

Sermon by Rabbi Denise L. Eger, April 8, 2005

Shabbat Shalom.

They say famous deaths come in threes. First was Teri Schaivo—made famous by the circus surrounding her life and death, then the Pope—buried this morning and Prince Rainier—longest reigning monarch in Europe. With all the talk of funerals and legacy, end of life issues we cannot help but reflect on these topics in relationship to our own lives.

And given also that this week's Torah Portion Tazria—is focused on illness and healing, plague and impurity—the Understanding from a Jewish perspective on death and dying issues and particularly end of life issues is very important.

By now we are all at least familiar with the issues surrounding the death of Teri Schaivo. Her husband Michael decided after 15 years of trying to provide her with every hope, every possible treatment, to accept the opinions and medical advice of her doctors that –that nothing they could do would a) make Terri recover and b) that she was in a persistent vegetative state and that she had no real consciousness given the state of decay of her brain.

Her parents, the Schindlers, fought him tooth and nail, taking their case through the State courts, and by act of Congress—through the federal system several times trying to prevent him from removing the feeding tubes that kept Terri “alive.”

Tonight I won't try to address the sheer audacity, imprudence and unethical and politicizing tactics of Tom DeLay, Sen. Bill Frist, the Congress, the President and his governor brother—Jeb of Florida. They should be ashamed of the way they comported themselves, interfered in a private matter of a marriage, fished for activist judges, and subverted the legal system.

Many of us have been in the very difficult and painful decision making shoes of Michael Schaivo. We have had to decide for a loved one—a partner, a parent, or close friend whether to withhold medical treatment, and or even have to make the decision to disconnect a feeding tube or respirator. We have had to struggle with questions about what our loved one wanted, what their wishes were, as well as our own moral perspective.

But Judaism and specifically Reform Judaism do offer us guidance in this regard. So tonight I want to talk to you about the Jewish perspective on the Teri Schaivo case. For much is written about this very topic in Jewish tradition and in Reform Jewish tradition.

Even though medical technologies have progressed extending life beyond sometimes-sheer imagination—our Jewish sacred texts envisioned many different situation not dissimilar from the decision Michael Schiavo had to make.

Let us begin with traditional texts

First let us look at the actual Jewish sources—from the Shulchan Aruch— A dying person is considered as a living being in all matters. It is forbidden to touch him lest death be hastened. Whoever touches him is considered like one who sheds blood. This is compared to a flickering candle, which becomes extinguished as soon as touched. (Shulchan Aruch, Yoreh Deah, 339:1)

We believe that life is sacred. Life is a gift from God and in our tradition we adhere to the concept of Pikuah Nefesh—preserving a life—and protecting life. This principal is illustrated by these comments in the Shulchan Aruch. In fact we can even violate Shabbat, or Yom Kippur rules to get someone the medical attention they need if the case is life threatening.

Now let us look at another case from the Shulchan Aruch:

Even if a patient has agonized for a long time, and he and his family are in great distress, it is forbidden to hasten his death by for instance, closing his eyes, or removing a pillow from under his head or placing an object such as feathers or a synagogue key under his head (Yoreh Deah 339:1)

In the second comment from the Shulchan Aruch we see that we are not to hasten the death—it seems that certain actions that change the nature of the person—like removing a pillow—and therefore the way they breathe—might quicken their death. This might be compared to the concept of Active Euthanasia. The tradition speaks clearly here – Active Euthanasia is not provided for by our tradition. Thus we cannot give an injection to end a life.

But now read Rabbi Moses Isserles comment to this section—

However, if there is an obstacle which prevents the departure of the soul (death), such as noise outside or salt present on the dying person's tongue we may stop the noise or remove the salt so as not to hinder death. (Commentary of Rabbi Moses Isserles to Shulchan Aruch, Yoreh Deah, 339:1)

There is a recognition that the soul—the true seat of life—might have difficulty in passing from this world to the next—and we can get rid of the obstacles that keep the soul chained to this earth—and yes, to that body. This is more a description of passive euthanasia, which the tradition seems to support.

Rabbi Moshe Feinstein¹, a leading halachic authority from the previous generation of Orthodox scholars, clearly allows the terminally ill patient in intractable pain to refuse life-prolonging treatment that will neither cure him nor relieve his pain. According to Rabbi Feinstein a patient may refuse resuscitation or intubation if he so chooses. A non-terminally ill patient may refuse treatment if the proposed therapy is sufficiently dangerous or unproven.

This is radically different from the Schaivo case because Terri was not capable—given the amount of brain damage, to make such a decision.

However, The general consensus in most of the halachic literature has been that certain treatments, such as oxygen, nutrition, and hydration are obligatory for all patients, regardless of the severity of their medical condition. This obligation is predicated upon the assumption that there are certain bodily needs that all people share, regardless of their prognosis, and that failing to provide for these needs constitutes a breach in the obligation to care for one's fellow human being.

Now let's read the section from the Talmud, Ketubot 104 a.

Rabbi Judah the Prince was very ill. Seeing this, his maidservant went up to the roof and prayed for his death, since the prayers from the Rabbis below (in the synagogue) were keeping him alive. As the rabbis continued their prayers for heavenly mercy, the maidservant took up a jar and threw it down from the roof to the ground. In doing so, she caused such a noise that the Rabbis below were distracted and ceased their prayers. In that moment of silence, Rabbi Judah died.

The maid, mindful that the prayers of the students of Rabbi Judah were the “Medicine” that was keeping Rabbi Judah alive—stopped the medicine, or in this case the prayers—from being delivered. You might state that this is akin to the withdrawal of needs to the patient.

And if we further read at the top of the page—

Rabbenu Nissim of Gerondi was a prominent 13th century Spanish Rabbi. He used the story of Rabbi Judah's maidservant as proof that there are times when one should ask God's mercy that a sick person whose recovery is impossible and whose agony is great be allowed to die.

“Moreover, the *Shulchan Aruch* also explains that there is a prohibition of touching a moribund patient (*goses*) who is estimated to have less than three days to live. Resuscitation of a *goses* is not required, and in fact may be prohibited as a forbidden intrusion on the natural dying process. The underlying assumption in Judaism is that one should NOT resuscitate a gravely ill patient, but only a patient for whom there is a reasonable expectation of reversing the underlying cause of physiologic collapse the is impossible and whose agony is great be allowed to die.”

Dr Daniel Eisenberg, writes, “In *Igros Moshe* (the responsa of Rabbi Moshe Feinstein), Rabbi Feinstein was asked the question: “Should intravenous feeding be provided to a terminally ill patient for whom there is no method of relieving his pain, and should this be done even against the will of the patient?”

Rabbi Feinstein reiterates the requirement to provide oxygen to a suffering patient, regardless of the inability to cure the patient, because of oxygen's palliative benefits. He then responds to the question of providing intravenous nutrition to a terminally ill patient with the intent to

“Extend [the patient's] life span [although] prolonging his suffering, when we feel that [the patient] has no pain from abstaining from food . . . Clearly, we must feed him food that will do him no harm, for food surely strengthens him somewhat, despite the fact that neither the patient nor his attendants are aware of this effect.”

Rabbi Feinstein distinguishes this case from the medical treatment of a terminally ill patient when he writes:

“Our ruling in this matter is not to be compared with the question of giving medicine to a terminally ill patient. The distinction is obvious: Food is a natural substance which must be consumed to insure survival.”

Rabbi Feinstein's position suggests that the necessity of feeding (and hydrating) terminally ill patients is predicated upon there being benefit to the patient and the absence of anticipated harm from the providing of nutrition *as opposed to an objective obligation to feed per se.*

¹ Rabbi Moshe Feinstein 1895 – 1986. Rabbi Feinstein became the one of the leading halachic (religious law) authority of his time.

But what if the physician feels that nutrition or hydration is not only non-indicated, but actually *contra-indicated* in a particular patient? This may undermine our first assumption -- benefit to the patient. What if the vehicle used to provide the nutrition has potential for severe complications? This would undermine our second assumption -- lack of harm to the patient."

In the Reform Jewish Responsa –written by the Responsa Committee of the CCAR they mention yet, a different approach which is provided by R. Yehoshua Boaz b. Barukh, the 16th-century author of the *Shiltey Giborim* commentary to Alfasi. " He notes that while it is forbidden to hasten the death of the *goses* it is likewise forbidden to take any action that unnecessarily impedes it. Salt, which cannot bring healing but only impede the patient's death, should never have been put on his tongue. Whoever put it there has acted improperly; thus, its removal, even though it involves physical contact, is permitted as the restoration of the correct *status quo ante*.

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

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

Thus Jewish tradition—although erring on the side of life—recognizes at times—that there are occasions that keep the soul from departing naturally. But at the heart of the Terri Schiavo case is one final consideration—and that is the critical issues of making sure your wishes—your instructions are followed. Terri's problem at the core was that there were no written wishes—only the report of her husband what her wishes were. For each of us—we should have learned from this example that we must as responsible adults—whether in relationship or not—take a few moments to think through these issues for ourselves. God forbid –if something happened tomorrow to you—and you had a massive stroke from which there would be no recovery- would you want to be resuscitated? Who would make those decisions for you if you can't? If you are not legally married—are you comfortable with a parent or sibling making those decisions for you? Who would you trust with your life? What are your boundaries for life and death?

We might have been spared the circus that was made of Terri Schaivo's life and death if only she had documented her wishes. I have several copies of an Advance Health Care Directive Form here—take one—fill it out. File it with your doctor—give it to your mate and/or family. Don't leave this life or death decision to others to agonize over in the event you can't communicate.

No one likes to talk about death, dying or illness and few of us are willing to do what it takes to prepare for that day—but if Terri Schaivo left us a legacy of anything—then this is it—As the book of Ecclesiastes Teaches—There is a time for every experience under heaven—a time to be born and a time to die. The question is will you be prepared. Shabbat Shalom.