The Definition of Death in Jewish Law

How do we know when we have entered the World To Come? How do we draw the line between the living and the dead? With increasingly complicated medical innovations such as new technology and advances in treatment, does Jewish tradition still have relevance in medical decision-making? These challenging questions are some of the central issues facing Jewish bioethicists. From determining whether or not to become an organ donor to when to remove someone from a respirator, the discussion at the core of these ethical debates is the definition of death in Jewish law.

TEXT 1

Mishnah Yoma 8:6-7
...Every danger to human life suspends the [laws of the] Sabbath. If debris [of a collapsing building] falls on someone and it is doubtful whether he is there or whether he is not there, or if it is doubtful whether he is alive or whether he is dead or if it is doubtful whether he is an Israelite or a heathen, one must probe the heap of the debris for his sake [even on the Sabbath]. If one finds him alive, one should remove the debris but if he is dead, one leaves him there [until after the Sabbath].

TEXT 2

Talmud Bavli Yoma 85a
...How far does one search [to ascertain whether he is dead or alive]? Until [one reaches] his nose. Some say: Up to his heart...Life manifests itself primarily through the nose as it is written, “In whose nostrils was the breath of the spirit of life” [Genesis 7:22]...

TEXT 3

Rambam Laws of the Sabbath 2:19
If upon examination no sign of breathing can be detected at the nose, the victim must be left where he is [until after the Sabbath] because he is already dead...

These three texts build upon each other in an effort to determine when life ends or rather when death begins.

What do these texts teach us about the Jewish value of life?
**How does the worldview of the different layers of Jewish law compare to your personal conceptions of life and death?**

Jewish bioethicists argue that the destruction of the brain stem inevitably leads to the inability to spontaneously respire. Would this meet the standard of the Talmud passage?

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**TEXT 4**

Ta\`lmud Bavli Ketubot 104a

On the day when Rabbi (Judah) died, the rabbis decreed a public fast and offered prayers for heavenly mercy. They, furthermore, announced that whoever said that Rabbi was dead would be stabbed with a sword. Rabbi’s handmaid ascended the roof and prayed: “The immortals desire Rabbi to join them and the mortals desire Rabbi to remain with them; may it be the will of God that the mortals may overpower the immortals.” When, however, she saw how often he resorted to the privy, painfully taking off his tefillin and putting them on again, she prayed: “May it be the will of God that the mortals may overpower the immortals.” As the Rabbis continued their prayer for heavenly mercy, she took up a jar and threw it down from the roof to the ground. At that moment they ceased praying and the soul of Rabbi departed to its eternal rest.

The handmaiden acts out of compassion, but in defiance of rabbinic prohibition. Would you define this as an act of euthenasia? Does she actually murder the Rabbi? How would you evaluate the morality of the handmaiden’s actions? How does the function of the rabbis’ prayers compare to today’s artificial life support?

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**TEXT 5**

Mishnah Oholot 1:6

Humans do not impart impurity until the soul expires. Even if he was chopped up, even if he was in the throes of death, he obligates levirate marriage and he exempts from levirate marriage; he permits the eating of trumah and he disqualifies from trumah. Likewise, a domestic animal and a wild beast do not impart impurity until their souls expire. If their heads were cut off, even if they were still convulsing, they are impure, like the tail of a lizard which convulses.

How does the Mishnah determine the moment when the soul expires?
Many Jewish bioethicists use this text to prove that a dysfunctional brain stem is equivalent to the decapitated head of an animal (like a psychological decapitation)? Do you agree with the application of the text?

Babylonian Talmud Avodah Zarah 27b
Rabbah said in the name of R. Yohanan, and some say it was Rav Chisda said in the name of R. Yohanan: When a patient will possibly live and possibly die [if left untreated], we may not take medical treatment from [pagan practitioners]; but when the patient will surely die [if left untreated], we may take medical treatment from them. [Can it be that if the patient stands to] surely die [they many be treated by a pagan practitioner], but there is momentary life [remaining to them and this is put at risk by submitting them to the pagans care]? We do not concern ourselves with momentary life [when there is a possibility of effecting a long-term extension of life].

What is the overriding value in this situation?
Rabbi Elliot Dorff argues in his paper before the Committee on Jewish Law and Standards of the Rabbinical Assembly that this passage proves that we may relinquish aggressive medical treatment, even if it is effective in prolonging vital organs, if the patient is dying of a terminal disease. We then, may, and probably should, concentrate instead on relieving pain. Does this interpretation seem consistent with the original text?

Tosafot Avodah Zarah 27b
We do not concern ourselves with the life of the hour—... There are grounds to say that in both sources [Yoma and Avodah Zarah] we should act for his benefit, for there [in Yoma] if you do not care [about the life of the hour], he will die, and here, if you do care [about the life of the hour and therefore permit the Gentile physician from treating him], he will not be healed by the Gentile and will certainly die. So here and there we abandon the certain [course of action] to do that which is doubt [fully appropriate].

This commentary takes examples given in the above Talmud passages and creates a rule for treatment: Always act to sustain life. Is this a fair extrapolation of the texts?

Solomon B. Freehof, Modern Reform Responsa, Cincinnati, 1971, #34.
Greater knowledge of the human body enables us to define much more closely than the rabbis of the past did when a person is actually moribund or whether he still has viability. We also have new remedies such as heart-pacers, adrenalin, etc. Nevertheless, the ethical principle underlying the Jewish tradition seems strong,
although, of course, applied somewhat differently today. The ethics of the law would be substantially as follows: If the modern methods of revival bring with them a fair probability that the patient may recover some health for, let us say, twelve months (as their old test had it) and be fairly free of pain and be able to live a life of some activity, then the remedy is justified and the patient should be revived. But if these methods merely revive a patient for a longer period of pain, or continued weeks or even months of moribundity, then they are contrary to the spirit of Jewish ethical-legal tradition.

_Concept 1: Reform responsum and cultural contexts._

How does this Reform responsum interact with the texts above? How could a Reform Jew apply this responsum to their experiences in the medical system? How could a hospital chaplain utilize this responsum within a hospital context?

**David J. Bleich, Bioethical Dilemmas: A Jewish Perspective, p. 96**

A brief comment of the late Rabbi Yosef Eliyahu Henkin, of blessed memory, eloquently captures the Jewish attitude with regard to the emotionally charged issue of treatment of the terminally ill. Many years ago, when I first began to investigate issues of medical Halakhah and when many now common-place life-prolonging measures were yet novel, I offhandedly asked Rabbi Henkin, “How far is one obligated to go in order to prolong life?” Without the slightest hesitation he responded, “Azoi lang vi a Yid ken leben, darf er velen leben” (So long as it is possible for a Jew to live, he ought to want to live). Those words uttered by a blind, frail, saintly individual to whom life had clearly become a burden—but a sacred burden—made a profound impression upon me. That short, succinct statement reflects authentic Jewish values in a way that sometimes becomes submerged in learned responsa. Truly, sometimes one cannot see the forest because of the trees.

_Compare this concluding anecdote of Rabbi Bleich’s chapter on “Treatment of the Terminally Ill” with Rabbi Freehof’s responsa?_ How does this thinking interact with the story of the Rabbi’s death? Are the cultural contexts different? What do “authentic Jewish values” mean?

**CASE STUDY #1**

Mrs. L is an 85-year-old resident of a Jewish long-term care facility who has vascular dementia, controlled heart failure and diabetes mellitus. The feeding tube she received 2 years ago has begun leaking and needs to be replaced. Her daughter, who has become her surrogate since the recent death of Mrs. L's husband, has indicated that if the tube were to come out, she would not consent to the insertion of a new tube: a decision she feels would be in accord with her mother's true wishes. She would not, however, request that the tube be deliberately removed. The staff are concerned that, by not replacing the tube, they would be failing to maintain the current level of treatment. They feel that this would amount to taking the mother's life without any substantial decline in her clinical condition. The daughter acknowledges the concern and devotion of the staff and her mother's unchanged clinical status but reiterates her
belief that her mother would prefer to be allowed to die rather than to continue with feeding through a tube.

CASE STUDY #2

72-year-old Mr. B is a patient in a chronic care facility where he has lived for many years because of non-dementing progressive neurologic paralysis in all limbs and, ultimately, the diaphragm. For most of his years in the hospital he has been mentally capable and socially active. All who know him are impressed by his courage, determination, humor and zest for life. Unfortunately, Mr. B’s condition begins to deteriorate. Previously, he had stated in writing that he did not wish to be maintained alive if he were a “vegetable” or required “permanent artificial feeding.” His only living relative and designated substitute decision-maker lives in another city. Although Mr. B now requires a feeding tube and has diminished mental function, the medical staff is unsure whether his directive clearly applies. They are emotionally and morally uncomfortable in complying with the implied instruction to stop life-sustaining treatment, because the patient still has a chance to continue living, although in a significantly altered state.

How would the above texts respond to these case studies? How could they help the family, friends and medical professionals make an ethical decision?