

## EUTHANASIA AND ABORTION

by Rabbi Dr. Nachum Amsel June 18, 2018

***This essay is reprinted from the book, "The Encyclopedia of Jewish Values" published by Urim, or the upcoming books, "The Encyclopedia of Jewish Values: Man to Man" or "The Encyclopedia of Jewish Values: Man to G-d" to be published in the future. This essay is not intended as a source of practical halachic (legal) rulings. For matters of halachah, please consult a qualified posek (rabbi).***

The moral questions regarding euthanasia and abortion are very sensitive issues which are discussed by all segments of society today. Much has already written about these topics in Jewish law. Therefore, the purpose here is not to deal with the Jewish legal issues themselves, but, rather, to give the general Jewish perspective as to how Jewish law reflects Jewish values and attitudes about them. Each topic is distinctive, but they are combined in this chapter because they both reflect Jewish attitudes toward life itself.

### **EUTHANASIA**

Many people feel that it is their own decision whether or not to end their lives or when, because they are the masters over their own bodies. Judaism strongly believes that one's body is not his and does not belong to him.<sup>1</sup> Since the Jewish view is that life has infinite value,<sup>2</sup> and just as in mathematical terms, each part of infinity is still infinity, so, too, according to the Jewish view, each part of life has infinite value, even a few moments. These ideas are not only lofty concepts, but are reflected in Jewish law as well.

A Jew is permitted and even obligated to violate the Shabbat only if there is a possibility to save a life. Thus, if there is no possibility at all of saving life, one may not violate the Shabbat.<sup>3</sup> The Talmud,<sup>4</sup> however, says that even if the possibility of saving life is extremely remote, one should and must violate the Shabbat. Thus, if a house collapsed on a person and that person may or may not be alive, one should violate the Shabbat to dig out the rubble. The Talmud continues and says that if violating the Shabbat will only save a few hours of life, one still violates the Shabbat. Therefore, if by removing the rubble (and violating the Shabbat) the person will die in five hours, while by not removing the rubble, the person will die in one hour, Jewish law says a person must violate the Shabbat.<sup>5</sup> This is also codified in the Shulchan Aruch.<sup>6</sup> Consequently, this proves that even saving a few hours of life is considered saving a life, and, hence, each moment of life is as infinite as an entire life.

The opposite is also true with regard to ending life. Since each minute of life has infinite value, ending a life a few minutes earlier than it would have ended naturally is considered to be

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<sup>1</sup> Maimonides, Hilchot Rotze'ach 1:4

<sup>2</sup> Sanhedrin 37a

<sup>3</sup> Shabbat 151b

<sup>4</sup> Yoma 83a

<sup>5</sup> Yoma 85a

<sup>6</sup> Shulchan Aruch, Orach Chaim 329:3-5

taking away an infinite life and is deemed to be murder. Thus, the man who helped the dying King Saul to die a bit quicker<sup>7</sup> is later condemned to death as a murderer<sup>8</sup> since he ended Saul's life early. When Rabbi Chananya ben Tradyon was being burned alive by the Romans, his students begged him to open his mouth in order to die more quickly, but he refused because ending life early, even in torture and even though being murdered by someone else, is still forbidden as taking a life, even regarding one's own life.<sup>9</sup> Therefore, even if someone is dying and by ending his or her life, a person will relieve pain, as was the case with Rabbi Chananya, it is prohibited in Judaism.<sup>10</sup> Thus, euthanasia, which is defined as ending a dying person's life early, even for the noblest and most merciful of reasons, is not permitted in Judaism.

In addition to the reason that each moment of life has infinite value, there is another concept behind the prohibition of a human being to end life early. The Talmud<sup>11</sup> states that the moment of death is something that is left up to G-d. A person is not meant to actively intervene to determine the exact moment of death of oneself or others. The Torah itself implies this<sup>12</sup> when G-d says that He alone gives life and death. Therefore, we see that man can't "play G-d" and ever determine who and when any person will die (except for a legally appointed Jewish court in convicting a murderer – see the chapter on Capital Punishment).

There is another very practical reason why Judaism prohibits euthanasia, which has sometimes been demonstrated, unfortunately, in those countries which now legally permit certain types of euthanasia, ending life early by "pulling the plug" of a patient on a respirator, for example. Once any form of (active) euthanasia is permitted, a very dangerous "slippery slope" comes into play. For example, if a law were to say that a person could end his or her own life when he or she feels excruciating pain, who will then determine what is excruciating pain? And what if the pain is psychological -- a person who has worked out in a gymnasium all of his or her life sees that his or her body is beginning to deteriorate? It is excruciating to that person to see a "perfect" body lose that perfection, even if that person will die in another ten years. To that (relatively healthy) person, the pain of seeing a body lose its perfection may indeed be very painful. If euthanasia were permitted in cases of extreme pain, this "imperfect" person might also be justified in ending life early.

Similarly, if laws were created that let children become involved with euthanasia of their elderly and infirm parents, problems would quickly arise. If we gave the right to children to end the life of elderly, dying parents who were no longer able to communicate, many children would "pull the plug" for very noble reasons. But other children would also quickly decide to end life because

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<sup>7</sup> Samuel II 1:9-10

<sup>8</sup> Samuel II 1:13-16

<sup>9</sup> Avodah Zara 18a

<sup>10</sup> Maimonides, Hilchot Rotze'ach 2:7

<sup>11</sup> Pesachim 54b

<sup>12</sup> Deuteronomy 32:39

of the high cost of keeping the person in the hospital. Children who see their future inheritance decrease each week that a parent stays alive and passively watch as the hospital takes "their" money, would be tempted to end life for the wrong reasons. Therefore, as soon as one form of euthanasia is permitted, this "slippery slope" poses an unending problem. Where does one stop? How can illegitimate ending of life be truly stopped and even be determined? It really cannot. This is yet another reason why man cannot be given the right to determine the end of life.

### **LEGITIMATE WAYS TO END LIFE IN JUDAISM**

Since the basic principle is established that only G-d can end life, then as long as it is G-d, and not man, ending life, it is permitted in Judaism, under certain conditions. Therefore, if life is ending anyway (by G-d) and man does something not to lengthen the process of death that is permitted in Judaism. Thus, the Code of Jewish Law records that if the noise outside of a man chopping wood is holding back a dying person from finally dying, then it is allowed to stop the wood chopping. This is called passive euthanasia which, under certain circumstances, is permitted in Judaism, since it is G-d, not man, ending the life of a person.<sup>13</sup> This involves very technical questions and often difficult to define. Thus, if a person is dying anyway, man does not have to go to "heroic" measures to continue life (although one may). However, once heroic or non-heroic measures are taken to keep someone alive (such as attaching to a respirator), one may not do anything active to end the life (pulling the plug from that respirator) since, once again, it would be man, not G-d, determining death.

### **PRAYING FOR DEATH**

The Talmud<sup>14</sup> debates whether visiting the sick helps cause someone to stay alive longer by inspiring an "automatic" prayer that this person be kept alive. On this issue, Rabbeinu Nissim<sup>15</sup> writes that it is sometimes permissible to pray for someone's death if the person is dying anyway and is in excruciating pain. He cites as proof the story of the maidservant of Rabbi Judah the Prince<sup>16</sup> who, after seeing the great suffering of her master, prayed that he die. It is interesting to note that in that story, her prayers were not heeded because all the other rabbis (who may not have been aware of his excruciating pain as she was) kept praying that Rabbi Judah continue to live. The maidservant eventually threw down a vessel from the roof whose noise upon shattering startled the rabbis who momentarily stopped praying. At that instant, Rabbi Judah died. The Talmud does not disparage this act, implying that throwing down the vessel by the maidservant was allowed. Here, once again, is an act of passive euthanasia, where Rabbi Judah was taken by G-d, not man. Therefore, it seems that prayer for someone's death who is in great pain is permitted. It should be noted that according to Maimonides,<sup>17</sup> life with pain is preferable to death. This is

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<sup>13</sup> Ramah on the Shulchan Aruch, Yoreh Deah 339:1

<sup>14</sup> Nedarim 40a

<sup>15</sup> Rabbi Nissim commentary on Nedarim 40a

<sup>16</sup> Ketuvot 104a

<sup>17</sup> Maimonides, Hilchot Sotah 3:20

based on the Mishna<sup>18</sup> that also explains that a Sotah who is condemned to die after drinking the special waters will be kept alive in great pain if she has merited reward through Torah study. The more reward she has merited, the longer she will be kept alive in pain before dying. Thus, we see that the painful existence of the Sotah is preferable to her immediate death, and is even viewed as a reward.

### **EXPERIMENTAL SURGERY**

One of the major areas of discussion today where technology and Halacha meet is in cases involving experimental surgery for "dying" patients. If a patient is dying of a disease, and a new procedure may cure the person totally or, if unsuccessful, will result in immediate death on the surgery table, may a person take the risk of "ending his life early" through surgery if the alternative is the possibility of being totally cured? If permitted, must the person have the surgery? What if, as a result of the surgery, it will only delay death a few months? A year? A few years? What is the risk/benefit ratio? If there is a 10% chance of cure and 80% chance of death on the surgery table, does that make a difference? What if the chances for success and failure are 50-50? All these questions are very real Jewish law issues which are still being debated today by Torah authorities. Each case must be weighed on its own merit and its own unique circumstances. There is a source for these cases in the Talmud<sup>19</sup> where it discusses whether a person who is definitely going to die may use treatment involving idol worship to be cured. Like a detailed discussion of cases presented today, the Talmud's outcome is beyond the scope of this book. Each case must take into account the legitimate chances of survival as determined by a competent physician and then be ruled upon by a competent Jewish laws authority.

### **ABORTION**

Some religious groups, such as the Catholic Church, believe that life itself begins at conception. Others believe that life begins only at birth, and prior to birth, there is no life concept at all. Where does Judaism stand on this issue, whose corollary will be the view on abortion?

Unlike the two "extreme" views, Judaism believes that taking the life of a fetus does not receive the death penalty as one who takes the life of a one-day-old newborn.<sup>20</sup> A baby one day old (or a few minutes old) is treated as a full life in every way and has equality of life with the mother.<sup>21</sup> However, a fetus has worth in Judaism, as a potential life, if not actual life, and therefore one who accidentally destroys a fetus pays a fine, according to Jewish law, but is not totally exempt in the eyes of the Torah.<sup>22</sup> According to some opinions,<sup>23</sup> the fetus is considered an

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<sup>18</sup> Mishna, Sotah 3:4

<sup>19</sup> Avodah Zara 27a

<sup>20</sup> Maimonides, Hilchot Rotze'ach 2:6

<sup>21</sup> Sanhedrin 72b

<sup>22</sup> Exodus 21:22

<sup>23</sup> Maimonides, Hilchot Rotze'ach 1:9; Since the fetus is in the category of Rodef, which is a concept which applies normally to two human beings, it must have a status of a human being.

actual life, but since it has not yet been born and shown that it is viable, it is treated only as potential life. Other opinions<sup>24</sup> state that until the fetus is born, it has no status of a life at all. Either way, the status of the fetus is potential, not actual life.

Therefore, abortions are permitted in Judaism only if it is to save the life of the mother<sup>25</sup> since that is a case of actual life vs. potential life. But one may not abort a fetus for any other reason except to save an actual life, since the fetus' status, as potential life, is sacred as well (see the chapter of "Getting Pregnant to Abort the Fetus to Use the Stem Cells" for an expansion of this theme). Some authorities have extended the concept of saving the mother's life to the psychological sphere as well, so that if there is a potential that the mother's life may be threatened, i.e. the mother may commit suicide if she has the child, these authorities permit abortion.<sup>26</sup>

Although not an actual life, the status of the fetus as potential life can be seen from several sources which show that one may violate the Sabbath in order to save the fetus.<sup>27</sup> Since one may only violate the Shabbat to save a life, the status of the fetus is more than just "property" which may not be destroyed. In fact, according to Rabbi Yishmael,<sup>28</sup> a non-Jew who destroys a fetus is called a murderer and can be put to death. This concept is codified by Maimonides.<sup>29</sup>

It should be pointed out that, although the vast majority of opinions do not distinguish between any specific time of pregnancy, there is a minority opinion which, when allowing abortions, the permission to do so is only before the first forty days of pregnancy is reached.<sup>30</sup> This is based on a Talmudic statement<sup>31</sup> that prior to forty days, according to Rav Chisda, the fetus is "considered only as water." Maimonides<sup>32</sup> agrees with this view stating that during the first forty days it is not a fetus. This is mentioned again<sup>33</sup> in a different context, which states that prior to forty days the baby is not formed. Maimonides once again<sup>34</sup> states that before forty days the baby is not formed. Nevertheless, most authorities do not permit abortions during this period unless the circumstances warrant an abortion in general. (It is interesting to note that only in the last few years have doctors been able to discern conclusively that by the six-week period, 40-42 days, human features such as limbs and fingers are formed.)

The reasoning behind the Jewish rulings of no abortion (except to save the mother's life) is

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<sup>24</sup> Rashi on Sanhedrin 72b, who states that until the baby emerges from the womb it is not a life.

<sup>25</sup> Mishna, Ohalot 7:6

<sup>26</sup> Responsa of Tzitz Eliezer, Vol. 7, sec. 48, chap. 1, paragraph. 8 and vol. 8, sec. 36

<sup>27</sup> Arachin 7a

<sup>28</sup> Sanhedrin 57b

<sup>29</sup> Maimonides, Hilchot Melachim 9:4

<sup>30</sup> See Tzitz Eliezer, Vol. 7, sec. 48, chap. 1, Vol. 8, sect. 36 and Vol. 9, sec. 51

<sup>31</sup> Yevamot 69b

<sup>32</sup> Maimonides, Hilchot Terumot 8:3

<sup>33</sup> Niddah 30a

<sup>34</sup> Maimonides, Hilchot Isurei Biah 10:1

that man may not destroy life, even potential life. As was seen with euthanasia, just as every part of a life has value, so too does potential life. And just as in euthanasia, a person cannot say that it's his or her life to do with as he or she pleases, since life belongs to G-d, a potential mother cannot say it is her fetus to do with as she wishes. The potential life also belongs to G-d and not just the mother.

In addition, the same "slippery slope" argument used by critics of euthanasia also applies to abortion. If Judaism were to permit abortion for, as an example, abnormal fetuses, then who is to determine what is normal and what is permitted? The parents? If the child will have a 70 IQ, which is borderline normal, some parents would insist on an abortion because their child will not be normal. What about an IQ of 60? 40? To a family of geniuses, then, a child that will have a 100 IQ (perfectly normal) would bring shame on that family and would be considered abnormal for that family. Once the decision is left up to man, the human being will, of necessity, have to draw an artificial line defining when abortion is, or is not, permitted. Similarly, if society will say that we will not bring a deformed baby into the world, who is to define deformed? Is a body without arms and legs, but with a normal brain deformed? Who is to say that the person without limbs should not live? Will that person, of necessity, have an unhappy fulfilled life? Do we then abort babies who will be blind and deaf? What if we know the baby's life expectancy will be only ten years? Do we abort? If not, then if it will live 5 years? Two months? If we do abort a baby who will live ten years, what about a baby who will live "only" 21 years? Once a line is drawn by man, it of necessity becomes arbitrary and imperfect. Thus, the "slippery slope".

Therefore, although it is sometimes more painful, it is certainly more moral and ethical to say that man may never define which babies will be born and which will not. Like the ending of life, the beginning of life must be G-d's decision, not man's.

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