

On Halakhic Approaches to Medical Care for the Terminally Ill: A Response

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This paper was submitted as a response to the responsa written by Rabbi Elliot Dorff and Rabbi Avram Reisner, which were adopted by the CJLS in December 1990.

It has been a privilege and an extraordinary learning opportunity to serve on the Law Committee's Subcommittee on Biomedical Ethics. Most especially, it has been a deeply rewarding experience to sit as one of the midwives attending the birth of these two superb papers on halakhic approaches to medical care for the terminally ill, the one by Rabbi Avram Reisner and the other by Rabbi Elliot Dorff. Now that both papers have been birthed, although I must say that I favor one over the other, I have deep appreciation for both.

Rabbi Reisner's paper is surely one of the finest statements in the field, combining the strictest articulation of halakhic principles surrounding the sanctity of life with keen awareness of the clinical issues at the bedside. This is no view from the ivory tower, no empty proclamation of bookish teachings regarding the sanctity of life. Rabbi Reisner, as well-informed on the medical issues as a layperson can be, wrestles honestly with the day-to-day realities of the Intensive Care Unit, and still, with his eyes open to the contemporary medical scene, maintains a very traditional stance in terms of the basic halakhic principles surrounding care for the terminally ill. His suggestion of the distinction between mechanical and biological intervention is helpful, if slippery (as are all such distinctions in the literature of medical ethics!), and he uses it deftly to soften in practice the harsh conservatism of his basic philosophical stance.

Most importantly from my perspective, Rabbi Reisner adds a unique spiritual view to the voluminous literature on these issues, by suggesting an image of the patient's internal dialogue with God. For Rabbi Reisner,

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in the final analysis, one must remember that decisions on termination of treatment are ultimately governed by the conversation between the dying person and his or her Creator, at the moment when the two are soon to meet, and no doctor, clergyperson, or even family member has full access to this final, intimate spiritual conversation. For me, it would have been worthwhile for Rabbi Reisner's paper to have been written for the sake of this insight alone, not to mention its general erudition, incisiveness, and eloquence.

However, I must cast my vote for Rabbi Dorff's paper, for a number of reasons. What was extraordinary about Rabbi Reisner's paper is his ability to apply the absolutist teachings of the גויסט case to contemporary reality, coping seriously with the medical and psychosocial context in which these teachings are applied today. Rabbi Dorff takes a very different approach, which I wholeheartedly support, working his way free of the shackles of a basically anachronistic approach. For Dorff, halakhic teachings on the sanctity of life, no less binding than they are for Reisner, are no longer rules to be applied automatically to cases unimaginable to the framers of the halakhah. Rather, halakhic rules become principles to be applied with intellectual and spiritual rigor, given an understanding that contemporary medical realities defy the more simple categorization that was possible in an earlier time. Dorff offers an approach based in the philosophy of law that allows us, as Conservative Jews, to hold fast to halakhic integrity without pretending that the Rabbis could have imagined the cases we grapple with, and without violating an emerging social consensus that, in some cases, to prolong life is a sacrilege rather than a sanctification of life.

In a way that is immensely compelling for me, Dorff rehabilitates a number of halakhic categories not typically a part of the biomedical ethical discourse, in an effort to preserve intent in a radically changed milieu. Dorff's bold use of the טריפה as the operative category for the terminally ill patient; his emphasis on the principle of "לטובתו" – halakhah's most direct analogue, I think, to contemporary convictions about patient autonomy; his important application of siege legislation for medical triage questions; his stunning introduction of the mental anguish category, borrowed from halakhic abortion law, his willingness to speak of Maimonides' definition of rational human life out loud, where it can be used as a part of the dialogue regarding the PVS patient—all of these specifics enable Dorff to articulate a halakhically authentic ethic that affirms what everyone who walks in the world of the tertiary care treatment center knows to be true: sometimes death is a friend, sometimes the only sanctity lies in letting go.

I appreciate Rabbi Reisner's erudition and eloquence, his flexibility in bending a rigidly conservative philosophical stance to complex realities,

and I am deeply moved by the spiritual context in which he places the dialogue. And so, I am grateful that his paper was written, for it stands as an important contribution to the field. But I must stand with Rabbi Dorff's boldness in challenging the myth that there is only one way to think halakhically. I must stand with his openness to radically changed realities and convictions, with his deep concern for social justice, and with his overriding concern for the intent of the law in this baffling and anguishing arena.

Finally, I stand with Rabbi Dorff's paper because of something I once learned from a nun with whom I served on a clergy panel on biomedical ethics. I lectured, I thought, with clarity and conviction, about Judaism's absolute concern for the sanctity of life. She asked, with less certainty, and with more realism, what a life-affirming tradition must say about death in the intensive care unit, about the mindless application of technology to save one organ residing in a hopelessly ill patient, about contemporary culture's distorted view that death is a failure, and that everything that can be done must be done. That day, some years ago, that nun forever informed my thinking about how to read halakhah on biomedical ethical issues. The question is not: are we being rigorous enough, in every case, about the prolongation of life? Rather, the question for the contemporary halakhist, as for my Catholic friend, is: what is the intent of a life-affirming, life-sanctifying tradition in the world of the hopelessly ill patient? That question brings me firmly in agreement with Rabbi Dorff's paper, and I rejoice that it was written.