

Jewish Perspectives on Issues of Death and Dying

Dr. Fred Rosner

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 vegetative state. Medical technology has created as many problems as it has solved.

The new technology denies the physician a simple physiological end point for death. When is a donor dead (*vide infra*) so that his organs can 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 agonal hours, to prolong life (or death) by the use of 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 dying of leukemia? Who is to weigh the value of a few more days of life? Who is to decide when the end should come? The physician? The

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

patient? Should the decision be put upon the family? Should the patient have the option to choose a peaceful death without exposure to the seemingly relentless application of medical technology? Should one discuss this option with the patient? One basic question seems to be the extent to which any individual owns his own death. Does a person have the right to select how and when he will die? Is such a decision by the patient akin to suicide? We believe that only G-d gives life and hence only G-d can take it away. 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 psychological forces pushing the physician to "do something". There are professional forces that may force a physician to act to protect himself from peer review. Patients are better informed and becoming more vocal. The physician's own religious and ethical values, his own experiences, his teaching by preceptor all play a role in deciding how he approaches a dying patient.

This essay discusses Jewish perspectives on 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 will be only briefly summarized here.

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 primarily not to end his life 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.

I would like to present the classic Jewish sources which relate to this subject.

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: "And if a man come presumptuously upon his neighbor, to slay him with guile; thou shalt take him from Mine altar, that he may die." In Leviticus 24:17, there is the phrase "And he that smiteth any man mortally shall surely be put to death" and four sentences later we find again ... "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. 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. Then 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 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. Ralbag and Rashi also support this viewpoint, as does *Metzudat David*.

The Mishnah states as follows (*Semachot* 1:1): "One who is in a dying condition (*gosses*) is regarded as a living person in all respects." This rule is reiterated by later codifiers of Jewish law including Rambam and the *Shulchan Aruch* as described below. The Mishnah continues (*Semachot* 1:2 to 4):

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 move him nor may one place him on sand nor on salt until he dies.

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 (*Shabbat* 151b) mentions as follows: "He who closes the eyes of a dying person while the soul is departing is 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 (Book of Judges, laws of Mourning, chapter 4:5) treats our subject matter as follows:

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 guilty of shedding 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 shedding 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. This problem is becoming more pronounced as scientific medicine improves the methods for supporting respiration and heart function.

The sixteenth century code of Jewish law, the *Shulchan Aruch*, compiled in 1564 by Rabbi Joseph Karo, devotes an entire chapter (*Yoreh Deah*, chapter 339) to the laws of the dying patient. The individual in whom death is imminent is referred to as a *gosses*. Rabbi Karo's code begins, as do Maimonides and the Mishnah, with the phrase: "A *gosses* is considered as a living person in all respects," and then enumerates various acts that are prohibited. All the commentaries explain these prohibitions "lest they hasten the patient's death." One of the forbidden acts not mentioned by Maimonides or the Mishnah is the removal of the pillow from beneath the patient's head. This act had already been prohibited two centuries earlier by *Tur* (Rabbi Jacob ben Asher) in his code (*Tur Yoreh Deah*, chapter 339). The text of the *Shulchan Aruch* is nearly identical to that of *Tur*. *Tur*, however, has the additional general explanation: "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.

On the other hand, Rabbi Judah the *Chasid*, author of the thirteenth century work *Sefer Chasidim*, states in section 723, "If a person is dying and someone near his house is chopping wood so that the soul cannot depart one should remove the [wood] chopper from there ..."

Based on the *Sefer Chasidim*, the *Ramo* (Rabbi Moses Isserles), in his glosses on *Shulchan Aruch*, section *Yoreh Deah*, chapter 339:1 states that

if there is anything which causes a hindrance to the departure of the soul such as the presence near the patient's house of a knocking noise such as wood

chopping or if there is salt on the patient's tongue; and these hinder the soul's departure, then it is permissible to remove them from there 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 a famous passage (*Avodah Zarah* 18a), 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 Hananya Ben Teradyon, who was the victim of the Romans during the Hadrianic persecutions of the second century. 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.

Another talmudic reference is to be found in *Ketubot* 104a: When Rabbi Judah the Prince was dying, the rabbis decreed a public fast and offered prayers for the prolongation of his life. When Rabbi Judah's maid, renowned in legend for her sagacity, discerned that he was approaching death and suffering great pain, she threw a jar from the roof to distract the rabbis and interrupt their incessant prayers. This, the Talmud relates approvingly, enabled his soul to depart in peace.

While this latter passage and later rabbinic statements based on it suggest that it is proper that a life in mortal suffering be ended (or at least to cease praying that it be prolonged), the first passage teaches clearly that it is proper actively to remove an artificial impediment to the process of dying. Various rabbinic

responsa on this subject are summarized by Rabbi J.D. Bleich in a recent book.¹

The sum total of this discussion of the Jewish attitude toward euthanasia seems to indicate, as expressed by Rabbi Jacobovits,² 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."

Rabbi Jacobovits is quick to point out, however, that all the Jewish sources refer to 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 by Jewish law (as described by Ramo), 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 codes 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? Certainly only a scholar of Jewish law is qualified to offer an opinion.

1. Bleich, J.D. *Judaism and Healing*. New York, Ktav, 1981, pp. 134-145.

2. Jakobovits, I. *Jewish Medical Ethics*. New York, Bloch, 1959, pp. 119-125.

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 incest or adultery. Life's value is absolute and supreme. Thus, an old man or woman, a mentally retarded person, a defective baby, a dying cancer patient and their like all have the same right to life as you or I. In Jewish law, a young patient does not have preference over an old one. In order to preserve a human life, even the Sabbath or the Day of Atonement may be desecrated and all other rules and laws, save the above three, are suspended for the overriding consideration of saving a human life. The corollary of this 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 experimental surgery or therapy. However, if the surgery or therapy fails to heal, the patient will die immediately. What should the physician do? Should he risk the definite short period of life remaining for the patient by administering the drastic remedy in the hope that the patient may be cured and live a prolonged period? 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?³

In his famous Responsa⁴ Rabbi Moshe Feinstein states 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 effecting a cure. In his most recent collection of responsa, however, R.

Feinstein rules that if the surgery might hasten his death if it does not heal him, the patient should not be subjected to it. Only when there is at least a fifty-fifty chance of success must the sick person undergo the treatment.⁵ He cautions that forcing a person to undergo this treatment may arouse such anxiety as to cause his death, which would render it an act of murder.⁶ However, he does not cite the reasoning or precedent on which he relies. Israel's former Chief Rabbi, Shlomo Goren, writes that one should use hazardous experimental therapy not only in a case 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.⁷ Britain's Chief Rabbi, 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.⁸

Two earlier rabbinic sources also clearly enunciate the Jewish legal view concerning hazardous therapy for the dying. Rabbi Chaim Ozer Grodzinski was asked about the permissibility of performing a dangerous surgical procedure on a seriously ill patient. He answered 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 (Responsa *Achiezer*, *Yoreh Deah* #16:6). A similar pronouncement is made by Rabbi Jacob Reischer with regard to dangerous medical therapy for a seriously ill patient. He permits such therapy since it may cure the patient although it may hasten the patient's death (Responsa *Shevut Yaakov*, Section 3 #75). Rabbi Reischer also requires a group of physicians to concur in the decision.

Do heroic or extraordinary measures constitute impediments to dying? How does one define heroic measures? What may be

5. *Iggerot Moshe*, *Choshen Mishpat*, part II, 74:5.

6. *Ibid*, 73:5.

7. Goren, S. *Shanah BeShanah*, Jerusalem, Hechal Shlomo, 1976, pp. 149-155.

8. Jakobovits, I. "Medical Experimentation on Humans in Jewish Law," in *Jewish Bioethics*. Ed. F. Rosner and J.D. Bleich, New York, Hebrew Publ. Co. 1979, pp. 377-838.

3. Rosner, F. "Jewish Ethical Issues in Hazardous Medical Therapy." *Tradition*, 1981, 19: 55-58.

4. *Iggerot Moshe*, *Yoreh Deah*, part II, 58:.

considered heroic for Karen Ann Quinlan (e.g., use of antibiotics to treat pneumonia) may be standard therapy for an otherwise healthy person. When, if ever, may treatment be withheld? May 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 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 very short time, all commandments of the Torah are set aside. Any act which can prolong life supercedes all the biblical commandments, except the three cardinal ones. However, Rav Feinstein has recently ruled that if a person is in great pain, he does not have to undergo treatment that will extend his life but not alleviate the pain.⁹ Also, he cannot be forced to accept intravenous feeding.¹⁰ For the patient who has difficulty breathing, Rav Feinstein counsels giving only enough oxygen to alleviate pain for a short while, then removing the equipment to see if the patient is still alive. Apparently, he does not consider it necessary to keep the patient artificially breathing and thus prolong his dying — but enough should be given to prevent pain to him.¹¹

Definition of Death

The definition of death in Jewish law¹² is first mentioned in

9. *Iggerot Moshe, Choshen Mishpat*, part II, 75:1.

10. *Ibid*, 74:3.

11. *Ibid*, 73:2.

12. Rosner, F. "Definition of Death in Jewish Law." *New York State J. Med.* 1983, 83: 973-978.

the Talmud. The Mishnah in *Yoma* 8:6-7 enumerates circumstances under which one may 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 dead, or if it is doubtful whether he is alive or whether he is dead, or if it is doubtful whether he is an Israelite or a heathen, 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 (*Yoma* 85a), commenting on the above Mishnah, states 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 explains that if no air emanates from his nostrils, he is certainly dead. Rashi further explains that some people suggest the heart be examined for signs of life, but the respiration test is considered of greatest import.

The Palestinian Talmud (*Yoma* 8:5) quotes certain authorities who require "until one reaches the navel" but this is a minority viewpoint.

The above rule from the Mishnah is codified by Rambam (*Book of Seasons; Laws of the Sabbath* 2:19) 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.

In the *Shulchan Aruch* (section *Orach Chayim* 329:4) we find:

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 Rambam nor the *Shulchan Aruch* 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 the ascertainment of death.

Another pertinent passage found in the *Shulchan Aruch* (Ibid. 33:5) states as follows:

If a woman is sitting on the birthstool [i.e., about to give birth] and she dies, one brings a knife on the Sabbath, even through a public domain, and one incises her womb and removes the fetus since one might find it alive.

Rabbi Moses Isserles (*Ramo*) adds to this statement:

However, today we do not conduct ourselves according to this [rule] even during the week [i.e., even *not* on the Sabbath] because we are not competent to recognize precisely the moment of maternal death.

Several commentators explain that *Ramo* is concerned that perhaps the mother only fainted and incising her abdomen might kill her. Maimonides, five centuries earlier, had already raised the problem of fainting complicating the recognition of death, when he stated (Book of Judges, Laws of Mourning 4:5):

Whosoever closes the eyes of the dying while the soul is about to depart is shedding blood. One should wait a while; perhaps he is only in a swoon.

Both Rambam and *Ramo*, however, agree that the talmudic description of death for all practical purposes is the absence of cessation of respiration.

Recent rabbinic opinions support the classic Jewish legal definition that death is established when spontaneous respiration ceases. Since respiration was thought to be dependent upon cardiac

activity, the definition would thus include absence of a heartbeat. Such an opinion was first expressed by Rabbi Moses Schreiber (Responsa *Chatam Sofer*, *Yoreh Deah* #338) 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 (*vide supra*) who was concerned that the patient may only be in a swoon. Rabbi Sholom Mordechai Schwadron (Responsa *Maharsham* Vol. 4, Sect. 6 #124) states that if any sign of life is observed in limbs other than the heart and lungs, the apparent absence of spontaneous respiration is not conclusive in establishing death.

On the other hand, Rabbi Isaac Yehuda Unterman, addressing the Eleventh Congress on Jewish Law in Jerusalem in August 1968, stated that one is dead when one has stopped breathing. 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 Rabbi Unterman, and whose heart is not beating, is considered dead by Jewish law.

Rabbi Eliezer Yehuda Waldenberg (Responsa *Tzitz Eliezer* Vol. 9 #46; vol. 10 #25 and Vol. 13, Sect. 89:12-13) also defines death as the cessation of respiration and cardiac activity. 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 Waldenberg cites a work entitled *Divrei Shaul* in which the author states that "it is clear to me like the sun that if we observe a patient and he appears dead, and has no respiration and no heartbeat which are the signs of life as explained in tractate *Yoma*, he is not alive any more and has the [legal] status of a dead person in all respects." Rabbi Waldenberg also discusses the issue of whether the seat of the soul resides in the heart or in the brain and cites Rabbi Zvi ben Yaakov Ashkenazy, known as *Chacham*

Tzvi (Responsum #77) who pointed out that this issue has been argued since the times of Galen, whose opinion was that the brain is the source of life, and Aristotle, who considered the heart to be more important than the brain.

Rabbi Moshe Feinstein (Responsa *Iggerot Moshe, Yoreh Deah, Part 2* #146 and #174:2) states that if the brain is not functioning, death will occur because breathing will stop. Until the latter occurs, physicians may be able to resuscitate the patient or prayers to G-d may avail. Hence, if one kills someone with no brain function who is still breathing, it is murder. The Talmud and codes of Jewish law do not indicate, continues Rabbi 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] and yet, cessation of brain activity was not considered to be the definition of death. In a patient without spontaneous respiration or heartbeat but with some electrical activity on an electroencephalogram, the rare possibility of resuscitation must be reckoned with. Although the respiration test is paramount, it is clear that "the nose is not to 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 this life, concludes Rabbi 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 Jakobovits¹³ 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."

Rabbi Aaron Soloveichik,¹⁴ 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. This means that:

When a person in whom death is imminent becomes devoid of respiration but other bodily functions 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 awhile. 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 his death.

Rabbi J. David Bleich¹⁵ traces the Jewish legal attitude concerning the definition of death from talmudic through recent rabbinic times. He posits 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 there is a definite obligation to resuscitate the patient if at all feasible. Rabbi Bleich¹⁶ also discusses the various "Time of Death" statutes already enacted into law in many states in this country and statutes being contemplated by other states. These statutes supplant the classical definition of

13. Jakobovits, I. Personal communication, August 1, 1968.

14. Soloveichik, A. "The Halakhic Definition of Death," in *Jewish Bioethics* F. Rosner and J.D. Bleich, editors. New York. Sanhedrin Press (Hebrew Publ. Co.) 1979. pp. 296-302.

15. Bleich, J.D. "Establishing Criteria of Death," in *Contemporary Halakhic Problems*. New York, Ktav 1977 pp. 372-393.

16. Bleich, J.D. "Time of Death Legislation." *Tradition* 1977, 16: 130-139.

death with more flexible criteria. Rabbi Bleich voices concern about the fact that it is unlikely that Jewish opinion can succeed in stemming the legislative tide indefinitely. It is also unrealistic to believe that time of death statutes will accurately reflect even the most liberal of Jewish legal opinions.

Several Jewish physicians¹⁷ well-versed in talmudic law and rabbinic writings have written in detail about the Jewish legal definition of death. They essentially conclude that today one requires all three criteria cited by the *Chatam Safer* (*vide supra*), namely absence of spontaneous respiration and absence of a heartbeat in a patient who appears dead, i.e., is "motionless like an inanimate stone."

Rabbi Moshe David Tendler¹⁸ introduced the concept of brain stem death as an acceptable criterion for the definition of death even if cardiac function has not ceased.

His contention that "complete and permanent absence of any brain-related vital bodily function is recognized as death by Jewish scholars" is supported by a recent pronouncement of Rabbi Moshe Feinstein (*Responsa Iggerot Moshe, Yoreh Deah, Sect. 3 #132*) who 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 Rav Feinstein, it should be used.

Rav Tendler's arguments generated considerable discussion

17. Levi, Y. "That which Prevents the Departure of the Soul." *Noam* (Jerusalem) 1963, 16: 53-63.

Rabinowitz, G.A. and Koenigsberg, M. "The Halachik Definition of Death in the Light of Medical Knowledge." *Hadarom* (New York) #32 (Tishri 5731), 1971 pp. 59-76.

Steinberg, A. "Establishing the Moment of Death." *Noam* (Jerusalem) 1977, 19: 210-239.

Abraham, A.S. "Treatment of Gossess and the Determination of Death," in *Halakha and Medicine* Vol. 2, M. Hershler (Edit.). Jerusalem - Chicago. Regensberg Institute, 1981 pp. 185-190.

18. Tendler, M.D. "Cessation of Brain Function: Ethical Implications in Terminal Care and Organ Transplant." *Ann. N.Y. Acad. Sci.* 1978, 315: 394-397.

and controversy. Rabbi Aaron Soloveichik¹⁹ attacked his position as a serious misinterpretation of Jewish law, an attack refuted by Rabbi Tendler himself.²⁰ However, an opposing viewpoint of some physicians concerning brain death²¹ asserted that "cessation of total brain function, whether irreversible or not, is not necessarily linked to total destruction of the brain or to the death of the person. Further, to take vital organs or to otherwise treat people as though they were dead already on the basis of these recent criteria is morally unacceptable to most Orthodox Jews and Christians."

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. Cerebral death is not generally accepted by 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.

The Living Will

The living will is a recently-adopted method in some jurisdictions of the United States that would recognize the right of an adult person to prepare a written directive instructing his physician to withhold life-sustaining procedures in the event of the patient's incompetence to do so while in a terminal condition. The

19. Soloveichik, A. "Jewish Law and Time of Death." *J.A.M.A.* 1978, 240:109.

20. Tendler, M.D. "Jewish Law and Time of Death." *J.A.M.A.* 1978, 240:109.

21. Byrne, P.A., O'Reilly, S., and Quay, P.M. "Brain Death - an Opposing Viewpoint," *J.A.M.A.* 1979, 242: 1985-1990.

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.²²

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 by 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.²³ The living will only protects refusal of treatment but does not guarantee a peaceful easy death.

In essence, Judaism is opposed to the concept of the living will in that the patient may not have the "right to die." Only G-d 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. However, we have noted that in certain cases it is not required to prolong the suffering, and the patient may refuse treatment under certain circumstances.²⁴

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 such that it is difficult to specify the halacha in general terms, and each situation must be studied individually. Jewish law requires the physician to do everything in his power to prolong life, but does not mandate the use of measures that prolong the act of dying. In

22. Eisendrath, S.J. and Jonsen, A.R. "The Living Will. Help or Hindrance?" *J.A.M.A.* 1983, 249: 2054-2058.

23. Battin, M.P. "The Least Worst Death." *Hasting Center Rep.* 1983, 13:

24. *Iggerot Moshe, Choshen Mishpat*, part II, 74:5.

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 ..."²⁵

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 support systems that only serve to draw out the dying patient's agony, provided, however, that basic care such as food and good nursing is provided. An organ may not be removed for transplantation until the patient has been pronounced dead, defined in Judaism as the cessation of spontaneous respiration and heartbeat in a patient where resuscitation is deemed impossible. Specifically questioned about the Karen Ann Quinlan case, most rabbis offered the opinion that in Jewish law we are not required to utilize heroic measures to prolong the life of hopelessly sick patients, but we are forbidden to terminate the use of such measures once they have been begun.

The modern phrase "quality of life" or "quality of existence" embodies within it a concept of worthiness with connotations of personal character and social status. Emotional and financial burdens are frequently cited as justification for decisions about "heroic" measures; suffering of the family is another reason offered for allowing a patient to die by removing artificial life supports. 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.

25. See reference #8 above.