BIO-ETHICS

PROGRAM/CASE STUDY

UAHC COMMITTEE

BIO-ETHICS CASE VI - SUMMER, 1993

VOLUNTARY ACTIVE EUTHANASIA - ASSISTED SUICIDE

Perhaps there is no greater area of debate currently existing than that which surrounds the subject of under what circumstances, if any, can I be allowed to either terminate my life or request assistance in so doing. This debate, as contrasted to so much in our society, is a quiet one, often carried out in the deepest recesses of our souls, or in private discussions among trusted friends or family. Yet, it goes on.

One of the "triumphs" of modern medical technology has been the ability to delay, sometimes at great length, the process of death. Indeed, it is that process that raises more fear in many than the death itself. In our individual rights oriented society we have responded with a heightened sense of our own power and autonomy surrounding the decisions that may be made concerning our lives, indeed our very existence. Within Reform Judaism, this sense of the private is raised given our affirmation of the basic Reform doctrine or "personal autonomy."

Yet, how much do we or can we or should we control! Is not all life a gift from God and ultimately God's decisions as to its end? Can there be meaning in suffering? Is it not a greater and more significant challenge to our modern religious minds and souls to bring meaning to the final days or stages of life? Or, given the changes we now accept in medical technology, do we have to redefine the word, "suicide" and rethink the concept of "euthanasia" itself?

The activities of Dr. Kevorkian, the publication of "Final Exit," the attempts at legislating physician assisted suicide in the States of Washington and California, the institution of the Patient Self Determination Act in the U.S.A. and the current realities of popular opinion and medical practice challenge our Reform Jewish community to respond in ways that can give guidance, strength and support to our people as they seek to honor our most cherished value of life's dignity and sanctity.

The material now current on the subject of voluntary active euthanasia and assisted suicide is much too great to be included here. What we have tried to do is present a wide overview of material with some special emphasis on

(over please)

Reform Judaism. The reflections of Rabbi Terry A. Bookman, Rabbi Yoel H. Kahn and Dr. Harvey Gordon were prepared for the Bio-Ethics component of the UAHC Committee on Older Adults' meeting in January, 1993. A segment of the debate on the limits of personal autonomy were presented at the UAHC National Board meeting in May, 1993. The resources listed in the last section of the program guide are all available through both secular and Jewish bookstores. As with the previous program guides (numbers I through V) additional copies are available through the UAHC Committee on Older Adults/Bio-Ethics Committee, 117 S. 17th Street - Suite #2111, Philadelphia, PA 19103.

B'shalom,

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   Dr. Harvey L. Gordon
   Congregation Emanu El, Houston, Texas
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1. ASSISTED SUICIDE

I am not an expert in the area of bioethics or medical technology. I do not know all the nuances and subtleties of the latest advances or issues in the field. Certainly these particulars can have an enormous effect on any decision making and need to be addressed. I come to the issue of assisted suicide as a rabbi who ministers to the needs of a heterogeneous population. My congregation includes babies, young adults, the elderly, and middle aged adults, many of whom are struggling with the care of their aging parents. I also come to this issue as a theologian, both from my training as a rabbi and my graduate work in Systematics.

When I was a child, the first prayer I was taught in heder was the **modeh ani** (my teachers assumed that our parents had already taught us the **sh'ma**, an assumption unfounded in my case). To this day, when I wake up each morning, if I stop long enough to look out our hall window to the silent landscape below, and I usually do, I find that the words of the **modeh** still come to my lips. "I am grateful as I stand before You, Sovereign of all life, because in Your graciousness, You have returned my soul to me". Understanding the word "soul" as life force, I read the **modeh** as simply, yet profoundly, thanking God for another day of life.

Now I realize full well that there are many in our world who are not grateful, for whom another day of life is a dubious gift. Those who are lonely and in pain; the destitute and the brokenhearted; those with failed dreams and hopes, whose disappointment in self and life dominate their day to day existence; those who await death without hope of cure from a dreaded disease. If we add to this list those who have felt utter despair even for a short period in their lives, the list could include

most of us. So perhaps modeh is easy for me to say, me who "has it all"--successful career, loving family, good health. Perhaps.

But this is not an argument about feeling good or grateful. I am not an advocate of say it and maybe you will actually begin to feel that way. Even if I could, I would not enforce modeh singing or even modeh believing in every Jewish home. For me, the words just come naturally when they do, and if it expresses someone else's feelings about the day, then great. We sing in silence, together. No, what this is about is the question of whose life is it. Are we owners or renters? Again, I turn to the morning liturgy.

"Elohai, n'shama sh'natatah be...My God, the soul that You have given me is pure. You created it, You formed it, You breathed it into me, and within me You sustain it. Therefore, so long as this soul is within me, I am grateful before You, Adonai, my God, God of my ancestors, Master of all creation, Sovereign of all souls. Blessed are You, Adonai, in whose hands are the souls of all the living, and the spirits of all flesh." Again, if we read soul as life force, as I do, then this prayer tells us that God is the giver and sustainer of life. All life belongs to God, if you will. God metes it out according to the Divine will. Our tradition, understanding God as intimately connected with each and every one of us, sees this as a daily (re)occurence. Each day God must decide whether or not to give us life.

Now even if one does not like the theology, even if one has an Aristotlean God not so bound up in the lives of mere mortals, the question of whose life it is, is clear. We are not owners. We are

merely renters. And if we do not like the accommodations, want to complain to the management, we are free to do so. But life itself does not belong to us. It is God's.

I know this flies in the face of much that we Americans hold sacred. As Robert Bellah points out, "the dignity of the individual, the right to self expression, and the integrity of the individual conscience" are basic concepts intimately bound up with our understanding of a just society. These are the gifts the West has bequeathed to the rest of the world. And they are gifts. I grew up singing along with the Rolling Stones, "It's my life and I'll do want I want...". Our own Reform Movement, especially since the Centenary Perspective, has raised autonomy of the individual (in religious decision making) to the level of Divine commandment. But as the primary author of that document, Rabbi Eugene Borowitz himself writes, "In Jewish belief, the self cannot be the exclusive object of its primary concern...Such a Jew is self legislating but only in terms of what God wants of this individual as part of the people of Israel's historic-messianic service to God. The decision is individual but the context is more than personal. The autonomy is genuine but it is exercised in terms of realities as real as one's self." (Choices in Modern Jewish Thought, p.271) Autonomy has its limits.

I would say, in what I think is in consonance with Jewish tradition, that one of those limits is life itself. While we may not be able to be fully grateful for the life which is lent to us each day, at least not all the time, life itself really does not belong to us. It is not ours. We do not create life, so it is not ours to waste or take away. And if this is true of others, then it is also true of ourselves. Our tradition

has an aversion to suicide because it distorts reality, temporarily placing the one who would take his/her life in the role of God. That is why, I believe, Jewish law goes to great lengths to prove that the suicide person was not in full control of his/her faculties. No "normal" person would attempt to take God's place. For the one who assists suicide, who weighs the request of the other, and then makes a rational decision to fulfill their desire, no such halachic "loophole" is available. No matter how altruistically one may be motivated, and those who assist others in suicide are generally not in it for themselves, such an act is a violation of the Jewish understanding of life. Appeals to rachmunis, to loving concern for the one who is suffering, to quality of life, to "if it were not for the medical technology they would not be alive anyway", etc., all these appeals would stir the heart of even the most unfeeling of individuals. Nevertheless, they do not override Judaism's clear and unbending recognition that life belongs to the Creator of life, and is God's to give and take away.

Our job, it seems to me, is to help those who would end their lives to this reality. It will mean overcoming our desire to fix everything and make it better. It will mean accepting that we are not in control of ultimate decisions. It will mean setting limits on personal freedom and autonomy. While these may be difficult lessons for us, I believe that even the struggle with them will deepen us spiritually, making us better servants of God and God's creation, human beings.

Terry A. Bookman is rabbi and spiritual leader of Congregation Sinai in Fox Point, Wisconsin. He is pursuing a PhD in Systematic Theology at Marquette University.

2. REFLECTIONS ON ASSISTED SUICIDE

In any discussion of assisted suicide it is necessary to distinguish three separate issues. There is the issue of helping a person to die, the issue of suicide, and the issue of assisting in a person's suicide. The morality of each must be addressed separately.

The Talmud speaks of the death of the great Rabbi Judah HaNasi. His dying was long and painful. In the courtyard his disciples prayed incessantly for his recovery. In desparation the Rabbi's housekeeper dropped a clay jug among them. the noise of its shattering disrupted the prayers of the disciples, thus allowing the soul of the Rabbi to depart.

During the Hadrianic persecutions, Rabbi Hananiah ben Teradyon was condemned to burn at the stake for teaching Torah. To prolong his suffering, tufts of wool soaked in water were placed over his heart. Moved by his agony, the Roman executioner took the tufts away and increased the heat of the fire so that Hananiah might more quickly expire; he then threw himself into the flames. It is said that both were given a place in the world to come.

I have helped people to die. When all efforts to arrest the disease have been exhausted and the illness has run its course, further treatment will not postpone dying; it will only prolong it. When there is agreement between the patient (or the family) and the physician, I support the decision to terminate

life-sustaining measures.

My attitude towards suicide has changed. Once, death was something that happened to other people. I could hardly imagine wanting to die, much less at my own hand. But I never questioned the morality of suicide.

My heritage was both Jewish and secular. The larger culture affirmed that choosing death at one's own hand could be the highest morality. I was raised on tales of Romeo and Juliet, and Othello. Of Sidney Carton. Of resistance fighters who swallowed poison rather than risk betraying their comrades. And there were Jewish stories; of Saul who fell upon his own sword, and of the martyrs of Masada who slew themselves for kiddush haShem.

As a youthful humanist I never doubted that human beings had the right to suicide; no authority was far-reaching enough to tell me that I must live. Later I would see my autonomy in conflict with the authority of my tradition, but as a Reform Jew I saw the balance tipped heavily towards the former. Whether to live or not was a matter of free will, and I was free to choose. I saw myself as a unique creature, but I had very little understanding of creatureliness, very little sense of being a small but essential player in the great drama of creation. Whether any individual lived or died was surely of no cosmic importance, If the game seemed to be no longer worth the candle, why not snuff out the candle ?

But the certainties of youth give way to the ambiguities of maturity. I understand that I am not as free an agent as I had

thought. There is little that makes me unique; I am very much like all other people. The meaning of my life is that I have evolved to play a role in the cosmic drama. My role as a player outweighs my uniqueness in importance

When it comes to suicide I no longer see myself as autonomous. In the tension between autonomy and authority, suicide becomes a moral issue. I have been created to play my role to the end. I don't think that God or Nature 'wants' me to give up the role, to abandon my creatureliness. And my notion of morality is doing what God 'wants' me to do.

Studies have shown that suicide is usually a response to depression or to pain. Suicide occurs at the nadir of hope. A person may well want to die because she is depressed, or in pain. If the depression or pain could be relieved, perhaps the person would want to live. Thus I reject suicide as a solution. Is it not better by far to treat the depression and to alleviate the pain?

But in our imperfect world that isn't always possible. When people are driven beyond their endurance they may choose suicide. Paradoxical though it may seem, I think it would be immoral to condemn the person driven to suicide.

This paradox is addressed by the Rabbis in the Talmudic principle of Lechatchila lo; bediavad iyn. Before the fact, no; after the fact, yes. This humane teaching addresses the human condition. We aspire to do what is right, but in our brokenness we fail. And in our brokenness we are loved, and judged worthy.

And so I can't affirm the right to commit suicide, even as I refuse to judge those who do so. As I would help others to survive pain and depression, so I would hope that when I am in despair, there will be those who will comfort me. And if driven by despair to suicide, I would hope to be accepted and loved in my brokenness.

This leads to my consideration of <u>assisted suicide</u>. Let me acknowledge that I would prescribe morphine to ease the pain or the gasping respirations of a dying patient, even though that medication would probably hasten death. My primary intent is to give comfort; I can accept the secondary effect of shortening the process of dying. And I would withhold or terminate life-sustaining measures when it is clear that they serve only to prolong the patient's dying. But the agent of death is not the disconnected respirator; it is the disease. I am acting in the tradition of the executioner of Hananiah, and the housekeeper of Judah HaNasi. And as a physician, I have made good my commitment to help my patient through her illness, to the very end.

But I have not assisted in a suicide. How different the situation is when persons suffering with fatal illnesses ask for and receive help in taking their own lives. When a person in fear or pain or despair seeks comfort in death, it is not a lack of compassion that keeps me from assisting. It is a question of what will be the agent of death. Living with a fatal disease is not the same as dying. To think otherwise is to affirm that 'life is a fatal disease', an affirmation that seems at best

sophistry and at worst an obscenity. Existentially, it is nonsense. Dying is that brief passage, at the very end of life, that leads to death. It is hard to define; it is not difficult to recognize. If my actions shorten the act of dying, then I can act in good conscience. But if my actions shorten life, then I, and not the disease, am the agent of death. While I can respect the integrity of those who may reach a different conclusion, I can't accept that role.

There has been much publicity attached to Dr. Kevorkian and the "suicide machine". I do not doubt the sincerity and good will of Dr. Kevorkian, but I find it hard to justify the role of a physician who enters a case not to treat illness, but to assist a person in taking her own life. Of course, for those who affirm the legitimacy of suicide he is providing a desirable service. But in no case do I think that he is functioning in the capacity of a physician; he is a technician of death. He should be judged as any person who helps others to commit suicide. His medical degree gives him greater knowledge; it does not give him a greater moral right to assist a suicide.

Sometimes a person, under the stress of seeing a beloved suffer, may with compassion help that loved one to take his own life. It is hard to judge that person harshly. But, as in the matter of suicide, I can't affirm it to be a moral act. And, as in the matter of suicide, it may be a matter of <u>Lehatchila lo; bediavad iyn</u>. To that person I can only say, "I understand".

Should society punish such an act? Although the suicide can't be called before the bar of human justice, one who assists

will have to answer. I can't speak to the legal issues; but is it a moral act?

The issue hinges on the same considerations that lead one to decide on the morality of suicide itself. Having decided in the negative, I would not easily condone, even after the fact, an immoral act chosen not in despair, but as a perceived kindness.

A human life is of infinite value; we sense that in our bodies and our souls. In the human experience great suffering is all too commonplace, yet suicide is rare. The thought of suicide may be enticing to most of us at one or another moment of despair, but we don't often succumb to the temptation. To take one's own life is hard; there is something within that resists. I think that were it less difficult, it would be resorted to more frequently.

We have been created to choose life, life with its joys and life with its inevitable suffering. Our task is to comfort and love and support each other so that even when at its darkest, we can choose life. Suicide is a measure of our failure.

Assisting a suicide diminishes our reverence for the gift of life. Suicide is a desparate, irrevocable act; it should not be made easier.

Harvey L. Gordon, M.D.

3. REDEFINING THE DIALOGUE ON VOLUNTARY EUTHANASIA

With some anxiety I entered the house. It was about a year ago on a morning in late Spring; the kind of morning in which everything seems fresh. Sitting in a darkened room, in his chair, he looked at me with eyes, once bright, now reflective of the cancer that was spreading and which had marked him for death. He knew! Still alert and rational, he had invited me to "talk." Turning to me with eyes still able to see, he quietly asked: "rabbi, can you help me to die?"

This scenerio, familiar to physician, clergy, family and friends is not limited to the classification of the "frail elderly." The man in the chair was in his late 50's. Well read, aware of the spread of his disease and his ability to choose how his final weeks or months would be lived, his question reflected testimony to the sense of many an unexpressed feeling; it is not death we fear, rather it is the process of dying.

Technology has placed before us the issues of how we view life and embrace death, how we approach the dying process and how we view the limits of our own autonomy within the context of our relationship to God.

We fear our loss of control and we tremble in the face of unbearable pain and suffering. We recognize that we are responsible to God from whom life flows, but question whether God would seek such suffering and incapacity as a sign of reverence. We know that as Jews we are created in God's image and that life's dignity and sanctity are among our highest values. Yet, all too often we question life's absolute value when, in its final flickering moments we are rendered helpless, anguished vessels, the arsenal of medical weaponry exhausted. Would it not be more dignified, in this final stage of life's journey, to seize a last element of control and end it "my way?" Has technology now opened the door to the limited acceptance of voluntary active euthanasia? The mood of Judaism tells us, "no"...and yet!

A summary of Responsa, commentaries, and the like from across our denominational spectrum reveals a solid underscoring that any active taking of life in the contexts relevant here is contrary to Judaism. That same summary, however, will also reveal that in certain circumstances we are permitted to allow the flame of life to flicker out. When someone becomes a "goses" (an individual in the final stages of life, who faces imminent death and for whom modern medical technology is used as a means to prolong the process of dying and not as a means to enable healing) we are permitted to withdraw impediments to that flickering flame out of a sense of dignity and sanctity. The tradition is quite clear on this and through the ongoing process of dialogue and interpretation of texts in the light of our own context, the removal of impediments has come to include (according to some scholars) everything from machinery, to fluids. The mood of much of these discussions has embraced the fact that to relieve unbearable pain in one who is "goses" it is permissible to use higher and higher dosages of pain-killing medication, even if the secondary effect is a shortening of the life of the patient who is in the category of "goses." This acceptance of what some would call "passive euthanasia," is consistent within the world view of Judaism for it underscores the fundamental ethic of life's dignity and sanctity. One may not do anything to actively end life, yet, in certain contexts, we are permitted to remove those elements which would impede the flame of life from flickering out.

The press of medical technology and the willingness to discuss the variety of situations that can and do apply to those in a "goses" category have given rise to the study of and acceptance of advance medical directives (so called "living wills") by the vast majority of the American Jewish religious community. The passing of the Patient Self Dtermination Act has added to the openness of of these discussions on the ways we approach these subjects and has naturally led to a very American way of looking

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at the end of life decisions. After all, it's my life, and no one can or should be able to tell me what to do! As United States Jewry becomes more "American," is it any wonder that the envelope of personal autonomy is being pushed further and further.

As a result of these social realities, and the growing documentation that people help people die in ever increasing ways, the Jewish community has begun to wrestle with the subject of what some would call voluntary euthanasia or rational suicide or assisted suicide.

Textually, some see the opening of the door that would accept some limited form acceptance of voluntary euthanasia in a reinterpretation of the term, "goses." Dr. Elliot N. Dorff of the University of Judaism in Los Angeles gives us a peek into the first wave of what may become a tide in his "A Jewish Approach to End-State Medical Care," in the Spring, 1991 edition of Conservative Judaism. Dorff, citing extensively the work of Dr. Daniel B. Sinclair, elaborates on the usage of another traditional term, "terefah" which is more relevant to our contemporary medical/ethical arena. The "terefah" is one whose medical diagnosis makes him as if he is a dead person. Dorff quotes Sinclair: "The outstanding feature of the category of human "tarfut" for the current debate concerning the treatment of the terminally ill is the exemption of the killer of a "terefah" from the death penalty. This feature focuses attention upon the fact that a fatal disease does detract from the legal status of a person and also introduces a measure of flexibility into the issue of terminating such a life." Dorff extends the discussion to remind us that this should not be seen as a warrant for killing by noting the context of certain Talmudic discussions germane to the subject. We are reminded that we are still not permitted to end that life for, if nothing else, Divine sanctions may apply. However, has a new light of interpretation been shed? This possibility has begun to be discussed especially in light of diseases such as AIDS which test even further our ability

to find meaning in an individual's pain and suffering. Indeed, ask some colleagues, if the circumstances of the end of life cause us to curse life and God, can we not imagine that in such a circumstance death and release would be preferable? While no answers are forthcoming, new questions abound! Not the least of which is the ongoing attempt to redefine, or perhaps refine the role autonomy plays within our current religious structure. A blind worship of personal autonomy leads to a civilization of the "self." The essence of the Covenantal relationship that links us with God is one in which both parties involve themselves in the living of life. How can this dialogue be played out if I choose to end my life or assist in someone ending theirs? Yet, Judaism is an evolving civilization which seeks to find the possibilities for the "holy" in the experiences of life; even as the circumstances of that life change.

What is necessary for us as a religious community is to urge that the dialogue on this subject continue, regardless of the denominational affiliation. Jews must be educated in what the tradition says and how it can speak to these crucial life and death situations. From the formalism of Halachah bound Judaism to the more liberal textual interpretations of Reform, this dialogue and discussion must now begin in earnest. We owe it to our people to provide Jewish approaches to these issues. Already under way as part of Reform Judaism's Bioethics Committee (a sub-committee of the Committee on Older Adults) are several Movement-wide plans for seminars and publications that will attempt to present the issue to the members of our congregations.

These attempts to deal with the issue of voluntary euthanasia have an even wider ramification to us in this country. We have already seen two major attempts to legalize assisted suicide. In Oregon and in California propositions were defeated. Other states, especially ones with significant populations of older adults, can be expected to try. Any attempt to legalize assisted suicide should be fought. This decision, which speaks to the heart of the relationship between an individual, his God,

his physician and his soul does not belong in the halls of the State legislature. The potential inherent in that legalization for abuse and neglect is too great and evidence of the one country, Holland, that has moved in this direction, seems to confirm these feelings.

There is another moral ground upon which our opposition to legalization should be based. There is no doubt that the discussion and decisions about assisted suicide are a luxury of social and economic class and race. . Exit polls for California's defeated Proposition ~~161~~ showed lowest support among women, older adults, Asians and blacks; groups who fear control. Support was highest among voters under 30, with post graduate educations and incomes in excess of $75,000 a year, predominantly male and "successful." In other words, according to the February 14, 1993 article entitled, "Helping Hands in Death," people who expected to be in control of their lives.

Many have begun to argue as to the folly of legalization of assisted suicide in a country that cannot provide basic medical care for millions of its citizens. Equality of health care access is a primary social value and must be implemented for all. Our Jewish value of justice ("tz'dakah") demands that we address this need before we single out a specific symptom.

The issue of voluntary euthanasia and assisted suicide is now before us. Ths disaster of Dr. Kevorkian's abuses coupled with its media attention has pushed this issue quicker than many would have hoped or wanted. Yet, the issues that surround them are NOT new and given the thrusts of medical technology demand that we address them from the foundations of our specific denominational positions. Let us have the courage to do just that. Let us also remember that these decisions are private and speak to the covenant between each human being and God in holy dialogue. It is not the province of the State.

RABBI RICHARD F. ADDRESS
Regional Director: Pennsylvania Council, Union of American Hebrew Congregations
Director: UAHC Committee on Older Adults

II. SELECTIONS ON THE THEME

1. DR. ALVIN J. REINES, DR. BERNARD M. ZLOTOWITZ, and RABBI SANFORD SELTZER

In a series of articles that appeared in the Journal of Reform Judaism, the authors participated in a lively debate much of which turned on the understanding of how we can understand the meaning of Reform Judaism, its concept of personal autonomy and the application of both to the subject of suicide. The length of the articles prohibits full reproduction here. However, to introduce these Selections, we have included some relevant passages that are very representative of the range of opinion surrounding these issues. For full citations see the Resources section of this program guide.

The first selection is from Dr. Reines' article, Reform Judaism, Bioethics and Abortion. (Winter, 1990)

The second selection is from an article of dialogue between various respondents to Dr. Reines and the Journal editor. (Fall, 1990)

The third selection is from a response by Dr. Zlotowitz and Rabbi Seltzer. "Suicide as a Moral Decision: A response to Dr. Alvin J. Reines. (Winter, 1991)

The fourth selection is from Dr. Reines' response to Dr. Zlotowitz and Rabbi Seltzer: "The Morality of Suicide: A Surresponse." (Winter, 1991)

When Reform principles are employed to determine bioethical morality, we have what is properly termed "Reform Jewish bioethics." The aim of the discussion that follows is to analyze the principles of Reform Jewish bioethics.

A. Suicide and Reform Judaism

No subject in bioethics is more fundamental than the issue of the morality of suicide. The term *suicide* as employed here refers to the act of taking one's own life voluntarily, deliberately, and while of sound mind. (No issue of morality is present if the act of suicide is performed involuntarily, accidentally, or while the person is of unsound mind. General agreement exists that moral judgments in such cases are inappropriate.) There are two basic questions regarding the morality of suicide: (1) Does a person possess a moral right to commit suicide? (2) If a person possesses a moral right to commit suicide, on what basis does one have this right, and if one does not have the right, why not? Once these basic questions with respect to suicide have been answered, a foundation will have been laid for the resolution of other bioethical issues.

To answer the question of the morality of suicide from the Reform viewpoint, we must begin with a statement on the basic principles of Reform relevant to the issue. Reform Judaism as a polydoxy is a religion that affirms the ultimate moral right of the individual person to exercise authority over her/himself. Stated in other terms, Reform asserts that every person is the ultimate owner of her/himself, with the moral right, consequently, to do with her/his mind or body that which she/he chooses to do. The Reform principle that every person is her/his own ultimate owner means that no other person or group of persons possesses a right to authority over her/him superior or equal to that which she/he has over her/himself. It must be emphasized that Reform restricts a person's ultimate moral right to authority to self-authority or autonomy. Since every person possesses this ultimate right to autonomy, no one has a moral right to exercise authority over another person without the latter's consent. Hence, according to Reform Judaism, the moral right of a person to exercise authority stops where another person's autonomy begins. From this it naturally follows that no person has a moral right to do anything to another person's mind or body without the latter's consent.[2]

It is not necessarily the case that the political community in which a Reform Jew resides will permit the full exercise of her/his moral rights in all spheres of life. When a political community in which a Reformer resides prohibits her/him from performing an action that Reform Judaism permits, the situation is described as one in which the Reformer has a moral right to perform the action, but not a legal one. In a democracy such as the United States, Reform Jews are for the most part able to act on their religious principles without difficulty. Religious communities can be organized in America in which individual members enjoy religious autonomy with respect to their theological beliefs and ritual observances. However, when we come to the matter of Reformers possessing the legal right to follow Reform Jewish principles with respect to bioethical issues, difficult problems arise.

Having said this, we return to the question of the morality of suicide. From the brief statement of the principles of Reform Judaism given above, it is evident that a Reform Jew has a moral right to commit suicide. Inasmuch as a person is her/his own ultimate owner and possesses, therefore, a fundamental right to self-authority, that is to do with her/himself as she/he wishes, one has the right to take one's own life. Performance of an action to which a person has a moral right is a moral action. It goes without saying that a Reform Jew who unsuccessfully attempts suicide has acted morally. One has equal self-authority to attempt suicide and fail as to attempt suicide and succeed.

Yet still another point flows from Reform principles. This is that a Reform Jew, as owner of her/himself, can transfer the moral right to do with her/himself as she/he wishes to another person so that the latter then has a moral right to do for or to the Reformer that which she/he delegates the other person to do. Hence a person to whom a Reform Jew has transferred the moral right to assist her/him to commit suicide has a moral right to render such assistance. The next point is equally clear. Since a Reform Jew has a moral right to take her/his own life and the authority to transfer this right to another, then a Reformer can give another person the moral right to take the Reformer's life.

An enumeration and restatement of the above points will contribute to clarifying the discussion that follows:

1. *A Reform Jew has a moral right to commit suicide.*
2. *An unsuccessful attempt to commit suicide by a Reform Jew is a moral action.*
3. *If a person assists, that is, aids and abets a Reform Jew to commit suicide at the request (which, of course, necessarily implies consent) of the latter, the former has behaved morally. (An example of assisting a person to commit suicide is the case where a physician, at the request of the person, hands her/him a needle filled with a fatal substance with instructions on how to use it, and she/he then injects her/himself.)*
4. *If a person takes a Reform Jew's life at the request of the latter, then the former has performed a moral act. Another name for such an action is "voluntary euthanasia." (An example of this is the case where a physician, at the request of a person, injects a fatal substance into her/him. The only action of the Reformer is to request that her/his life be terminated by the physician.)*

Dialogue between various respondents to Dr. Reines and the Journal editor.

DIALOGUE ON SUICIDE AND ABORTION

Our editor asks these questions of me:

Assuming that one agrees with your conclusion that it is a matter of personal free choice whether to commit suicide or obtain an abortion, what are the criteria that one may employ in making such a decision? Does Jewish tradition, as you regard it, help to identify these criteria?

1. In general, the answer to the first question is that the method by which the apprehension of criteria for the decision to commit suicide or undergo an abortion is for the person concerned to examine the variety of philosophic and theological positions that have been advanced pro and con. In my view, none of these positions can be supported by objectively compelling proofs. Let me illustrate this point with the question of what is the definition of a "person," that is, what are the properties or characteristics an entity must possess in order to possess the status of "person"? There simply is no answer to this question that is not subjective and arbitrary. Yet it is at the core of the problem of abortion as well as of numerous bioethical dilemmas. All that a person can do is examine the various definitions of "person" that have been given and then make a decision that seems correct and comfortable on the basis of one's reason and emotions. Freedom simply places upon us the burden of making decisions at times that are based upon no more than our subjective, limited faculties.

Similarly, the decision to commit suicide is of necessity subjective and personal. My own view is that before committing suicide one should be aware of precisely why one is doing so. In other words, one should study very carefully (probably in consultation with knowledgeable and objective others) the reason(s) for the action. Having done so, and still convinced that one wishes to commit suicide, the person can exercise the moral right she/he has at all times, the taking of one's own life.

A specific example of a reason that I personally consider clear justification for taking one's life is this: The absolute conviction on the part of a person that her/his life is, and will until death, be asoterial, that is, annihilated of all meaningfulness owing to physical or psychic pain and anguish.

2. By the "Jewish tradition" in this question, I understand all thinkers of the Jewish past who have had opinions on the subjects of suicide and abortion. Let me preface my answer with the statement that I believe, as I stated above, that one is well-advised to examine all philosophic and theological positions that have been advanced on the subjects of suicide and abortion. Unfortunately, I find that Reform Jews who possess ethical autonomy have little in common regarding suicide and abortion with the generality of past Jewish thinkers inasmuch as they subscribed to authoritarian ethical systems. We Reform Jews have much that is new morally to contribute to the world of Jewish religions into which we have brought a Judaism of individual autonomy.

DR. BERNARD ZLOTOWITZ and RABBI SANFORD SELTZER
Suicide as a Moral Decision: Response

The fact that today the incidence of suicide among young people is on the rise only heightens the distress of the Task Force. Estimates are that 13 Americans between the ages of 15 and 24 kill themselves daily and that many more attempt suicide and fail. Youth suicide is now the second leading cause of death among this age group.[2]

It must therefore be stated at the outset that, in keeping with historic Jewish tradition which affirms life, Reform Judaism does not condone the deliberate taking of one's life by someone who is of sound mind. Indeed, it challenges the assumption that anyone of sound mind would do so. It further condemns as immoral the actions of those who would assist such individuals overtly or by withholding pertinent information under the misguided notion of loyalty to a friend.

No less disturbing is Reines's failure to allude to the existence of a body of Reform responsa on the subject. This omission is even more glaring in light of his references to Orthodoxy, however pejorative and slanted, and his examination, whatever its limitations, of the status of suicide under the American legal system.

Mention made in a footnote of the full exposition of his premise in a book, which implies that there is another Reform position, is hardly sufficient justification for overlooking the statements of Berkowitz, Lauterbach, Freehof, and Jacob and the CCAR Committee on Responsa, past and present.[3]

Reines does not indicate whether he is a member of the Hemlock Society, but his advocacy of an unconditional right to suicide echoes theirs.[4] It also reflects the efforts of those who have argued unsuccessfully that suicide is a constitutional prerogative guaranteed under the 14th amendment.[5]

Nor is he alone in grappling with the decline of moral philosophy and the need for a new behavioral ethic. Hans Jonas and Alasdair MacIntire are notable thinkers whose conclusions are far more compatible with normative Jewish thought.

Jonas, conceding that the new technology "assumes ethical significance by the central place it occupies in human purpose,"[6] cautions that the ethics protecting the body from abuse proceed "into the sphere of the holy."[7] MacIntire laments the breakdown of traditional morality and the emergence of a cacophony of self-proclaimed moral agents who speak "unconstrained by the externalities of divine law, natural teleology, or hierarchical authority."[8] He warns that it is not possible to step outside of society and that in the formation of moral culture "we are, whether we acknowledge it or not, what the past has made us ... and by our relationship to each formative stage of our history."[9]

In presenting his case, Reines underscores that "no person has a moral right to do anything to another person's mind or body without the latter's consent."[10] The logic of that position renders his argument untenable, for anyone contemplating suicide would be obligated to secure permission of loved ones, friends, and possibly neighbors, representatives of the community in which one resides and even state or federal officials.

To assume otherwise is to suppose that all persons who commit suicide live alone in splendid isolation from the rest of society. Would Reines deny that a suicide attempt causes worry, anger, grief, and pain for family and friends? And what of the burden of settling the deceased's estate, probating a will, and arranging for the burial of the victim? In the absence or inability of family or

friends to perform these tasks, officials of the state will of necessity be compelled to intervene in the public interest. Reines would assuredly grant that if the intended suicide inadvertently injured others or their property in carrying out his goals, he or his estate would be legally liable for damages.[17] Yet, Reines does not explain how it is possible to allow for these contingencies in advance of a suicide.

Reines goes to great lengths to negate the Halacha and to present the Orthodox position in as heartless a light as possible. He claims that rulings regarding suicide are post-biblical and post-talmudic products of rabbinic isegesis, and thereby presumably irrelevant.[18]

One wonders whether he would be less rejecting if they were of earlier origin. If that which is older is superior or more reliable, does it follow that all theories rooted in modernity are inferior to those expounded in antiquity?

That undoubtedly is not his purpose. It serves rather to emphasize his disdain for the Orthodox attitude toward suicide which he finds to be without merit, describing it as harsh, rigid, and punitive, indictments rendered without a single footnote or supporting citation.

It is true that Judaism has always affirmed that life is sacred and suicide abhorrent except under special conditions such as martyrdom, where the act is deemed not only permissible but at times appropriate. A survey of the sources reveals a far more compassionate and humane picture of rabbinic sensitivity than what Reines would have us believe. Precisely because of their horror of suicide, the rabbis deliberately narrowed its definition and broadened the categories of extenuations. They did so not only out of regard for the family of the deceased who had suffered enough but also because of their conviction that anyone truly of sound mind could not do such a thing under normal conditions.[19]

In the tractate Semachot, which one translator declares to be Tannaitic,[20] suicide by one of sound mind is defined:

> Who is to be accounted a suicide? Not one who climbs to the top of a tree or to the top of a roof and falls to his death. Rather it is one who said, behold I am going to climb to the top of the tree or to the top of the roof and then throw myself down to my death and thereupon others see him climb to the top ... and fall to his death. Such a one is presumed to be a suicide and for such a person no funeral rites should be observed.[21]

The intent to kill oneself must be clearly and loudly proclaimed in the presence of witnesses.

In addition to their testimony, Maimonides insists that the death is considered a suicide only if it is carried out immediately following the announcement which must be voiced angrily, otherwise all mourning rites are to be observed.[22]

But even in the case of a willful suicide, numerous rabbinic authorities counseled lenience, again out of concern for the family and in keeping with the principle that what is for the honor of the living shall be done. Semachot states that the Kaddish is to be recited and people are to line up before the body. The *Mishneh Torah* and the *Shulchan Aruch* concur while the Asheri permits members of the immediate family to rend their garments and mourn the deceased. Nachmanides and others go so far as to allow funeral rites with the possible exception of the funeral oration.[23]

The rabbis were especially alarmed by the suicides of minors, a fact totally ignored by Reines. The death of a minor was never adjudged a suicide since children were not considered to be fully of sound mind until they had reached their majority.

The specific talmudic examples are of special relevance since they deal with children who kill themselves because of a family crisis. In one case, a child who has run away from school is fearful that he will be punished by his father. In a second, a youngster who has broken a flask on the Sabbath is terrified of what his parents will do when they find out.[24]

Reines leaves the reader with the singular impression that for Orthodoxy, suicide was an abominably evil sin worse than murder. Only in a footnote does he grudgingly admit that under extreme circumstances, such as martyrdom, suicide is permitted. But, he is quick to add, "many but not all Orthodox authorities would excuse suicide."[25]

Reines has written a tendentious polemic noteworthy for its hostility toward Orthodoxy and its disenchantment with Reform for not fulfilling his vision of its responsibilities in a modern world. He offers a less-than-adequate summary of the medical and legal views of suicide and merely a reiteration of an already-well-documented debate regarding its status as a moral option.

While he is entitled to his opinions, our fear is that his suppositions may lead, albeit unwittingly, to tragic consequences for tortured souls seeking an authoritative Jewish religious voice to countenance their actions. That foreboding prospect saddens us and has prompted this reply. We continue to believe that whosoever saves a life it is as if he or she has saved an entire world.

DR. ALVIN J. REINES

Morality of Suicide: Surresponse

A

The first point to be made is that the authors have misunderstood my basic statement regarding suicide. They ascribe to me the following: "Any attempt at suicide, therefore, be it successful or not, is moral so long as it is voluntary and deliberate, and the perpetrator of the act is of sound mind." My stated view is not that an attempt at, or act of, suicide is moral *only* if performed by a person voluntarily, deliberately, and when of sound mind, but that attempts at, or acts of, suicide are *always* moral,[5] whether committed voluntarily, deliberately, and when of sound mind or otherwise. The point I made is that there is universal agreement that acts of, or attempts at, suicide when committed involuntarily, accidentally, or while of unsound mind are not immoral; hence, since there is agreement on the absence of culpability in such cases I limited my discussion to the situation where there is disagreement over morality: suicides attempted or performed by persons voluntarily, deliberately, and when of sound mind.

B

The core of the basic issues raised (more implicitly than explicitly) by the authors can be sharply depicted by an analysis and critique of their statement, "Reform Judaism does not condone the deliberate taking of one's life by someone who is of sound mind. ... It further condemns as immoral the actions of those who would assist such individuals..." For this statement to be valid, the following three conditions (at the minimum) must be met.

1. It must be demonstrated that Reform Judaism possesses credible and ethical justification for decreeing that suicide is immoral.
2. Assuming the first condition has been met, it must be shown that Reform has an ethical right to exercise absolute authority over the minds of its adherents, namely, the right to dictate to them that they must believe suicide is immoral (the same argument would be extended to any other exercise of absolute authority by Reform over its adherents).[6]
3. If the first two conditions have been fulfilled, the authors must then demonstrate that Reform Judaism has delegated to them absolute authority over their fellow Reform Jews thus bestowing upon the authors the right to dictate to other Reformers that they must believe suicide is immoral.

If the authors cannot meet the above conditions, then their statement, "Reform Judaism does not condone, etc.," is an *ipse dixit* assertion, subjective (without, that is, objective justification), fallible, and personal. *Ipse dixit* assertions have authority over no one, not even those who make them.

With respect to the first condition enumerated above, that it be demonstrated Reform Judaism possesses ethical and credible justification for decreeing that suicide is immoral, the only such justification that has been offered in the history of religion is the theological argument given by Orthodox (also Rabbinic) Judaism (and by other religions as well, notably Roman Catholicism). Since I have already discussed this argument in my article, I will summarize the points relevant here.

1. Only a creator God who has brought humankind into existence and given them "life" (the property that distinguishes a vital entity from a dead body) can claim a right to ownership of a person's "life" superior to that of the person whose "life" it is. A creator God of humankind, in other words, would be the ultimate owner of the "life" of every person, and, consequently, whoever destroys her/his "life" by suicide would be destroying that which belongs to another, the creator God.

2. No Jewish religious system has ever put forth the notion that any Jew (and certainly not a non-Jew) on her/his own — that is, without ownership over another Jew having been delegated to her/him by a creator God — possesses a right to ownership over another Jew's "life" superior to the latter's own right in her/his "life." Therefore, so far as all other human beings acting on their own authority is concerned, a Jew possesses ultimate ownership of her/his own "life," with the right, consequently, to do with it as she/he chooses.

3. Thus for suicide to be immoral, it must be an offense against a creator God who is the ultimate owner of every person's "life." Suicide, however, is not an offense against a creator God unless he has communicated in an inerrant revelation that he forbids the destruction by a human being of her/his "life." There can be a creator God who is the ultimate owner of every person's life, but who does not prohibit a person from taking her/his "life." In such a case suicide would not be immoral. Hence if no inerrant revelation from a creator God prohibiting suicide exists, then every person is the ultimate owner of her/his "life" and possesses a moral right to do with it as she/he chooses.

4. Reform Judaism possesses no inerrant revelation from a creator God,[7] let alone a revelation in which suicide is prohibited. Every Reform Jew, consequently, is the ultimate owner of her/his "life," and possesses, therefore, a moral right to do with it as she/he chooses, which includes the moral right of suicide.

In light of the above reasoning, there is no need to inquire further into the other two conditions that must be met to see that the authors' statement, that Reform Judaism maintains suicide is immoral, is nothing more than an *ipse dixit* assertion. Since suicide in Reform Judaism is moral, it is nonsensical to maintain Reform possesses authority to compel its adherents to believe that suicide is immoral, or to claim Reform has bestowed upon the authors authority to decree such a belief in the Reform community.[8] The authors are claiming for themselves no less than a right to ownership of every Reform Jew's "life" superior to that of the Reform Jew whose "life" it is. Without credible, convincing evidence to verify and justify so awesome a claim to authority and power, it must be strenuously and forcefully rejected.

II. SELECTIONS ON THE THEME

2. RABBI JOSEPH A. EDELHEIT
Temple Israel, Minneapolis, Minnesota

Active Euthanasia, Religion and the Public Debate
Park Ridge Center, Chicago, Illinois, 1991, pp. 82-83

Jewish tradition teaches us that life and death are not passive, but active categories.

The 1990s will demand of us a critical and often painful reflection on what we mean by life and death. We have spent nearly a century caught between the paradoxical poles of unthinkable acts of genocide and uncontrollable population growth. We have participated culturally in acts of violence which make death a senseless void, and we have engaged in scientific discoveries and medical technologies that have added measurably to both the quality and quantity of life. Given those highly charged paradoxical polarities, it is not coincidental that during the final decade of this century, we need to ask, What do we mean by life and death? The specific question of whether active euthanasia can be morally justified goes to the very core of how we will eventually understand what we mean by life and death.

Answering this question *today* presupposes our willingness to answer it *differently* as our understanding changes. The many variables in this area will determine the still emerging parameters of our answer. As a congregational Reform rabbi, I am acutely aware that my interpretation of Jewish tradition does not represent a "universal" Jewish answer, and my involvement as an AIDS activist has also given me a distinct bias. With these caveats in mind, I would support active euthanasia and even some selected cases of physician-assisted suicides with the awareness and participation of the dying person and his or her family and closest friends. I make this statement fully aware that life is a unique divine gift.

Jewish tradition teaches us that life and death are not passive, but active categories. One of the most quoted passages from Hebrew Scriptures is Deuteronomy 30:19, "I have set before you life and death, the blessing and the curse, therefore choose life that you may live—you and your seed." Lost in the translation from the Hebrew is the grammatical nuance, second person singular, for the imperative: choose life! *You*—as an individual—are required to choose life. Would Moses have used this dramatic peroration if there had been any indication that doctors, nurses, hospital administrators, nursing and convalescent home staffs, judges and lawyers could all choose for you? Within the biblical setting the definition of life was simple—breathing. We have long since passed that watershed of medical innocence. Were Moses speaking today, I pray he would charge us with a more relevant admonition—"Choose life . . . unless it is a machine!"

Not only is there a public consensus—there is a strong indication that scripture allows us this final act of free will.

The key element of the question before us pertains to the assertive participation of the patients "who request to have their lives ended." Not only is there a public consensus—there is a strong indication that scripture allows us this final act of free will. Even if some choose to interpret the final act of dying to belong only to the divine giver of life, the human *has* control until it is wrested from him or her. The passion to control the destiny of others, even if morally justified and necessary, cannot be allowed to eclipse this foundational area of human dignity. To this end, we must continue to ask each other—what do we mean by life and death?

Hundreds of thousands are sick and dying, and millions will eventually die, from the pandemic of HIV/AIDS. This disease has forced us only now to begin to reckon with the profound link between sexuality and death. We have spent nearly 20 years in a national debate about abortion and choice—defending the rights of an unborn fetus and attempting to define when life begins. How curious that the lines separating "prochoice" and "prolife" cross and recross as the rhetoric becomes more sophisticated. The debates over abortion and euthanasia are already overlapping. How many people understand the words *prochoice* and *prolife* and what they really mean? As a society, we are morally derelict if we do not answer the question regarding active euthanasia, but can we answer it without knowing and understanding what we mean by life and death?

We must in my view be able humanely to support euthanasia requested by patients and surrogates, a goal that can be reached only by the difficult process of public conversation. Allow me to close with one final provocative question, intended to communicate the urgency of our conversation. An estimated 10,000 persons in America remain in persistent vegetative states and cannot die for various legal reasons. How can we justify this indignity to them and their families when we accept as nearly axiomatic the deaths of more than 20,000 persons—double the number of those in PVS—in wanton acts of urban violence with handguns? We can't seem to legislate a means to allow those who have no life to die, nor can we legislate a means to allow those who have life to live.

II. SELECTIONS ON THE THEME

3. DR. EUGENE B. BOROWITZ
Professor, HUC-JIR, New York School
"The Crux of Liberal Jewish Thought: Personal Autonomy."

Another Unsatisfactory Alternative: Radicalizing Autonomy

Some Reform extremists, notably Alvin Reines and Sherwin Wine, have suggested that Judaism finally carry through an uncompromising identification of modernity with autonomy. If human dignity is realized in the exercise of freedom, nothing should be allowed to stand in its way, not even Jewish tradition or Jewish folk responsibility. Until now, Jewish modernists have refused to embrace wholeheartedly the cardinal rule of the Enlightenment, that neither the past nor society should be allowed to override thoughtful self-determination. These Reformers consider it an illusion to hope that autonomy can be co-opted without revolutionizing Judaism. Literally, autonomy means that the self and only the self should legitimately legislate for one. No one determined to have a fully authentic human existence should compromise that principle.

This radicalism need not entail a complete rejection of the Jewish tradition. People who have personal ties to Judaism can find it a valuable resource for the pursuit of true selfhood. Abraham, the first Jew, broke sharply with his culture in pursuit of a truth no one around him knew and which, once he found it, no one could comprehend. The prophets preserved a similar individualism, proclaiming against their society that God's service was found less in maintaining inherited institutions than in the pursuit of truth and justice. The Jewish people, which has produced such figures as Marx, Freud and Einstein, should not be content with a tradition whose world view is prescientific, whose imagery is mythological and many of whose practices reflect magical notions. In its place autonomous moderns ought to seek out the most appealing truth they can rationally discover in contemporary culture. One left-wing liberal group finds this in secular humanism which it enriches by Jewish ethnicity. Another party affirms a Sartrean radical freedom relieved by a quest for God as the infinte possibility of being (a notion resembling Tillich's conception of God as the ground or power of being).

I disagree with the radical assertion of autonomy for it remains confidently modernist. It maintains the old Jewish liberal faith that contemporary culture knows far more about reality than does Judaism and it therefore rigorously subordinates everything Jewish to that universal truth. I deny that premise. The postmodern Jewish spiritual swing arose because many of us lost our old, ultimate faith in western civilization and acknowledged how wise Judaism remained. After what we have seen happen to the quality of life in our time, Jews such as I can no longer give our primary loyalty to western culture generally or contemporary philosophy in particular. For us, a sensitivity to human values alone would require that Jews move from servile dependency on our society to a maturely independent engagement with it. Indeed, we feel we need to be more Jewish in order to stay fully human in this culture. To our ears, the call to reduce Judaism only to what a radical pursuit of autonomy warrants, appears little more than an effort to reincarnate a long since outmoded strategy of Jewish modernity.

II. SELECTIONS ON THE THEME

4. RABBI YOEL H. KAHN
Congregation Sha'ar Zahav, San Francisco, California

Excerpts from his sermon:
"On Choosing the Hour of Our Death"
(To be published in its entirety by the CCAR Journal of Reform Judaism)

"It is hard to seek guidance from our tradition when we do not speak the same language. The quality of life, the measure which has become so critical for us, is not a concept which previous generations talked about. What then can our tradition offer? Many of you are also no doubt asking a further question: who am I to tell you what to do? Is not this the ultimate personal decision? I am not a person who lives for books and movies and who is losing my sight, I am not lying on a bed of pain without relief, I am not watching my sphere of activity shrink day by day, not have I lost my lover and the people who are dearest to me, I am not watching for signs of impending dementia, no, I do not know your pain. I do not presume to tell you what to do or to judge your actions; as I've said to many of you individually, I say to all of you: I and this congregation will not abandon you, in health and in sickness, in your hour of life and in the hour of your death. Reform Judaism does not tell its adherents what we must do; we do, however, come here seeking guidance from our tradition and its teachings and we come together as Jews, linked through covenant to history, community and God. As we have in other matters, we can turn to our tradition and our community for assistance in naming the questions and articulating the considerations which properly inform our decisions. It is in this spirit that I speak tonight. But how can the wisdom of Judaism guide us if prior generations never imagined circumstances like ours? Perhaps we must look for other parallels in the Jewish tradition."

"Each of us, regardless of our abilities or intellect or health, is created and lives *b'tzelem Elohim - in the image of God*. When a person has died, we are taught to treat the body with great respect; not because the body is in the image of God, but because our personhood is lived through our body. Part of the respect we give to the dead body is not to allow the body to remain for a long period in the bed where it lived, nor to eat or worship in its presence. Such actions are considered essential acts of living, and doing them in the presence of the deceased is called a mockery of the dead, insulting them by emphasizing the characteristics of life which they can no longer enjoy. Is it possible that there are times when a person, though still technically alive, cannot participate in the essential activities of life to such an extent that continuing life has become a mockery of life? As Graham Green asks: "What happens if you drop all the things that make you I?" Perhaps when one can only be sustained by machine, when pain has no relief, when every organ and system is failing and death can only be held at bay - perhaps under such circumstances, choosing to end life may truly be an act of *Kiddush ha-shem, the sanctification of life.*"

II. SELECTIONS ON THE THEME

5. "TEREFAH" AND "GOSES"

One of the most interesting and exciting aspects of the debate regarding Jewish sources relating to suicide and euthanasia is that regarding an attempt to redefine the traditional understanding of the term, "goses." This term, used to mark the time when one's death seems quite imminent and during which artificial impediments to the dying process may be withdrawn, is coming into increasing discussion given the ability of modern technology to keep people in "limbo" for an extended period of time. Recently, the term, "terefah" has been redefined by Dr. David Sinclair of Hebrew University. Dr. Elliot Dorff has been the major commentator on Sinclair's usage and application. The full exposition of Sinclair's thesis is to be found in his, Tradition and the Biological Revolution" (Edinburgh University Press, 1989). A selection from his book with a brief selection from Dorff's major Responsa regarding end of life issues is included. Also, as a point of reference and comparison, note the appropriate section from a 1950 CCAR Responsa discussion on Euthanasia and Dr. Atlas' reference to "terefah."

The Terefah Category (Dr. David Sinclair)

Although the category upon which most attention has been focused in the context of the biological revolution in the field of the treatment of the dying is that of the *goses*, there is another Talmudic category which is relevant to this topic, known as the *terefah*. In the course of the following chapters, it will be argued that this is the category which contains the solutions for some of the most pressing issues in contemporary medical law, namely, the correct approach to the criminal nature of terminating the life of a critically ill patient, and the principles underlying the allocation of scarce medical resources. In arguing that the best approach to current bioethical issues is the development of an existing category within the legal tradition of Judaism rather than a general philosophy of life and death drawn from either received or conventional morality, a statement is also being made in favour of a particular theory of juristic development. This is the theory that such development takes place within traditional categories rather than general philosophies, and that the categories in question possess the capacity for such development. It is to this theory that much of the final chapter of the book is devoted.

The term *terefah* is a familiar one in the context of Jewish dietary laws where it refers to an animal suffering from a fatal organic defect, e.g. a pierced windpipe or gullet.[1] Such an animal may not be eaten, even if it is slaughtered in the prescribed manner. The defects constituting animal *tarfut* (fatal condition) are specified in the *Talmud* and Codes, and scientific evidence as to whether or not they are actually fatal is completely irrelevant.[2] It is presumed that a *terefah* animal will die within twelve months; hence, a doubtful case may be consumed if it survives for a longer period.[3] Survival of an established *terefah* for more than a year is ascribed to supernatural forces.[4]

In the human context, however, the meaning of the term *terefah* is much less precise. The classical definition is provided by Maimonides in relation to the exemption of the killer of a *terefah* person from capital punishment on the grounds that the victim is 'already dead'.[5] Maimonides's definition runs as follows: 'it is known for certain that he had a fatal organic disease and physicians say that his disease is incurable by human agency, and that he would have died of it even if he had not been killed in another way.[6] Thus, in direct contrast to an animal *terefah*, the human *terefah* is defined on the basis of medical evidence.[7] The primacy of such evidence in the establishment of human *tarfut* (the condition of being a *terefah*) was reiterated in a definitive fashion by R. Moses Feinstein in a recent *responsum* on various bioethical dilemmas.[8]

It is also noteworthy that according to R. Hayyim Grodzinski, the *terefah* category applies to an internal disease, and not necessarily to an injury sustained as a result of an external blow. According to R. Grodzinski, a person suffering from an internal disease from which, according to his doctors, there is no chance of recovery is classified as a *terefah*.[9] R. Grodzinski maintains that the feature of externality is characteristic of animal rather than human *terefot*, since the former are all visible to the eye of the person inspecting the

animal after slaughter. On this basis, therefore, any person suffering from a fatal internal disease may be classified as a *terefah*,[10] and his killer will be exempt from the death penalty provided that there is sufficient medical evidence of the fatal nature of his victim's condition. Since the position regarding the killing of a *terefah* in Jewish law will be dealt with at length in Chapter 3, it is unnecessary to take this issue any further at this point.

The other aspect of the definition of animal *terefot* already mentioned, i.e. the presumption of death within twelve months, is also modified in the context of human beings. According to the *halakhah*, the deserted wife of an established *terefah* may be permitted to remarry since the death of a *terefah* is inevitable and evidence of *tarfut* is, therefore, tantamount to evidence of death.[11] According to the majority of authorities, twelve months must elapse before such permission may be granted, analogous with the presumption regarding animal *terefot*.[12] *Tosafot*, however, maintain that a fundamental physiological difference exists between animals and human beings, with the result that the latter may very well be capable of surviving for a longer period.[13] This does not mean, however, that a *terefah* is capable of living for an indeterminate period of time. *Tosafot* merely observe that the fixed time limit is not applicable in the human context in the same way that it is applied to animal *tarfut*. At the same time, the view of *Tosafot* indicates that the twelve month time limit is not as conclusive in relation to human beings as it is in the context of the dietary laws. On this basis, it is arguable that the application of the category of *terefah* to the critically ill of modern medicine ought not to depend strictly upon the twelve month limit. The main factor in any such categorisation ought to be the inevitability of death as a result of fatal illness, with the element of time constituting an important, but not paramount, element in the determination of that inevitability. The twelve month time limit is not absolute in relation to human beings.[14]

The fundamental concept in the definition of human *tarfut* is, therefore, the inevitability of death. This is also the major distinguishing factor between the categories of *goses* and *terefah*. As such, in describing the legal status of the *terefah*, the expression *gavra katila* (dead man) is often used. This is the rationale underlying the rule that the killer of a *terefah* is legally exempt from capital punishment, since he killed someone who was, in effect, already dead.[15] In contrast to the *goses*, whose status as a living being is generally beyond any doubt, the *terefah* is regarded as a 'dead man' in various branches of the *halakhah*. According to some authorities, a *terefah* son renders his widowed mother liable to a levirate marriage.[16] It has also been suggested that the biblical prohibition on marrying the sister of a living wife does not apply if the latter is a *terefah*.[17] Although these views have not gained general acceptance,[18] the fundamental assumption involved in them, i.e. the non-personhood of the *terefah*, is clearly a well-established principle in Jewish law.

There are, however, at least two cases in which it would appear that the status of the *terefah* as 'dead man' is, in fact, an operative one. The first is that of the exemption of the killer of a *terefah* from capital punishment. Here, the underlying rationale is that the victim would have died in any case, and there is no capital punishment for killing a dead man.[19] The second is the permission given to a woman to remarry on the strength of evidence as to her husband's *tarfut* in a case where he has disappeared. Evidence of *gesisah*, however, would not be sufficient for this purpose.[20] Thus, in both cases, the legal status of the *terefah* clearly reflects the conceptual essence of the human *terefah* as a non-person. It is significant that the *halakhah* does not relate to the *goses* as a non-person in either of these cases. Moreover, a person who murders a *goses* is liable to capital punishment, and evidence of *gesisah* is insufficient to permit remarriage.

The outstanding feature of the category of human *tarfut* for the current debate concerning the treatment of the critically ill is the exemption of the killer of a *terefah* from the death penalty.[21] This feature focuses attention upon the fact that a fatal disease does detract from the legal status of a person, and also introduces a measure of flexibility into the issue of terminating such a life. This is in direct contrast to the category of *goses*, which is based on the premise that a *goses* is like a living person in all respects.[22] Indeed, almost all the laws of the *goses* confirm his living status and, as already observed, can only be appreciated against the background of the domestic death-bed.[23] The *terefah* category adopts a different perspective, (the effects of the critical illness upon a person's legal status) and as such, it is much closer to the current debate on the termination of the life of a critically ill patient.

Terefah, Rather than Goses, as the Operative Category

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Before we proceed to some applications of the above policies, we must consider one conceptual matter. Almost all discussions in Jewish circles of the terminally ill have relied on what Jewish law does with the category of *goses*, a moribund person. As indicated above, during the last eight hundred years, Jewish law has continued to prohibit hastening a person's death but has permitted (or, in some versions, required) removal of anything which impedes the death of a moribund person. This distinction originates in the thirteenth-century work, *Sefer* Hasidim, and in the sixteenth century it is incorporated, with some modification, in Isserles' authoritative comments on the *Shulhan Arukh* [29]

The case in both sources is one of a person literally on his deathbed. In our time, however, people can be "on their deathbeds," as it were, almost indefinitely, sustained by heart and lung machines as well as by other medical paraphernalia. Thus definitions of "mortally ill" (*goses*) in terms of a specific number of hours (commonly held to be within 72 hours of death)[30] are inappropriate to today's medical realities, such as our ability to maintain artificial respiration. Even if one restricts the use of such a definition to the expectation of one's remaining life *unaided* by medicine, one still must face the problem which this definition has always entailed, namely, how can one know ahead of time the moment of a patient's impending death with such certainty? Moreover, the distinction between direct and indirect means of letting people die has become increasingly difficult to recognize and maintain and, according to some contemporary ethicists, it can easily mask highly immoral activities.[31]

Because we can maintain people on life-support systems, and because we still cannot accurately predict the moment of a person's death, the only way to use the category of *goses* at all in these matters is to define a *goses* not in terms of the remaining hours of his or her life, but rather as anyone who has been adjudged by the attending physicians to have an irreversible, terminal illness. Some Orthodox and Conservative rabbis in recent years have moved in this direction[32] In a very broad sense, of course, life itself is an "irreversible, terminal illness," but that stretches the term "illness" beyond recognition—and, more importantly, beyond the experiences which we intend to denote by using the term "illness" in contrast to the term "life" in the first place.)

There is, however, a better way in Jewish law to conceive of most of the cases with which we are concerned. As Daniel B. Sinclair has pointed out, however we define the category of *gesisah*, all agree that the person in that category is still considered alive. Therefore, any withholding or withdrawing of treatment from such people always comes with not a small amount of ambivalence and guilt. The halakhic category which describes these situations much more accurately and appropriately, he suggests, is that of *terefah*, a person with an incurable disease. Such a person is, according to medieval authorities, a *gavra katila*, an already dead person, and consequently one who kills him or her is exempt from human punishment although subject to divine and extra-legal penalties.[33]

2. Withholding and/or Removing Medicine and Other Forms of Medical Intervention from the Terminally Ill. Another clear implication of these principles is that, *when the patient has an irreversible, terminal illness*, medications and other forms of therapy may be withheld or withdrawn. Because withdrawing treatment requires a positive act, some physicians are more morally queasy about that than they are about withholding treatment in the first place, but actually it is easier to justify withdrawing a treatment which has proven not beneficial than not to try a possibly beneficial therapy at all. Moreover, since the physical condition of patients may change over time, the goals of treatment and the methods used to attain those goals need to be continually reassessed, and that may easily involve discontinuing some therapy and beginning another. Only if little or no chance exists that a treatment will benefit the patient—or, if, as explained below, triage issues require that a treatment not be provided—may it properly be withheld. When the patient has an irreversible, terminal illness, however, even withholding treatments is justified: we need not do that which the attending physicians judge to be medically futile.

Even when a decision is made to withhold or withdraw aggressive modes of therapy, of course, the patient may not be abandoned. All appropriate forms of pain therapy and all relevant humanitarian support systems must be maintained.

If the *goses* category is to be used to regulate care of the terminally ill, this policy permitting the withdrawal and withholding of aggressive treatments from such patients invokes the Jewish tradition's distinction between sustaining the life and prolonging the death of the moribund (Policy #D-3 above). The definition of the person to whom it applies (the *goses*), however, is broader than most Orthodox rabbis make it—but, I think, more in keeping with the intent of the tradition, as discussed above.

If the *terefah* category is to be used to guide our thinking on these issues—and that category does more accurately describe the vast majority of situations in which questions arise nowadays—withholding or withdrawing treatment from the terminally ill represents a permissible failure to act, in the case of withholding treatment, or a permissible act of bloodshed, in the case of withdrawing treatment, in order to save the life and health of the viable and/or to alleviate the pain of the dying.

II. REFLECTIONS

DR. SAMUEL ATLAS, HUC-JIR

The two previous speakers have placed the problem of euthanasia on a purely moral and religious basis, so I would like to point out that apart from the legal aspect there is a philosophical question involved. When we speak of euthanasia, the question actually depends upon our attitude towards life: What is life? Can life be measured from the point of view of suffering and balancing the suffering with pleasure--the suffering of the patient and the suffering of those nearest to the patient against the amount of pleasure they had seeing their dearest one still living? Now, on the basis of a certain philosophy of life, as well as from a Jewish point of view, life cannot be measured in such terms. A Jewish thinker has said that "Life is more than mere living," the implication being that while the life of species other than man is a merely biological function, human life implies something more. It is the element of creativity which is the distinguishing mark of human life. If a person is ill and about to die, and the idea of repentance arises in that man's mind, that is worth more than an eternity of static existence. It is sufficient to recall the statement in Pikrei Avot that one hour of repentance is worth more than the whole future life. Why is one hour of repentance worth more than the whole future life? Is it because of the consideration that repentance is an act of creativity, and one hour of creative life is worth more than an eternity of static bliss? Consequently, it is wrong to deprive a hopelessly sick person of the opportunity for repentance which may arise in his mind. No man or doctor can decide that issue. And euthanasia cannot be justified on the basis of such a concept of human life.

As to the Halacha, if I may say a word on that, it has been pointed out that there is a distinction between terefa and goses. According to Jewish law, if one murders a terefa, there is no consequence such as capital punishment which is due to all murderers, but a goses is considered a normal human being with all due consequences. Goses means a person who is dying a natural death; terefa means a person in whose organs there is a deficiency. Here is a place, to my mind, for a change in the Halacha, which would be in the spirit of the Talmudic Halacha, for I am convinced that the Talmudic Halacha is so flexible that it can be made a living force and compatible with modern scientific concepts of medicine. The Halacha in itself demands an adjustment of certain elements in it which are the result of scientific conceptions of an older time no longer compatible with modern scientific developments. Only in this way could the Halacha be made existential, and a guide for life. The very meaning of the word Halacha implies a way of life, as it is derived from the Hebrew verb meaning "walking." Now, according to modern scientific conceptions of medicine, the distinction between terefa and goses has no validity whatsoever. A goses means one who dies a natural death; but what is natural death in medicine today? While the ancients thought that no organic change occurs in the body of a person dying a natural death, modern medicine maintains that the cause of death is always, even in the case of a very old man, the result of some deficiency in some of his organs. Consequently, there is no distinction between goses and terefa.

Maimonides, in the beginning of his Code, in Sefer Hamada, has a section dealing with medicine. You will ask, how does medicine come into a code? The reason is simply this: medicine is closely connected with law. Since there is a commandment in the Torah to preserve life, medicine is a part of that commandment; for in order to preserve life we must know medicine. Maimonides believed that he had reached the pinnacle of the science of medicine; therefore, his medicine is part of Halacha. Our medicine would accordingly be part and parcel of our Halacha. In this respect, we will have to modify the law, but it will be a change in the letter of the Halacha for the sake of preserving its spirit. And Maimonides would subscribe to our medicine which is the result of a higher development of scientific thought. Consequently, the distinction between goses and terefa does not apply to us, and the former will have to be treated in the same manner as the latter. In this respect, there is room for development, and the application of Talmudic-Rabbinic law to our times should be brought up to date in agreement with the latest development of scientific thought, for even Maimonides would agree that our present-day medicine should serve as the basis of the law, and not his medicine, which is out of date. But while we will have to identify terefa and goses, it means only that there is no consequent punishment for an act of murder in both cases; but the law "Lo tirtsach" ("Do not murder") which prohibits the act of cutting short a life which has in it the potentiality of creativity, obtains with regard to terefa as well as in respect to goses.

With reference to Dr. Freehof's statement on the law that a person who takes life away from the terefa does not suffer the consequences of capital punishment, but still has to render an account before God, I would suggest the following definition of the legal basis of the law. Taking life away from a terefa is an offense

against the commandment, "Thou shalt not kill," for which, however, there is no consequence of capital punishment, since the murdered person is deficient and not whole. The law of "nefesh tachat nefesh" ("a soul for a soul") cannot be applied. For there are two aspects governing the case of murder. There is first the principle of "a soul for a soul," which does not apply in the case of the murdered person being a terefa (and, in our view, also in regard to a goses), and there is no capital punishment involved. Then there is the ethical-religious principle expressed in the commandment "Thou shalt not kill." This law is valid even in relation to a terefa and goses because of the potential activity of human life, the value of which is absolute, independent of the time element involved, and cannot be measured by the criterion of time.

I should now like to refer briefly to the Biblical story of King Saul and David's order that the Amalekite be killed for his slaying of Saul, which has a bearing on our problem. Saul had thrown himself upon his sword and he was a dying man when the Amalekite slew him, and yet David ordered capital punishment for this act of an Amalekite. This is contrary to Jewish law as explained above. The solution to this difficulty seems to be this: David's reaction to the Amalekite's report of his slaying of King Saul was motivated by political consideration, and he acted in the interest of the State. David had to show indignation at the slaying of Saul, thus dissipating any suspicion of his disloyalty to Saul which might arise in the mind of the people. In order to preserve the unity of the State and his kingship, David had to show loyalty to Saul, as is evident from his remark: "Wast thou not afraid to stretch forth thy hand against the Lord's anointed?" (II Sam. 1:14). It was thus an act of statesmanship on the part of David; it cannot therefore serve as a basis for the legal consideration of our problem.

As a proof to the correctness of this interpretation of David's act, I would like to point out another difficulty in the legal aspect of David's reaction. David meted out capital punishment on the basis of the Amalekite's confession, saying: "Thy blood is upon thy own head, for thy mouth has testified against thee," which is contrary to Jewish law, that capital punishment can be meted out only on the basis of testimony of witnesses and not on that of confession (Sanhedrin 9b). Maimonides solves this difficulty by establishing the principle that a king is entitled to accept self-confession as sufficient evidence (Hilchot Sanhedrin 18.6). And just as David was entitled to deviate from the law with regard to confession, so we may conclude that he was entitled to ignore the fact that Saul was a dying man and, according to law, no capital punishment is involved in such a case.

That a king is permitted to deviate from the law does not mean, however, that a king stands above the law and is not subject to it. Only in cases of national emergency is the king entitled to deviate from the law (Maimonides quotes the law of the Mishna [Sanhedrin 2.4] that a king is entitled to break a way through anybody's property without interference and comments that it refers only to time of war). It may seem at first thought that there is a contradiction involved in Maimonides. As it clearly follows from his exposition of the law in Mishna Sanhedrin, a king is subject to law and bound by it, and yet with reference to David's acceptance of confession as sufficient testimony, Maimonides declares that a king is entitled to deviate from the law. This apparent difficulty dissolves itself on the basis of our explanation that David acted in the interest of the State. It was a case of national emergency where the king can make his own law and deviate from the established system of positive law. Our exposition of the case of David is thus borne out by Maimonides' conception of the law.

I should like now to add the following: We do not intend here to present an historically correct interpretation of the case of David. I am well aware that at the time of David the law may have been different, and David did not have to follow the law as it evolved at a much later period. Our intention is merely to present an existentially correct picture of the legal case of David as it has been understood by the existing legal tradition. Jewish law was an existing and living force in Israel and underwent a long process of development, but it always attempted to present new ideas and conceptions as if they had existed previously. Our exposition of the legal aspect of David's reaction in the light of the legal tradition as developed later is meant merely as an existential interpretation of the living legal tradition and its relation to the case of David.

Thus, in the light of our understanding of Jewish law, an act of euthanasia is to be considered a violation of the commandment "Thou shalt not kill." Therefore, the Amalekite's slaying of the dying Saul was an offense against this commandment. For an act of euthanasia, however, there can be no capital punishment. Since the murdered person is deficient and not whole, the principle of "nefesh tachat nefesh" cannot be applied. In the light of modern medicine, so it seems to me, there should be no difference in this respect between terefa and goses, for both have organic deficiencies. David, however, meted out capital punishment for an act of euthanasia on the basis of political considerations and in the interest of the State, just as he deviated from the legal procedure for the sake of preserving the unity of the State.

III. PROGRAMMATIC SUGGESTIONS

1. Compare the reflections in section 1 of the program guide as to similarities and differences. Pay close attention to the very human tensions both personally and as a Reform Jew.

2. How can or should we redefine "suicide" or "euthanasia" especially as it applies to the thoughts of Rabbi Kahn and Rabbi Edelheit as they relate to AIDS patients?

3. Can we find redemptive value in pain and suffering as Reform Jews?

4. Create a synagogue symposium on euthanasia. Bring together local theologians and ethicists, physicians and families who have had to deal with these issues. Do we need to seek a redefinition of terms? Did they "assist" in someone's death? Could they? React to the differences and possibilities of interpretation between the ideas of "goses" and "terefah."

5. A forum on Reform Judaism and the limits of Personal Autonomy. Compare and contrast the views of Dr. Reines and Rabbis Bookman, Zlotowitz and Seltzer. Can there be, or should there be "limits" on my autonomy? (see references to works by Dr. Borowitz in the Resources section)

6. How can we understand the quote from Rabbi Max Ardst: "The quantity of life is in the hands of God, but the quality of life is in the hands of man." How would Reform and Orthodox Judaism differ in their understanding of this thought?

7. Examine the following article from the March 17, 1993 New York Times. How do you react to the proposed "guidelines?" How do they mesh with a Reform Jewish ideology?

8. Examine the New York Times article from February 14, 1993. Can you support legalization of physician assisted suicide? Do the exit polls from California show the possibility that legalization will create further social divisions based on race, gender and economic power? Can we support such laws without first having equal access to medical treatment for all our citizens?

9. Using the UAHC's "A TIME TO PREPARE," develop a program for your congregation/group which illustrates the importance of letting people know what you want in times of medical uncertainty.

10. How active could you be in assisting someone in great pain and suffering in their dying process? What can it mean to "help someone to die?"

11. Examine the article by Ronald Dworkin from the New York Times Magazine of May 16, 1993. Compare and contrast points of view regarding life's sanctity as it relates to abortion and euthanasia.

12. Examine the June 13, 1993 New York Times article on "Compassion In Dying" of Seattle. Develop a panel of physicians and health care workers on their reaction to this "referral" group.

13. One of the most interesting ethical questions dealing with our subject is the concept of "double effect." From the Book, "Death and Dignity," by Timothy E. Quill, comes the following definition of the term. Compare that definition to the following Responsa on "Relieving the Pain of a Dying Patient." (American Reform Responsa p. 254-257) "How does/can the "double effect" concept relate? Is the concept a "legal fiction" to allow for an easy death?

COMFORT CARE

From the book, "Death and Dignity"
by Dr. Timothy E. Quill

Comfort care involves distinct trade-offs and priorities compared to traditional medical care. In traditional medical care, increased suffering is reluctantly accepted as a side effect of treatment that is directed primarily at extending the patient's life. In comfort care, unintended shortening of a patient's life can be accepted as a potential side effect of treatment, provided the primary purpose of the treatment is to relieve suffering. The underlying religious and ethical principle is called the "double effect," which absolves physicians from responsibility for indirectly contributing to the patient's death, provided they intended purely to alleviate the patient's symptoms. It places considerable weight on the physician's unambiguous intent to relieve suffering and not to intentionally shorten life.

Accepting the double effect in the care of the terminally ill has humanized and substantially improved the quality of life before death for many patients. It has freed doctors to use narcotic pain relievers so that they can effectively treat severe physical pain without fear of being morally or legally accountable if that treatment inadvertently contributes to an earlier death. Comfort care promises to humanize the process of dying, and to focus medical attention more on improving the quality than the quantity of the time remaining. In practice, comfort care allows physicians to use their considerable personal and professional resources to attend to the patient's suffering with the same intensity that they apply to prolonging the patient's life in traditional medical care.

CENTRAL CONFERENCE OF AMERICAN RABBIS

RELIEVING PAIN OF A DYING PATIENT
(Vol. LXXXV, 1975, pp. 83-85)

QUESTION: A dying patient is suffering great pain. There are medicines available which will relieve his agony. However, the physician says that the pain-relieving medicine might react on the weakened respiratory system of the patient and bring death sooner. May, then, such medicine be used for the alleviation of the patient's agony? Would it make a difference to our conclusion if the patient himself gave permission for the use of this pain-killing medicine? (Rabbi Sidney H. Brooks, Omaha, Nebraska)

ANSWER: Let us discuss the second question first, namely, what difference would it make if the patient himself gives permission for the use of this medicine, though he knows it may hasten his death? There have been some discussions in the law in recent years of the difference it would make if a dying patient gave certain permissions with regard to the handling of his body after death. For example, he might ask for certain parts of the usual funeral ritual to be omitted; and some authorities say that he may permit autopsy. If I remember rightly, this permission was given by the late Rabbi Hillel Posek of Tel Aviv. But all these statements, giving the dying man the right to make such requests, deal with what should be done with his body after death, but not with any permission that he may give for hastening his death. After all, for a man to ask that his life be ended sooner is the equivalent of his committing suicide (or asking someone else to shorten his life for him). Suicide is definitely forbidden by Jewish law.

However, we are dealing with a person who is in great physical agony. That fact makes an important difference. A person under great stress is no longer considered in Jewish law to be a free agent. He is, as the phrase has it, Anus, "under stress or compulsion." Such a person is forgiven the act of suicide, and the usual funeral rites--which generally are forbidden in the case of suicide--are permitted to the man whose suicide is under great stress. The classic example for this permissibility is King Saul on Mount Gilboa. His death (falling on his sword) and the forgiveness granted him gave rise to the classic phrase, in this case, "Anus keSha-ul." Thus, in many cases in the legal literature the person committing suicide was forgiven and given full religious rites after death, if in his last days he was under great stress. (See the various references given in Recent Reform Responsa, pages 114ff, especially the example of the boys and girls being taken captive to Rome who committed suicide [B. Gittin 57b]; the responsum of Jacob Weil, 114; and that of Mordecai Benet, Parashat Mordechai, Yoreh De-a 25; and the other responsa given in Recent Reform Responsa.)

However, a caution must be observed here. The law does not mean that a person may ask for death if he is in agony, but it means that if in his agony he does so, it is pardonable. In other words, here we must apply the well-known principle in Jewish law, the distinction between Lechatechila, "doing an action to begin with," and Bedi-avad, "after the action is done." Thus, we do not say that Lechatechila it is permissible for a man to ask for death, but Bedi-avad, if under great stress he has done so, it is forgivable.

So far we have discussed the situation from the point of view of the action of the patient. Now we must consider the question from the point of view of the physician. Is a physician justified in administering a pain reliever to a dying patient in agony when the physician knows beforehand that the medicine will tend to weaken his heart and perhaps hasten his death?

Jewish traditional law absolutely forbids hastening the death of a dying patient. It requires meticulous care in the environs of the dying patient, not to do anything that might hasten his death. All these laws are codified in the Shulchan Aruch, Yoreh De-a 339. See the full discussion in Modern Reform Responsa, pp. 197ff. If, therefore, this were definitely a lethal medicine, the direct effect of which would be to put an end to the patient's life, the use of such medicine would be absolutely forbidden. But this medicine is neither immediately, nor intentionally, directly lethal; its prime purpose and main effect is the alleviation of pain. The harmful effect on the heart of the patient is only incidental to its purpose and is only a possible secondary reaction. The question, therefore, amounts to this: May we take that amount of risk to the patient's life in order to relieve the great agony which he is now suffering?

Interestingly enough, there is very little discussion in the classic legal literature, beginning with the Talmud, about the relief of pain. Most of the discus-

sion deals with the theological question of why pain is sent to us and how we are to endure it and with our attitude to God because of it. As for the paucity of reference on the relief of pain--that can be understood because, after all, in those days they had very little knowledge of opiates or narcotics. However, the Talmud does mention one pain-killing medicine which could be used in the ceremony of piercing the ear of a slave (Kiddushin 21b). This is the basis of all modern legal discussion as to whether anesthetic may be used in circumcision (see Current Reform Responsa, pp. 102ff). It should be noted in that responsum that most of the scholars agree on the permissibility of the relief of pain, at least in that ceremony.

But in the case which we are discussing, it is more than a question of relieving pain of a wound or an operation. It is a question of relieving pain at the risk of shortening life. Now, granted that it is forbidden to take any steps that will definitely shorten the life of the patient (as mentioned heretofore)--may it not be permitted in the case of a dying patient to take some risk with his remaining hours or days, if the risk is taken for his benefit?

This question may be answered in the affirmative. The law in this regard is based upon the Talmud (Avoda Zara 27a-b). There the question is whether we may make use of a Gentile physician (in that case, an idolater). What is involved is the enmity on the part of an idolater toward the Israelite, and the fact that the physician may--out of enmity--do harm to the patient. It makes a difference in the law whether the man is an amateur or a professional. The latter may generally always be employed. Also it makes a difference as to the present state of the patient's health, as follows: If the patient is dying anyhow, more risks may be taken for the chance of his possible benefit. The phrase used for these last dying hours is chayei sha-a, and the general statement of the law is that we may risk these fragile closing hours and take a chance on a medicine that may benefit the patient (cf. Shulchan Aruch, Yoreh De-a 154). See Modern Reform Responsa, p. 199, and especially the classic responsum on this subject by Jacob Reischer of Metz, Shevut Ya-akov III, 75. In other words, this is the case of a dying patient, and the law permits us in such a case to risk the chayei sha-a for his potential benefit.

However, this does not quite solve the problem. The law permits risking these last hours on the chance of curing the patient. But may we conclude from that permission also the right to risk those last hours, not with the hope of curing the patient, but for the purpose of relieving him of pain? Interestingly enough, there is a precedent in Talmudic literature precisely on this question (see the references in Modern Reform Responsa, 197ff). The incident referred to is in Ketubot 104a. Rabbi Judah the Prince was dying in great agony. The Rabbis surrounded his house in concerted prayer for his healing. But Rabbi Judah's servant (who is honored and praised in the Talmud) knew better than the Rabbis how much agony the rabbi was suffering. She therefore disrupted their prayers in order that he might die and his agony end.

In other words, we may take definite action to relieve pain, even if it is of some risk to the chayei sha-a, the last hours. In fact, it is possible to reason as follows: It is true that the medicine to relieve his pain may weaken his heart, but does not the great pain itself weaken his heart? And: May it not be that relieving the pain may strengthen him more than the medicine might weaken him? At all events, it is a matter of judgment, and in general we may say that in order to relieve his pain, we may incur some risk as to his final hours.

Solomon B. Freehof

IV. RESOURCES FOR ADDITIONAL REFERENCE

The following is by no means an exhaustive list of additional resources now current on the subject of Program Guide VI. What we have done is to try and suggest several books, articles and journals that can be popularly obtained. In developing a program or series of programs for your congregation, the material listed below can serve as an excellent beginning resevoir of information.

1. REFORM RESPONSA: See appropriate Responsa on Euthanasia; Quality of Life and Euthanasia; plus associated topics on end of life decisions in collections of Reform Responsa edited by Freehof and Jacob.

2. UAHC Bio-Ethics Program Guide II. "Autonomy: My Right To Live Or Die". April, 1989.

UAHC Bio-Ethics Program Guide III. "Termination of Treatment." April, 1990.

UAHC Bio-Ethics Program Guide IV. "The Living Will/Medical Directives". Winter, 1991.

3. TRADITION AND THE BIOLOGICAL REVOLUTION. Dr. David B. Sinclair, Edinburgh University Press, 1989, Edinburgh, Scotland.

4. "End Stage Medical Care: A Halakic Approach." CONSERVATIVE JUDAISM. Volume XLIII, Number 3, Spring, 1991.

5. "Reform Judaism, Bioethics and Abortion." Dr. Alvin J. Reines. JOURNAL OF REFORM JUDAISM, Winter, 1990.

6. "Dialogue on Suicide and Abortion." JOURNAL OF REFORM JUDAISM, Fall, 1990.

7. "Suicide As A Moral Decision: A Response to Dr. Alvin J. Reines." Bernard M. Zlotowitz and Sanford Seltzer. JOURNAL OF REFORM JUDAISM, Winter, 1991.

8. "The Morality of Suicide: A Surresponse." Dr. Alvin J. Reines. JOURNAL OF REFORM JUDAISM, Winter, 1991.

9. ENCYCLOPEDIA JUDAICA.

10. "Suicide," MODERN MEDICINE AND JEWISH ETHICS, Dr. Fred Rosner, K'tav Publishing/Yeshiva, University Press, 1986.

11. A TIME TO BE BORN AND A TIME TO DIE: THE ETHICS OF CHOICE. Rabbi Barry S. Kogan, Ed. deGruyter, Inc., Hawthorne, N.Y., 1991. *See especially the articles by Dr. Leon R. Kass: "Death with Dignity and the Sanctity of Life," (p. 117) and the response; "Good Rules Have good Reasons: A Response to Leon Kass," by Ronald M. Green (p.147).

12. CHOICES IN MODERN JEWISH THOUGHT. Dr. Eugene Borowitz. Behrman House, New York, 1983.

13. ETHICS IN AN AGING SOCIETY. Harry R. Moody. Johns Hopkins University Press, 1992. *See especially the section on "Rational Suicide on Grounds of Old Age?" (p. 71).

14. LIFE'S DOMINION:AN ARGUMENT ABOUT ABORTION, EUTHANASIA AND INDIVIDUAL FREEDOM. Ronald Dworkin, Knopf, NYC, 1993.

15. ACTIVE EUTHANASIA, RELIGION AND THE PUBLIC DEBATE. The Park Ridge Center, Chicago, Illinois, 1991.

16. TOUGH CHOICES: JEWISH PERSPECTIVES ON SOCIAL JUSTICE. Albert Vorspan and David Saperstein. UAHC Press, NYC, 1992. *See the section: "Bioethics: Thinking the Unthinkable." (p. 266).

17. ENCYCLOPEDIA OF BIOETHICS. Kennedy Institute of Bioethics, Georgetown University, Washington, DC.

18. HASTINGS CENTER REPORT. Published by The Hastings Center, 225 Elm Road, Briarcliff Manor, NY. *See recent issues which include: "Is There A Right To Die?" Leon Kass, Vol. 23, Number 1, January-February, 1993 and "Are Laws Against Assisted Suicide Unconstitutional?" Yale Kamisar, Vol. 23, Number 3, May-June, 1993.

19. "Aid in Dying: Should We Decriminalize Physician Assisted Suicide and Physician Committed Euthanasia?", Maria T. CeloCruz. AMERICAN JOURNAL OF LAW AND MEDICINE, Vol. XVIII, Number 4, 1992.

20. KENNEDY INSTITUTE OF ETHICS JOURNAL
"Active Euthanasia and Assisted Suicide." Pat Milmoe McCarrick. Vol. 2, Number 1.

"Religious Ethics and Active Euthanasia In A Pluralistic Society." Courtney S. Campbell. Vol. 2, Number 3.

21. A TIME TO PREPARE: A Practical Guide for Individuals and Families In Determining One's Wishes for Extraordinary Medical Treatment and financial Arrangements. UAHC COMMITTEE ON OLDER ADULTS/Bioethics Committee, 117 S. 17th Street, Suite 2111, Philadelphia, PA 19103.

22. "Rabbi Moshe Feinstein On The Treatment Of The Terminally Ill," Fred Rosner. JUDAISM: Number 146, Vol. 37, Spring, 1988.

23. SH'MA: A Journal Of Jewish Responsibility.

*see several recent issues of Sh'ma which contain entire issues of major pieces relating to the subject of this Program Guide. Specifically: October 18, 1991 and November 1, 1991 which focus entire issues on the subject featuring reports from the Dutch community (especially see Rabbi David Lilienthal's "Shall We Judge When It's 'A Time to Die'"?) In the October 18 issue and North American responses in the November 1 issue. Likewise, see articles of interest in the issues of May 29, 1992 and November 27, 1992.

24. UAHC Committee on AIDS.

25. FINAL EXIT: The Practicalities of Self Deliverance and Assisted Suicide for the Dying. Derek Humphry. (Hemlock Society, NY, 1991).

26. DEATH AND DIGNITY: MAKING CHOICES AND TAKING CHARGE" Timothy E. Quill, M.D. Norton Publishing, New York City, N.Y., 1993.

27. JEWISH VALUES IN HEALTH AND MEDICINE, Rabbi Levi Meier, Ph.D., Ed. University Press of American, Lanham, MD, 1991.

28. CCAR Convention of 1993 in Montreal, Canada. Workshops on Assisted Suicide.

Personal Health

JANE E. BRODY
March 17, 1993
New York Times

Is doctor-assisted suicide ever acceptable?

AS an unstoppable cancer ravaged my mother's 49-year-old body, she tried twice to hasten her inevitable death, first by slashing her wrists and then by swallowing rubbing alcohol. Both times she was "rescued," forcing her to suffer further unrelenting insults to her once stalwart figure and boundless energy. Unable to retain food, she withered to 65 pounds, half her original weight, all the while yearning to be out of her misery.

But instead of heeding her demonstrated wish to die and easing her way with, say, an overdose of sleeping pills, at her doctor's request we allowed her to serve as a "test animal" for possible new drugs against her kind of cancer, causing her to suffer further from the toxic effects of the medications. It seemed altruistic, even noble, at the time, but in retrospect it was cruel and inhuman punishment to a dignified woman who had already served society as an inspiring teacher for 32 years.

When my mother died in 1958, no health professional in his or her right mind would have openly helped her to end her life when to her it had become no longer worth living. Today doctor-assisted suicide is a subject of vigorous debate, national headlines and state legislation.

Extremists on both sides — Dr. Jack Kevorkian of Michigan and his suicide machine and the Hemlock Society's published prescriptions for self-destruction on the one side and fundamentalist religious groups and traditional medical ethicists on the other — have galvanized feelings on an issue that deserves more rational consideration. The importance of the issue will loom even larger as medicine continues to devise ways to prolong life, at least as it is biologically defined, and as health-care costs at the end of life continue to zoom into the stratosphere.

Definition and Limits

Society at least partly sanctions two forms of what might be called doctor-assisted deaths, steps that hasten the end for terminally ill people. One is the withholding of treatment, including breathing assistance and tube feeding; the other is the administration of high doses of narcotics to relieve pain or other symptoms. But for a doctor to actively help a patient die is outlawed in 37 states.

Still, untold numbers of doctors have in one or more cases gone outside the law. They have surreptitiously provided the means to a quicker end for patients they may have tended for months or years. Now, rather than continuing to risk prosecution, many are asking that doctor-assisted suicides be legalized in certain well-defined instances.

Advocates emphasize that because it is predicated on a request from the patient, doctor-assisted suicide is quite different from active euthanasia, in which a doctor or nurse might decide to end a patient's suffering, even when the patient has not sought such intervention. Still, there is a real fear that sanctioning assisted suicides might lead to abuse.

For example, institutions or insurers forced to sustain waning lives at exorbitant cost might be tempted to use assisted suicide to control costs. Another concern is that patients who cannot speak for themselves or fully comprehend their circumstances might be coerced into choosing death rather than becoming burdens on their families or society.

Dr. Timothy E. Quill, who has written eloquently on the subject, says there is also a very realistic worry that some patients who request help in ending their lives may have conditions that can be improved with proper treatment, giving them a new perspective on life. Among those conditions are severe pain and mental depression, potentially treatable problems that can lead to feelings of desperation.

Dr. Quill, a specialist in medicine and psychiatry at the University of Rochester School of Medicine and Dentistry, and a former director of a hospice center, put his career on the line two years ago by publishing in The New England Journal of Medicine his decision to supply a lethal dose of barbiturates to a terminally ill leukemia patient, who used them to kill herself.

The thousands of letters he received in response encouraged him to write a book, "Death and Dignity: Making Choices and Taking Charge," newly published by W. W. Norton ($21.95). In it he presents a case for a "cautious" exploration of doctor-assisted suicide "under carefully controlled conditions."

Proposed Guidelines

Last November, he and two collaborators, Dr. Christine Cassel of the University of Chicago and Dr. Diane Meier of Mount Sinai Medical School in New York, proposed these seven criteria for allowing doctor-assisted suicide in the New England journal:

1. The patient must have an incurable condition that causes severe, unrelenting suffering and must understand the prognosis and options of available care.

2. The patient must be assured of adequate "comfort care" so that a decision to die is not influenced by a fear or experience of suffering that can be relieved by less drastic action.

3. The request for doctor-assisted suicide must be made clearly and repeatedly and emanate from the patient's own free will rather than come from a family member or surrogate or even from a directive the patient prepared in advance of illness.

4. The patient's judgment must not be distorted by depression or some other reversible mental disorder, which, if treated, might change the patient's perspective on a desire to die. For example, relief of depression in severely handicapped patients may allow them to see things that are worth living for.

5. The doctor involved should be one who has had a meaningful relationship with the patient and who can fully understand why the patient considers death to be the best option.

6. A consulting doctor should concur that "the patient's request is voluntary and rational, the diagnosis and prognosis accurate, and the exploration of comfort-oriented alternatives thorough."

7. The patient, the doctor and the consultant must each sign a consent form attesting to the fact that the above conditions have been satisfied.

In an interview Dr. Quill emphasized: "Each person has his or her own definition of what is tolerable. The patient is the expert on his own circumstances." As he and his collaborators wrote in the journal, "The most frightening aspect of death for many is not physical pain but the prospect of losing control and independence and of dying in an undignified, unesthetic, absurd and existentially unacceptable condition."

This is how my mother died, and 35 years later I still regret that we did not let her choose her own way.

By PETER STEINFELS

The Powerless Are More Afraid

February 14, 1993
New York Times

Help for the Helping Hands in Death

ON Tuesday, the lower house of the Dutch Parliament put its stamp of approval on the world's longest-running experiment in medical euthanasia, giving more legal protection to doctors who carry out dying patients' requests to be killed.

But by leaving euthanasia on the books as a crime punishable by up to 12 years in prison, the legislators recognized the degree of anxiety, ambivalence and religious reservations still surrounding the practice.

The Dutch vote — and the upper house is expected to go along — came one day after Dr. Jack Kevorkian helped another person, the third in five days, commit suicide in Michigan. That defied a state law that will go into effect March 30.

Also last week, New Hampshire's Legislature held hearings on bills legalizing assisted suicide.

Dr. Joanne Lynn, who works with dying patients at the Dartmouth Medical Center, testified against the bills, but she also described why euthanasia has become attractive: the fear many people have that they will be entrapped by a high technology medical system that exhausts their resources while ignoring their suffering and their individuality.

Often "it is easier to get a heart transplant or cataract surgery than supper or a back rub," let alone effective pain relief, she said.

In the Netherlands, although euthanasia remains technically a crime, it has been more or less openly tolerated when practiced under the medical profession's guidelines, since the 1970's.

In opinion polls, about 80 percent of the Dutch public say they approve of voluntary euthanasia for the terminally ill. But rather than fully legalizing the practice, the Parliament guaranteed that doctors will not be prosecuted for reporting, as required, the deaths they bring about.

Evidently not even a strong social consensus makes it easy to say straightforwardly whether the right to die with dignity includes the right to be killed or to get help in committing suicide.

Obviously no such consensus yet exists in the United States. In polls, large majorities of Americans express support for the proposition that doctors should help terminally ill patients commit suicide or give them lethal injections if they request them.

But when voters or legislators have faced concrete proposals legalizing such practices, the majority have always voted no, as the New Hampshire Legislature is expected to.

Up to election eve last November, for example, no polls showed that Proposition 161 would be defeated in California. The measure would have empowered doctors to give lethal injections to patients who had no more than six months to live, had signed an advance directive authorizing the killing and had requested more than once that it be put into effect. It was defeated by a vote of 54 percent to 46 percent. A year earlier, voters in the state of Washington rejected a similar initiative by the same margin.

In California, the television networks' exit polling showed support for Proposition 161 lowest among women, older voters, Asians and blacks. It was highest among voters under 30 and those with postgraduate education and incomes over $75,000.

The typical 'yes' voter was young, male and successful, a person who expected to be in charge of his own life. The 'no' voters came heavily from more vulnerable groups, people who might fear being controlled.

A telephone survey of 600 voters taken by the Tarrance Group and paid for by groups opposed to euthanasia showed the strongly religious base of the opposition. Sixty percent of Catholic voters opposed Proposition 161, as did 55 percent of all Protestant voters, with higher numbers among Baptists, fundamentalists and Pentacostals; 81 percent of regular churchgoers voted 'no.'

The defeats in Washington and California have taken a toll on the Hemlock Society, a 52,000-member organization that has been in the forefront of the euthanasia cause. Even more disruptive, however, may have been the resignation last May of Hemlock's outspoken founder and director, Derek Humphry, whose 1991 how-to book on suicide, "Final Exit," became a best-seller and helped pay for the organization's work.

Nonetheless, the Society's Oregon chapter is trying to put a right-to-die initiative on the ballot in 1994. John Pridonoff, Mr. Humphry's successor, foresees an eventual breakthrough in one or two states where a proposal "will be written in such a way that it will have the backing of medical organizations," who so far have usually been opposed.

A different scenario was sketched by Jack Nicholl, who directed the losing Proposition 161 campaign. "In Washington and California," he said, "we tried to take the whole bite at once." Next time, he said, they might try devising guidelines for doctors that prosecutors could accept in deciding when to prosecute.

In the Netherlands, in fact, the legal acceptance of euthanasia grew out of decisions by courts and prosecutors not to pursue cases if certain guidelines were observed. Also, at a time when medical ethics had not yet developed as an independent discipline, euthanasia received the moral blessing of a medical profession that, far more than in the United States, had the public's trust.

Most Dutch doctors fervently insist that this trust has not been betrayed. But euthanasia opponents are not convinced. While the annual number of cases of euthanasia in the Netherlands is usually reported as 2,300, critics point out that the 1991 government study that arrived at that figure also revealed that another 1,000 people who were incapable of requesting death were given lethal injections. The study did not list these as euthanasia on the grounds that the term referred only to voluntary deaths.

Guidelines Ignored?

Critics charged that whether or not those deaths could be justified on humane grounds, as the study suggested, they clearly fell outside strict guidelines that allow killing only patients able to give their consent.

The government's own findings, the critics concluded, showed that euthanasia was seriously under-reported, that doctors were gradually extending the practice to patients unable to consent, that professional guidelines were regularly ignored and that the medical establishment minimized these deviations.

To some extent, the current legislation is a response to such criticism. By removing the fear that kept doctors from fulfilling the legal requirement to report cases, the government hopes that the whole process will get public scrutiny and correction.

Maurice A. M. de Wachter, director of the Institute for Bioethics in Maastricht, the Netherlands, said that the new measure reflected a desire to regulate euthanasia more carefully. At the same time, he added, the law appeared to lend approval to a process in which the lines between voluntary and involuntary were steadily being blurred and in which euthanasia was passing from an exceptional and anguishing measure to a practice that doctors took for granted.

Life Is Sacred. That's the Easy Part.

BY RONALD DWORKIN

New York Times
Sunday Magazine
May 16, 1993

THE FIERCE ARGUMENT about abortion and euthanasia now raging in America is this century's Civil War. When Dr. David Gunn was shot and killed in front of a Florida abortion clinic last March, any hope that the abortion battle had finally become less savage died with him. The argument over euthanasia has been less violent but equally intense. When Nancy Cruzan was finally allowed to die in a Missouri hospital in 1991, after seven years in a persistent vegetative state, people called her parents murderers and her nurses wept over what was being done to her.

These terrible controversies have been far more polarized and bitter than they need and should have been, however, because most Americans have misunderstood what the arguments are *about*. According to the usual explanation, the abortion struggle is about whether a fetus, from the moment of conception, is already a person — already a creature whose interests other people must respect and whose rights government must protect. If that is the correct way to understand the debate, then of course accommodation is impossible; people who think that abortion violates a fetus's right to life can no more compromise than decent people can compromise over genocide.

In truth, both sides approach the incendiary issues of abortion and euthanasia from their own spiritual values.

But in fact, in spite of the scalding rhetoric, almost none of those who believe abortion may be objectionable on moral grounds actually believe that an early fetus is a person with rights and interests of its own. The vast majority of them think abortion morally permissible when necessary to save the mother's life, and only somewhat fewer that it is permissible in cases of rape and incest. Many of them also think that even when abortion is morally wrong, it is none of the law's business to prohibit it. None of this is compatible with thinking that a fetus has interests of its own. Doctors are not permitted to kill one innocent person to save the life of another one; a fetus should not be punished for a sexual crime of which it is wholly innocent, and it is certainly part of government's business to protect the rights and interests of persons too weak to protect themselves.

So conservative opinion cannot consistently be based on the idea that a fetus has interests of its own from the moment of conception. Neither can liberal and moderate opinion be based simply on rejecting that idea. Most liberals insist that abortion is always a morally grave decision, not to be taken for frivolous or capricious reasons, and this positive moral position must be based on more than the negative claim that a fetus has no interests or rights.

I suggest a different explanation of the controversy: We disagree about abortion not because some of us think, and others deny, that an immature fetus is already a person with interests of its own but, paradoxically, because of an ideal we share. We almost all accept, as the inarticulate assumption behind much of our experience and conviction, that human life in all its forms is *sacred* — that it has intrinsic and objective value quite apart from any value it might have to the person whose life it is. For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief. But though we agree that life is sacred, we disagree about the source and character of that sacred value and therefore about which decisions respect and which dishonor it. I can best explain what the idea that life has intrinsic and objective value means by turning to the other agonizing controversy I mentioned, at the far edge of life.

Should a doctor prescribe enough pills to allow a patient with leukemia to kill herself, as Dr. Timothy Quill of Rochester did in 1991? Should he ever try to kill a patient in agony and pleading to die by injecting her with potassium chloride, as Dr. Nigel Cox did in Britain last year? Many people concede that in such terrible circumstances death would actually be in the patient's best interests, but nevertheless insist that killing her or letting her die would be wrong because human life has an independent, sacred value and should be preserved for that reason.

There is nothing odd or unusual about the idea that it is wrong to destroy some creatures or things, not because they themselves have interests that would be violated but because of the intrinsic value they embody. We take that view, for example, of great paintings and also of distinct animal species, like the Siberian tiger, that we work to save from *(Continued on page 60)*

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EUTHANASIA

(Continued from page 36)

extinction. Paintings and species do not have interests: If it nevertheless seems terrible to destroy them, because of their intrinsic value, it can also seem terrible to destroy a human life, which most people think even more precious, though that human life has not yet developed into a creature with interests either. So people can passionately oppose abortion for that reason even though they do not believe that a collection of growing cells just implanted in a womb already has interests of its own.

Once we identify that different basis for thinking abortion wrong, we see that it actually unites as well as divides our society, because almost everyone — conservatives, moderates and liberals on the issue of abortion — accepts both that the life of a human fetus embodies an intrinsic value and that a frivolous abortion is contemptuous of that important value. Americans disagree about when abortion is morally permissible, not because many of them reject the idea that human life is sacred but because they disagree about how best to respect that value when continuing a pregnancy would itself frustrate or damage human life in some other grave way: when a child would be born seriously deformed, for example, or when childbirth would frustrate a teen-age mother's chances to make something of her own life, or when the economic burden of another child would mean more privation for other children already living in poverty.

In such cases, respect for the inherent value of a human life pulls in two directions, and some resolution of the tragic conflict is necessary. How each of us resolves it will depend on our deeper, essentially religious or philosophical convictions about which of the different sources of life's sacred value is most important. People who think that biological life — the gift of God or nature — is the transcendently important source of that sacred value will think that the death of any human creature, even one whose life in earnest has not yet begun, is always the worst possible insult to the sanctity of life. Those who think that frustrating people's struggle to make something of their own lives, once those lives are under way, is sometimes an even greater affront to the value of life than an early abortion might resolve the conflict in the other direction.

That view of how and why we disagree about abortion also explains why so many people think that even when early abortion is morally wrong, government has no business forbidding it. There is no contradiction in insisting that abortion sometimes dishonors a sacred value and that government must nevertheless allow women to decide for themselves when it does. On the contrary, that very distinction is at the heart of one of the most important liberties modern democracies have established, a liberty America leads the world in protecting — freedom of conscience and religion. Once we see the abortion argument in this light, we see that it is an essentially *religious* argument — not about who has rights and how government should protect these, but a very different, more abstract and spiritual argument about the meaning and character and value of human life itself. Government does have a responsibility to help people understand the gravity of these decisions about life and death, but it has no right to dictate which decision they must finally make.

The same is true of euthanasia. Of course, any legal regime that permits doctors to help patients die must be scrupulously careful to protect the patient's real, reflective wishes and to avoid patients or relatives making an unwitting choice for death when there is a genuine chance of medical recovery. But government can do people great harm by not allowing them to die when that is their settled wish and in their best interests, as they themselves have judged or would judge their interests when competent to do so.

In both cases, the crucial question is not whether to respect the sanctity of life, but which decision best respects it. People who dread being kept alive, permanently unconscious or sedated beyond sense, intubated and groomed and tended as vegetables, think this condition degrades rather than respects what has been intrinsically valuable in their own living. Others disagree: They believe, about euthanasia as about abortion, that mere biological life is so inherently precious that nothing can justify deliberately ending it. The disagreement, once again, is an essentially religious or spiritual one, and a decent government, committed to personal integrity and freedom, has no business imposing a decision. Dictating how people should see the meaning of their own lives and deaths is a crippling, humiliating form of tyranny.

If we change our collective view of these two great controversies, if we realize that we are arguing not about whether abortion and euthansia are murder but about how best to honor a humane ideal we all share, then we can cure the bitterness in our national soul. Freedom of choice can be accepted by all sides with no sense of moral compromise, just as all religious groups and sects can accept, with no sense of compromise, freedom for other versions of spiritual truth, even those they think gravely mistaken. We might even hope for something more: a healing sense, after all the decades of hate, that what unites us is more important than our differences. It is inevitable that free people who really do believe that human life is sacred will disagree about how to live and die in the light of that conviction, because free people will insist on making that profound and self-defining decision for themselves. ■

New Group Offers to Help the Ill Commit Suicide

Special to The New York Times

SEATTLE, June 12 — A number of right-to-die advocates here have created what is apparently the nation's first organization intended to provide professionals who will help terminally ill people kill themselves.

It is unclear whether the organization's efforts violate the laws of Washington State, where the "promoting" of suicide has been illegal for almost two decades.

The new group, Compassion in Dying, maintains that terminally ill people who are in great pain should have a right to what the organizers call a "humane death": suicide with the assistance of medical volunteers.

So it has opened a modest office downtown to provide help to such people from Washington State who choose to end their lives by taking lethal doses of morphine or other drugs. The group's executive director, the Rev. Ralph Mero, a Unitarian, said in an interview that the office would be staffed by volunteer doctors, nurses and members of the clergy who would offer "counseling, emotional support and their time to be present at the time of death, so people don't have to die alone."

A Policy of Privacy

Compassion in Dying announced the opening of the office at a news conference on May 19, and already, Mr. Mero said, about a a dozen severely ill people have called to ask for help in killing themselves.

Unlike Dr. Jack Kevorkian, the retired pathologist who has assisted in 15 suicides in Michigan in the last three years, the new group has decided, for the sake of its clients' privacy, not to make their identities public. This means that although all suicides will take place at the clients' homes, the group will not disclose the planned time or exact location of any. Mr. Mero said there had been no suicides yet.

The new organization distances itself from Dr. Kevorkian's efforts in other ways as well. First, it will not provide the means of death. Instead, the client must obtain the drugs that will kill him from his own physician or, if that doctor refuses, from another doctor who is not affiliated with the group. In addition, the organization will require a finding by at least two doctors, one of them independent of the group, that the client has only six months or less to live, is in pain and is mentally competent.

By involving outside doctors, Compassion in Dying says, it seeks to safeguard itself and those who ask for its help against any errant decision to take a human life. "Dr. Kevorkian acts independently, without involvement of other physicians," Mr. Mero said. "Many of his patients weren't terminally ill, and their suicides were not kept confidential."

A Hedge Against Prosecution

But by placing limits on their group's participation, particularly in the decision not to provide the lethal drugs, the organizers appear to have allowed themselves a hedge against prosecution as well.

Like most other states, Washington has a law against suicide assistance. But the scope of the Washington statute, enacted in 1975, is not entirely clear. The law bars "promoting a suicide attempt" by knowingly "causing or aiding another person to attempt suicide." But it does not define either "causing" or "aiding," and so at present the line between lawful activity and a felony — and between freedom and a prison term of up to five years — is blurred.

Daniel T. Satterberg, chief of the King County Prosecuting Attorney's office, said that the statute certainly outlawed activities like Dr. Kevorkian's but that it was "less clear whether a person or group is guilty by merely advocating and counseling a person on suicide."

Instruction in How to Die

So specifically what kind of assistance will Compassion in Dying provide? Mr. Mero, whose group numbers five doctors on its advisory committee and a hospice nurse among its 11 directors, said that in addition to offering emotional support medical volunteers would examine the patient and review his medical records to "verify the terminal prognosis, the mental competence and the voluntary nature of the terminally ill patient's request."

If the patient passes that screening, he will be instructed in the most effective way to administer the life-ending drugs to himself and told what he will experience after they are taken. Volunteers will attend the suicide itself to help make sure that all goes as planned.

"It won't be illegal," Mr. Mero said of all this activity, "until a judge and jury says it's illegal."

Ethical Objections

But if Compassion in Dying draws a distinction between its own efforts and what has been going on in Michigan, where the authorities' latest attempt to prosecute Dr. Kevorkian was thwarted only by a legal technicality, certainly the ethical objections being raised here are similar to those that have been raised against suicide assistance elsewhere.

For instance, Sister Sharon Parks, a spokeswoman for the Washington State Catholic Conference, said the implied message of a group like Compassion in Dying was that some lives were more valuable than others.

In addition, she said, people whose severe illnesses are imposing financial or emotional burdens on their families have a great incentive to end those burdens. Given the availability of a suicide-assistance organization, such people may feel particularly compelled to take their own lives. For them, Sister Sharon said, suicide may become a matter less of free choice than of an option to which they feel pushed..

Some medical ethicists predict that Compassion in Dying will also stumble over its own rules. Nancy S. Jecker, an assistant professor of medical history and ethics at the University of Washington, said that because the organization's volunteer doctors so strongly believed in the group's mission, any one of them might, out of sympathy, ignore the rules and provide a lethal drug to a terminally ill patient who failed to get it from a cooperative doctor elsewhere. One such slip would enhance the chances of prosecution.

In any case, Ms. Jecker said, diagnosing an illness as terminal is frequently an inexact science. "There's always an element of uncertainty," she said.

Beyond all that, there is the question of whether volunteers who have known a patient for only a few weeks are qualified to judge that suicide is a fit alternative for him. "Medical records don't substitute for a physician and patient's longstanding relationship," Ms. Jecker said. "It's not enough to know the medical history of a person. One needs to know the person over time. Not everyone can jump into that role."

Compassion in Dying has even found itself distanced from the Hemlock Society, perhaps the nation's leading right-to-suicide organization, which contends that suicide assistance should be decriminalized before any such assistance is rendered.

'I Don't Want to Suffer'

The arguments of the new group's opponents do not sway Jack Mallaghan, a 42-year-old AIDS patient who, on his own, made an attempt at suicide with a drug overdose four years ago. When he decides the end is near, he said in an interview, he will seek the help of Compassion in Dying. "I don't want to suffer the way I've seen loved ones suffer," he said, "or have my wife witness the prolonged suffering."

One of the group's doctors, Thomas Preston, a cardiologist, said his decision to volunteer had resolved for him a central conflict facing any physician who treats a terminally ill patient tormented by pain: "Do I maintain life, or relieve suffering?"

Dr. Preston said he was really no different from many other doctors, who, he said, "are already helping their patients die, in a covert way, by withholding certain treatments."

And to any objections by religious groups, Mr. Mero, offers his own argument, saying, "There's nothing in the Bible that says terminally ill people who are suffering from AIDS or cancer, and who are wracked with pain, should not commit suicide."

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