led to a protracted termination of life. The added longevity, although accompanied by pain and suffering, is viewed as a privilege bestowed in recognition of meritorious actions. Life accompanied by pain is thus viewed as preferable to death. It is this sentiment which is reflected in the words of the Psalmist, "The Lord has indeed chastened me, but He has not left me to die" (Psalm 118:18).

The practice of euthanasia—whether active or passive—is con-

trary to the teachings of Judaism. Any positive act designed to hasten the death of the patient is equated with murder in Jewish law, even if death is hastened only by a matter of moments. No matter how laudable the intentions of the person performing an act of mercy-killing may be, his deed constitutes an act of homicide.

"But your blood of your lives will I require; from the hand of every beast will I require it; and from the hand of man, from the hand of a person's brother, will I require the life of man" (Genesis 9:5). This detailed biblical prohibition against homicide contains one phrase which is an apparent redundancy. Since the phrase "from the hand of man" pronounces man culpable for the murder of his fellow-man, to what point is it necessary for Scripture to reiterate "from the hand of a person's brother will I require the life of man"? Fratricide is certainly no less heinous a crime than ordinary homicide. R. Ya'akov Zevi Mecklenburg, in his commentary on the Pentateuch, *Ha-Ketav ve-ha-Kabbalah*, astutely comments that while murder is the antithesis of brotherly love, in some circumstances the taking of the life of one's fellow-man may be perceived as indeed being an act of love par excellence. Euthanasia, designed to put an end to unbearable suffering, is born not of hatred or anger, but of concern and compassion. It is precisely the taking of life, even under circumstances in which it is manifestly obvious that the perpetrator is motivated by feelings of love and brotherly compassion, which the Torah finds necessary to brand as murder, pure and simple. Despite the noble intent which prompts such an action, mercy-killing is proscribed as an unwarranted intervention in an area which must be governed only by God Himself. The life of man may be reclaimed only by the Author of life. As long as man is yet endowed with a spark of life—as defined by God's eternal law—man dare not presume to hasten death, no matter how hopeless or meaningless continued existence may appear to be in the eyes of a mortal perceiver.

Jewish law with regard to care of the dying is spelled out with care and precision. The terminal patient, even when he is a *goses*, i.e., a person who has become moribund and whose death is imminent, is regarded as a living person in every respect. One must not pry his jaws, anoint him, wash him, plug his orifices, remove the pillow from underneath him or place him on the ground.³ It is also forbidden to close his eyes "for whoever closes the eyes

with the onset of death is a shedder of blood."⁴ Each of these acts is forbidden because the slightest movement of the patient may hasten death. As the Talmud puts it, "The matter may be compared to a flickering flame; as soon as one touches it, the light is extinguished."⁵ Accordingly, any movement or manipulation of the dying person is forbidden.

Passive euthanasia involving the omission of a therapeutic procedure, or the withholding of medication, which could sustain life is also prohibited by Jewish law. The terminal nature of an illness in no way mitigates the physician's responsibilities. The physician is charged with prolonging life no less than with effecting a cure.

Elimination of pain is certainly a legitimate and laudable goal. According to some authorities it is encompassed within the general obligation to heal;⁶ it is certainly mandated by virtue of the commandment "Love thy neighbor as thyself." Yet when the dual goals of avoidance of pain and preservation of life come into conflict with one another, Judaism recognizes the paramount value and sanctity of life and, accordingly, assigns priority to preservation of life. Thus, a number of authorities have expressly stated that non-treatment or withdrawal of treatment in order for the patient to be freed from pain by death constitutes euthanasia and is not countenanced by Judaism.⁷ This remains the case even if the patient himself pleads to be permitted to die. As stated by one prominent authority, "Even if the patient himself cries out, 'Leave me be and do not give me any aid because for me death is preferable' " everything possible must be done on behalf of the patient.⁸

Nevertheless, everything possible should be done to alleviate the patient's suffering. This includes aggressive treatment of pain even to a degree which at present is not common in medical practice. Physicians are reluctant to use morphine in high dosages because of the danger of depression of the cerebral center responsible for respiration. The effect of such medications is that the patient cannot control the muscles necessary for breathing. However, as has been discussed in the preceding chapter, there is no halakhic objection to providing such medication in order to control pain in the case of terminal patients and maintaining such patients on a respirator. Similarly, there is no halakhic objection to the use of heroin in the control of pain in terminal patients. The danger of addiction under such circumstances is, of course, hardly a significant consideration. At present, the use of

heroin is illegal even for medical purposes. Judaism firmly believes that everything in creation is designed for a purpose. Alleviation of otherwise intractable pain is a known beneficial use of heroin. Marijuana is effective in alleviating nausea which is a side-effect of some forms of chemotherapy. There is every reason to believe that these drugs were given to man for the specific purpose of controlling pain and discomfort. Jewish teaching would enthusiastically endorse legislation legalizing the use—with adequate accompanying safeguards—of these substances in the treatment of terminal patients.

In discharging his responsibility with regard to prolongation of life the physician must make use of any medical resources which are available. However, as shown earlier, he is not obligated to employ procedures which are themselves hazardous in nature and may potentially foreshorten the life of the patient. Nor is either the physician or the patient obligated to employ a therapy which is experimental in nature.

Jewish law, however, makes no distinction between "natural means," such as food or drink, and artificial means, such as drugs and medications. Rambam in his *Commentary on the Mishnah, Pesachim* 4:9, draws a cogent parallel between food and medication. God created food and water; we are obliged to use them in staving off hunger and thirst. God created drugs and medicaments and endowed man with the intelligence necessary to discover their medicinal properties; we are obliged to use them in warding off illness and disease. Similarly, God provided the materials and the technology which make possible catheters, intravenous infusions, and respirators; we are obligated to use them in order to prolong life.

Medication, therefore, may not be withheld from an incurable patient. Thus, for example, insulin may not be withheld from a diabetic who suffers from debilitating terminal illness in order to hasten his demise. By the same token, Jewish law recognizes no distinction between "ordinary" and "extraordinary" modes of therapy. The obligation to preserve and prolong life requires the use of any available mode of therapy, subject to the limitations which have been discussed. Indeed, terms such as "extraordinary means" and "heroic measures" are alien to the vocabulary of rabbinic literature.

For these same reasons, Judaism cannot sanction a "living will"

or the provisions of legislation such as the Natural Death Acts which have been enacted by a number of state legislatures. Such legislation is designed to bind the physician to respect the wishes of the patient and, under certain conditions, to withhold or withdraw life-sustaining procedures in the event of a terminal malady. Judaism denies man the right to make judgments with regard to quality of life. The category of *pikuach nefesh* extends to human life of every description, including the feeble-minded, the mentally deranged, and even persons in a so-called vegetative state. The *mitzvah* of saving a life is neither enhanced nor diminished by virtue of the quality of life preserved. Nor, in the final analysis, does the desire of the patient to have, or not to have, his life prolonged play a role in the halakhic obligation to initiate or maintain life-sustaining procedures.

Judaism does not perceive the overriding obligation to preserve life to be in any way antithetical to "death with dignity." It is Judaism which teaches that the human body must be accorded every sign of dignity in death as well as in life. But the struggle for life is never an indignity. The attempt to sustain life, by whatever means, is naught but the expression of the highest regard for the precious nature of the gift of life and of the dignity in which it is held.

It is quite true that man has the power to prolong life far beyond the point at which it ceases to be either productive or pleasurable. Not infrequently, the patient, if capable of expressing his desires and allowed to follow his own inclinations, would opt for termination of a life which has become a burden both to others and to himself. Judaism, however, teaches that man does not enjoy the right of self-determination with regard to questions of life and death. Generations ago our Sages wrote, "Against your will you live; against your will you die."⁹ While conventionally understood as underscoring the irony that a baby wishes to be born no more than an adult wishes to die, these words today take on new meaning. They may be taken quite literally as an eloquent summary of the Jewish view with regard to both euthanasia and the withholding of life-sustaining treatment. Judaism has always taught that life, no less than death, is involuntary. Only the Creator, who bestows the gift of life, may relieve man of that life, even when it has become a burden rather than a blessing.

Although euthanasia in any form is forbidden, and the hasten-

ing of death, even by a matter of moments, is regarded as tantamount to murder, there is one situation in which treatment may be withheld from the moribund patient in order to provide for an unimpeded death. While the death of a *goses* may not be hastened, there is no obligation to perform any action which will lengthen the life of the patient in this state. The distinction between an active and a passive act applies to a *goses* and to a *goses* only. When a patient is, as it were, actually in the clutches of the angel of death and the death process has actually begun, there is no obligation to heal. Therefore, Rema permits the removal of "anything which constitutes a hindrance to the departure of the soul, such as a clattering noise or salt upon his tongue . . . since such acts involve no active hastening of death, but only the removal of the impediment."¹⁰ Some authorities not only sanction withholding of treatment but prohibit any action which may prolong the agony of a *goses*.¹¹ Other authorities (*Bi'ur Halakhah, Orach Chaim* 329:2, and Rabbi Eliezer Waldenberg, *Ramat Rachel*, no. 28) insist that the life of a *goses* may not be shortened even passively by withdrawal of medication. They apparently are of the opinion that withholding of medical therapy is not analogous to removal of an impediment, such as a clattering noise or salt upon the tongue, which hinders the soul's departure. The latter are apparently considered to be in the category of *segulot*, i.e., non-natural and not proximately causal in nature, whereas drugs and medications are in the realm of rationally explainable, causally effective procedures. Alternatively, a distinction may be drawn between the state of *gesisah*, during which time the patient must be treated, and the actual moment of departure of the soul from the body, at which time man should not intervene.

It cannot be overemphasized that even the earlier cited permissive authorities sanction acts of omission only when the patient is in a state of *gesisah*. At any earlier stage withholding of treatment is tantamount to euthanasia. What are the criteria indicative of the onset of this state? Rema defines this state as being that of the patient who "brings up a secretion in his throat on account of the narrowing of his chest."¹² Of course, if the condition is reversible there is an obligation to heal. When the condition of *gesisah* is irreversible there is no obligation to continue treatment and, according to some authorities, even a prohibition against prolonging the life of the moribund patient.

Rema's description, while a necessary criterion of *gesisah*, is certainly not a sufficient one. Were the patient to present this symptom but in the opinion of medical practitioners be capable of survival, he would clearly not be considered a *goses* and all usual obligations would remain in force. Moreover, the physiological criteria of *gesisah* must be spelled out with care. It is surely clear that a patient whose life may be prolonged for weeks and even months is not yet moribund; the actual death process has not yet started to commence and hence the patient is not a *goses*. The halakhic provisions governing care of a *goses* may most emphatically not be applied to all who are terminally ill.

It appears that any patient who may reasonably be deemed capable of potential survival for a period of seventy-two hours cannot be considered a *goses*. If the patient is capable of surviving this length of time, the death process cannot be deemed to have commenced. It would appear that Halakhah assumes axiomatically that the death process or the "act of dying" cannot be longer than seventy-two hours in duration. This is evidenced by the ruling that one must commence to observe the laws of mourning three days after a relative has been observed in a state of *gesisah*.¹³ Some authorities even permit a wife to remarry in the absence of witnesses testifying to the actual death of the husband provided that testimony is forthcoming to the effect that her husband was observed in a state of *gesisah*. These authorities maintain that the testimony of witnesses with regard to *gesisah*, *ipso facto*, constitutes legal proof of a state of widowhood commencing three days following the onset of *gesisah*.

It appears that this state is not determined by a patient's ability to survive for this period solely by natural means unaided by drugs or medication. The implication is that a *goses* is one who cannot, under any circumstances, be maintained alive for a period of seventy-two hours. Testimony with regard to the existence of a state of *gesisah* as conclusive evidence of impending death implies that the state is not only irreversible but also not prolongable even by artificial means. Otherwise there would exist a legal suspicion that life may have been prolonged artificially by means of extraordinary medical treatment. The obvious conclusion to be drawn is that if it is medically feasible to prolong life, the patient is indeed not a *goses* and, therefore, in such instances there is a concomitant obligation to preserve the life of the patient as long as possible.

It follows that a specific physiological condition may or may not correspond to a state of *gesisah* depending upon the state of medical knowledge of the day. When medical care is of no avail and the patient manifesting the symptoms described by Rema is expected to expire within seventy-two hours, he is deemed to be in the process of "dying." When, however, medication can prolong life, such medicine, in effect, delays the onset of the death process. Accordingly, the patient who receives medical treatment enabling him to survive for a period of three days is not yet in the process of "dying." It follows, therefore, that those responsible for his care are not relieved of their duty to minister to his needs and to postpone the onset of death by means of medical treatment.

The aggressiveness with which Judaism teaches that life must be preserved is not at all incompatible with the awareness that the human condition is such that there are circumstances in which man would prefer death to life. The Gemara, *Ketubot* 104a, reports that Rabbi Judah the Prince, redactor of the Mishnah, was afflicted by what appears to have been an incurable and debilitating intestinal disorder. He had a female servant who is depicted in rabbinic writings as a woman of exemplary piety and moral character. This woman is reported to have prayed for his death. On the basis of this narrative, the thirteenth-century authority, Rabbenu Nissim of Gerondi, in his commentary on *Nedarim* 40a, states that it is permissible, and even praiseworthy, to pray for the death of a patient who is gravely ill and in extreme pain. He chides those who are remiss in discharging the obligation of visiting the sick, remarking of such an individual ". . . not only does he not aid [the patient] in living but even when [the patient] would [derive] benefit from death, even that small benefit [prayer for his demise] he does not bestow upon him."

Although man must persist in his effort to prolong life, he may, nevertheless, express human needs and concerns through the medium of prayer. There is no contradiction whatsoever between acting upon an existing obligation and pleading to be relieved of further responsibility.¹⁴ Man may beseech God to relieve him from divinely imposed obligations when they appear to exceed human endurance. But the ultimate decision is God's, and God's alone. There are times when God's answer to prayer is in the negative. But this, too, is an answer.

Contemporary rabbinic writers point out that even after Rabbi Judah's servant expressed her feelings and conveyed information regarding her master's pain and discomfort to his disciples, they not only declined to join her in prayer for his decease but did not desist from praying for prolongation of his life.¹⁵

There is one responsum in particular which deals with the question of prayer for termination of suffering through death, but which has important implications for decision-making in general. R. Chaim Palaggi, *Chikehei Leo*, I, *Yoreh De'ah*, no. 50, accepts the view of Rabbenu Nissim but expresses an important caveat. According to this authority, only totally disinterested parties may, by even so innocuous a method as prayer, take any action which may lead to a premature termination of life. Husband, children, family, and those charged with the care of the patient, according to R. Palaggi, may not pray for death. The considerations underlying this reservation are twofold in nature: (1) Those who are emotionally involved, if they are permitted even such non-physical methods of intervention as prayer, may be prompted to perform an overt act which would have the effect of shortening life and thus be tantamount to euthanasia. (2) Precisely because of their closeness to the situation, they are psychologically incapable of reaching a detached, dispassionate, and objective decision in which considerations of patient benefit are the sole controlling motives. The human psyche is such that the intrusion of emotional involvement and subjective interest preclude a totally objective and disinterested decision.

Decisions that available therapeutic methods shall not be employed because they are hazardous or of insufficiently demonstrated efficacy, or a decision that the patient is already in a state of *gesisah*, are also subject to unconscious bias because of the inability of the family and physician totally to transcend their personal and emotional involvement with the patient. It must, therefore, be stressed that Jewish scholars have long insisted that the pertinent facts be placed before a qualified rabbinic authority for adjudication on a case-by-case basis.

NOTES

1. *Orach Chaim* 329:4.
2. See J. Hamburger, *Real Encyclopaedia für Bibel und Talmud*, Supple-

ment, II (Leipzig, 1901), p. 37; H. J. Zimmels, *Magicians, Theologians and Doctors* (London, 1952), p. 172, note 72.

3. *Yoreh De'ah* 339:1.

4. *Loc. cit.*

5. *Shabbat* 151b and *Sanachot* 1:4.

6. See R. Eli'ezer Waldenberg, *Tzitz Eli'ezer*, XIII, no. 87. See also R. Natab Zc'ev Friedman, *Ha-Tovah ve-ha-Medinah*, V-VI (5713-5714), 229; and R. Iser Y. Unterman, *Torah she-be'al Peh*, XI (5729), 14.

7. Cf. however, R. Isaac Liebes, *Teshuvot Bet Avi*, II, no. 153, p. 113. There may be room for an argument in support of withholding treatment in face of intractable pain so severe that the patient would willingly expend an entire fortune in return for its alleviation; cf. R. Abraham I. Kook, *Mishpat Kohan*, no. 144, sec. 17; and R. Moshe Feinstein, *Iggrot Mosheh*, *Yoreh De'ah*, II, no. 174, p. 294. See also *Shitah Mekubetzet*, *Ketubot* 33b, s.v. *u-be-kuntresin*.

8. *Tzitz Eli'ezer*, IX, no. 47, sec. 5.

9. *Ethics of the Fathers* 4:22.

10. *Yoreh De'ah* 339:1.

11. *Teshuvot Bet Ya'akov*, no. 59; *Iggrot Mosheh*, *Yoreh De'ah*, II, no. 174. Cf. also R. Moses Isserles, *Darkei Mosheh*, *Yoreh De'ah* 339. However, *Shevut Ya'akov*, I, no. 13; *Bi'ur Halakhah*, *Orach Chaim* 329:2; and R. Eli'ezer Waldenberg, *Ramat Rachel*, no. 29, see no prohibition against prolonging the life of a *goses*; the latter two authorities view prolongation by means of accepted medical treatment as obligatory.

12. *Even ha-Ezer* 121:7 and *Choshen Mishpat* 211:2. See also the commentaries of Rambam and *Tosefot Yom Tov*, *Eruvin* 1:3.

13. *Yoreh De'ah* 339:2. See also *Derishah*, *Tur*, *Yoreh De'ah* 339:5, and *Teshuvot Bet Avi*, II, no. 153, p. 109.

14. See R. Shlomo Zalman Auerbach, *Halakhah u-Refu'ah*, ed. R. Moshe Hirshler, III (Jerusalem, 5743), 60. Cf. *Tiferet Yisra'el*, *Yoma*, *Bo'az* 8:3 and R. Moshe Feinstein, *Iggrot Mosheh*, *Choshen Mishpat*, II, no. 74, sec. 1.

15. *Ramat Rachel*, no. 5, and *Tzitz Eli'ezer*, IX, no. 47.