Death and euthanasia in Jewish law

Jacob, Walter

Pittsburgh, 1995

END-STAGE EUTHANASIA

urn:nbn:de:kobv:517-vlib-10100

END-STAGE EUTHANASIA
Some Other Considerations

Walter Jacob

Death and euthanasia bring us face to face with some of the basic problems of modern medical ethics. The advances in medical technology have caused problems for the patient and family, the health care institution and its personnel, as well as the government. The matter, however, goes far beyond medical technology and its advances.

Judaism has always been a highly optimistic religion with a love of life which permeates every aspect of it. That positive view has come from the creation story with its continuous refrain "and it was good." For human life, the statement went even further, "and it was very good." Life had supreme value and was to be sustained even through the violation of other Divine commandments. This thought was paramount and all commandments except those which forbade murder, incest, and idolatry could be voided to save a human life.[1] This has meant that any thought of killing another person even for some supposed benefit to that person was abhorrent.[2]

Euthanasia has, therefore, been completely foreign to Judaism. The stance of Judaism was absolutely clear in the interpretion of the early rabbinic literature, the later codes and the subsequent responsa. We continue to take this as our normative position. We reject efforts to eliminate individuals with genetic defects. The only possible exception to this rule may be end-stage euthanasia which we wish to discuss in this essay.

A variety of issues demand our attention. A new light has been shed on the traditional way of looking at euthanasia by my colleagues Peter Knobel and Leonard Kravitz in their papers. As I have also shown elsewhere, the Orthodox hesitation about end-stage euthanasia has been established on a weak and largely anecdotal foundation. Furthermore two of the tales normally used actually point in a different direction.

The story of the execution of Haninah ben Teradion indicated that an outside party could assist someone to an easier death[3] while the story of the old woman who ceased her prayers and died after three days indicated that it is permissible for the individual involved to hasten his/her death as well.[4] These tales alone are enough to have us rethink our position toward end-stage euthanasia. We must take a variety of matters into consideration as we review end-stage euthanasia.

Let us begin with the role of healing and the physician in our Tradition. This has evolved and changed since Biblical times and again been altered in our own age. This has led to a different role for the physician in the decisions made at the end of life. We must review our understanding of quality of life concerns and our definition of the *goses*.

Finally, we must consider the economic consequences of medical procedures. These will ultimately determine governmental policy. In the expanding American economy of the latter part of the twentieth century, economic considerations have not played a major role. Medical technology has been allowed to progress with very few restrictions. We are, however, coming to the end of that period and realize that we are among the few countries in which we can discuss these issues before economic considerations overwhelm us. How shall we balance the limited funds available for medical use with extremely expensive technologies which may add only marginally to a human life? Our Tradition, along with other religious traditions, must address this issue otherwise it will be left entirely to the utilitarian forces of government.

Each of these matters will be discussed briefly with a full realization that we can only begin, perhaps to ask appropriate questions and point to some possible solutions.

HEALING AND THE JEWISH PHYSICIAN

We shall start with the status of healing and the physician within Judaism. They have certainly not been clearly delineated by the religion of Israel in Biblical times. A wide variety of passages indicate that God is the ultimate healer and also the source of disease, "If you will diligently harken to the voice of the Lord your God and will do that which is right in His eyes and will give ear to His commandments, keep all his statues, I will put none of the diseases upon you which I have put upon the Egyptians for I am the Lord who heals you," or a passage from the time of the kings: "In the thirty-ninth year of his reign Asa was diseased in his feet; his disease was exceedingly grave; yet in his disease he sought not the Lord, but the physicians, and Asa left with his fathers and died in the forty-first year of his reign." Jeremiah expresses some doubts: "Is there no balm in Gilead? Is there no physician there? Why then is not the health of the daughter of my people recovered?" Job is not enthusiastic: "Physicians are of no value."[5] These passages may represent two possible theological views. In the first, God controls and human beings have no autonomy. In the second, human beings possess autonomy, but, as Jews, have surrendered much of it through entering a covenant with God.

The Bible has also expressed two different views about healing; Exodus states: "And if men fight and one smite the other with a stone or with his fist and he does not die but stays in his bed, if he rises again and walks abroad upon his staff, then shall he that struck him be quit; only he shall pay for the loss of his time and shall cause him to be thoroughly healed."[6] A physician may have been involved in the healing process here.

In another place we hear of the foreign general Naaman who came to Israel seeking a cure, and he was healed by God. This dual view of God as the healer versus the physician was continued by the post-Biblical books which were excluded from the canon. Ben Sirach

seems to feel that the physician's help should be sought, but he has been instructed by God while in the *Book of Tobit*, the physician did not succeed and Tobit was miraculously healed.[7] The Bible was not particularly concerned with medicine in contrast to the other ancient Near Eastern societies as Egypt and Mesopotamia.[8]

Although no clear path was set by Scripture, the Mishnah, Talmud and Midrashim heavily favored medical intervention with numerous statements in praise of physicians as well as a few which cast doubt on their efforts. This was part of the Hellenistic influence upon Judaism. Many texts take it for granted that physicians will be used, others require it, while a few would have those who are ill rely on God alone. The strongest negative feelings were expressed by the statement: "The best of physicians is destined for *gehenna,"* but even this statement assumed that physicians were widely used. Other texts make it clear that those who rely on the physician should not see this as a denial of God as the ultimate healer.[9]

In later Jewish times only Karaite writers continued to oppose medical intervention, however I do not know whether this was followed by the Karaite community which usually lived in close contact with rabbinate Jews. The medieval scholar/physicians do not comment on this behavior within the Karaite communities with which they must have been familiar.[10]

A few great medieval rabbinic scholars opposed or limited the use of medicine. Among them were Nahmanides who was himself a physician and Ibn Ezra who felt that a physician should appropriately deal only with external diseases.[11]

God remains as the ultimate healer for all rabbinic Jews as indicated by the liturgical paragraph in the *Amidah* which praises God "who heals the sick," a statement found in traditional and liberal prayer books.

In the Mishnaic period or a bit earlier, medical care by physicians became general.[12] The discussion of anatomical details, numerous symptoms, and medical treatments in the Talmud and the later *halakhic* literature indicated that medical treatment and the intervention of the physician was normative. There are thousands of references scattered throughout the Talmudic and Midrashic literature, not to speak of the later responsa.[13] The detailed discussions encouraged all Jews to make a maximum use of whatever medical techniques existed.

These discussions, of course, continued in the later *halakhic* literature up to the present day. Despite the large number of references, no tractate of the Talmud dealt exclusively with medicine or medical ethics. The earliest Jewish medical treatise is the *Sefer Refuot* by Asaph. This major work may date from the eighth century.[14] Later, of course, there was a great deal of medical literature and a whole series of volumes by Maimonides along with references in his *Mishneh Torah.*[15]

Although there were few basic changes in medical practice from the Greco-Roman period until the eighteenth century, the older medicine had to be rediscovered in the Islamic period. When medical practices changed, Judaism accepted the new ways with little or no discussion.[16]

Why were changes in medical practice so readily accepted by the Jewish public? Theologically, although God was the ultimate healer, we felt that the covenant permitted us the freedom to seek medical treatment and even mandated it. The high status of the Jewish physicians was not due only to their skill, which was appreciated by the Gentile world as well, but because in many instances they combined rabbinic scholarship with medical knowledge. Maimonides is only the most illustrious example and the line of his predecessors can be traced to Theodos, Mar Samuel, R. Hiyyah and others of the second century. This unique combination of Jewish scholarship and medical knowledge provided authority to the physician. It placed the physician in a position of trust as well as religious leadership.

We can see this combination of gifts most clearly in Maimonides who described his tasks as a physician to Ibn Tibbon, his translator, in a famous letter.[17] The authority of the rabbinate was easily extended to the medical realm, and, in the case of Maimonides, to the realm of philosophy, an area about which many of his contemporaries had serious reservations.[18] The status of the physician and the willingness to follow the most recent medical technology was therefore more or less guaranteed from Talmudic times onward.

A residue of that trust remains to the present day, but it has diminished for two reasons: The general questioning of all authority and the shift of emphasis of the Jewish physician away from Jewish scholarship to medical knowledge alone. This is visible not only in matters of death and euthanasia but in other medical areas also.

Modern medical practitioners are usually specialists in a narrow field, and only rarely concern themselves with broader ethical questions. Furthermore, they often have only a vague interest in such questions. As the role of physicians has changed, their influence in "end of life" issues has diminished.

THE *GOSES*

Individuals who are dying have been placed into a special category by the Tradition called *goses*. This category has been used since Mishnaic times.[19] The Traditional texts define what may and may not be done to this person as well as their rights.[20] None of these texts define the time limit of the *goses* precisely; that was done by Joshua Falk, a Polish Talmudist who died in 1614.[21] He defined the period within three days of death basing himself on the statement of Joseph Caro: "When they say that we have seen your relative *goses* for three days, we consider him dead and should mourn him." The definition was in keeping with the medical knowledge of the period although that is difficult to establish for Eastern Europe.

We also need a clear definition of the "end stage of life" and should look at contemporary medical research for it. With the modern technology available to us, it is legitimate to define that stage by specific conditions rather than a time frame. For example, an irreversable coma, brain death, the recognized final painful stages of various forms of cancer, AIDS, Hungtingon's Chorea, and other diseases for which there is neither a cure nor a way of halting the progress of the disease.

When these stages have been reached, we may consider the person a *goses*, and halt all treatment. I would advocate going further and assisting to a painless death.

RESPECT FOR LIFE AND THE GOOD LIFE

Let us continue by discussing the decisions which will face the patient and the family. There is an underlying respect for human life from Biblical times onward. Both the later *halakhic* and *aggadic* traditions clearly demonstrate a respect for life as a Divine gift, as initially expressed in the Genesis story. In that tale it is the Divine breath of life through which "man becomes a living soul." For the rabbis of the Talmud the first commandment of the Bible is "Be fruitful and multiply". Our love of life must lead to a desire to perpetuate it and so every human must do his/her best to continue it into the next generation. Marriage and procreation have always been high on our agenda[22].

When human life was in danger, every commandment except murder, adultery and idolatry could be trespassed in order to save a human life, Jewish or Gentile. *Piquah nefesh* therefore overrode all other obligations including the stringent restrictions on the Sabbath. Furthermore, all medical efforts must be made by the attending physician and the staff in order to preserve human life. There is a long series of discussions on this matter which stretches from the Talmud to the present day and the answer in every case of true danger is positive.[23]

Every human life is to be valued but not necessarily forever. Our technology has enabled us to examine the grey area between life and death, so we must discuss the quality of life. Judaism has been willing to accept suffering when it could not be avoided but has not turned it into a virtue. Sometimes, of course, suffering was seen as a Divine test as in the story of Job. However, that story is a very good example of the dominant view that there is nothing wrong with the enjoyment of life and that, in fact, happiness, which the material and personal aspects of life bring is highly desirable and should be attained by as many people as possible. When Job withstood the test and even Satan, the adversary, was satisfied, everything was restored to Job. He then had twice as much as before; his family life was renewed with seven sons and three daughters; his wealth was impressive and he lived a long life. In other words, the experience had not turned him into an ascetic saint who renounced the world and its pleasures. That might have been expected but it was not the turn which this story took.

There have been ascetics in Jewish history, people who renounced both the pleasures of a personal life as well as those of worldly comfort. They are mentioned in our tradition, sometimes even mildly praised, but they have never become its heroes. That is true of the major Biblical figures, beginning with Abraham and continuing through David and Solomon who were celebrated for worldly success. Various later rabbis combined personal wealth with communal leadership, as Judah Hanasi (second century), Saadia Gaon (ninth century), Hasdai Ibn Shaprut (eleventh century), Meir of Rothenburg (fourteenth century), David Oppenheim, (eighteenth century), and many others. As long as individuals took their personal and communal Jewish responsibility seriously and looked after those who were less fortunate, they were not required to abstain from the joys of material blessings. In other words, a good quality of life has always been seen as a positive goal toward which individuals might well strive alongside the development of their religious character and their intellectual abilities.

Small groups have followed more ascetic paths, usually influenced by the surrounding cultures. They have been duly recorded but never made normative. Furthermore, they did so as a matter of personal choice. We know of the Nazarites of Biblical times, among others.[24] The Essenes and the Qumran sect in the first century isolated themselves, did not marry, and led a very simple life far removed from most of the pleasures of the remainder of the community.[25] In the Middle Ages, the *Hassidim* of Germany were ascetic and engaged in the same kind of practices as some of the neighboring Christian communities. Various days were set aside for fasting as well as for abstinence from sexual relations; among some, a simple life of poverty was advocated. Those patterns occurred at various other times in Jewish history as well, mainly connected with mysticism and the yearning for a union with God or a deeper understanding of the essence of the commandments. The renunciation of much that was this worldly was a way of gaining quality of life in "the other" world of the totally spiritual.

It is interesting to note that although these paths existed and gained some followers in virtually every generation, they have only occasionally attracted the masses, as for example immediately after the destruction of the Temple in 70 C.E. and following the Crusades in the eleventh century.[26] Generally the normative *halakhah* has added such practices as footnotes or as the path of the very pious, not recommended for the ordinary individual. A good, religious, and happy life which sought God, observed the *mitzvot*, cared for the welfare of everyone in the community, and assured a reasonable standard of living, was the goal continually emphasized.

Charitable efforts, therefore, were not aimed solely at alleviating utter poverty and total depravation but also at elevating people's status. The primary effort was to provide employment so that the poor could lift themselves out of poverty and did not lose their dignity and hope for the future. Under some circumstances, loans were encouraged in place of outright gifts. Everyone in each community was charged with these

responsibilities.[27] This and a good deal more indicates that the quality of life played a positive role in Judaism, and that a high quality of life was considered a noble goal even if it was not possible in many periods of our history.[28]

Poverty, ill health and persecution were seen as punishment for sins by some theologians, but this rarely led to a feeling that the opposite, the good life was sinful; nor was asceticism and self-depravation seen as the road to "salvation" either for the individual or for the entire community.

The road to the good life included physical health along with all the other blessings. Appropriate words of gratitude are therefore expressed to God for maintaining physical health and all bodily functions in the regular daily morning service. Special thanks are to be given on arising. Prayers of gratitude after recovery from illness are part of the liturgy and of private prayer. There are Biblical verses which point to God as the sole healer and later rabbinic literature occasionally took that position as pointed our earlier. However, the dominant note was, and remains, that everything which can be done to enhance health or to heal the sick should be undertaken. In addition, all that could be done to alleviate pain and suffering was undertaken with few restrictions.

A HUMANE DEATH

Tradition has sought to provide a decent and humane death whenever it was within our hands to do so. For example, when the Talmud dealt with the execution of criminals, it was to be done in a humane manner without mental or physical suffering. Death should be quick. Anything which might lead to psychological suffering was avoided. Everything was done to assure that the execution could be stopped if new evidence arose, but otherwise the sentence was carried out speedily.[29]

As we have taken such precautions with condemned criminals, then we should certainly take similar steps with normal decent people who have simply entrusted themselves to a medical system which may not know when to stop. We must also state that the advance of medical technology has made the distinction between passive and active steps to sustain life meaningless or of doubtful value. We would place them together and argue that as the end approaches no further medical intervention of any kind should take place and we should proceed to a humane death as with those condemned by a court.

MEDICAL ECONOMICS

We also need to look at medical economics, although we may be tempted to state that monetary considerations shall not be permitted to play a role in a decision like end-stage euthanasia. They will play a role and so we need to discuss them frankly. As we look into the realm of medical economics, it is, of course, tempting simply to indicate, along with the Tradition, that all human lives are of equal value and that we cannot make a decision to save one rather than another.

Saving any human life takes precedence over all commandments except murder, incest and idolatry. Neglecting to receive proper medical help is a sin. Every effort must be made even on *Shabbat* to rescue individuals from a collapsed building, etc.[30] Furthermore, if it is possible to save one life out of a number, then one should do so. A passage of the Talmud discussed two individuals who were lost in the desert and did not have sufficient water for both to survive. What should be done? Interestingly enough two contradictory answers were provided. Ben Petura suggested that both should die so that one would not witness the death of his fellow human being, but Akiba stated that "your life takes precedence".[31] This quotation from the Talmud is helpful only as it refused to consider doing nothing. Of course, it does not help us to decide who should be saved.

A well known Mishnah in *Ohalot* may be of some slight use. It dealt with a woman, who faced enormous difficulty in giving birth to a child . The physician had to make a decision between saving the woman or allowing the child to be born. The Mishnah indicated that the woman's life was to be saved and the fetus may be dismembered. That was true until the head of the child emerged, then it was considered a person and one could not choose the life of one individual over another. The decision was then left to the physician.[32] Here again we have a statement that both lives are equal unless one has not yet attained the status of a person.

These statements have shown us that a life must be saved and it is our duty to do so, but they do not help us to decide which life to save. These statements are of less use when we are asked to guide legislation and are not dealing with single individuals for whom a decision must be made. Liberal Jewish discussions of this question must begin. In our discussion the larger public good and the Jewish view toward it must be carefully considered. It should be our task to enter this discussion and help to establish appropriate guidelines.

END-STAGE EUTHANASIA

Jewish tradition continues to oppose euthanasia in all instances except the final stage of life. When a person has reached this stage and is suffering, we may consider that individual minimally as a *goses*, but actually need to go further in a direction which will be helpful to the patient and to the family along the lines discussed by my colleagues in their papers.

End-stage euthanasia fits into our understanding of the covenantal relationship with God. It meets the criteria of the Jewish emphasis on a good life and the humane treatment of individuals. We may permit end-stage euthanasia within the confines of the *halakhah*.

Notes

1. *Sanhedrin* 23a; *Yoma* 85b; *Shabbat* 132b; Alfasi, *Shabbat*, ch 5, p. 139b.

2. *Yad, Hil. Avel* 4.5; *Tur* and *Shulhan Arukh, Yoreh Deah* 339.

3. The chief case against active euthanasia was taken from the fate of Haninah ben Teradion, (second century) (*b*. A. Z. 18a) who was burned at the stake, wrapped in a *Torah*, by the Romans for his rebellious act of teaching *Torah*. His disciples wished to ease the process and asked him to open his mouth, so that he would die more quickly, but he refused. They advocated suicide; he refused. On the other hand, when the pagan executioner asked whether he could increase the temperature of the fire and remove sponges, which kept him alive, he agreed. Active help toward death by an outside party was therefore possible with the agreement of the dying party. The executioner acted and when the rabbi had died, jumped into the fire himself. Haninah ben Teradion was unwilling to take steps himself, in other words, to commit suicide, but was willing to permit someone else to hasten the process of death. This path was, however, not discussed further.

4. An elderly woman (*Yalkut Shemoni* Vol. II, # 943) felt that her life had no further meaning and she asked R. Yose Hagalili, whether she could stop praying in the synagogue as she felt that this alone was keeping her alive. He agreed; she stopped her regular prayers and three days later died. There were no negative comments on her path of action.

5. Exodus 15.16; II Chronicles 16.12f; Jeremiah 8.22; Job 13.4.

6. Exodus 21,18f.

7. Leviticus 13, 14; II K 5.1; Ben Sirach 38.1ff and Tobit 2.10.

8. Irene and Walter Jacob, *Pharmaceuticals in the Biblical and Rabbinic World*, Leiden, 1993.

9. *M*. Kid 4.14; *b*. B. K. 46b, 85a; Julius Preuss, *Biblical and Talmudic Medicine* (T. R. Fred Rosner), New York, 1978, pp 11ff.

10. Some letters allude to this attitude, see Jacob Mann, *Texts and Studies in Jewish History and Literature*, Vol. II - *Karaitica*, Philadelphia, 1935. Karaites were more stringent than rabbinic Jews in granting permission to violate the Sabbath for medical emergencies, but in desperate situations, it was permitted. Leon Nemoy, *Karaite Anthology*, New Haven, 1952, pp. 267 ff.

11. Nahmanides to Ex 15.26; 23.25. Ibn Ezra to Ex 21.19.

12. Lev 19.16; Deut 22.1; San 73a; *b. A.Z.* 28b; *b. B. M.* 85b; *b. B. K.* 81b; 85a; *Yad Hil Deah* 3.3; etc.

13. Julius Preuss, *Biblical and Talmudic Medicine*, tr. Fred Rosner, New York, 1970. This is the best general survey of the field.

14. Steven Newmyer, "Asaph the Jew and Greco-Roman Pharmaceutics"; Irene and Walter Jacob, (ed.) *The Healing Past*, pp 107 ff

15. Maimonides, *Medical Treatises*, Vol I, II, III, tr. Fred Rosner, New York, 1970?; Fred Rosner, *Medicine in the Mishneh Torah of Maimonides*, New York, 1984.

16. Wilhelm Ebstein and Benno Jacob, *Die Medizin im Alten Testament*, Stuttgart, 1901; Julius Preuss, *Op. Cit.*; Harry Friedenwald, *Jews and Medicine*, Vol I and II, 1944, Baltimore; this book provides a good bibliography of works in modern European languages as well as a list of Jewish physicians.

17. Letter to Ibn Tibbon, written in 1199.

18. Daniel Jeremy Silver, *Maimonidean Criticism and the Maimonidean Controversy 1180-1240*, Leiden, 1965.

19. *Semahot* 1.3; *M. Oholot* 1.6; *Git.* 28a.

20. *Yad Hil. Avel* 4.5; *Tur* and *Shulhan Arukh, Yoreh Deah* 339 and Isslerles.

21. *Perishah* to *Tur, Yoreh Deah* 339.

22. Genesis 2.7; Genesis 2.8; *b. Kid* 29b; *b. Pes* 49a; *b. Ber.* 16a; *b. Git* 41b; *b. Yeb.* 61b ff; *Yad Hil, Ishot* 15 Tur, *Shulhan Arukh Even Haezer*.

23. Leviticus 18,5; *b. Yoma* 85b; *Shulhan Arukh Orah Hayim* 328.3 ff; 329.3 and Isserles.

24. Nu 6.8; Lev 10.8 ff; 21; I Sam 1.11. There is a tractate of the *Mishnah* devoted to the Nazarites, but we should note that there is no *gemara* on it. Furthermore, some of the Nazarite vows were temporary. All of this was dropped by later rabbinic Judaism. In the Biblical period the Rechabites were also mentioned as an ascetic group, but we know almost nothing about them (Jer. 35, II K 10.15 ff; Neh 3.14 f). In rabbinic literature they were discussed occasionally (*b. B.B.* 92b; *M. Ta-anit* 4.5; *b. Sotah* 11a, *Sifrei* Num. 78, etc.).

25. Josephus, *Antiquities*, XIII 5, 9; XVIII 1,2; B.J. II 8, 2-13; and Philo. For an excellent discussion and bibliography see G. Vermes, F. Millar, M. Black, eds., Emil Schürer, *The History of the Jewish People in the Age of Jesus Christ*, Vol 2, Edinburgh, 1979, pp 555 ff.

26. *Travels of Benjamin of Tudela* 2.11, 12; Bahyah Ibn Pakudah placed some emphasis on asceticism. On the other hand, Maimonides vigorously opposed such tendencies (*Yad* Hil Deut. 3.1; 6.1). *Sefer Hassidim* (#433, #990, #1174, #1200) mentioned the ascetic practices of various leaders, among them - Judah Hahasid. Abraham b. David of Posquieres in the thirteenth century along with his followers were ascetic as were others influenced by the *Kabbalah*. We should also note that many Karaite scholars were ascetics (H. Graetz, *Geschichte des Judenthums*, Vol. 3 pp. 417 ff).

27. *b. B. B.* 60b, *Tosefta Sota* - end; *b. Ket* 104b; *Sefer Hassidim*.

28. Yeb 62b; *Sefer Hassidim* #1049 - deal with loans for the poor. Employment was emphasized from Talmudic times onward (*Shab* 63a; *Mak*. 24a; *Yad Hil. Matnat Aniyim* 107f). The systematic arrangements were discussed in some detail (*Yad Hil. Aniyam* 9.1-3; *Shulhan Arukh* 250).

29. *b. San* 45a, - 52a; *b. Pes* 75a; *b. Ket* 37a

30. *Shulhan Arukh*, *Orah Hayim* 129.4 ff; *Yoma* 83a ff.

31. *b. B. M.* 62a.

32. *M.* Ohlot 7.6; *Shulhan Arukh Hoshen Mishpat* 425.2.