

CAN LIFE BE EVALUATED? THE JEWISH *HALACHIC* APPROACH  
VS. THE QUALITY OF LIFE APPROACH IN MEDICAL ETHICS: A  
CRITICAL VIEW<sup>1</sup>

**ABSTRACT.** In recent years there has been an increase in the number of requests for “mercy killings” by patients and their relatives. Under certain conditions, the patient may prefer death to a life devoid of quality. In contrast to those who uphold this “quality of life” approach, those who hold the “sanctity of life” approach claim that life has intrinsic value and must be preserved regardless of its quality. This essay describes these two approaches, examines their flaws, and offers a “golden path” between the two extreme positions. We discuss the *halachic* and the secular views, arguing for a balance between the sanctity of life and the quality of life. We argue that, indeed, such a balance exists in practice, and that life is important, but it is *not* sacred. Life can be evaluated, but quality of life is not the *sole* criterion.

**KEY WORDS:** quality of life, sanctity of life, concern, self-determination, indicators of humanhood, speciesist

## INTRODUCTION

In recent years, there has been an increase in the number of requests by patients and their relatives for what they call “mercy killing,” often involving the termination of life-prolonging treatment. Their assumption is that death is preferable to life when life becomes devoid of quality. In contrast to this “quality-of-life” argument, those upholding the “sanctity-of-life” argument claim that life has intrinsic value and must be preserved in any form, regardless of its quality. The dispute between the two approaches is still very lively. How is it possible to evaluate “quality of life” and what criteria can be used to distinguish between a life of “quality” and a life that is “devoid of quality”? Can euthanasia, assisted suicide or forgoing treatment be justified based on the quality of a person’s life or must life be preserved without question? Can the same argument be held for all three methods of ending life? How can the tension between the sanctity-of-life principle and the quality-of-life argument be resolved? We present both *halachic* and secular views, and then suggest an interpretation of the sanctity-of-life principle that does not necessarily lead



to a blanket prohibition of mercy killings. We propose a golden path between the *halachic* and the liberal perspectives that reflects the balance struck between the two extreme positions. Doctors and non-professionals are already devoting considerable thought to the quality-of-life issue and distinguish between lives of quality and those without it. We argue that life is important, but it is *not* sacred. Life can be evaluated, but quality of life is not the *sole* criterion.

This essay concerns that small percentage of the population who asks to die under circumstances of severe illnesses. These patients are competent adults who have *expressed a will* to die or patients who expressed such a will while they were conscious, *before* reaching a stage in which their quality was diminished, and with full understanding of the meaning of their request.

### CAN WE MEASURE QUALITY OF LIFE?

The idea of comparing specific life with the “good life” is not at all new. Socrates, Plato, Aristotle, and many others have dealt with it.<sup>4</sup> The issue has become prominent as medical technology has created new options. A request to terminate a life-sustaining treatment assumes that in the given situation death is preferable to life. These patients differentiate between the “good life” and a life that is not so good; and in the absence of the good life, some of them prefer to die. The phrase “good life” in this context does not imply a life of luxury but rather a minimum of conscious life (or, in case of Post Coma Unawareness patients,<sup>5</sup> potential for such minimum): life that has some meaning for the patient, that includes more than physical pain or numbness.

People are constantly “evaluating” life, even if they do it subconsciously or by intuition. When a person passes away, people ponder different considerations evaluating his or her life. They see importance in whether he or she was old or young, an adult or a child; whether he or she lived alone or with a family; whether death came swiftly or salvaged him or her of misery; did the person “die proud,” with dignity; what did that person accomplish in his or her life; did the person actualize, and to what extent, his or her potential, and many similar questions. Why these questions deem to be of importance and affect the way we conceive of one’s death? Perhaps because we ask ourselves what that person lost with death.

As opposed to the quality-of-life argument is the sanctity-of-life principle that conceives of human life as “sacred” and “holy” and therefore as something not to be harmed. According to this view, life has value *in itself*,

regardless of its content. Human value is not determined by subjective or utilitarian criteria. The advocates of this view think that the recognition in the sanctity of life is essential, for otherwise we might start to distinguish between “superior” and “inferior” life, with the implication that some life will be put in jeopardy.<sup>6</sup>

Those who uphold life as sacred do not argue for this principle without qualifications. Instead their assertion is that human life must not be harmed *without proper justification*; meaning, there are cases in which such harm might be permitted. The clear example is the *death penalty*, issued in some liberal societies to murderers. The rationale of the death penalty is accepted by many who endorse the sanctity-of-life principle in medicine. Judaism promotes the view that life is sacred while still permitting to kill under certain circumstances (i.e. for self-defense). The question then is: What is the underlying difference between the two approaches? For the advocates of the quality-of-life approach also agree that human life must not be harmed without proper justification.

The difference between the two approaches lies in the *justifications* for harming human life. According to the sanctity-of-life principle, these justifications are based on defending life itself. A murderer is sentenced to death because he or she *robbed* life, and the capital punishment is designed to punish the murderer as well as to deter others from committing a similar offense. Using this rationale, capital punishment helps to promote and secure the value of human life. Similarly, killing in self-defense and at times of war is permissible because the purpose is to protect human lives. There is no justification for taking human life outside the context of protecting life.<sup>7</sup>

On the other hand, the advocates of the quality-of-life argument base their justifications on considerations regarding the *content* of life, and not on the very fact of living. For instance, *preserving the patient’s dignity as a human being* would be considered as a relevant justification for shortening human life by the quality-of-life advocates, but it would not be taken into consideration by the advocates of the sanctity-of-life principle.<sup>8</sup> Life as such is not important. What is important is what one does with one’s life. Having a life is a precondition for self-realization, for fulfilling one’s ambitions, for developing oneself, advancing one’s character and personality. Similarly, the body as such is not important. It is merely a capsule, and what is important is the enterprise of body and mind: what one does with one’s body to develop one’s faculties and enrich oneself, and *ipso facto*, others.

The next section considers the Jewish *halachic* view on mercy killings. It purports to present the *main stream* of the *halacha*, not all the vari-

ances of Jewish law. Its main thrust is that human life cannot be evaluated and therefore the general view is that a person's life should be preserved irrespective of its quality.

### *Life Cannot be Evaluated*

In Judaism, the basis for the value of the life of every individual is that *people were created in God's image*.<sup>9</sup> Therefore people must not be differentiated from one another according to the "value of their lives." We must not harm the Godly image of our fellows, and a person must not harm his or her own Godly image. The value of human life is immeasurable, and the sanctity of life overshadows all other considerations.<sup>10</sup> Life is not relative to something nor can it be equated to another life. Consequently, the value of seventy years is equal to the value of one second, and the value of a sick person's life is equal to that of a healthy one. As soon as we agree on any relative criterion upon which we could evaluate life, a dangerous discrimination is formed between inferior and superior people. If we accept the presumption that we must not take lives, then this presumption applies to seconds and minutes as well. We could never agree on the criteria for the taking of lives.<sup>11</sup>

The Talmudic passage regarding the creation of Adam determines in the Sanhedrin religious tractate: "Therefore only a single human being was created in the world, to teach that if any person has caused a single soul to perish, Scripture regards him as if he had caused an entire world to perish; and if any human being saves a single soul, Scripture regards him as if he had saved an entire world."<sup>12</sup> Human life is not a good to be preserved as a condition of other values but as an absolute. The obligation to preserve life is commensurately all encompassing.<sup>13</sup>

According to the Jewish tradition, the very existence of a person, his or her essence as a human being, is a natural fact that does not depend on any human evaluation or social institution. This principle is valid and should not be questioned. Once we start to question it, we undermine its validity. Hence the *halacha* (Jewish law) holds that we should conceive of the dying person exactly in the same way as we conceive of any other person.

Jewish law distinguishes between two kinds of patients who are doomed to die shortly (*morituri* in Latin): the moribund, or *Gossess*, who are already dying; and the incurable, or *Tereifa*, who suffer from laceration of a vital organ or any other lethal injury, but in whom the process of death has not yet set in. Elaborate rules have been enumerated to prohibit active intervention in the process of death of the *Gossess*. We must not take any actions that might hasten his or her death even if we are certain that death is near, even if he or she has only minutes left to live, and even if we are

certain that death is near, even if he or she has only minutes left to live, and even if our intention is in the person's best interest.<sup>14</sup> One may not wash or anoint him or her, nor pry open his or her jaws or plug his or her orifices, nor remove pillows from underneath him or her, or lay him or her on the ground or on sand or salt, nor put anything on his or her abdomen – all supposedly calculated to hasten death.<sup>15</sup> Nor may one close his or her eyes: to close the eyes of a dying person is like putting one's finger in a flickering flame – the touch of the finger will extinguish it. Rabbi Meir said: "It is like a dripping candle, if a man touches it – the candle snuffed. So is the case when you are making an effort to close the eyes of a dying patient; it is as if you take his soul."<sup>16</sup> And according to the *halachic* view, even the dripping candle – burns; even the dripping candle is capable of shedding light.<sup>17</sup>

No such rules were enunciated with respect to the *Tereifa*, but we can infer from the discussion on the *Gossess* that if it is prohibited to do any act which may shorten life even only by a few minutes, it must surely be prohibited to do any act by which life may be shortened by a longer period. Even in regard to the *Gossess*, however, the prohibition applies only to active intervention: it is not forbidden to cause the hastening of death by abstaining from any intervention. The reason is that the soul of the dying person must be presumed to be desirous of leaving his body, and one must not impede its departure. In other words, as one ought not to do anything to hasten death, one need not and may not do anything to delay the due completion of the death process.<sup>18</sup>

In the *halacha* several other principles teach us not to take life:

1. People do not own their bodies, so they are not permitted to harm themselves. The body was given to a person as a deposit or "in trust" in order to fulfill certain tasks and missions defined by the commandments of the Bible. This deposit should not be harmed in any way.<sup>19</sup> The human soul is a Godly possession.
2. There is merit in the very existence of a human life in any form and under any circumstances. There is always an option for further spiritual elevation. The patient has a moral obligation not to give up, but to continue hoping. The continuation of life might enable gaining a complete redemption.<sup>20</sup>
3. We must recognize that there are things beyond our understanding: the assumption is that a person's suffering is the will of God, and the taking of his or her life constitutes a rebellion against His will. "This is His wish, Blessed Be He": God gives every person what he or she deserves based on his or her actions. A person who died an "easy" death without suffering might suffer greatly in the next world, whereas

another person who suffered severely from a prolonged disease might be rewarded in Heaven. Alternatively, maybe someone who experienced a pleasant death has more “rights” in this world. Rabbi Halevi further explained:

If we conceive of the soul as a being that existed before entering this body, and a being that will exist after departing from this body, and if we bear in mind that we do not know why the soul came into the world at all, what it supplements in this body, what awaits it in that world, what value has every hour and minute spent in this body (these are the mysteries of the soul and its puzzles), then it is easier for us to understand why it is forbidden to bring closer, even one minute closer, the parting of the soul from this world.<sup>21</sup>

As Maimonides declared categorically: “The killing of any person, whether healthy, mortally sick, or even in the final throes of death is an act punishable by death.”<sup>22</sup>

A principle in Judaism that *prima facie* contradicts all that has been stated until now is the principle of *consideration of sorrow and human suffering*. The term “pleasant death” is Talmudic,<sup>23</sup> referring not to euthanasia but to the mercy given at the time of death. There is a conflict in the *halacha* between its principles regarding the sanctity of life, their importance and endless value, the great merit embodied in life itself, and the duty of people and doctors to preserve and nurture the deposit entrusted to them by God, and the principle of striving to ease pain and diminish all suffering.

The *halacha* presents several answers to this conflict. While active euthanasia is strictly prohibited, withholding and withdrawing treatment (passive euthanasia, also termed “forgoing life-sustaining treatment”) is allowed under certain circumstances. Although we should abstain from taking measures that impede the departure of the soul from the body, it is permitted, for example, to take a grain of salt from the tongue of a dying person, so as not to prolong the suffering; it is prohibited to cut trees near the house of a dying person, so that the noise will not disturb the departure of the soul.<sup>24</sup> The conclusion is that the balance in the *halacha* is *between the sanctity of life and the suffering and pain of the patient*. A balance must be struck even if the patient’s mind or body is impaired, such as when he or she suffers from paralysis or unawareness.<sup>25</sup>

Several comments regarding the *halachic* stance are pertinent. First, the assumption that the value of life is immeasurable is debatable. There are cases, even according to the *halacha*, in which other values exceed the value of life, not only when the justification is the preservation of human life. For instance, the value of minimizing suffering and pain might outweigh the value of life, or the Biblical commandment to “wipe out the

memory of Amalek.”<sup>26</sup> So the prohibition on taking lives is not absolute, and the value of life can be measured against other considerations.

Second, regarding the dripping candle argument, there are cases in which its assumption is incorrect. A “shining life” is a life consisting of more than biological functioning. The *halachic* scholars did not refer to nor did they pretend to represent the subjective viewpoint of the patient with regard to his or her life. In doing so the *halacha* has ignored the will of the patient. The *Cruzan* case is a strong example.<sup>27</sup> As a result of a traffic accident, Cruzan suffered from irreversible, permanent, and progressive cerebral cortical atrophy of the brain. Prior to the accident, Cruzan expressed the opinion that “she would not wish to continue living if she couldn’t be at least halfway normal.” It was maintained that her lifestyle and other statements to family and friends suggest that “she would not wish to continue her present existence without hope as it is.”<sup>28</sup> Cruzan’s family and friends asserted that her prior statements and everything they knew of her convinced them that she would not want continued life-support, including nutrition and hydration. Thus, it is difficult to understand how it is possible to speak of Cruzan in terms of “a shining candle.” The doctors and Cruzan’s relatives did not think of the body sustained by mechanical means as a shining candle, and we can assume that Nancy Cruzan herself would not have described her situation in such terms. These are subjective conceptions and, indeed, the criticism of the *halachic* perspective is that it ignores the subjective opinions of the patients and their families when they feel that the candle had ceased to burn and shine.

Third, concerning the idea that human life has been entrusted to us by God. When a patient’s life is prolonged artificially, when the patient’s existence depends on machinery, we meddle with the will of God, we “play God,” and interfere with the “gift.” Without such machines, the patients would have returned their souls to the creator. The words of Rabbi Halevi concur with this opinion. According to him, when the patient is connected to a respiration system and no longer feels a thing, he must be disconnected from the machine for his soul, which belongs to God, has already been taken back by God; as soon as the machine is removed he will die: “And by continuing to resuscitate artificially we keep the soul in him and cause it (the soul, not the patient) grief since it cannot part and return to its peace.”<sup>29</sup>

This opinion is somewhat problematic because it assumes that the taking of the soul has already taken place. The acceptance of this opinion would have ramifications on many other actions of modern medicine. For example, someone in need of dialysis, or someone who has a pacemaker

implanted, theoretically should not be kept alive “artificially” because as soon as the machines are taken away these patients will die. Therefore we must not go as far as Rabbi Halevi, who claims that the soul has already been taken. Plainly stated, the saying that “we must not play God” loses its validity because in many instances doctors most certainly *do* interfere with natural processes. In this context we can distinguish between *giving* (or granting) the soul and *preserving* the soul. It could be argued that God is the giver and the taker of the soul. But the role of preservation of the soul was given to people, to doctors. Disconnection from a life-support system is therefore forbidden by religious authorities because it is conceived of as a preliminary step to the exist of the soul; but planting a pacemaker in one’s body is an example of a preservation act that does not take over God’s place.

Concerning the belief that people are the possessions of God, a belief prevalent in other religions as well, Noam Zohar claims that people are considered “the possession of God” only in the context of mercy killings because this statement has nothing to do with other meanings of ownership. For instance, there are no similar claims over the control and possession of human assets.<sup>30</sup> Zohar further explains that it is possible to understand the terms of possession and ownership in terms of sovereignty and authority. It is possible to claim that a person is the “possession” of God in the sense that he or she is within His “authority,” meaning subordinate to Him and required to obey Him. A person’s aspiration to determine his or her own time of death could accordingly be understood as a private case of mutiny against God’s authority. Just as a person must obey God throughout his or her lifetime, so must he or she accept Godly control over his or her time of death. The problem, argues Zohar, is that this unqualified claim is valid only if we assume that subordination to Godly authority requires total human passivity. In other words, people must do nothing regarding their own lives, and among other things they must not take their lives. But this assumption is absurd. Subordination to Godly sovereignty means not abstaining from any action but accommodating the actions to the will of God, who wants certain actions and forbids others. If so – is it clear that the termination of life-prolonging treatment when the patient wishes to be redeemed from his or her suffering is contradictory to the will of God? Zohar claims that in the traditional Talmudic framework, it is possible to accept the sovereignty of God without concluding that actions which prevent or shorten the suffering of a dying person are necessarily contradictory to His will.<sup>31</sup>

In this context it is emphasized that the discussion concerns not only physical torment, but also spiritual torment, including psycholog-

ical suffering caused by loss of autonomy and self-control, loss of human dignity, and the degradation and humiliation that cause patients to feel their lives are continuing against their will.

Even if the religious doctrines are not accepted today as they were in the past, the ethical questions they raise still affect secular thought. Many secular people believe in the “sanctity of life.” Although secular approaches consider principles such as respect and sanctity as intrinsic to people, neither depending on God nor created by Him, there are many similarities between the religious and secular approaches. The sense of great respect for life is emphasized in both approaches. They share the belief that life is a great thing: amazing, majestic, respectable, mysterious, and therefore that life should be protected. The religious and secular approaches also share the assumption that the sanctity-of-life principle, at least in general, is the basis and the starting point for every medical decision.<sup>32</sup> There are many secular individuals who accept the idea that people should not “play God.” The sanctity-of-life principle’s deep roots in secular thought are evident in the rationale for forbidding legislation allowing euthanasia.<sup>33</sup> Courts speak of the interest of the state in preserving life. The majority opinion in the *Cruzan* case stated that the state may properly decline to make judgement about the “quality” of life that a particular individual may enjoy, and simply assert “an unqualified interest in the preservation of human life” to be weighed against the constitutionally protected interests of the individual.<sup>34</sup>

The vitalist approaches interpret the sanctity-of-life principle in the most meticulous and ostensible manner. According to the vitalist interpretation, the principle means that from the moment human life is created, it is our duty to preserve it. When facing the decision of the fate of a patient who asks to terminate treatment, the sanctity-of-life principle is not merely one of several considerations; it is the only and final consideration. Therefore, quality of life considerations are of no significance.<sup>35</sup> Many people in the religious and secular communities believe that life is not subject to rationalization. Secular approaches that believe in the sanctity-of-life principle base their reasoning on the belief that life has intrinsic value, that harming life may cause anarchy and undermine world order, that life could be harmed only if weighty justifications are found. As a general rule, we must keep and preserve human life. This belief does not necessarily have a rational basis. Rather it is a natural feeling about the order of things in terms of “so it should be.”

The quality of life approach holds that life can be evaluated. Consequently, it is possible to determine that, under certain circumstances, some lives are not worth prolonging.

*Life Can be Evaluated*

Roy Perrett argues that it is morally permissible to put a price on a person's life, and that there is a theoretically adequate way of determining such a price.<sup>36</sup> He maintains that the value of a person's life has two components: its personal value, its value for the person whose life it is, and its social value, its value for others: "Thus the total value of a person's life is the sum of its personal and social values."<sup>37</sup> Perrett further explains that the personal value of life is concerned with the happiness of the life, and the pursuit or accomplishment of the person's objectives, while the social value of life involves the emotional and psychological value that a person's life has for others, the economic value of a person's life to others, and the recognition that the lives of some special individuals have a personal service value.

We think that the ranking of lives in accordance with their social value is a dangerous policy that would increase existing inequalities in society, would serve the best interests of the elite, and would discriminate against the "common" people. We may speak of the subjective value of a given life in accordance with how the person who leads this life appraises it. All considerations of the social value of life, and of so-called "objective" utilitarian rankings of life, should be excluded from medical decision-making processes.

Helga Kuhse and Peter Singer are among those who assert that life can be evaluated, and that we can compare different lives.<sup>38</sup> Kuhse and Singer rightly argue that a consciousness life is preferable to unconscious life,<sup>39</sup> and that people do make moral judgments when they refer to a specific life and sometimes compare it to other lives. In their opinion, those who speak of the sanctity of human life do not really mean that *all* kinds of life are sacred and are of the same value; rather they mean that *human* life, as opposed to that of a sheep or a head of lettuce, is sacred.<sup>40</sup> In other words, different types of life receive different types of judgment. By explaining the basis for the different judgment between human life and other kinds of life, Kuhse and Singer reach the conclusion that a moral judgment regarding the quality of human life is possible. Thus, for instance, most people would agree that the life of a mature, autonomous, and healthy person is of higher quality than the life of an infant who is born anencephalic, without a brain. Kuhse maintains that it is morally proper for parents, in consultation with their doctor, to decide that their disabled infant should not live. It is unacceptable that societies continue to pay lip service to the "sanctity of life" view while practicing a quality-of-life approach.<sup>41</sup> Kuhse and Singer offer two possible answers in response to the question of what gives value to human life:

- (a) Human life is sacred because it is a life of a creature that belongs to *Homo sapiens*. It is clear that this definition includes all humans *per se*. But in Kuhse and Singer's opinion, the fact that a creature belongs to *Homo sapiens* and not to another species does not say a thing about the value of that creature's life. The value of human life should not be based on the view that human life has a special value simply because it is a human life. Giving preference to the life of a being simply because that being is a member of our species would put us in the same position as racists who give preference to those who are members of their race.<sup>42</sup> Belonging to a particular species is not important in itself; what is important is the qualities and nature of the creature's life. The same principle applies in medical decisions: what is important is the quality of the patient's life (a life of pleasure as opposed to a life of suffering) and the kind of life (a life of an adult as opposed to that of a baby or a fetus).<sup>43</sup>
- (b) Human life has special value because people are rational creatures, self-conscious, autonomous, moral beings, who have ideals, goals, ambitions, and many other qualities, that make them persons.<sup>44</sup> Each one of these qualities (or a combination thereof) could serve as a basis for moral distinction between persons and other creatures. For if the value of life were based on mere biological life, the life of a head of lettuce would be equal to that of a person.

In *Practical Ethics*, Singer addresses the question of whether we can accept the idea of ordering the value of different lives.<sup>45</sup> Singer assumes a hypothetical neutral ground in which a person can choose between being a horse and being a human, when it is known to that person what being a horse is composed of (as far as the horse is concerned, with the consciousness of a horse, etc.), and what being a human is all about (from a human perspective). This choice is actually an evaluation of the life of a horse against the life of a person. Singer concedes that there are comparisons that are difficult to draw, such as whether it would be better to be a fish or a snake. But in general it seems that the more highly developed the conscious life of the being, the greater degree of self-awareness and rationality, the more one would prefer that kind of life. He maintains that if it is true that we are capable of understanding a choice between two forms of life, then we can understand the idea of one form of life having greater value than another form of life. So, in effect, Singer admits that it would not necessarily be speciesist to rank the value of different lives in some hierarchical order.<sup>46</sup>

To reiterate, Kuhse and Singer hold that it is reasonable to say that the life of a rational conscious creature is of greater value than the life of a

creature lacking those characteristics. If we accept this approach, we are not saying that human life is sanctified, but that we must examine whether human life has been blessed with rationalism, consciousness, and desires.<sup>47</sup> They also emphasize the sanctity of a spiritual life, as opposed to a physical life, and in doing so they are giving another interpretation to the sanctity-of-life principle.

Some scholars have tried to establish that there are different levels of concern for humans and non-humans. Thus, for instance, Downie and Telfer acknowledge three such levels. On the lowest level are the animals that are regarded as having a presumptive right not to suffer.<sup>48</sup> Next we have, in Downie and Telfer's terminology, "sub-normal" humans who are not accorded full respect but are not treated as animals either. Notice the shift Downie and Telfer have made from concern to respect as if both terms have the same meaning, which is false. They say that we can distinguish three levels of concern but then continue speaking of respect. Downie and Telfer maintain that it is not meaningful to attribute to infants, the severely mentally ill, the senile, and those in terminal coma a capacity for self-determination. Finally there are the normal humans who are accorded full respect, and they are called persons by Downie and Telfer.<sup>49</sup>

Downie and Telfer assert that what makes people worthy of respect is their capacity for self-determination and for the adoption of ideals.<sup>50</sup> When certain capacities are lacking or cease to exist, people are no longer worthy of full respect. On this issue Downie and Telfer's view comes close to that of Joseph Fletcher, Helga Kuhse and Peter Singer.

Fletcher has listed fifteen "indicators of humanhood." His list includes such attributes as self-awareness, self-control, a sense of the future, a sense of the past, the capacity to relate to others, communication, curiosity, and minimal intelligence.<sup>51</sup> According to his view, any individual with an IQ below forty is questionably a person, and he does not consider an individual with an IQ below twenty a person. But even if an infant does qualify as a person according to this checklist, taking its life may still be justified in some situations, taking into account not only the good of the child in question, but also the family's economic resources, the welfare of other children involved, as well as the parents' physical and emotional capacity to cope. Therefore, physicians should have only a qualified respect for human life.<sup>52</sup>

Kuhse and Singer accept Fletcher's reasoning and further maintain that it is entirely reasonable to suggest that it is much more serious to take the life of a being possessing all or most of these characteristics than it would be to take the life of a being possessing none of them.<sup>53</sup> Our view is different. What makes people worthy of respect is their human-

ness, that people are people, whether or not they have a capacity for self-determination, adoption of ideals, curiosity, or a sense of the future. When human life begins, it is important that it will continue with dignity and with respect. We give people respect because we value life as such, in itself. Is killing a retarded person less serious than killing a normal person? We think not. We submit it constitutes a more serious offense because the killer is taking advantage of the deficiencies of a person who is unable to defend herself. Defenseless individuals need *more* concern, not less. This is not to say that we endorse the sanctity-of-life approach, or that we feel there is no place for mercy killing in a liberal society. We may start to question the quality of human life when, for instance, our lives are saturated with incurable suffering and pain. In such circumstances the underlying assumption that existence is better than non-existence is questionable. One may think that it is in one's best interest to opt for death because life is no longer an attractive option. When life becomes a burden for the patient, some patients are no longer sure it possesses any meaning or value.<sup>54</sup>

Downie and Telfer connect capacity for self-determination to the notion of respect. Direct connection of the kind that Downie and Telfer suggest exists between self-determination and self-rule, but the criterion of capacity for self-determination should not decide what kind of respect should be accorded to people. Those who lack self-determination may need the advice, support, and the assistance of others, but they should not be accorded less respect. These persons may be accorded *different* kinds of respect and concern, involving more compassionate elements, but not less respect, as Downie and Telfer argue. We would be inclined to reject gross paternalism when considering rational person.<sup>55</sup> We would be less inclined to reject such paternalism when our concern lies with mentally retarded persons or with children. But we do not think that because we are dealing with persons whose capacity for rational decision making is lacking we should confer on them less respect. We should accord them the *same respect* we accord other people, seeing them as ends rather than means; ends that should not be substituted for any other end. At the same time we should grant them *more concern* when this capacity is lacking.

The notions of respect and concern are in the foci of Paragraph 9 of the regulations issued in 1974 by the United States Department of Health, Education, and Welfare for skilled nursing facilities. It holds that each patient is to be treated "with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs."<sup>56</sup> This document regards human beings as ends rather than means and does not speak of different kinds of respect to be accorded to different patients depending on their existing capacities.

Moreover, we emphasize that liberal democracies have a duty to protect weak third parties, especially minors.<sup>57</sup>

Bearing this document and the general liberal duty in mind, we find Kuhse and Singer's views on infants most disturbing. At the outset of one of their writings, they argued that "nothing in the views we express in this book in any way implies a lack of concern for disabled people in our community. On the contrary, it is our view that affluent nations should be spending far more than they presently allocate to assist disabled people to live fulfilling, worthwhile lives, and to enable people with disabilities to develop their potential to the utmost."<sup>58</sup> How should this statement be reconciled with their statement quoted above regarding the essential characteristics of humanhood? ("It is entirely reasonable to suggest that it is much more serious to take the life of a being possessing all or most of these characteristics than it would be to take the life of a being possessing none of them").<sup>59</sup>

Furthermore, immediately after making the humane statement of caring for disabled people, they qualified it by saying that their discussion refers only to disabled *infants*. Surely, if you support killing certain disabled infants, then there would be fewer disabled *people*. So in a way their prescription is designed to decrease the number of disabled individuals and thus enable society to allocate the same (or more) resources to less afflicted people. Only those who became disabled at a later stage in life would get better treatment.<sup>60</sup>

Kuhse and Singer employ an interesting method to convince their readers of their disturbing suggestions. They submit even more radical and shocking propositions, and in comparison their thesis sounds almost bearable. Alternatively, they offer outrageous positions, then say they do not endorse them (so why bring them up at all?), only later to qualify them, or further say that these positions are as senseless as the one endorsing sanctity of human life. This methodology is especially evident in their discussion on infanticide.<sup>61</sup> Kuhse and Singer explained that they decided to dedicate a chapter to infanticide in order to see "how other cultures would handle the problems" that they discuss; to obtain "a broader, less culturally-bound perspective on these problems"; and to gain "a better grasp of the historical framework within which these issues continue to be discussed."<sup>62</sup> They found that most cross-cultural studies of non-Western societies show that "the majority accepted infanticide in at least some circumstances."<sup>63</sup> This survey also shows that "infanticide is compatible with a stable, well-organized human society,"<sup>64</sup> as if this is the prime aim of western societies, to maintain stability and organization. There are few, if

any, feelings of compassion and mercy in this utilitarian, cold,<sup>65</sup> detached and most troubling discussion.<sup>66</sup>

Kuhse and Singer quote a geneticist named J.V. Neel, who argued that since infanticide is much easier to carry out and requires a considerably less sophisticated understanding of human reproduction than abstinence, contraception, or abortion, we first became “truly human” when we began deliberately killing our children. And what do Kuhse and Singer have to say about this?: “We do not endorse Neel’s suggestion, but it is no more far-fetched than the idea that belief in the sanctity of all innocent human life is a prerequisite for any civilized society.”<sup>67</sup>

The discussion offers the readers food for thought on the issue of infanticide, if not its legitimacy. Kuhse and Singer failed to discuss the hypothesis that infanticide might become an almost too easy solution that would contribute to irresponsibility on the part of parents to bring babies to this world. In a world where infanticide would be legal, what would prevent parents who are told there is a 90% chance their newborn will have a serious genetic disease from bringing children into the world, knowing they could just throw away the damaged babies? Should we allow this gambling? Should we allow them to destroy one, two, three or more babies, and continue to gamble until they achieve the right result? Moreover, women who become ill with diseases that might put their fetus at risk will opt for continuation of the pregnancy, knowing that infanticide is an option if something goes wrong. Is this a moral option? Parents could relieve themselves from taking responsibility for and caring about the consequences of their decisions.

Unlike Kuhse and Singer, we have no qualms about describing ourselves as “speciesists,” as people who think first of all of their own species, the human race. Contrary to their view, we think that the very birth of human life is morally significant, something of great importance.<sup>68</sup> Contrary to their view, we think that newborn infants *do* have a right to life merely because they are human and have emerged from the womb.<sup>69</sup> Contrary to their view, we think that it is only a humane and preferable inclination to think first about our fellow humans. It is also natural for an elephant to think first and foremost about its fellow elephants. Our view is very different from that of Kuhse and Singer who differentiate between babies and persons and hence do not recognize the babies’ natural right to life simply because they are human. For us the very title of their book, *Should the Baby Live*, is highly provocative, problematic and offensive, while they apparently have no qualms about it. From their point of view, babies are more similar to fetuses than to people and, therefore, it is not

directly wrong to end the lives of birth-defective babies.<sup>70</sup> Let us devote special attention to this claim.

According to Kuhse and Singer, the life of a brain-damaged baby, or indeed, of normal healthy babies,<sup>71</sup> or the lives of Post Coma Unawareness patients are not comparable to the life of an autonomous conscious person. In Singer's eyes, killing a chimpanzee, an animal with "human" qualities, is a more serious act than killing a person who, for reasons of intellectual-defects, lacks these characteristics.<sup>72</sup>

We reject these claims completely. We do not accept the notion that any person whose mind stopped functioning is equivalent to a head of lettuce. Saying such a thing is a terrible blow to human dignity. A woman born with a mental defect could undergo certain experiences, and as a person she is an entity with meaning to her close ones. It is possible that her life has meaning, taste, and quality, even if a bystander does not recognize it. We believe that treating her as a "person," as opposed to as a "vegetable" could possibly improve her condition.<sup>73</sup> Furthermore, although we agree that a life consisting of physical function alone is devoid of quality, we do not conclude from this, as Singer does, that killing a person in this condition is comparable to "killing" a head of lettuce. A person could have a family and friends who care greatly for him or her, regardless of that person's condition. We also think that most of the population, unlike Singer, accord enormous value to human life, much greater value than is accorded to heads of lettuce or sheep. In this context it should be noted that the fact that most people appreciate human life more than plant life or animal life does not necessarily stem from the two possibilities listed by Kuhse and Singer – belonging to *Homo sapiens* or mental capacities. As said earlier, religious people see human beings as created in God's image, unlike animals and plants, and this is the source for the special value of human life.

In conclusion, Kuhse and Singer represent the most radical view within the quality-of-life approach. We are inclined to be much more cautious in our thinking. Quality of life is an important consideration, but it is not all there is. On the other hand, we think that life as such is not an absolute value. We were not asked whether or not we wanted to be born, but from the moment of birth we are free to do as we wish with our lives, including forgoing life when we feel that it is a life we no longer wish to lead. With this proviso in mind, we emphasize that the starting point in pertinent medical discussions should be the sanctity of life: life has great value; it should be respected and preserved, but there are cases where another value might exceed its importance. When, for instance, a ventilator is asked to be withdrawn, the claim is that the ventilator is burdensome. We agree with

the words of Judge Uri Goren in the *Eyal* case: “This important ‘sanctity-of-life’ principle is limited to cases in which it is in the power of medical care to save a life or to better the medical condition of a patient. When doctors’ actions cannot help to heal the patient and cannot improve or even stabilize his (or her) condition – the ‘sanctity-of-life’ principle is no longer so holy.”<sup>74</sup>

## CONCLUSIONS

The state’s interest in preserving life is a most meaningful interest, but it is not an absolute interest. Therefore, in certain cases it is possible to evaluate life and to determine that a certain characteristic could make it better or worse in comparison with other lives. The Kantian view that conceives of people as ends rather than means leads us to conclude that life is not sanctified when the continuation of life harms human dignity and contradicts the patient’s best interests.

In this essay we contrasted between two approaches, asserting that life can be evaluated and that a life of quality is a life of consciousness, as free as possible from suffering and pain, and in which human dignity is preserved. In our discussion we referred to philosophical and theological arguments as well as to several Israeli and American court cases. We showed that both the quality-of-life argument and the sanctity-of-life principle should be qualified, and warned against sweeping generalizations and policies that do not adequately respect the best interests of the patients. Undoubtedly, the courts will need to address the challenging question of death with dignity and its relationship with quality of life many times and we would like that this discussion will expand to other circles of society. We hope that this essay will contribute to the promotion of sensitivity to human life and to human dignity in all social circles: medical, religious, judicial and academia, and that through the mass media the debate will reach all concerned citizens.

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## NOTES AND REFERENCES

2. Senior Lecturer, Department of Communication and Faculty of Law, University of Haifa; Director, The Medical Ethics Think-tank, The Van Leer Jerusalem Institute (1995–1998); Visiting Professor and the Fulbright-Yitzhak Rabin scholar for this year, UCLA School of Law (1999–2000).
3. Graduate of the Hebrew University Law Faculty, Jerusalem; LLM student, University of Toronto Law Faculty.
4. See, for example: Plato. *Criton, The Trial and The Death of Socrates*. Tel Aviv: Schocken, 1979: 57, 64 (Hebrew); Aristotle. *Nicomachean Ethics*. Tel Aviv and Jerusalem: Schocken, 1985: 1100a; 5–10 (Hebrew).
5. Post Coma Unawareness (PCU) is the state commonly referred to in the literature as Persistent Vegetative State (PVS). The moral rationale for our objection to the term PVS and preference for the term PCU is explained in Cohen-Almagor R. Autonomy, Life as an intrinsic value and death with dignity, *Science and Engineering Ethics* 1995; 1(3): 261–272. See also Cohen-Almagor R. Some observations on post-coma unawareness patients and on other forms of unconscious patients: Policy proposals, *Medicine and Law* 1997; 16(3): 451–471.
6. Keyserlingk EW. *Sanctity of Life or Quality of Life*, 1980: 18. Ottawa.
7. This principle has few exceptions – see the discussion on the Jewish stance *infra*.
8. For a critical view of the “death with dignity” concept see Ramsey P. The indignity of death with dignity, *The Hastings Center Studies* 1974; 2(2): 47–62.
9. Civil Appeal 506/88 *Scheffer v. The State of Israel*, P.D. 48(1): 87, 116.
10. Let it be noted that this principle has few exceptions. For example, three things which we must not do even under the threat of death are idol worshipping, incest and bloodshed (Sanhedrin, 74). These exceptions have specific *halachic* rationalizations, but the *principle* still is *prohibition of the taking of human life*.
11. Steinberg A. Euthanasia in light of the *halacha*. In: Steinberg A, ed., *The Book of Assia* Jerusalem: Reuven Mass, 1983: 3, 424, 429–430 (Hebrew).
12. *Babylonian Talmud*, Sanhedrin 37a.
13. David CF, Bleich J. Life as an intrinsic rather than instrumental good: The “Spiritual” case against euthanasia, *Issues in Law and Medicine* 1993; 9(2): 139–149, at 140.
14. Zoin SY, ed. *The Talmudic Encyclopedia*. Jerusalem: The Talmudic Encyclopedia Publishing House, 1953: v 395 (Hebrew).
15. Mishna, Shabbat, 151, 72.
16. Mishna, Smahot, 81.
17. Halevi HD. Disconnecting a patient who has no chance of surviving from an artificial resuscitation machine, *Tchumin* 1981; 2: 297, 298 (Hebrew).
18. Cf. Cohn, HH. On the dichotomy of divinity and humanity in Jewish Law. In Carmi A, ed., *Euthanasia*. Berlin: Springer-Verlag, 1984: 31–67.
19. Steinberg A. Euthanasia in light of the *halacha*, *op. cit.*, p. 435.
20. Steinberg, *Ibid.* at 440.
21. Halevi, *op. cit.* at 298–299.
22. Maimonides, *The Laws of Murder and Preservation of Life*, II, 7.
23. Sanhedrin, 45, 1.
24. Rosner, Fred. *Modern Medicine and Jewish Law*. New York: Yeshiva University Press, 1972: 120; Carmi, A. Live like a king: Die like a king. In Carmi A, ed., *Euthanasia*. Berlin: Springer-Verlag, 1984: at 3–28.
25. Civil Appeal 506/88 *Scheffer v. The State of Israel*, P.D. 48(1): 87, at 142.

26. Exodus, 17(14–16); Deuteronomy, 25 (17–19).
27. *Cruzan v. Director Mo. Health Dept.* 497 U.S. 261 (1990), 111 L. Ed. 2d 224, 110 S. Ct. 2841; *Cruzan v. Harmon*, 760 S.W. 2d 408 (Mo. Banc 1988).
28. *Cruzan v. Harmon* 760 S.W.2d 408 (Mo. Banc 1988), at 432.
29. Halevi, *op. cit.* at 305. It should be noted that this view is exceptional among *halachic* thinkers.
30. Zohar Noam. A person as a possession of God. In Statman D. and Sagie, A., eds., *Between Religion and Morality*. Ramat Gan: Bar Ilan University Press, 1993: at 149–150 (Hebrew).
31. *Ibid.*, pp. 150–152. See also Zohar, Noam J. Jewish deliberations on suicide. In Battin, M.P., Rhodes R. and Silvers A., eds., *Physician Assisted Suicide*, New York and London: Routledge, 1998: 362–372.
32. Keyserlingk, *op. cit.* at 15–17.
33. See, for example, Callahan D and White M. The legislation of physician-assisted suicide: Creating a regulatory Potemkin village, *University of Richmond L Rev* 1996; 30(1): 1–81.
34. *Cruzan v. Director Mo. Health Dept.* 497 U.S. 261 (1990), 111 L. Ed. 2d 224, at 244.
35. Keyserlingk, *op. cit.*, pp. 19–21; Robertson JA. *Cruzan* and the constitutional status of nontreatment decisions for incompetent patients, *Georgia L. Rev.* 1991; 25(5): 1139–1202.
36. Perrett RW. Valuing lives, *Bioethics* 1992; 6(3): 185–200, at 185.
37. *Ibid.*, p. 187.
38. Kuhse H. *The Sanctity of Life Doctrine in Medicine*. Oxford: Clarendon Press, 1987: 211–213; Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*. Oxford: Oxford University Press, 1985: 123. For further deliberation see Harris J. *The Value of Life*. London: Routledge and Keagan Paul, 1985; Boddington P, Podpadek T. Measuring quality of life in theory and in practice: A dialogue between philosophical and psychological approaches, *Bioethics* 1992; 6(3): 201–217; Morreim EH. The impossibility and the necessity of quality of life research, *Bioethics* 1992; 6(3): 218–232; Kappel K, Sandoe P. Qalys, age and fairness, *Bioethics* 1992; 6(4): 297–316; Chelluir L, Grenvik A, Silverman M. Intensive care for critically ill elderly: Mortality, costs, and quality of life, *Arch. Intern. Med.* 1995; 155: 1013–1022.
39. The vitalist scholars do not accept this view. For them the mere biological existence of human life is important. According to the vitalist interpretation, the principle means that from the moment human life is created, it is our duty to preserve it. When facing the decision of the fate of a patient who asks to terminate treatment, the sanctity-of-life principle is not merely one of several considerations; it is the only and final consideration. Therefore, quality of life considerations are of no significance.
40. Singer P. *Practical Ethics*, 2nd edn. Cambridge: Cambridge University Press, 1993: at 83.
41. Kuhse H. Quality of life and the death of ‘Baby M’, *Bioethics* 1992; 6(3): 233–250, at 250.
42. Peter Singer repeats these statements in: Singer P. All animals are equal. In Singer P, ed., *Applied Ethics*. Oxford: Oxford University Press, 1986: 215–228, at 222, and in *Practical Ethics*: 88.
43. According to Kuhse and Singer, infants are not persons. They only have a potential to become persons. Thus Singer argues that if a train instantly kills an infant, the death would not have been contrary to the interests of the infant, because the infant would

- never have had the concept of existing over time. To have a right to life, according to Singer, one must have, or at least at one time have had, the concept of having a continued existence. Singer P. *Practical Ethics*: 98.
44. Singer P. *Practical Ethics*: 89–90.
  45. *Ibid.*, pp. 105–107.
  46. *Ibid.*, p. 107.
  47. Kuhse H. *The Sanctity of Life Doctrine in Medicine*, 211–213.
  48. For a different perspective defending a more comprehensive framework of rights for animals see Regan T. *The Case for Animal Rights*, 2nd edn. London and New York: Routledge, 1988. See also Nozick R. *Anarchy, State, and Utopia*. New York: Basic Books, 1974: 35–45.
  49. Downie RS, Telfer E. *Caring and Curing*. London and New York: Methuen, 1980: 39–40.
  50. *Ibid.*, p. 46.
  51. Fletcher J. Indicators of humanhood: A tentative profile of man, *Hastings Center Report* 1972; 2: 1–4.
  52. Alan CF, Shewmon D. Active voluntary euthanasia: A needless Pandora’s Box, *Issues in Law and Medicine* 1987; 3(3): 219–244, esp. p. 237.
  53. Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*: 120; and Kuhse H. *the Sanctity of Life Doctrine in Medicine*: 211–213.
  54. See Cohen-Almagor R. A Circumscribed plea for Voluntary Physician-assisted Suicide. In Cohen-Almagor R, ed., *Medical Ethics at the Dawn of the 21st Century*, New York: New York Academy of Sciences.
  55. We distinguish between *gross* and *soft* paternalism. Gross paternalism means not involving the person in concern to any extent in the decision-making regarding his or her treatment. Soft paternalism takes some consideration of the patient’s view in the decision-making, but the doctors have the final say with regard to the question of what would serve the patient’s best interests.
  56. Warren CF, Reich T, eds. *Encyclopedia of Bioethics*. New York: The Free Press, 1978: 1749, 1784.
  57. This responsibility has been recognized and repeated in the U.S. court decisions. See for example *Superintendent of Belchertown v. Saikewicz* Mass 370 N.E. 2d. 417 (1977), at 426; *In re Conroy*, 486 A.2d 1209, 1223 (N.J. 1985). For general discussion see Bopp J. Jr. Is assisted suicide constitutionally protected?, *Issues in Law and Medicine* 1987; 3(2): 113–140, at 132–133; Kadish SH. Letting patients die: Legal and moral reflections, *California Law Rev.* 1992; 80: 857–888, at 863.
  58. Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*: v.
  59. *Ibid.*, p. 120; Kuhse H. *The Sanctity of Life Doctrine in Medicine*: 211–213.
  60. In his comments on this essay, Peter Singer writes that he and Kuhse explicitly say that parents should be the ones who choose whether their disabled infant lives or dies. If they choose that it should live, “then we think it should get more resources to help it live a good life than most societies presently give to disabled children and adults.” E-mail correspondence on 14 February 2000.
  61. Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*, chap. 5.
  62. Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*: 99.
  63. *Ibid.*, p. 107.
  64. *Ibid.*, p. 108.

65. Singer writes: "When the death of a defective infant will lead to the birth of another infant with better prospects of a happy life (could we know this for certain when we kill the infant? RCA), the total amount of happiness will be greater if the defective infant is killed. The loss of happy life for the first infant is outweighed by the gain of a happier life for the second. Therefore, if killing the haemophilic infant has no adverse effect on others, it would, according to the total view, be right to kill him." *Practical Ethics*, p. 134.
66. Singer's utilitarian ethics holds the humanity should strive for the greatest possible happiness for the greatest number of people. He is trying to lay down rules for human behavior which are divorced from emotion and intuition. Yet when his mother fell ill with Alzheimer's disease Singer hired a team of home health-care aides to look after her. When asked how he reconciled this with his writings that we ought to do what is morally right without regard to proximity or family relationships, Singer's answered: "I think this has made me see how the issues of someone with these kinds of problems are really very difficult ... Perhaps it is more difficult than I thought before, because it is different when it's your mother." See Specter, M., The dangerous philosopher. *New Yorker* (6 September 1999), at 55.
67. *Ibid.*, pp. 110–111. The same method is exhibited in their discussion in pp. 131–136.
68. Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*: 123.
69. *Ibid.*, p. 160. See also Kuhse H. *The Sanctity of Life Doctrine in Medicine*: 218.
70. Kuhse H. *The Sanctity of Life Doctrine in Medicine*: 204–218; Kuhse H, Singer P. *Should the Baby Live? The Problem of Handicapped Infants*: 160–161.
71. Kuhse H, Singer P. *Should the Baby live? The Problem of Handicapped Infants*: 122–123. Singer explains that infants lack rationality, autonomy, and self-consciousness. Therefore killing them cannot be equated with killing normal human beings. Instead, the principles that govern the wrongness of killing non-human animals that are sentient, but not rational or self-conscious, apply to them. Singer P. *Practical Ethics*: 182–183.
72. Singer P. *Practical Ethics*: 118. See also Specter, M., The dangerous philosopher. *New Yorker* (6 September 1999): 46–55.
73. For further discussion see Cohen-Almagor R. Autonomy, Life as an intrinsic value and death with dignity, *op. cit.*; Cohen-Almagor R. Reflections on the intriguing issue of the right to die in dignity. *Israel Law Review* 1995; 29(4): 677–701.
74. Opening Procedure (Tel Aviv) 1141/90 *Eyal v. Dr. Wilenski and Others*, 1991: (3)187, p. 199, b.

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