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The Shattered Vessel:

The Dying Person in Jewish Law and Ethics

*Philip J. Bentley, DD**

I. INTRODUCTION

On the day when Rabbi died the Rabbis decreed a public fast and offered prayers for heavenly mercy. They furthermore announced that whoever said that Rabbi was dead would be stabbed with a sword.

Rabbi's handmaid ascended the roof and prayed: 'The immortals desire Rabbi [to join them] and the mortals desire Rabbi [to remain with them]; may it be the will [of God] that the mortals may overpower the immortals.' When, however, she saw how often he resorted to the privy, painfully taking off his tefillin and putting them on again, she prayed: 'May it be the will [of the Almighty] that the immortals may overpower the mortals.' As the Rabbis incessantly continued their prayers for [heavenly] mercy she took up a jar and threw it down from the roof to the ground. [For a moment] they ceased praying and the soul of Rabbi departed to its eternal rest. 'Go,' said the Rabbis to Bar Kappara, 'and investigate.' He went and, finding that [Rabbi] was dead, he tore his cloak and turned the tear backwards. [On returning to the Rabbis] he began: 'The angels and the mortals have taken hold of the holy ark. The angels overpowered the mortals and the holy ark has been captured.' 'Has he,' they asked him, 'gone to his eternal rest?' — 'You,' he replied, 'said it; I did not say it.'¹

This account of the death of the editor of the *Mishnah*, Rabbi Yehudah Ha-Nassi in the early third century C.E., illustrates the antiquity of life-and-death issues that we still contend with today.² If

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1. THE BABYLONIAN TALMUD, Ketubot 104a (Rabbi I. Epstein ed., The Soncino Press 1935).

2. Rabbi Yehudah Ha-Nassi lived from the Mid-Second Century until the beginning of the Third Century C.E. As the passage from the *Mishnah* suggests, the Rabbi is often referred to by

we understand the Rabbis' prayers to be extraordinary measures to keep their leader alive even though he was in great pain, it is easy to see the analogy to contemporary medical issues.

Jewish law is grounded in the ethical and moral principles that are basic to our tradition. The fact that legal tradition is a response to the human condition is not forgotten in Jewish legal decision-making. As this article demonstrates, when a rabbinic authority considers a case, it is not just the law codes and case law literature that are considered. Other factors include the social context of the case and the situation of the people involved in it. The power and beauty of this way of making law is that it transcends the particulars of time and place. What a rabbi, who might well also have been a physician, wrote a millennium ago in Egypt will get as much consideration as the opinion of a rabbinic court in New York in the late twentieth century.

This article examines the treatment of dying persons in the context of Jewish legal and ethical traditions. This article uses source materials ranging from the time of the Bible to the present time to illustrate these traditions. The reader should regard this article as an introduction to the subject of life and death issues from the perspective of the Jewish tradition as well as an introduction to the sources to which this article refers. In Part II, this article provides an overview of the texts informing Jewish legal and ethical traditions.³ Part III then explores the value those traditions place on human life.⁴ Next, the article examines medical, legal, and ethical considerations surrounding dying patients⁵ as well as historic and contemporary responses to those issues.⁶

II. EXCURSUS: THE SOURCES OF JEWISH LAW

In order to understand the texts to which this article refers and how Jewish legal tradition functions, it is necessary to first describe and explain Rabbinic literature. This Part therefore provides a very brief introduction to this complex subject.

According to Rabbinic tradition, there are two Torahs.⁷ The first is the Written Torah, which is the five books of Moses.⁸ The Written

his title alone. See *infra* Part II for an explanation of what the *Mishnah* is and its place in the *Torah*. In this article, the Jewish historical dating B.C.E. (Before the Common Era) and C.E. (Common Era) will be used in place of B.C. and A.D., respectively.

3. See *infra* Part II (summarizing the literary history of canonic Jewish Law).

4. See *infra* Part III (explaining Jewish Law's longstanding reverence for healing and life).

5. See *infra* Part IV (applying traditional beliefs about healing to the dying patient).

6. See *infra* Parts V, VI (exploring medical and ethical issues of euthanasia, artificial life support, and removing impediments to death).

7. JACOB NEUSNER, *TORAH THROUGH THE AGES: A SHORT HISTORY OF JUDAISM* 20 (SCM

Torah is the basic document of Judaism and it includes a great deal of legal material, but the more important body of work for legal discussion is the Oral Torah, known as the Talmud.⁹ Tradition says that at Mount Sinai, Moses received not only the Written Torah, but also the oral traditions that became the Talmud or at least the wisdom to produce the Oral Torah.¹⁰

It was not until late in the Second Temple period that a group known first as the Scribes and later as the Pharisees began to write down and codify the Oral Law.¹¹ This was done because of a fear that the Oral Law would be lost due to acculturation in the midst of the Hellenistic and the Persian civilizations (the larger civilizations among which Jews lived). At first, the Pharisees focused on the laws concerning Temple rituals and purity, but after the destruction of the Temple in 70 C.E., the Pharisees, now known as the Rabbis (masters or teachers), began to codify all areas of law.¹² The Pharisees' purpose was to preserve Jewish tradition despite the loss of the Temple and the loss of Jerusalem.

First in the town of Yavneh, near Jerusalem, and then later in Sepphoris in the Galilee, this work continued over the generations. The result of this work was the *Mishnah*, published around the year 210 C.E.¹³ The *Mishnah* is a law code organized into six sections called orders and subdivided into tractates.¹⁴ This code lays out not only rituals and religious obligations but laws on every aspect of life.¹⁵ A distinctive feature of this law code is the inclusion of minority views along with the prevailing majority views.

Over the following three centuries, Rabbis in academies located in Babylonia (modern day Iraq) expanded on the *Mishnah*, defined its terms, considered cases that are not explicitly covered by *Mishnaic* law, and established legal principles and precedents. Those discussions were

Press 1990).

8. *Id.*

9. THE BABYLONIAN TALMUD, *supra* note 1.

10. NEUSNER, *supra* note 7, at 21.

11. In 586 B.C.E., the Temple of Solomon was destroyed. Fifty years later, the second Temple was built. That Temple was destroyed in the First War against Rome in 70 C.E. The Second Temple period is the name given to the years that the Second Temple stood, 536 B.C.E. to 70 C.E. *Id.* at 38.

12. *See generally id.* at 38–50 (discussing the initial writing of the Torah).

13. *Id.* at 23. For an example of a recent English translation, see THE MISHNAH (Rabbi Bernard Susser ed., Edward Levin trans., Eliner Library 1990).

14. NEUSNER, *supra* note 7, at 41.

15. *Id.*

edited during the sixth century into the *Gemara*. The Talmud consists of parts of the *Mishnah* combined with the *Gemara*.

In addition to the text of the Talmud, collections of additional teachings from the *Talmudic* and *Mishnaic* periods serve as an appendix.¹⁶ Over the centuries many commentaries have been written to further explain the Talmudic text.¹⁷ On a page of Talmudic commentaries, the student of Talmud will find addenda and cross references to other parts of the Talmud and to other sources.¹⁸ Here, differing views and their arguments are presented. To many, the Talmud may seem disorganized, because its text moves from one subject to another, based sometimes on flimsy pretexts.¹⁹ A discussion of law may be interrupted by discussion of morality, philosophy, theology, or folklore.²⁰

This peculiar nature of the Talmud made it inevitable that other codifications of the law would be developed. The most important ones to which scholars refer today are the *Mishneh Torah* by Rabbi Moshe ben Maimon, better known as Maimonides,²¹ and the *Shulhan Arukh* by Rabbi Joseph Karo²² with glosses by Rabbi Moses Isserles.²³ Of the two, the *Shulhan Arukh* is considered a more authoritative guide for practice for traditional Jews.

Jewish law also relies on Responsa, an extensive literature of case law known in Hebrew as *Tshuvot* that extend from the publication of the Talmud up to the present day. Responsa are legal decisions written by contemporary experts at the request of individual rabbis and local courts

16. *E.g., id.* at 23 (discussing the additional writings that supplement the Torah).

17. *Id.*

18. *E.g., THE BABYLONIAN TALMUD supra* note 1, at Yoma 85b (referencing other sections of the Talmud within the text).

19. In the past century, indices and concordances have been published to aid the student, and in the past decades the Talmud text, along with many other works cited here, has been recorded on CD-ROMs with search engines and posted on the Internet. *See, e.g.,* Torah.org, www.torah.org (last visited Nov. 29, 2005) (providing discussions about the study of the Torah).

20. *E.g., THE BABYLONIAN TALMUD supra* note 1, at Yoma 82a (interrupting the text to provide further explanation and commentary).

21. Rabbi Moshe ben Maimon was also known by the acronym RaMBaM. He lived from 1135 to 1204 and was a noted physician in his day and also served as family doctor to the court of the Caliph in Cairo. The *Mishneh Torah* is available in fourteen volumes (various translators and publication dates). THE CODE OF MAIMONIDES (MISHNEH TORAH) (Julian Obermann ed., Abraham M. Hershman trans., Yale University Press 1949).

22. Joseph Karo was an authority for Sephardic Jews (generally those who live on or near the Mediterranean or in the Middle East) and lived from 1488 to 1575 in Turkey and Israel. For his work to be acceptable to Ashkenazi communities (generally in eastern Europe) additional notes, called glosses, were added where the tradition was different between these two Jewish cultures.

23. Rabbi Moses Isserles lived from 1525 to 1572 in Poland. CODE OF HEBREW LAW, SHULAN ARUKH, YOREH DEATH (Rabbi Chaim N. Denburg ed., The Jurisprudence Press 1954).

of law. Through Responsa, Jewish law treats even the most recent of technological developments. In fact, there are regular conferences of rabbinic and medical experts to discuss issues of contemporary medicine in Jewish law.²⁴

III. THE VALUE OF HUMAN LIFE AND HEALING IN THE JEWISH TRADITION

Jewish tradition and law have long supported the value of human life and the importance of healing to the promotion of that value. This Part provides a brief introduction to the importance of life in the Jewish tradition. Then, this Part discusses the Jewish respect for and support of healing.

A. *Human Life as a Jewish Value*

According to the *Aggadic* Tradition, after Cain murdered Abel he responded to God's inquiry by saying, "Am I my brother's keeper?" God said, "The bloods of your brother cries to Me from the earth."²⁵ Why "bloods" and not "blood"? Cain had murdered not only his brother Abel but all of the progeny that Abel might have produced down through the ages. From this, we learn that one who destroys a single life destroys an entire world; one who saves a single life saves an entire world.²⁶

Human life is the paramount ethical value in Judaism. To save a human life, one may violate any law except those prohibiting bloodshed, incest and idolatry.²⁷ For example, observant Jews are forbidden to use the telephone or drive a car on the Sabbath. However, if someone falls ill on the Sabbath one *must* call a doctor, drive the patient to a hospital or do anything else that is needed to save that

24. *E.g.*, AMERICAN REFORM RESPONSA: COLLECTED RESPONSA OF THE CENTRAL CONFERENCE OF AMERICAN RABBIS 1889-1983 (Walter Jacob ed., 1983) [hereinafter AMERICAN REFORM RESPONSA] (compiling rabbinic responsa from 1889 through 1983); QUESTIONS AND REFORM JEWISH ANSWERS: NEW AMERICAN REFORM RESPONSA: COLLECTED RESPONSA OF THE CENTRAL CONFERENCE OF AMERICAN RABBIS (Walter Jacob ed., 1992) [hereinafter QUESTIONS AND REFORM JEWISH ANSWERS] (compiling recent rabbinic responsa).

25. THE TORAH at *Genesis* 4:10 (Rabbi Nosson Scherman ed., Messorah Publications, Ltd. 1993). *Aggadah* is Rabbinic literature that expands on scriptural sources often making homiletic points related to ethics, moral philosophy, folklore, or any cultural tradition or issue. This includes theology which does not appear in Jewish literature in a formal sense until medieval times. The Hebrew word *Aggadah* means simply "telling" or "narration."

26. THE TORAH, *supra* note 25, at *Genesis* 4:10 & n. 10. This concept is also reflected in the fact that the Hebrew word for blood is not *DaM* (singular) but *DaMiM* (plural). THE BABYLONIAN TALMUD, *supra* note 1, at Sanhedrin 37a.

27. SIFRA, PARASHAT AHAREI MOT PEREQ 13, at 80-81 (Jacob Neusner trans., Scholars Press 1988).

person's life. One is not simply allowed to set aside the usual requirements and restrictions to save a life: one is *required* to do so.²⁸

As we shall see, the definition of a *nefesh*²⁹ is essential in deciding the law. Life begins at birth when an infant first takes a breath and ends when a person no longer breathes.³⁰ A person on his or her deathbed should be considered and treated as a living person in every way until the last breath is drawn. As it says in the *Mishnah*: “[I]f one closes the eyes with the departure of the soul, then such a one sheds blood.”³¹

There are a number of illustrations in Rabbinic literature exploring the difficulty of balancing the value of one's own life against the value of the law or of balancing the value of one life against the value of another. For example, the Rabbis interpret the Biblical verse, “You shall My decrees and My laws, which man shall carry out and by which he shall live—I am HASHEM”³² in order to consider the propriety of endangering one's life to follow the law:

The Torah said: Profane for his sake *one* Sabbath, so that he may keep many Sabbaths. Rab Judah said in the name of Samuel: If I had been there, I should have told them something better than what they said: *He shall live by them*, but he shall not die because of them. Raba said: [The exposition] of all of them could be refuted, except that of Samuel, which cannot be refuted.³³

In addition, Rabbi Akiva proposes a hypothetical case³⁴ to show that a person has a primary obligation to save his own life:

Now how does R. Johanan interpret, ‘*that thy brother may live with thee?*’³⁵ — He utilises it for that which was taught: If two are traveling on a journey [far from civilisation], and one has a pitcher of water, if both drink, they will [both] die, but if one only drinks, he can

28. THE TORAH, *supra* note 25, at *Leviticus* 18:5 & n. 5.

29. “*Nefesh*” is the Hebrew word for “life.”

30. In Jewish law, viability is the crucial factor. The unborn embryo or fetus is a potential human life and therefore is worthy of protection. It is not, however, considered a human being. Scriptural support for this is found in *Exodus* 21:22. “If men shall fight and they collide with a pregnant woman and she miscarries, but there will be no fatality, he shall surely be punished as the husband of the woman shall cause to be assessed against him, and he shall pay it by order of the judges.” THE TORAH, *supra* note 25, at *Exodus* 21:22. This could be understood to mean that the death of a fetus is not to be considered at the same legal level as the death of a person. *Id.* at n. 22.

31. THE MISHNAH, *supra* note 13, at *Shabbat* 23:5.

32. THE TORAH, *supra* note 25, at *Leviticus* 18:5.

33. THE BABYLONIAN TALMUD, *supra* note 1, at *Yoma* 85b.

34. Today we might call this an ethical thought experiment.

35. This passage paraphrases *Leviticus* 25:36 (“and let your brother live with you”), even though in context that verse is about the prohibition against taking usury. THE TORAH, *supra* note 25, at *Leviticus* 25:36. However, taking such a phrase out of its immediate context and making it a general ethical principle is often done in Rabbinic literature.

reach civilization, — The Son of Patura taught: It is better that both should drink and die, rather than that one should behold his companion's death. Until R. Akiba came and taught: '*that thy brother may live with thee*': thy life takes precedence over his life.³⁶

In other words, where one must choose between saving one's own life or giving up one's life for another, an obligation exists to save one's own life first. One may not judge whose "blood is redder," meaning one may not judge the value of one life over another.³⁷ Another Talmudic story shows this operating principle in a different way:

But whence do we know that this principle applies in the case of a murder? — This is reasonable. For there was a man who came before Raba and said to him: The lord of my village told me: Kill so-and-so, and if you will not, I shall kill you! — He [Raba] answered: Let him kill you, but do not kill! What makes you see that your blood is redder than his? Perhaps the blood of that man is redder than yours?³⁸

This principle also applies to the case of preventing a murder or rape, whether one is being attacked or sees that someone else is under attack (assuming one has the physical ability to intervene with reasonable expectations of success). "If a man has come to kill you anticipate him by killing him!"³⁹ However, the case of the pursuer raises many questions. In the case of a woman whose life is endangered by a difficult childbirth, the Mishnah says:

The woman who is in hard labor — they chop up the child in her womb and they remove it limb by limb, because her life takes precedence over his life. [If] its greater part has gone forth, they do not touch him, for they do not set aside one life on account of another life.⁴⁰

This passage indicates that the established life, that of the mother, takes precedence over that of her unborn child. She may have other children to care for and she may still have more children in the future. Once the child has emerged into the world, however, it has also become a viable, established life that may not be taken.⁴¹

36. THE BABYLONIAN TALMUD, *supra* note 1, at Bava Metzia 62a.

37. See *id.* at Yoma 82a (implying that one life is no more valuable than another in God's eyes).

38. *Id.*

39. *Id.* at 85a.

40. THE MISHNAH: A NEW TRANSLATION, OHALOT 7:6 (Jacob Neusner trans., Yale University Press 1988).

41. For a discussion of this issue, see DAVID M. FELDMAN, BIRTH CONTROL IN JEWISH LAW: MARITAL RELATIONS, CONTRACEPTION, AND ABORTION AS SET FORTH IN THE CLASSIC TEXTS OF JEWISH LAW, Part 5, (New York University Press 1968) and Mark Washofsky, *Abortion and the Halakhic Conversation*, in THE FETUS AND FERTILITY IN JEWISH LAW (Walter Jacob & Moshe Zemer eds., Freehof Institute of Progressive Halkhah, Rodef Shalom Press 1995).

Human life assumes a prime value in Judaism, but there is a recognition that issues surrounding the beginning, preserving and ending of life are complex, sometimes setting values against each other. In any particular case, a rabbinic authority should be consulted to interpret and decide the situation at hand.

B. *The Mitzvah of Healing*

Judaism teaches that for every ill in the world God first created a cure. Physicians have always held a place of great honor among Jews and many of our greatest leaders earned their livings as medical practitioners.⁴² Because humanity is regarded as God's partner in creation, healing the sick is a *Mitzvah*.⁴³ Likewise, easing a patient's suffering is also a *Mitzvah*.⁴⁴

Because of these principles, there is a highly developed tradition concerning medical practices and ethics in *Halakhah*.⁴⁵ Many medical issues can be traced in Jewish sources from ancient times to the present day. As this article demonstrates, contemporary issues can sometimes be considered in light of the principles applied in pre-modern times.

A story in the Talmud speaks of a patient's suffering and the patient's relationship with his healer.⁴⁶ In that story, we are told nothing about the disease or the cure and the story is told in the context of the reasons for human suffering. The discussion is about *yessurin shel ahavah* (chastisements of love), which God visits on those who are favored:

R. Hiyya b. Abba fell ill and R. Johanan went in to visit him. He said to him: Are your sufferings welcome to you? He replied: Neither they nor their reward. He said to him: Give me your hand. He gave him his hand and he raised him.

R. Johanan once fell ill and R. Hanina went in to visit him. He said to him: Are your sufferings welcome to you? He replied: Neither they

42. The most famous of these was Maimonides. Other examples are Judah HaLevi, Nachmanides, Abraham Zacuto, and Solomon Luria of Lublin, among others. For an extensive list of Jewish practitioners, see Solomon Schechter, C.D. Spivak, Joseph Jacobs & Frederick T. Haneman, *Medicine*, <http://www.jewishencyclopedia.com> (enter "Medicine" in search box, select "Medicine" from search results).

43. In English, "*Mitzvah*" means commandment or a moral obligation. Because some of the commandments involve kindness to those in need, some think the word means "good deed." It is important to understand that in Judaism we do good in the world because that is what God wants of us. Giving to the poor, for example, is not charity (giving from the heart) but *Tzedakah* (doing what is right). See WAYNE DOSICK, *LIVING JUDAISM* 249–50 (1995) (explaining the differences between *Tzedakah* and charity).

44. Solomon B. Freehof, *Relieving Pain of a Dying Patient*, in *AMERICAN REFORM RESPONSA*, *supra* note 24, at 253–57.

45. "*Halakhah*" translated means Jewish law, literally "the way of going."

46. THE BABYLONIAN TALMUD, *supra* note 1, at Berakoth 5b.

nor their reward. He said to him: Give me your hand. He gave him his hand and he raised him. Why could not R. Johanan raise himself? — They replied: The prisoner cannot free himself from jail.

R. Eleazar fell ill and R. Johanan went in to visit him. He noticed that he was lying in a dark room, and he bared his arm and light radiated from it. Thereupon he noticed that R. Eleazar was weeping, and he said to him: Why do you weep? Is it because you did not study enough Torah? Surely we learnt: The one who sacrifices much and the one who sacrifices little have the same merit, provided that the heart is directed to heaven. Is it perhaps lack of sustenance? Not everybody has the privilege to enjoy two tables. Is it perhaps because of [the lack of] children? This is the bone of my tenth son! — He replied to him: I am weeping on account of this beauty that is going to rot in the earth. He said to him: On that account you surely have a reason to weep; and they both wept. In the meanwhile he said to him: Are your sufferings welcome to you? — He replied: Neither they nor their reward. He said to him: Give me your hand, and he gave him his hand and he raised him.⁴⁷

This story teaches that human mortality is an inescapable reality. No one escapes it and few escape illness over the course of a lifetime. We can mourn for lost health and for the inevitable end of life, but we must not allow that sadness to cause an unhealthy sense of futility. Instead we are counseled to heal what we can and endure what we cannot heal.

When a disease is likely to be fatal, that does not limit the duty of the physician. All possible remedies must be tried and every measure to ease pain must be applied as well. It does not matter how the patient became ill. For example, Rabbi David Bleich expressed his vehement objections to homosexual relations.⁴⁸ However, Rabbi Bleich also made clear that the *Mitzvah* of healing nonetheless applies fully to AIDS patients, no matter how a person acquired the disease.⁴⁹

IV. THE DYING PATIENT

The Hebrew term for a person in the last stage of illness is *goseys*.⁵⁰ Obviously, this is not a medical term, because there is no accurate way to determine such a thing. Instead, the term suggests the presence of a

47. *Id.*

48. *E.g.*, J. DAVID BLEICH, BIOETHICAL DILEMMAS: A JEWISH PERSPECTIVE 132 (1998) (interpreting documents from various sects of Judaism as considering homosexuality to be an unacceptable practice). Rabbi Bleich is a leading scholar in contemporary questions regarding Jewish law. He is currently the Herbert and Florence Tenzer Professor of Jewish Law and Ethics at Benjamin N. Cardozo School of Law.

49. *Id.* at 142.

50. "*Goseys*" is the Hebrew word for an ill person who is likely to die within three days.

situation to be considered in terms of ethical issues—often concerning medical treatment. For example, medical personnel are forbidden to practice on a *goseys*, and a *goseys* should never be left alone because it is considered wrong to allow a person to die alone.⁵¹ Most pertinent to this article, while nothing may be done to hasten death, it is permissible to remove factors that delay a natural death. The following passage from the *Shulhan Arukh* is the classic statement on this issue:

One in a dying condition is considered a living being in all respects. We may not tie up his jaws, nor may we anoint him with oil, nor wash him, nor stop off his organs of the extremities, nor may we remove the pillow from under him, nor may we place him on sand, clay-ground or earth, nor may we place on his stomach a dish, a shovel, a flask of water or a globule of salt, nor may we summon the towns on his behalf, nor may we hire pipers and lamenting women, nor may we close his eyes before his soul departs. And whosoever closes [the dying person's] eyes before death is regarded as one who sheds blood. One may not rend garments, nor bare the shoulder in mourning, nor make a lamentation for him, nor bring a coffin into the house in his presence before he dies, nor may we begin the recital of *Zidduk Haddin* before his soul departs. . . . *However, if there is aught which causes a hindrance to the departure of the soul, e.g., [if] near that house there is a knocking sound, viz., a wood-cutter, or there is salt on his tongue, and these hinder the departure of the soul, it is permitted to remove it therefrom, for there is no [direct] act [involved] in this, since he merely removes the hindrance.*⁵²

The basic values that guide *Halakhic* decisions are evident in these laws. Centuries of advances in medical knowledge and technology do not change these values. Instead, the use of knowledge and technology is guided by the values and principles established centuries ago. It is too easy to believe that technological progress trumps received traditions. As Albert Einstein stated: "It has become appallingly obvious that our technology has exceeded our humanity."⁵³ Jewish law seeks to make the best use of human progress in the context of the highest standards of such principles as compassion, justice, and uprightness.⁵⁴

51. "People do not enter this world alone nor should they be left alone as they leave this world." This is part of the Jewish ritual when death is imminent. Massachusetts General Hospital, Medical Interpreter Services, http://www.massgeneral.org/interpreters/b_isr.asp (last visited Nov. 29, 2005).

52. CODE OF HEBREW LAW, *supra* note 23, § 339:1, at 14–18 (citations omitted).

53. Albert Einstein Quotes, <http://www.brainyquote.com/quotes/quotes/a/alberteins161262.html> (last visited Nov. 29, 2005).

54. THE BABYLONIAN TALMUD, *supra* note 1, at Yevamot 79a.

A number of values are expressed in the passages above. First of all, a living human being deserves to be treated as such regardless of his physical or mental condition. A dying person is not a case, but a person. Factors such as age, level of cognition, social status, and any other quality of life issues are considered.⁵⁵ Only the patient's suffering and personal wishes, if such have been or can be communicated, are considered along with medical and rabbinic opinion.⁵⁶ If the law of the land gives such power to the patient's family, that too must be taken into consideration.⁵⁷

Second, there is an obligation to use all available means to bring about the patient's recovery so long as the potential benefit of the treatment outweighs the risks to the patient.⁵⁸ If a treatment will enable the patient to survive longer, but without curing the patient, the patient may choose to refuse such treatment on the grounds that this treatment will only extend the suffering.⁵⁹

Third, the patient must be made as comfortable as possible.⁶⁰ Caretakers may use all measures to alleviate pain and suffering that will not actually cause the patient to die.⁶¹ If there is a relatively small risk

This nation is distinguished by three characteristics: They are merciful, bashful and benevolent. 'Merciful', [sic] for [it] is written, *And shew thee mercy, and have compassion upon thee, and multiply thee.* 'Bashful', [sic] for it is written, *That His fear may be before you.* 'Benevolent', [sic] for it is written, *That he may command his children and his household etc.* Only he who cultivates these three characteristics is fit to join this nation.

Id.

55. For a discussion of the factors, see Myriam Klotz, *End of Life Care*, in BEHOREF HAYAMIM: IN THE WINTER OF LIFE 122–23 (2002).

56. David Teutsch, *Introduction: Jewish Values and Decision Making*, in BEHOREF HAYAMIM, *supra* note 55, at 5–6.

57. William Kavesh, *Taking Control of Difficult Decisions*, in BEHOREF HAYAMIM, *supra* note 55, at 12–24.

58. See generally IMMANUEL JAKOBOVITZ, *JEWISH MEDICAL ETHICS* 64–65 (1975) (detailing rules of procedure for situations where physicians and/or patients differ in opinion for the best course of treatment).

59. See *id.* at 65 (stating the rule for when a patient “is so weak that most people around him deem him in danger”).

60. Responsum No. 5754.14, *On the Treatment of the Terminally Ill*, in TESHUVOT FOR THE NINETIES 337–64 (W. Gunther, et al. eds., Hebrew Union college Press 1997) [hereinafter Responsum No. 5754.14], available at <http://data.ccarnet.org/cgi-bin/respdisp.pl?file=14&year=5754>. See also *infra* Part VI (discussing duties of physicians and patients relating to end of life decisions).

61. This author's personal opinion is that the obsession with psychotropic drugs in our country has over-ridden compassion and even decency where the treatment of patients is concerned. Analgesic narcotics are often under-used even for terminal patients. For example, cannabis, which is the least harmful of these drugs, is forbidden altogether according to United States federal law upheld by the United States Supreme Court. 21 U.S.C. §§ 841(a)(4), 844(a) (2000); *Gonzalez v. Raich*, 125 S. Ct. 2195 (2005) (holding that the Federal Controlled Substance Act

that such treatments will kill the patient, they may still be used so long as the purpose of their use is not to end the patient's life. Furthermore, the patient must be notified of and must consent to the use of such treatments.⁶²

Fourth, no steps may be taken to hasten the death of a terminal patient as that would constitute bloodshed.⁶³ This means, according to most rabbinic authorities, that medications already being used and needed to sustain the life of the patient must be continued.⁶⁴ Life sustaining treatments, once they are begun, should not be stopped in order to shorten the patient's life. However, if there is no possible cure available, the patient may elect to discontinue some medications and treatments in order to shorten suffering. There are some differences of opinion among rabbinic authorities on this question.⁶⁵

Fifth, factors that impede the course of nature in allowing a terminally ill patient to die may be removed.⁶⁶ This includes the decision not to begin life-extending measures once it is known that the patient's condition is terminal with no hope of recovery. There are a number of boundary issues here, such as beginning a respirator for an ALS (Amyotrophic Lateral Sclerosis also known as Lou Gehrig's Disease) patient or providing feeding through artificial means such as a feeding tube. Once such treatments begin it is much harder under Jewish law to end them because that may represent an impermissible step to hasten death rather than the removal of an impediment to death.

V. REMOVING AN IMPEDIMENT TO DEATH: A TALMUDIC ACCOUNT

Another Talmudic account emphasizes the interrelated nature of the values discussed above. During the time of the Hadrianic persecution, the teaching and study of Torah were forbidden on pain of death.⁶⁷ Rabbi Hanina ben Teradion was found to be violating this law in public

does not violate the commerce clause, even when barring the sale of marijuana for medicinal purposes). The moral cowardice of the political and medical communities in this area is, in effect, a rejection of the principle of compassion. Because Judaism teaches that the Creator provided the cure for every ill, this author believes that the rejection of these substances for use by medical purposes is a rejection of divine gifts that are part of creation.

62. See generally JAKOBOVITZ, *supra* note 58, at 64–65 (explaining procedures to be followed when patients and physicians differ on the best course of treatment).

63. CODE OF HEBREW LAW, *supra* note 23, § 339:1, at 16.

64. See *id.* (explaining what physicians and caretakers should not do when caring for terminally ill patients).

65. *Id.*

66. *Id.*

67. The Roman Emperor Hadrian imposed restrictive laws on Jews after the failure of the Bar Kochba Revolt in 135 C.E.

and was martyred in the customarily cruel Roman fashion.⁶⁸ His martyrdom, one of ten ascribed to this period, involved factors relevant to this article:

[T]hey found R. Hanina b. Teradion sitting and occupying himself with the Torah, publicly gathering assemblies, and keeping a scroll of the Law in his bosom. Straightaway they took hold of him, wrapped him in the Scroll of the Law, placed bundles of branches round him and set them on fire. They then brought tufts of wool, which they had soaked in water, and placed them over his heart, so that he should not expire quickly. His daughter exclaimed, 'Father, that I should see you in this state!' He replied, 'If it were I alone being burnt it would have been a thing hard to bear; but now that I am burning together with the Scroll of the Law, He who will have regard for the plight of the Torah will also have regard for my plight.' His disciples called out, 'Rabbi, what seest thou?' He answered them, 'The parchments are being burnt but the letters are soaring on high.' 'Open then thy mouth,' [said they] 'so that the fire enter into thee.' He replied, 'Let Him who gave me [my soul] take it away, but no one should injure oneself.' The Executioner then said to him, 'Rabbi, if I raise the flame and take away the tufts of wool from over thy heart, will thou cause me to enter into the life to come?' 'Yes,' he replied. 'Then swear unto me,' [he urged]. He swore unto him. He thereupon raised the flame and removed the tufts of wool from over his heart, and his soul departed speedily. The Executioner then jumped and threw himself into the fire. And a *bath-kol* exclaimed: R. Hanina b. Teradion and the Executioner have been assigned to the world to come. When Rabbi heard it he wept and said: One may acquire eternal life in a single hour, another after many years.⁶⁹

This narrative contains the elements of a fatal situation, the refusal to commit suicide even *in extremis*, and a heavenly reward for an act that removes an impediment to an inevitable death. This story raises a number of questions, but for our purposes here we can see that allowing the executioner to take action to hasten the death of the martyr is deemed praiseworthy. Where is the line drawn between removing an impediment to death and engaging in active euthanasia? That is the crux of the issue.

68. See THE BABYLONIAN TALMUD, *supra* note 1, at Abudah Zarah 17a (recounting the story of R. Hanina b. Teradion being questioned about his activities with the Torah and his consequential sentence to be burnt and further consequences to his family).

69. *Id.* at Abudah Zarah 18a. "*Bath-kol*" is a Hebrew term literally meaning "daughter of a voice"—a heavenly voice.

VI. A CONTEMPORARY HALAKHIC STATEMENT

How are all of these issues and principles followed today given so many advances in medical knowledge and technology? By following the argument in a recent Responsum issued by the Reform movement, we can see that the principles explained above are applied in our time.⁷⁰ In this Responsum, a rabbi asks about care for two relatives of a congregant who are at end-stages of fatal neurological diseases, one an infant and the other elderly. The Responsum begins with an explanation of why Jewish tradition does not consider active euthanasia an option:

Our duty to the sick is to heal them or, when this is no longer possible, to care for them; it is not to kill them. The sick, the terminally-ill, have a right to expect compassion from us, for such flows from the respect we ought to display to ourselves and to others as children of God. But they are not entitled to ask that we take their lives, and should they make that request, we are not entitled to grant it. For when we define 'compassion' so as to include the killing of human beings, we have transgressed the most elemental of Jewish moral standards and the most basic teachings of Jewish tradition as we understand it. We believe that compassion toward the dying is a moral responsibility. But we also believe that this responsibility can and must be discharged without resort to assisted suicide and active euthanasia.⁷¹

A. *Ending Medical Treatment*

The Responsum goes on to discuss the question of the cessation of medical treatment for a terminal patient. Other authorities from different times and places are cited to explain permissible treatment for terminally ill patients and to show that Jewish law allows pain relief even when there is a risk of death.⁷²

The Responsum then specifically addresses the ability of doctors to provide strong pain medication for dying patients:

Physicians may administer powerful anti-pain medications such as morphine to dying patients, even though such a course of treatment may shorten the patients' lives, for pain itself is a disease and its relief

70. See, e.g., NEUSNER, *supra* note 7, at 136–139 (explaining that Reform Judaism emerged as a modern response to the changing social, political, and economic circumstances experienced by Jews).

71. Responsum No. 5754.14, *supra* note 60.

72. "Patients may undergo risky surgery to relieve pain, even though the surgery may hasten their death; such surgery is, after all, legitimate medicine." *Id.* Responsa are always based on the arguments and decisions of earlier authorities, and here, we can see how the passage from *Shulhan Arukh* cited above is brought to bear on our issue.

is a proper medical objective. In addition to permitting such active measures, the *halakhah* also supports the withdrawal of medical treatment under some circumstances from terminal patients. The classic source for the discussion of this issue is the comment of R. Moshe Isserles in *Shulchan Arukh Yore De'ah 339:1*. Drawing upon material from the 13th-century *Sefer Chasidim*, Isserles rules that while it is forbidden to take any measure that would hasten the death of the *goses* (e.g., by moving him or by moving the pillow or mattress from beneath him), “if there exists any factor which prevents the soul from departing, such as the sound of a woodcutter near the house or salt on the patient’s tongue . . . it is permitted to remove that factor. This is not considered a positive act (*ma’aseh*) but merely the removal of an impediment.”⁷³

The application of the example of “salt on the patient’s tongue” to the modern era is then described in detail in the Responsum. A distinction is made, separating actions into forbidden actions, termed “active” euthanasia, and permissible courses of action.⁷⁴

Nevertheless, the Responsum reveals an underlying problem that hinders clear determination of permitted versus forbidden activities and thus demonstrates the potential existence of a contradiction in Rabbi Isserles’ logic.⁷⁵ Distinguishing between actions that cross over into the realm of active euthanasia from those that only reach the level of “removal of an impediment” can be difficult, particularly in the modern age, where technology can permit the survival of patients in conditions not considered by the original theorists. The Responsum, however, continues to describe various arguments that support differentiating the two actions using different analytical approaches.⁷⁶ The Responsum

73. Responsum No. 5754.14, *supra* note 60 (citations omitted). Rabbi Eliezer Waldenberg, a Twentieth Century rabbi, cautions in this passage that the intent of the procedure must be to relieve pain and not to hasten the patient’s death. Rabbi Isserles’ classic statement can be found in CODE OF HEBREW LAW, *supra* note 23, at § 339:1.

74. This article will adopt the definitions of “active euthanasia” and “letting nature take its course” as used in the paragraphs of the Responsum cited here.

75. Responsum No. 5754.14, *supra* note 60. The distinction between “active euthanasia” and “letting nature take its course” can also be found in CODE OF HEBREW LAW, *supra* note 23, § 339:1, at 16. See also Freehof, *supra* note 44, at 258 (discussing the limits on the actions a physician may take when treating a terminally ill patient).

76. Responsum No. 5754.14, *supra* note 60.

What is the difference between the two? Why may we remove the salt but not the mattress? Halakhic authorities have addressed this contradiction in various ways. Some, opting for extreme caution, declare Isserles wrong and prohibit the removal of the salt altogether. Others allow the removal of the salt as but an “insignificant” contact with the patient. A third approach is provided by R. Yehoshua Boaz b. Barukh, the 16th-century author of the *Shiltey Giborim* commentary to Alfasi. He notes that while it is forbidden to hasten the death of the *goses* it is likewise forbidden to take any action that unnecessarily impedes it. Salt, which cannot bring healing but

ultimately adopts the *Shiltey Giborim's* argument and continues to analyze what actions can be properly taken to ease a terminal patient's passing by looking to the purposes that motivate the action.⁷⁷

Finally, the Responsum concludes its analysis of this issue by returning to modern application of the theory, applying the conclusions developed above. Applying the bar against "active" euthanasia, the Responsum authors apply this theory to a specific situation in which a respirator is used to sustain the life of an otherwise terminal patient.

This theory helps to translate the medieval language of the texts into a usable contemporary vernacular. Does there not come a point in a patient's condition when, despite their obvious life-saving powers, the sophisticated technologies of modern medicine—the mechanical respirator, for example, or the heart-lung machine—become nothing more than mere "salt on the tongue," mechanisms which maintain the patient's vital signs long after all hope of recovery has vanished? Answering "yes" to this question, some contemporary *poskim* allow the respirator to be disconnected when a patient is clearly and irrevocably unable to sustain independent heartbeat and respiration. Even though the machine is considered part of routine medical therapy (for patients are as a matter of course connected to it during emergency-room and surgical procedures), it has at this juncture ceased to serve any therapeutic function. They can no longer aid in the preservation or prolongation of life. Once their therapeutic function is exhausted, the machines "merely prolong in an artificial way the process of dying. We must disconnect the patient from the machines, leaving him in his natural state until the soul departs."⁷⁸

only impede the patient's death, should never have been put on his tongue. Whoever put it there has acted improperly; thus, its removal, even though it involves physical contact, is permitted as the restoration of the correct *status quo ante*.

Id. (citations omitted).

77. *Id.*

The advantage of the *Shiltey Giborim's* analysis is that it turns our attention away from blurry distinctions between "active" and "passive" measures and toward the nature and purpose of those actions. The essential issue is the medical efficacy of the factor we seek to remove. Certain measures must never be applied to the *goses* because they lack any trace of therapeutic value. Offering no hope of cure or successful treatment, they serve only to delay his or her otherwise imminent death. Since it is forbidden to do this, to unnecessarily prolong the death of the dying person, these measures may be discontinued even if we must touch the patient's body in order to do so.

Id.; see also QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 266–264 (suggesting that artificial nutrition and CPR methods should never be used on patients who are dying (*goseys*) because they are so close to death that they will not be helped by such methods).

78. Responsum No. 5754.14, *supra* note 60 (citations omitted). See also Walter Jacob, *Euthanasia*, in AMERICAN REFORM RESPONSA, *supra* note 24, at 272–73 ("Absolute certainty of death, according to the halachic authorities of the last century, had occurred when there had been no movement for at least fifteen minutes . . . after the halt of respiration and heart beat.") (citation

B. *The Duty to Heal*

The Responsum also addresses the principle of the duty to heal. The issue is that we cannot know with certainty how close to death a patient is until the patient has reached the stage at which Moses Isserles says “the soul is struggling to depart from the body.”⁷⁹ Until that last extremity, vital medical treatments should be continued. This raises very basic questions as to the philosophy of medical practice. Some would argue that the duty to heal does not apply in the terminal stages of an illness in the same way as before. When there is no longer hope for a cure or recovery, some would argue that the responsibility of the medical practitioner changes.

A physician is obligated to administer those measures which in the judgment of the profession are therapeutic: *i.e.*, they are regarded in medical opinion as contributing to the successful treatment of the disease. On the other hand, treatments which do not effect “healing” are not *medicine* and thus are not required. While we may be entitled to administer such treatments we are not commanded to do so, inasmuch as they do not partake in the saving of life.⁸⁰

Thus, the Responsum distinguishes between therapeutic and non-therapeutic care. Because there is an obligation to provide therapeutic care, many modern-day problems in medical ethics arise. Addressing these modern-day problems, the Responsum makes clear that palliative care practices, such as provision of high dosage pain medication, are permitted under Jewish law.⁸¹

C. *Refusing Medical Treatment*

The Responsum continues its analysis of modern-day medical ethics problems under Jewish law by discussing the issue of refusal of medical treatment by a patient. The obligation to accept necessary therapeutic care is balanced against the desire to alleviate pain and end one’s life prematurely by refusing care.⁸²

The Responsum ultimately precludes a Jewish patient from committing deliberate suicide, and obligates such a patient to accept treatments that are considered non-experimental in nature. Thus, once a treatment is deemed tested, proven, and reasonably likely to succeed, it

omitted). “*Poskim*” is the Hebrew word meaning “legal decisors.”

79. Responsum No. 5754.14, *supra* note 60 (citations omitted).

80. *Id.*

81. *Id.*

82. *Id.* “On the other hand, should a particular remedy be experimental in nature, if its therapeutic effect upon the disease is uncertain at best, then the patient is not required to accept it.” *Id.*

must be accepted as a commandment for which there is no right to refuse.⁸³ The Responsum makes a clear distinction between those treatments that are obviously therapeutic and those that are more controversial in their categorization. Ordinary treatments used in everyday medical practice that either cure or control a disease state are obligatory treatments under Jewish law.⁸⁴

Although the distinction between obligatory and non-obligatory treatments can be made clearly in some cases, this distinction is blurred when a patient is in a terminal condition. A terminal cancer patient is used to illustrate the difference in treatment obligations under Jewish law.⁸⁵

Thus, a terminal patient's obligations to receive care differ from those of a non-terminal patient. Unfortunately, however, making such a distinction between those treatments that must be accepted as a non-terminal versus a terminal patient creates additional problems that must be taken into account. The following section of the Responsum addresses this very concern, making clear that the decision to end medical treatment leads to the patient's death, and therefore must be a decision that must be made with great care and prudence.

83. *Id.* (quoting R. Moshe Feinstein, a twentieth century *Halakhic* authority).

84. *Id.*

The standard of therapeutic effectiveness, as a tool by which to make judgments concerning medical treatment, allows us to draw some conclusions with moral confidence. Under the heading "therapeutic" and "successful" treatments we would certainly include all medical and surgical procedures, such as antibiotics and routine surgeries, which physicians expect will lead to a cure for the illness in question. These treatments are "obligatory" under the traditional Jewish conception of medicine. Other therapies, though they do not produce a cure, would nonetheless fall under this category because they are able to control the disease and allow the patient a reasonable degree of function. Included here are such therapies as insulin for diabetes (so long as the patient has not developed another, terminal illness; see above) and dialysis for chronic renal disease. These procedures can be unpleasant, true, and they do not offer a cure, but they do offer life; they are to be considered as *pikuach nefesh*.

Id.; see generally Freehof, *supra* note 44, at 258 (defining the limits of freedom of action of a physician with a terminal patient).

85. Responsum No. 5754.14, *supra* note 60 (citations omitted).

When, however, a patient has entered the final stages of terminal disease, medical treatments and procedures which serve only to maintain this state of existence are not required. A cancer patient, for example, would accept radiation and/or chemotherapy so long as according to informed medical judgment these offer a reasonable prospect of curing, reversing, or controlling the cancer. Once this prospect has disappeared and the therapies can serve only to increase suffering by prolonging the patient's inevitable death from the disease, they are no longer to be regarded as *medicine* and may therefore be withdrawn.

Id.; see also QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 264-66 (describing the time when a patient becomes a *goses* as when he or she is being kept alive artificially without hope of improvement).

While this standard is useful in helping to direct our thinking, it is by no means free of difficulty. Terms such as “therapeutic” and “successful treatment” are inherently vague and impossible to define with precision. In many situations it will be problematic if not impossible to determine when or even if the prescribed regime of therapy has lost its medical value. Yet the decision to continue or to cease the treatment must nonetheless be made, and those who must make it will confront an element of doubt and uncertainty that cannot be entirely resolved. Every such decision is inherently a matter of *choice*, a choice between two or more alternatives when none is the obviously correct one. This kind of uncertainty is disturbing to many, who believe (as we all do) that fundamental issues of life and death must be handled with an attitude of reverence and caution. Yet their laudable search for moral certainty has led some authorities toward an extremist position, rejecting the very possibility that treatment can ever be withdrawn from a dying patient. Says one: “every person is obligated in every case to seek out medical treatment, even though he believes that the treatment will not heal him but only prolong his suffering; for we must hope for and await God’s deliverance to the very last moment of our lives.” This conviction is based upon the reasoning that, inasmuch as medicine is not a precise science, even the most definitive medical prognosis is a matter of *safek*, of doubt. We must work to preserve life until the very end, for while it can never be established with certainty that a patient has absolutely no hope for recovery, it is indeed certain that, should we withdraw medical care, the patient will die.⁸⁶

D. Artificial Nutrition and Hydration

The Responsum then takes up the question of artificial nutrition and hydration, which is a difficult boundary issue. Is this a medical procedure or is it ordinary care using modern technology? Given the deep controversy on this issue, the Responsum proceeds with caution.⁸⁷

As we have seen, Jewish tradition offers strong support for the cessation of medical treatments for the terminally-ill when these treatments have lost their therapeutic effectiveness. We are not commanded to do medicine when our actions are *not* medicine, when they do not heal. We violate no moral obligation if we refuse to offer

86. Responsum No. 5754.14, *supra* note 60 (citations omitted). This passage quotes R. Natan Zvi Friedman, Resp. Netser Mata’i, No. 30 and cites J. David Bleich, *The Quinlan Case: A Jewish Perspective*, in *JEWISH BIOETHICS* 266–76 (Fred Rosner & J. David Bleich eds., Hebrew Publ’g Co. 1979).

87. The Responsum presents this as a question: “May we discontinue the supply of nutrients or disconnect the tubes altogether on the grounds that, as all hope for recovery or satisfactory control of the illness has vanished, this feeding serves only to prolong the patient’s death?” Responsum No. 5754.14, *supra* note 60 (citations omitted).

a patient drugs or technologies that are medically useless. By contrast, we do violate such an obligation under normal circumstances when we withhold food and water: we have starved that person to death. Though we might respond that a dying patient fed through a tube hardly constitutes a “normal circumstance,” artificial feeding differs from other hospital procedures in one crucial aspect: it can be argued that the feeding tube has nothing to do with “medicine” at all. Its function is not to treat the disease but to provide essential nutrients to the patient, and so long as the patient is capable of digesting these nutrients, the tube is successfully performing its task. In this analysis, artificial nutrition and hydration are not medical treatments, do not lose any “therapeutic” effectiveness, and therefore may not be withdrawn.⁸⁸

Thus, a patient may not refuse artificial nutrition and hydration, because food and water are obligations under normal circumstances. The purpose of the artificial nutrition and hydration is to continue life rather than to treat the condition.

The Responsum then rejects an argument that favors categorizing artificial hydration and nutrition as medicine based upon the conditions that trigger their use.⁸⁹ Even though artificial nutrition and hydration are frequently used in medical settings such as hospitals and hospices, because food and water are required to sustain life, artificial nutrition and hydration are not to be considered medical treatment. However, the Responsum recognizes that the disagreement about the nature of

88. *Id.*; see also QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 263–66 (responding to the question: “Should nutrition in contrast to medicine be continued for a comatose patient who is suffering from incurable cancer?”); *supra* Part VI.C (discussing a patient’s right to refuse medical treatment in certain situations); THE BABYLONIAN TALMUD, *supra* note 1, at Sanhedrin 77a. The Talmudic passage deals with homicide and states that, “If one bound his neighbor and he died of starvation, he is not liable to execution.” *Id.* This indicates that such an act would be manslaughter but not murder.

89. Responsum No. 5754.14, *supra* note 60 (citations omitted).

One could argue that artificial feeding devices are indeed “medical”, [sic] a response to disease. They are utilized precisely because a patient is unable to ingest nutrients in the “normal” manner. As such they are medical interventions and can be withdrawn when the intervention is no longer medically justified. There is no reason to distinguish between feeding tubes and other, indisputable “medical” procedures such as cardiopulmonary resuscitation: both keep the terminal patient alive, and the withholding of either will result in death from the very disease which warranted its introduction in the first place. On the other hand, unlike sophisticated medical procedures, food and water are universal human needs. All of us, whether sick or well, require food and water in order to survive. Moreover, the fact that these nutrients are supplied by a machine does not transform them into exotic medical substances; we all receive our food at the end of a long chain of production, transportation, and distribution technologies. A real and desirable distinction can therefore be made between artificial feeding and medical treatment.

Id.

artificial nutrition and hydration continues throughout society.⁹⁰ The dispute about the nature of artificial nutrition and hydration cannot be resolved here.⁹¹ Yet, whether it is a medical procedure or not, Jewish law supports the use of artificial nutrition and hydration as a basic means of sustaining life, but does not absolutely oppose its removal.⁹²

Thus, a patient cannot refuse artificial hydration and nutrition under Jewish law, not because of the interventional nature of the treatment, but because of its basic purpose to sustain the basic functions of life.

90. *Id.*

Opinions on this question are deeply divided. A broad coalition including medical ethicists, the American Medical Association, and the United States Supreme Court supports the definition of artificial nutrition and hydration as a medical procedure that may be withdrawn from terminal patients. On the other hand, this “emerging medical, ethical and legal consensus” has been challenged by some ethicists, who argue that the withdrawal of nutrition resembles killing more than it does the cessation of purely “medical” treatment.

Id.

91. *Id.*

The dispute among halakhic scholars is the mirror image of that among ethicists. Most authorities prohibit the withdrawal of food and water; “the reason, quite simply, is that eating is a normal physiological process, required to sustain life, necessary for all, including those who are healthy.” Food and water are not, therefore, medicine; their presence cannot be defined as medically illegitimate. At the same time, some halakhists have suggested the opposite, that artificial nutrition is a medical procedure and may be withdrawn. Reform *halakhic* opinion is also split: one Responsum opposes the removal of the feeding tube, though several others permit it.

Id.; see also Hospital Patient Beyond Recovery, CCAR Responsa Committee Archives no. 5750.5, available at <http://data.ccarnet.org/cgi-bin/respdisp.pl?file=5&year=5750> (stating that because “the patient is not dying the withdrawal of the feeding tube is not permissible in the light of Jewish tradition”); Walter Jacob, *Nutrition and Incurable Cancer*, in QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 263–69; Freehof, *supra* note 44, at 257 (permitting the physician to refrain from connecting or refilling the nutrition apparatus of a dying patient).

92. Responsum No. 5754.14, *supra* note 60 (citations omitted).

Given this division of opinion, we cannot claim that Jewish tradition categorically prohibits the withdrawal of food and water from dying patients. It can be plausibly argued that artificial nutrition and hydration are medical interventions which, on the Judaic grounds that we have cited in the previous two sections of this *teshuvah*, may be discontinued upon a competent finding that they no longer provide therapeutic benefit to the patient. At the same time, we stress the plausibility of the opposing argument. Food and water, no matter how they are delivered, are the very staff of life (*lechem chuki*) for the human being. They sustain us at every moment of our lives, in health as well as in illness. It is therefore not at all obvious that we should look upon these substances as “medicine” merely because they come to us in the form of a tube inserted by medical professionals. Moreover, the moral stakes in removing the feeding tube are considerable. As one authority who rules permissively admits, “there is something which is, minimally, highly unaesthetic” about withholding food and water from terminal patients. We agree. Indeed, some of us would use stronger adjectives, for—let us neither mince words nor hide behind comforting euphemisms—we cannot overlook the fact that by removing them we are starving these human beings to death

Id.

Having dismissed the argument based upon the supposed "medical" nature of artificial hydration and nutrition provision, the Responsum concludes by giving instructions on how the bar against refusal of such therapeutic care should be applied.

We would therefore caution at the very least that the removal of artificial nutrition and hydration should never become a routine procedure. It is preferable that artificial feeding of terminal patients be maintained so that, when death comes, it will not have come because we have caused it by starvation. Nonetheless, because we cannot declare that cessation of artificial nutrition and hydration is categorically forbidden by Jewish moral thought, the patient and the family must ultimately let their conscience guide them in the choice between these two alternatives.⁹³

VII. CONCLUSION

Jewish law is an organic body of law running from scriptural sources to rabbinic experts responding to the latest advances and problems in medicine today. What we find in these sources is not always uniformity of opinion. Instead, we find legal experts trying to conform to basic ethical principles in deciding how to act on specific cases. Jews who seek religious authority for their medical decisions are not required to choose a single rabbinic authority or rabbinic body to consider the case at hand. Instead of regarding any one code of law or any one person as an ultimate authority, Jewish tradition incorporates thousands of years of legal and ethical tradition embodied both in codes and in case law (the *Responsa* literature). On life-and-death questions, there is unity of commitment to such principles as the saving of life and the duty to heal. It is well understood, however, that a decision on a specific case must consider a variety of sources and opinions. Jewish law is therefore a living process that stands on tradition and depends on scholarship and creative thought.

93. *Id.*