

The Right to Die: A Halachic Approach



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American society has increasingly come to recognize what is known as the "right-to-die". In the famous Cruzan case, the Supreme Court of the United States in a 5-4 decision ruled that a patient who has clearly communicated his or her wishes regarding the use of life support machinery or the provision of hydration and nutrition has a constitutional right to have those wishes respected even if the patient is not suffering from a terminal condition. Jack Kevorkian, the infamous doctor of death, is running around the country assisting persons in killing themselves. Derek Humphrey's work FINAL EXIT was a best seller. A referendum in the state of Washington that would formally legitimate physician-assisted suicides was supported by almost 50% of the electorate and many feel that within a few years, such measures will be routinely approved. Under a recently-enacted federal law, persons entering hospitals or nursing homes must be informed of their rights to execute living wills or other advance directives spelling out ahead of time that certain medical interventions should not be employed. What does the Jewish tradition say about these matters? Does halacha take positions on advance directives? Does Judaism recognize a right to die?

Briefly stated, the Jewish tradition rests on a number of assumptions:

1. The preservation of life [pikuach nefesh] is considered to be of paramount importance, surpassing virtually all of the other commandments of the Torah. One may and must violate Yom Kippur or the Sabbath, eat non-kosher food, etc. if there is the slightest chance that human life may be preserved or prolonged.
2. The quality and/or duration of the life being saved is irrelevant. Life is of infinite, not relative, value and mathematically, any fraction of infinity must also be infinite. Once life is assigned a relative value - once we start making judgments as to which lives are worth living and which are not, once we assign value to people because of what they can do instead of what they are we have demeaned the intrinsic sanctity of existence for all human beings and have embarked on a dangerous exercise of line drawing. What about the elderly, what about the severely retarded, what about the handicapped: are they any less human because their productivity is impaired?

[The reader may legitimately ask what use is the life of a Karen Ann Quinlan? What use is the life of a person who is comatose and incapable of any cognitive brain functioning? What use is an anencephalic child? Keep in mind, however, that a Jew believes in a soul and that the body is simply a receptacle for the person's true spiritual essence. Souls come to earth for many, many purposes and we don't know why G-d sends souls into this life. Sometimes it could be that the spiritual destiny of a soul is to elicit certain responses on our part. The soul exists to teach us certain things about the meaning of life and love and how we relate to the dignity of a human being and when we fail to respond with sensitivity and respect for the unconditional value of that person's life, we kill off a small

part of ourselves as well.]

3. Judaism rejects the notion of unlimited personal autonomy. Our bodies and our lives are not our own to do with as we will. They are temporary bailments given to us by G-d for a specific purpose and duration which only G-d can terminate and just as we don't have the moral right to kill or harm others, we don't have the moral right to kill, maim, or injure ourselves or to authorize other persons to do those things to us.

4. Judaism rejects the notion that the utilization of advanced technology to sustain life is somehow an interference with G-d's will. Technology and scientific advancement are not man-made but are in themselves gifts of Divine revelation to be used for the benefit of mankind. Thus, the dichotomy that some religions posit between "natural" and "unnatural" ways of treating illness is essentially foreign to Jewish thinking.

These four factors standing alone would surely argue against any "right to die" and would support an absolute affirmative obligation to prolong life at all costs, regardless of pain and indeed regardless of the patient's expressed wishes. This is in the fact the position associated with the eminent Talmudist and bioethicist, Rabbi Dr. J. David Bleich of Yeshiva University. It is, however, a decidedly minority position.

Halacha, as all well-developed ethical systems, cannot and does not focus on a single moral value to the exclusion of others but seeks to balance, accommodate, and prioritize a multiplicity of ethical concerns. Just as there is a mitzva (a Divine commandment) to prolong life, there is a mitzva to alleviate pain and suffering. But what happens if one value can be achieved only at the expense of another? Consider the patient suffering terminal cancer whose life could be prolonged for no more than six months but only at the cost of painful, debilitating chemotherapy or the elderly stroke victim who falls prey to pneumonia which will kill him swiftly and relatively-painlessly overnight but is easily treatable by antibiotics. May the patient decline the chemotherapy or the antibiotics to achieve a quicker, less painful death or is the mitzva of pikuach nefesh (preservation of life) so absolute that it admits of no exceptions?

Most rabbinical authorities (Rabbi Moshe Feinstein, for one) have sanctioned the patient's right to decline treatment provided a number of very specific conditions were met. First, the patient must be in a terminal condition - that is, whether the treatment is employed or not, the patient is not expected to live beyond a year. Second, the patient suffers unbearable pain and suffering. Third, the patient has indicated that he or she desires not to be treated. In the event the patient is incompetent or unable to communicate his decision, next-of-kin may make such a decision based exclusively on what they feel the patient would have wanted (Note: This is not based on what they would have wanted if they would have been the patient but rather what this particular patient would actually desire). Fourth, assuming the above three conditions are met, the patient may decline surgery, chemotherapy, and painful invasive treatments but may not decline food, water, or oxygen (which are the normal sustainers of life, the withdrawal of which may be tantamount to murder or suicide). Antibiotics may also fall under the "food" category because they are generally a noninvasive, nonpainful procedure. There is also some question whether tube feeding falls in the category of "food" or in the category of "surgery". Most decisors would place it in the former but emphasize that even if the patient is halachically-obligated to take artificial nutrition, he should not be force-fed or physically-restrained. In no event may the patient or the physician take any affirmative step that would hasten death. Active euthanasia, regardless of motive, is morally and halachically equivalent to murder. On the other hand, halacha would view both the goals and methods of hospice in a very sympathetic light.

Judaism thus attempts to strike a balance between the great mitzva of prolonging life and the recognition that life may become unbearably difficult and painful. The living will, however, which attempts to spell out in advance which treatments should be employed and which should not is too blunt of an instrument to accurately mirror the necessary value judgments. The basis for all of these decisions is the pain and suffering the patient feels at the time of the illness and this can simply not be predicted in advance. Conditions that may seem intolerable to us when we are 35-40 may be quite adequate when we reach 85 and we realize that the alternative would be death. Keep in mind too that many patients such as those with advanced Alzheimer's or in comas may in fact not be suffering though their existence is undoubtedly a hardship to their families. Moreover, it is almost impossible to

spell out all contingencies in advance, making living wills incomplete almost by definition.

Far preferable to the living will is the durable power of attorney (often called a health-care proxy) which simply specifies a person-family member, friend, clergyman - empowered to make health care decisions on the patient's behalf in the event he or she is incapacitated. The power may in addition specify that all decisions shall be made in accordance with Jewish law and in consultation with a designated clergyman of the patient's choice. Sample forms - labelled somewhat inaccurately as "Halachic Living Wills" - have been prepared by Agudath Israel of America, a national organization headquartered in New York. This document insures that decisions will be made consistently with the moral and religious beliefs that the patient holds dear. Obviously, one should discuss these delicate matters ahead of time both with family members and spiritual advisers.

Incapacitation and terminal illness are tragic situations. Let us remember, however, that we come from a tradition that has grappled with these questions and that approaches these issues with sensitivity, compassion, and understanding. Hopefully, none of us will ever be faced with these problems but if we are, let us turn to our tradition for guidance and support.

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