

Jewish Medical Ethics: End of Life Decision Making

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Session I

Part I The Supreme Value of Life

Text 1 Iyov 1:21, 14:5, Kohelet 3:1-3

Job 1:21

כא ויאמר ערם יצתי [ינצאתי] מבטן אמי וערם אשוב שמה ה נתן ה לקח יהי
שם ה מברך:

He said, “Naked came I out of my mother’s womb, and naked shall I return there; the Lord has given, and the Lord has taken away; blessed be the name of the Lord.”

Job 14:5

ה אם חרוצים | ימיו מספר־חדשיו אתך תקו [חקיו] עשית ולא יעבר:

His days are determined;
You know the number of his months;
You have set him limits that he cannot pass.

Kohelet 3:1-3

א לכל זמן ועת לכל־חפץ תחת השמים:
ב עת ללדת ועת למות עת לטעת ועת לעקור נטוע:
ג עת להרוג ועת לרפוא עת לפרוץ ועת לבנות:

- 1 A season is set for everything, a time for every experience under heaven:
- 2 A time for being born and a time for dying,
A time for planting and a time for uprooting the planted;
- 3 A time for slaying and a time for healing,
A time for tearing down and a time for building up;

Text 2 Mishnah Yoma 8:7

Compilation of teachings of 3rd century BCE – 3rd century CE scholars in *Eretz Yisrael (Tanna'im)*; compiled and edited by Rabbi Yehudah HaNasi.

If debris fell on someone, though it is questionable whether or not he is there, whether he is alive or dead, or whether he is an Israelite or a heathen, one should open [even on Shabbat] the heap of debris for his sake. If one finds him alive one should remove the debris in order to rescue him, but if he is dead one should leave him there [until Shabbat is over].

מִשְׁנֵה יוֹמָא ח:ז

– מִי שֶׁנִּפְלָה עָלָיו מִפְּלֵת, סָפֵק הוּא שֶׁם סָפֵק אֵינוֹ שָׁם, סָפֵק חַי סָפֵק מֵת, סָפֵק נִכְרִי סָפֵק יִשְׂרָאֵל – מִפְּקָחִין עָלָיו אֶת הַגֵּל. מִצְּאוּהוּ חַי – מִפְּקָחִין עָלָיו, וְאִם מֵת – לְבִיחוּהוּ.

Text 3 Talmud Bavli, Tractate Yoma 85a

Compilation of teachings of 3-6th century scholars in Babylonia (*Amora'im*); final redaction in the 6-7th centuries.

"If one finds him alive [one should remove the debris in order to rescue him]" — that is self-evident! The law must be stated for the case in which he has only a short while to live.

תְּלִמוּד בְּבָבְלִי, מִסְּכַת יוֹמָא דָּף פה עמוד א

מִצְּאוּהוּ חַי פְּשִׁיטָא! – לָא, צְרִיכָא, דְּאֶפִּילוּ לְחַיִּי שְׁעָה.

PART II: Rabbinic stories seeking to teach about termination of life because of an intolerable condition.

Text 4 Talmud Bavli, Tractate Avodah Zarah 18a

Compilation of teachings of 3-6th century scholars in Babylonia (*Amora'im*); final redaction in the 6-7th centuries.

[Rabbi,] open your mouth that the fire may enter [and you will die]. He said to them, "It is better that He who gave [my soul] should take it away and let no one inflict injury on himself." The executioner asked him, "Rabbi, if I intensify the fire and remove the mats (of wool soaked in water that were placed on his heart in order to prolong his suffering) from your heart will you bring me in to the World to Come?" He said, "Yes." "Swear to

me," [said the executioner]. He swore to him. [The executioner] immediately increased the flames and removed the mats from upon his heart. [Rabbi Chanina's] soul speedily departed. Then, [the executioner] leaped, falling into the fire. A heavenly voice went out and proclaimed: "Rabbi Chanina and the executioner are invited into the Afterworld." Rabbi [Yehudah HaNasi] wept and said, "Some may attain their world in but one moment while others require many years."

תלמוד בבלי, מסכת עבודה זרה דף יח עמוד א
פתח פיה ותכנס [בה] האש. אמר להן מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו. אמר לו
קלצטונירי, רבי אם אני מרבה בשלהבת ונוטל ספוגין של צמר מעל לבה אתה מביאני לחיי
העולם הבא? אמר לו הן. השבע לי. נשבע לו. מיד הרבה בשלהבת ונטל ספוגין של צמר מעל לבו.
יצאה נשמתו במהרה. אף הוא קפיץ ונפל לתוך האור. יצאה בת קול ואמרה, רבי חנינא בן תרדיון
וקלצטונירי מזומנין הן לחיי העולם הבא. בכה רבי ואמר יש קונה עולמו בשעה אחת ויש קונה
עולמו בכמה שנים.

Text 5 Talmud Bavli, Tractate Ketuvot 104a

Compilation of teachings of 3-6th century scholars in Babylonia (*Amora'im*); final redaction in the 6-7th centuries.

The maid of Rabbi [Yehudah HaNasi] went up to the roof. She said, "Those on high are seeking Rabbi and those below are seeking Rabbi. May it be [God's] will that those below overpower those on high." [However,] when she saw how he suffered so from repeatedly taking off and putting on his *tefillin* each time he would enter the bathroom, she said, "May it be [God's] will that those on high will overpower those below." However, the rabbis did not cease imploring God's mercy. She, then, took a pitcher and threw it down from the roof. They were silenced (momentarily) in their prayer and Rabbi's soul departed.

תלמוד בבלי, מסכת כתובות דף קד עמוד א
סליקא אמתיה דרבי לאיגרא, אמרה: עליונים מבקשין את רבי, והתחתונים מבקשין את רבי –
יהי רצון שיכופו תחתונים את העליונים. כיון דחזאי כמה זימני דעייל לביית הכסא, וחליץ
תפילין, ומנח להו, וקמצטער, אמרה: יהי רצון שיכופו עליונים את התחתונים, ולא הווי שתקי
רבנן מלמיבעי רחמי. שקלה כוזא שדיא מאיגרא [לארעא], אישתיקו מרחמי, ונח נפשיה דרבי.

Text 6 Yalkut Shimoni 2:943

Anthology of midrashic writings on all the books of the Tanakh. Compiled by Rabbi Shimon Ashkenazi of Frankfurt, during the era of the Tosafists.

There is a story of a woman who grew very old. She came before Rabbi Yose ben Chalafta. She said to him, "Rabbi, I have grown too old. Life is repugnant to me: I can taste neither food nor drink. I would like to depart from this world." He said to her, "How is it that you have lived so long?" She answered, "Every day, I am accustomed to go early to the synagogue even if I must desist from something I like." He said to her, "Refrain for three successive days from going to the synagogue." She went and did this and on the third day she became ill and died.

לְקוּט שְׁמַעוֹנִי ב:תתקמג (מְשָׁלִי ח)

מַעֲשֵׂה בְּאִשָּׁה אַחַת שֶׁהִזְקִינָה הַרְבֵּה, (באת) בָּאָה לְפָנַי רַבִּי יוֹסִי בֶן חַלְפַּתָּא אָמְרָה לוֹ, רַבִּי זְקֵנְתִי יוֹתֵר מִדְּאֵי וּמַעֲכָשׁוּ חַיִּים שֶׁל נוּוֹל הֵם שְׂאִינִי טוֹעֵמֶת לֹא מֵאֲכָל וְלֹא מִשְׁקָה וְאֲנִי מְבַקֶּשֶׁת לְפָטֵר מִן הָעוֹלָם, אָמַר לָהּ בְּמָה הֵאָרְכַתְּ כָּל כֶּף יָמִים, אָמְרָה לוֹ לְמוֹדָה אֲנִי אֶפִּילוּ יֵשׁ לִי דְבָר חֲבִיב אֲנִי מִנַּחַת אוֹתוֹ וּמִשְׂכָּמֶת לְבֵית הַכְּנֶסֶת בְּכָל יוֹם, אָמַר לָהּ מִנְעִי עֲצֻמָּה מִבֵּית הַכְּנֶסֶת שֶׁלֹּשָׁה יָמִים זֶה אַחֵר זֶה, הִלְכָה וְעָשְׂתָה כֵן וּבִיּוֹם הַשְּׁלִישִׁי חָלְתָה וּמָתָה...

PART III: A Turning Point – how to treat the dying.

Text 7 Minor Tractate Semachot 1:1-4

Included in the Bab. Talmud, a compilation of teachings of 3-6th century scholars in Babylonia (*Amora'im*); final redaction in the 6-7th centuries.

Rule 1. A goses (someone on the brink of death) is regarded as a living person in all respects...

Rule 2. We do not tie up his cheek-bones, or stop up his apertures, or place a metal vessel or anything which chills on his stomach...

Rule 3. We may not move him or place him on sand or salt until he dies...

Rule 4. We may not close the eyes of a dying man. Whoever touches or moves him is guilty of bloodshed. For Rabbi Meir used to say: "He can be compared to a lamp which is dripping, should a man touch it, he extinguishes it. Similarly, whoever closes the eyes of a dying man is considered to have taken his life."

מסכת קטנה, שמחות, פרק א, הלכה א-ד
הלכה א. הגוסס הרי הוא כחי לכל דבר לעולם...
הלכה ב. אין קושרין את לחייו ואין פוקקין את נקביו ואין נותנין כלי של מתכות ודבר שהוא
מיקר על טבורו...
הלכה ג. אין מזיזין אותו ואין מטילין אותו על גבי החול ולא על המלח עד שעה שימות:
הלכה ד. אין [מעמדין] את עיני הגוסס הנוגע בו ומזיזו הרי זה שופה דמים שהיה רבי מאיר אומר
משל לנר שהוא מטפטה כיון שנגע בו אדם מכבהו כה כל המעמיץ את עיני הגוסס מעלין עליו
כאילו הוא נוטל נשמתו.

PART IV: In what ways do we respond?

[A]Classic Rabbinic Text 8 Sefer Chasidim 723

A compilation of teachings following the format of Rabbi Yehudah ben Shmuel he-Chasid of Regensburg's (c.1150–1217) work by the same name, comprised of his teachings as well as the teachings of his students and other scholars that followed in the generations immediately after him.

If we are causing one not to die quickly, such as the case of one who is a *goses*, and nearby someone is chopping wood, and his soul is not able to depart, we remove the woodchopper from there. We [also] don't place salt on his tongue, to prevent him from dying. [However,] if the *goses* says that he cannot die unless he is moved elsewhere, he is not to be moved.

ספר חסידים תשכ"ג

יגובעאוושאווילועוולומיבתושלפ ואם גורמין שלא ימות מהרה כגון שהיה אחד גוסס והיה אחד קרוב לאותו בית חוטב עצים ואין הנשמה יכולה לצאת מסירין החוטב משם ואין משימין מלח על לשונו כדי שלא ימות ואם גוסס ואומר אינו יכול למות עד שישמוהו במקום אחר אל יזיזהו משם.

Text 9 Rabbi Moshe Isserles, Shulchan Arukh, Yoreh Deah 339:1

Known by his acronym: Rama; 16th century halakhic authority and codifier in Poland; author of commentary on the *Tur* and glosses to the *Shulchan Arukh*.

It is prohibited to hasten the death process. For example, in the case of one who has been a *goses* for a long period of time, and whose soul is unable to depart, it is

forbidden to remove the pillow, whose feathers are the source [of the impediment to death] according to some, from under him. It is forbidden to move him or to place the synagogue keys under his head in order to cause his soul to depart. But if there is anything which causes a hindrance to the departure of the soul, such as the presence near the patient's house of a knocking noise like woodchopping, or if there is salt on the patient's tongue and these hinder the soul's departure, it is permissible to remove them from there because no act is involved with this at all but only the removal of the impediments [to death].

רב משה איסרליש, שלחן ערוה, יורה דעה, סימן שלט:א
וכן אסור לגרום למת שימות מהרה כגון מי שהוא גוסס זמן ארוך ולא יוכל להפריד אסור להשיט
הפר והפסות מתחתיו מכה שאומרים שיש נוצות מקצת עופות שגורמים זה וכן לא זיזנו ממקומו
וכן אסור לשום מפתחות בית הכנסת תחת ראשו כדי שיפריד אבל אם יש דבר שגורם עכוב
יציאת הנפש כגון שיש סמוך לאותו בית קול דופק כגון חוטב עצים או שיש מלח על לשונו ואלו
מעכבים יציאת הנפש מתר להסירו משם דאין בזה מעשה כלל אלא שמיסיר המונע.

PART V: In what ways do we respond?

[B] Modern Responses

Text 10 Rabbi Moshe Feinstein, Igrot Moshe, Choshen Mishpat 2:73,74

An American Orthodox halakhic authority (1895-1986).

2:73 The gemara included this story to teach us that there are occasions when it is necessary, for a person in pain and for whom medicine and prayers for recovery are ineffective, to pray for their death...with regard to people in this category — when doctors realize the impossibility of recovery and survival, and drugs to reduce the pain cannot be provided, and all that exists is medicine to prolong their lives in anguish, that such medicine should not be provided but these patients should be left alone...However, oxygen should be provided even when it will not cure him since it reduces the pain...

2:74...food must be provided... since it strengthens him a bit even if he is not cognizant of its merits...and this is not comparable to medicine, since food is a natural necessity...

רב משה פיינשטיין, אגרות משה, הושן משפט חלק ב'

סימן עג

ונקט זה הגמרא לאשמועיןן שאיכא לפעמים שצריה להתפלל על האדם כשמצטער ואין מועילין מיני רפואות לרפאותו, והתפלות שיתרפא לא נתקבלו, שצריה להתפלל עליו שימות... ובאינשי כהאי גוונא שהרופאים מכירין שאי אפשר לו להתרפאות ולחיות, ואף לא שיחיה כמו שהוא חולה בלא יסורין אבל אפשר לתן לו סמי רפואה להאריה ימיו כמו שהוא נמצא עתה ביסורין, אין לתן לו מיני רפואות אלא יניחום כמו שהם... וחולה מסכן שאינו יכול לנשום צריה לתן לו

חמצן (אקסידזשען) אף שהוא באופן שאי אפשר לרפאותו, שהרי הוא להקל מיסוריו.

סימן עד

... פשוט שצריה להאכילו דברים שאין מזיקין ואין מקלקלין דודאי מחזיקין כחו מעט אף שהחולה בעצמו אינו מרגיש... ולא דמיכללעניניסמירפואה, והטעם פשוט שהאכילה הוא דבר טבעי.

פיינשטיין, מ. אגרות משה, יורה דעה חלק ג, סימן קלב, ניו יורק, דף שצח.

Text 11 Rabbi Elliot N. Dorff, Applying Jewish Law to New Circumstances

(b. 1943) US Conservative rabbi, professor, author, and bioethicist; author of this Melton curriculum.

The Problem

Many issues that arise in contemporary life are so different in either context or substance from what our ancestors knew in their times, that what they said seems either inappropriate for making decisions in current circumstances or inapplicable altogether. How, then, can Judaism be used as a source for moral guidance for such cases?

No Sources Mean No Guidance

One response is to say that if there is nothing explicitly in the tradition that deals with our problem, we should simply say that and look elsewhere for moral guidance. This approach has several advantages. First of all, it is honest: it acknowledges that the tradition says nothing directly on point about this. Second, it takes seriously the newness of modern circumstances and the need to think thoroughly about how to live nobly in very new contexts; we cannot simply rely on the past to tell us what to

do. Third, it is very liberating; it allows Jews to decide the matter for themselves without any limitations imposed by Jewish law, gaining guidance, if they want it, from whomever or whatever they wish.

This approach, however, has some serious disadvantages as well. Because 20 modernity has changed our lives in virtually every area of life, direct precedents are lacking for many, many modern issues. Thus, on this approach, Judaism will not be able to guide us regarding many areas of our lives. This will be bad for both Jews and Judaism: Jews will lack any Jewish guidance for important decisions in their lives, and Judaism will lose a major source of its attraction and significance for Jews.

“Everything Is In It”

The opposite end of the spectrum is typified by Ben Bag Bag’s comment about the Torah, “Turn it over, and turn it over again, for everything is in it ...”

Clearly it is not Written Torah itself that contains the answers to everything; it is the Torah as *interpreted anew in succeeding generations* that can produce the answers to all the questions...

The advantages of this methodology are apparent. If you believe that God gave the Written and Oral Torahs and you derive all of your rulings on modern issues from them or the later rabbinic literature based on them, you can claim that your ruling shares in the divine authority of those texts. This methodology also provides a very strong link to the tradition, thus preserving continuity along with authority. Clearly it is not the Written Torah itself that contains the answers to everything; it is the Torah as *interpreted anew in succeeding generations* that can produce the answers to all questions ...

On the other hand, there are significant problems with this methodology. First, the Rabbis themselves may have been exaggerating when they said that the answers to all questions for all time are contained in the Written and Oral Torahs. These statements may have been expressions of the love they had for the tradition and the deep meaning they found in it without really intending that everything was to be answered by interpreting it. The Tradition, for example, never tells us how to bake a cake or how to fix a broken cart.

Even if the Rabbis of the Mishnah and Talmud meant such statements literally, they could claim that the Torah addresses everything only because they were willing to stretch its meaning to address the issues of their world. There is no guarantee that what they created for their time will fit ours.

Furthermore, because our context is so different from theirs, one [problem in using this method is that it could be claimed – A.W.] that the tradition dealt with issues that it never contemplated, let alone consciously dealt with. One is actually reading what one wants *into* the tradition (eisegesis) rather than gaining guidance *from* the tradition (exegesis). That is dishonest. Moreover, on a practical level, we learn from this method only what

the interpreter thinks, and that may respond to the modern question very badly, perhaps even dangerously.

Personal Autonomy

Yet another approach, typical of Reform thinkers but not exclusive [to] them, is to highlight the role of the individual in deciding what to do. Some advocates of this approach emphasize that to be a recognizably Jewish decision, individual Jews must study the Jewish tradition and take into account the import of their decisions for the Jewish community as well as for themselves. Still, in the end, it is the individual who must decide what to do.

The advantages and disadvantages of this approach are readily apparent. This puts the responsibility of making moral decisions squarely on the shoulders of the individuals who face them. This encourages individuals to take responsibility for their actions. It also prevents them from thinking that they can blame anyone else for what they do, as many of the Nazis did when they claimed that they were simply following orders. Further, it enables individuals to decide issues as they see fit.

Aside from the freedom that this brings, it makes it more probable that people will act on what they themselves determine to be moral.

Like its advantages, the problems with this approach are rooted in its individualism. ⁸⁰ If individuals make their own decisions, in what sense can there ever be a communal norm? Worse, especially because individuals may consult their rabbi and the Jewish tradition as much or as little as they please, what makes the decisions individual Jews make identifiably Jewish? Most Jews, after all, do not know much about Judaism, especially in problematic moral areas. They also lack the skills of applying the tradition to modern circumstances ...

Applying Jewish Law Wisely

I have described various aspects of my own methodology in the appendices of my books on Jewish medical, social, and personal ethics, and I have described its conceptual foundations in my book on Jewish law, *For Love of God and People: A Philosophy of Jewish Law*. Here I will summarize it and then point out its strengths and weaknesses.

I view Jewish law as similar to a human being, with a body and soul. The body of Jewish law, the *corpus juris*, functions in many of the ways that the human body does, with some parts changing rapidly and others very slowly in order to renew itself and accommodate itself to new environments. The soul of Jewish law, the Covenant, links Jews to God and to each other with the goal of living life in a holy way, a way that takes actions to fix the world and that inculcates in us the desire and character to imitate God and fulfill God's will for us as we understand it. ...

In practice, what this means is that on any given moral issue, we must first look for precedents within the corpus of Jewish law. Sometimes a precedent may be directly on

point even if the applications of the precedent are quite new. This is the case, for example, with regard to abortion, respect for parents, and privacy.

On the other hand, in some areas of the law, such as removal of life-support systems or laws concerning corporations, very little, if anything, exists. Sometimes, in fact, the situation is so different that what does exist clearly does not fit; so, for I view Jewish law as similar to a human being, with a body and soul. The body of Jewish law, the *corpus juris*, functions in many of the ways that the human body does, with some parts changing rapidly and others very slowly in order to renew itself and accommodate itself to new environments. The soul of Jewish law, the example, Jewish sources presume that we cannot do anything to keep a person alive, but now, when we have many ways to do just that, when should we intervene and when should we let nature take its course?

Both when we have relevant precedents and when we do not, I maintain that we must do “depth theology” – that is, we must identify the foundational concepts and values of Judaism that apply to the area in question. We then should employ those concepts and values to inform how we interpret and apply whatever precedents seem relevant ...

Because Judaism ... tried to formulate its moral inquiries as much as possible in legal terms, most of the time normal legal methods will do just fine in enabling us to use previous legal materials to determine what Judaism would have us do. As I discuss elsewhere, although the law has some distinct disadvantages for discerning our moral duties, it has significant advantages as well ... To produce wise and appropriate, as well as genuinely Jewish, moral guidance for us now, however, the law must be used with conscious attention to its foundations in Jewish theology and morality and its historical context.

Moreover, individuals, even well-schooled ones, cannot be the sole authorities to determine our legal or moral duties; rather, the law must be now, as it has always been, the product of the ongoing *interaction* between rabbis and laypeople acting as a community ... Exactly how to balance rabbinic and lay authority is not something that can be easily and universally determined, but what is clear is that law is effective as a moral guide only if such cooperation occurs.

Finally, we must recognize that Judaism requires us to fulfill our moral obligations in addition to our legal ones. Indeed, as Nahmanides (13th century Spain) later asserted, one can be a *naval b’reshut ha-torah*, “a scoundrel within the bounds of (or with the permission of) the Torah,”² and the Talmud maintains that the Second Temple was destroyed because Jews fulfilled only their legal obligations and not their moral ones beyond the requirements of the law.³

In sum, only if we pay rapt attention to the theological and moral goals set out by the Jewish tradition can we use Jewish law appropriately to give us guidance in the moral issues of our time. On the other hand, only if we also pay rapt attention to Jewish law and use it to its fullest, invoking not only its content but its methods, can we make

decisions on most matters that carry the authority of the tradition and preserve its continuity. Both of these processes must be carried out by rabbis and laypeople working in concert, for only then will our efforts to gain moral guidance from the Jewish tradition bear fruit in the way Jews think, feel, and behave ...

Dorff, E.N. (2014). "Applying Jewish Law to New Circumstances." *The Muslim World*, Special Edition 104(4): 418–423.

