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Rabbi Hershel Schachter
Reflections on "Piety"

After the mabul, Hakadosh Baruch Hu entered into a bris with mankind that He would never again destroy the entire world via a flood. The rainbow was chosen to symbolize this bris. This is why one who sees a rainbow recites beracha asking that Hashem to remember and uphold His bris.

The Talmud (Kesubos 77b) states that when R' Yehoshua Ben Levi died he was greeted in heaven by R' Shimon Bar Yochai who asked him whether a rainbow had ever appeared during his lifetime. When R' Yehoshua replied that it had, R' Shimon commented that apparently R' Yehoshua was not that great a tzadik. The rainbow would not have appeared in a generation of a very great tzadik, because in his merit the entire generation would have been spared, and thus there would have been no need to invoke the aforementioned bris and have its symbol appear.

The Talmud proceeds to comment that in truth the rainbow had not appeared during his lifetime. R' Yehoshua Ben Levi had lied to R' Shimon out of humility. If he would have told the truth it would have appeared as if he were bragging. The Talmud (Bava Metziah 23b) tells us that a talmid chacham may lie in three types of situations, one of them being for the sake of humility, that others should not know how learned or how pious he is.

This Shulchan Aruch (Orach Chaim 565:6) applies this idea, stating that if one has accepted upon himself extra fast days and lets others know of his middas chasidus, "he will be punished for doing so"[1]. Every so often in Shulchan Aruch and in its commentaries we come upon a recommendation that a ba'al nefesh ought to be stringent on himself regarding some halachic issue. Rabbi Yehuda Amital shlit"a relates that when he was a teenager learning in yeshiva, when the students learned Mishna Berura and came across a statement that "one who is a ba'al nefesh should act on accordance with the stringent view", they thought to themselves that this certainly refers to a few outstanding tzadikim who they knew of. Whereas today, he further commented, many of the yeshiva students instinctively assume that it refers to them!!

Even one who does belong in the category of ba'alei nefesh must be careful that his middas chasidus not turn into a public demonstration of his piety. Today the term "frum" is usually used with a positive connotation. In pre-World War II Litta it was usually used as negative description of one who publicly displays his piety. Some of the ba'alei mussar used to say "a

galach has to be 'frum'; a yid has to be 'erlich'. They would add that the word "frum" is roshei teivos (an acronym) for "fiel rishis, veinig mitzvos – much evil and very few mitzvos".

Additionally, a middas chasidus is not to be forced upon others. The expression in the Shulchan Aruch always is that a "ba'al nefesh yachmir al atsmo – a ba'al nefesh ought to be stringent upon himself."

The Talmud (Berachos 35b) states, "Many attempted to follow the style of R' Shimon Bar Yochai and they did not succeed." The style of the ba'al nefesh, following the stringent approach, was clearly not intended for the masses. Those who are able to should certainly strive to attain the state of chasidus, but this must be done step by step, as spelled out in the Talmud (Avoda Zara 20) and elaborated in Mesilas Yesharim.

[1]The Taz and Magen Avraham quote the aforementioned passages (Kesubos 77b and Bava Metziah 32b) in their comments to this line Shulchan Aruch Copyright © 2008 by The TorahWeb Foundation. All rights reserved.

From: owner-weeklydt@torahweb2.org on behalf of TorahWeb.org
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Rabbi Yonason Sacks
The Gift of Vision

The complex nature of man is evident in his creation. The Medrash Rabbah (8:11) explains, "Rabbi Yehoshua bar Nachmeini beshaim Rabbi Chanina bar Yitschak v'Rabbanan beshaim Rabbi Elazar amri, bara bo arba briyos milema'ala varaba milematan." In certain ways man resembles an animal, in others, however, he is compared to an angel. Man eats, drinks, multiplies and excretes like an animal. He stands erect, speaks, exhibits intelligence, and sees like an angel. The Midrash asks, "ubeheima aina roeh? Atmeha! Ela ze metsaded - is it true that an animal does not see? Rather, unlike an animal, man possesses peripheral vision"

This poignant Midrash distinguishes between the sight of animals and the vision of man. Whereas an animal can only see that which is directly before it, man is capable of angelic perception, discernment and perspective. Man's broad visual field and foresightedness enables and challenges him to emulate the angels.

Rav Soloveitchik linked this midrash to others which contrast the vision of tzadikim and reshaim. The Yalkut Shimoni (Parshas Balak, 765) explains, "noach loreshaim sheyihyu sumim, she'eineihem m'vi'im maareh laolam, 'vatereh haisha ki tov haeitz l'maachal...' uksiv, 'vayaar Cham avi Canaan'...aval tzadikim yirru vyismachu, 'vayisa einav vayar v'chinei shlosa anashim'...'vayar es hamakom meirachok' - better that the evil doers should be blind, for their sight brings curse to the world, and the woman saw that the tree was good for eating...' (Braisish 3:6)... 'Cham, the father of Canaan, saw his father's nakedness (Braisish 9:22)...however the righteous will see and be glad. 'He lifted his eyes and saw, and behold three men were standing over him' (Braisish 18:2). 'On the third day Avraham raised his eyes and saw that place from afar' (Braisish 22:4)."

Cham and Canaan used the gift of vision to disgrace and shame Noach. Canaan was therefore punished, "arur Canaan eved laavodim yihiye le'echav - cursed is Canaan, a slave of slaves shall he be to his brothers" (Braisish 9:25). A slave who is under constant control of his master has limited vision and aspiration, and awaits a bleak destiny.

Avraham Avinu, however, lifts his eyes and searches for opportunities to perform chessed. Even at a time of nisayon, he is able to perceive Har Hamoriyah from afar.

As descendants of Avraham Avinu, we must hone our vision liros beTuv Hashem, to see the goodness of Hashem. Undoubtedly, each of us is capable of such greatness, for we were created with angelic vision.

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Rabbi Frand on Parshas Noach

These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape #609, Cosmetic Surgery. Good Shabbos!

Great Is Peace

I saw the following insight on Parshas Noach written in the name of the Rosh Yeshiva of Ner Israel, Rav Yaakov Weinberg, of Blessed Memory.

We are all familiar with the story recorded at the end of the Parsha involving an attempt to build "a tower with its top in the heavens". Society spoke a single language and had a common purpose. With single-minded dedication, this society attempted to build a brick and limestone structure that would allow them to "make a name" for themselves. Hashem descended, as it were, and "confused their language" such that they stopped building the tower and the project was abandoned.

The Torah records: "That is why it was called Babel, because it was there that Hashem confused the language of the whole earth, and from there Hashem scattered them over the face of the whole earth." [Bereshis 11:9]

Rashi asks: Which sin was greater – that of the Generation of the Flood or the Generation of the Dispersion? Off hand, we would say that the latter were worse. The people of the Generation of the Dispersion were heretics. They engaged in theological battle, waging war against the Almighty (by building a tower that would reach the heavens to go up and fight with Him). The Generation of the Flood engaged in theft, violence, and sexual immoralities -- crimes of passion. However, they did not engage in heresy. They did not have the audacity to "wage war against the Almighty!"

And yet, the Generation of the Flood was totally destroyed while the people of the Generation of Dispersion were merely dispersed. Rashi explains that the unity that existed within the society of the Generation of Dispersion is what saved them. The Generation of the Flood was a totally dysfunctional society. They hated each other and stole from one another. The people of the Generation of Dispersion on the other hand, despite the fact that they were heretics, were unified. They loved one another. They spoke with one language and had common purpose! Rashi concludes: From here we see that disputes are hated and great is peace (Gadol haShalom).

Rav Weinberg asked a basic question on Rashi's premise. How can Rashi say that love of fellow man and unity prevailed in the society of the Generation of the Dispersion? Rashi himself two pasukim [verses] earlier cites a Medrash that the people of this generation were more concerned about the loss of a brick than they were about the loss of human life! (One asks for a brick and the other brings lime, and the former stands over him and shatters his brain). Where is the love and friendship that Rashi in pasuk 9 claimed was pervasive in this society?

Apparently, any cooperation they manifested in the project of building the tower was a very superficial demonstration of "peace". The Shalom was based on ulterior motives!

In a classic insight, Rav Weinberg stated that this teaches us that even if people have their differences or even hate each other, the mere fact that people work together is "shalom". The mere fact that people can join together to work on a project and set aside their differences -- superficial shalom -- is also very meritorious. Even though the shalom may be short-lived, still, people working together is better than people working against

one another. Even if Shalom is only skin-deep, if the people, for whatever reasons, come together: Gadol HaShalom – Great is Peace.

This write-up was adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Torah Tape series on the weekly Torah portion. The complete list of halachic topics covered in this series for Parshas Noach are provided below:

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The Prohibition On an Incandescent Bulb On Shabbat and Yom Tov - Part 1

by Rabbi Chaim Jachter

Introduction Poskim today assume that turning on an electric appliance in which a filament is heated until it glows on Shabbat constitutes a violation of Torah law. Although there is great debate whether completing a circuit in such an appliance in which a filament is not heated until it glows is a Biblical or Rabbinic level prohibition, a clear consensus has emerged concluding that turning on an appliance with a glowing filament violates a Torah prohibition. In this essay we will explore the basis and development of this consensus view.

Four Sources in the Gemara There are four passages in the Gemara which discuss heating metal on Shabbat. The Gemara, (Yevamot 6b) states that melting metal on Shabbat in preparation for use in administering the form of capital punishment known as Sereifah (burning) involves two violations of the laws of Shabbat. The two violations are cooking (Mevashel) and burning (Havarah). Teshuvot Avnei Neizer (Orach Chaim 229) asserts that this Talmudic passage is the primary source that teaches that one who heats a metal violates a Torah level prohibition. The second source is the Gemara on Pesachim 75a which records a dispute between Rav Chisda and Ravina whether a Gachelet Shel Matechet (a burning metal coal) is defined by the Halachah as fire. The Gemara in Yoma 34b relates that if the Kohen Gadol (High Temple Priest) found it difficult to immerse in a cold Mikvah, iron bars were heated prior to Yom Kippur and placed into the Mikvah used by the Kohein Gadol. The Maggid Mishneh (commenting on Rambam Hilchot Shabbat 12:1) points out that we see from this Gemara that heating a metal involves violating a Biblical level prohibition. Had the Gemara regarded heating a metal as only a rabbinic level prohibition, it would have permitted heating the metal rods on Yom Kippur. This is because of the celebrated rule "Ein Shevut BeMikdash," rabbinic prohibitions do not apply in the Beit HaMikdash (Temple). Nonetheless, the Maggid Mishnah's proof is not beyond dispute. The counter argument is that indeed heating metals is merely a rabbinic level prohibition, but nevertheless we do whatever is necessary to minimize violating rabbinic prohibitions even in the Beit Hamikdash. (The following sources support this contention: Eruvin 103a, Rambam Hilchot Korban Pesach 1:18, and the commentary ad. loc. of the Lechem Mishneh.) The fourth passage is Shabbat 74b which defines heating a metal to soften it as an act of Bishul.

Rishonim and Acharonim Rambam (Hilchot Shabbat 9:6) rules that heating a metal constitutes a Toladah (subcategory) of the Melachah (prohibited act of work) of cooking. In Hilchot Shabbat 12:1 Rambam rules that heating a metal is a Toladah of the Melachah of Havarah. Raavad (commenting on the Rambam Hilchot Shabbat 12:1) asserts that the act of heating a metal is considered only Bishul. The Avnei Neizer (O.C. 229) explains that the Rambam and Raavad disagree as to whether the Halacha follows Rav Chisda or Ravina in their debate on Pesachim 75a as to whether a Gachelet Shel Matechet constitutes a fire. The Raavad rules that a heated metal is not considered fire. Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:105-107) disputes this interpretation and offers an alternative

interpretation. Halacha accepts the opinion of the Rambam as normative (Chayei Adam 45:2 and Sha'ar Hatziyun 318:1). The Chazon Ish (O.C. 50:9) and Rav Shlomo Zalman Auerbach (Minchat Shlomo 1:107) disagree about the temperature at which one violates the prohibition of heating a metal. The Chazon Ish rules that the violation occurs at the point that the metal becomes *Yad Soledet Bo* (hot to the extent that one's hand would recoil when touching it). Rav Shlomo Zalman argues that the heating of metal is Halachically insignificant until the metal heated to the point that it appears as a glowing coal. Rav Moshe Feinstein (Teshuvot Igrot Moshe O.C. 1:93) concurs with Rav Shlomo Zalman. Rambam appears to contradict himself as to whether heating a metal constitutes *Bishul* or *Havarah*. In *Hilchot Shabbat* 12:1 Rambam writes that it constitutes *Havarah* and in *Hilchot Shabbat* 9:6 he states that it is *Bishul*. The *Lechem Mishneh* (commenting on *Hilchot Shabbat* 12:1) explains that one violates different prohibitions depending on the stage of the process of heating metal which has been reached. *Bishul* is violated at the temperature at which the metal can be softened. At the point that metal can be tempered, *Havarah* is violated. The *Lechem Mishneh's* approach to this problem is accepted (Shaar HaTziyun 318:1 and Teshuvot Tzitz Eliezer 3:17) though the Chazon Ish (O.C. 50:9) presents a very different way to resolve this apparent contradiction in Rambam.

Incandescent Lamps When the incandescent bulb (which is essentially a glowing metal caused by the resistance in the wire to the electric current flowing through it) was introduced during the latter part of the nineteenth century, Poskim argued whether lighting such bulbs constitutes an act of *Bishul* or *Havarah*. Teshuvot Maharsham (2:246) suggests that lighting an incandescent bulb was only a rabbinic prohibition, due to the dissimilarity between an incandescent bulb and the fire created in the Mishkan. He noted that the incandescent bulb more resembled the Biblical burning bush (fire that does not consume) than the fire in the Mishkan. Rav Eliezer Waldenberg (Tzitz Eliezer 1:20:6) vigorously refutes the Maharsham's suggestion. The fact that Rambam's opinion that heating a metal until it glows violates *Havarah* clearly indicates that a glowing metal constitutes a fire. Poskim reject the suggestion of the Maharsham. Both the Tchebiner Rav (Teshuvot Doveiv Meisharim 1:87) and Rav Ovadia Yosef (Teshuvot Yabia Omer O.C. 1:19) assert that the Maharsham's suggestion cannot be utilized even as a *Senif LeHakel*, a component in a lenient ruling. The Chazon Ish (O.C. 50:9) writes that since the wires in an incandescent bulb are heated, turning on an incandescent bulb constitutes an act of *Bishul*. Rav Shlomo Zalman Auerbach, however, notes that one does not care that the metal within the bulb is softened and that one does not perceive the softening of the metal within the lamp. Moreover, the metal returns to its original state immediately when the light is extinguished. Thus, argues Rav Shlomo Zalman, the Halacha attaches no significance to the fact that the metal is softened. Thus, lighting an incandescent bulb is not considered to be an act of *Bishul*. Rav Moshe Feinstein presents a somewhat similar argument to that of Rav Shlomo Zalman Auerbach (Teshuvot Igrot Moshe O.C. 3:50). Most authorities agree with Rav Shlomo Zalman (1:12) that turning on an incandescent bulb is considered to be an act of *Havarah*. Rav David Tzvi Hoffman (Teshuvot Melamed Lehoil 1:49) states what has emerged as the consensus opinion - "*Havarah* refers to the creation of light and not the burning of fuel." Almost all authorities find the analogy between an incandescent bulb and the Rambam's heated metal to be compelling. Teshuvot Achiezer (3:60), Teshuvot Tzitz Eliezer (1:20:8), Teshuvot Mishpetei Uzziel (II O.C. 36), and Teshuvot Beit Yitzchak (Y.D. 1:120) are some of the other major authorities who rule that causing a filament to glow constitutes an act of *Havarah*. It is related by many (including Rav Yosef Dov Soloveitchik) that Rav Chaim Ozer Grodzinski (the preeminent Halachic authority of pre-World War 2 European Jewry) used to routinely use an incandescent bulb for the fire of *Havdalah*. He did so in order to emphasize to all that an incandescent light constitutes a fire. On the other hand, there is great debate as to whether a Biblical or rabbinic prohibition is violated if one turns on an appliance in which a glowing filament is not present (see Chazon Ish O.C. 50:9 and Teshuvot Minchat Shlomo 1:11).

Lighting an Incandescent Bulb on Yom Tov The Mishnah (Beitzah 4:7) teaches the well-known rule that although one may transfer fire on Yom Tov, it is forbidden to light a fire on Yom Tov. Poskim debate whether this constitutes a Biblical or rabbinic prohibition (see *Beur Halachah* 502:1 s.v. *Ein Motziin*). When incandescent bulbs were first introduced a few prominent Poskim permitted lighting an incandescent bulb on Yom Tov, arguing that lighting an incandescent bulb constitutes a transfer of fire rather than starting a fire (*Encyclopedia Talmudit* 18:178). This approach, however, is rejected by the overwhelming majority of authorities primarily because it emerges from a mistaken understanding of how an incandescent bulb works. Those who permitted this lighting thought that the flow of electrons in the filament is what causes the bulb to glow. They believed that when one completes a circuit, the electrons in the filament then have a path in which to flow and thereby cause a glow. According to this understanding, one is simply transferring the electrons when turning on a light. Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:9 footnote 5), however, notes that this is an erroneous

understanding of how an incandescent bulb operates. The glow does not result from the flow of electrons but rather from the resistance in the wire to the flow of the electrons in the filament. Thus, one clearly creates fire when turning on an incandescent bulb and is forbidden on Yom Tov. Although some may remember a time when some Rabbanim actually permitted lighting an incandescent bulb on Yom Tov, the accepted opinion in the past century has been to forbid turning on lights on Yom Tov. Rav Shlomo Zalman Auerbach develops this point at great length in his seminal work on electricity known as *Meorei Eish* (chapters 1-3). Among the many authorities who stated that turning on an incandescent light is forbidden on Yom Tov are Chazon Ish (ad. loc.), Teshuvot Chelkat Yaakov (1:51), Teshuvot Melamed Lehoil (ad. loc.), and Teshuvot Yabia Omer (O.C. 1:19).

Conclusion Next week we shall review the question as to whether turning on an electric appliance where no filament is heated constitutes a Torah level or rabbinic level prohibition.

The Prohibition of Turning On an Incandescent Bulb On Shabbat and Yom Tov - Part 2 by Rabbi Chaim Jachter

Introduction In our previous essay we presented the accepted view that turning on an electric appliance that heats metal until it glows constitutes a Torah level prohibition of *Havarah* (burning). This week we turn our attention to electric appliances where metal is not heated to a glow, such as a fluorescent bulb. Poskim (Halachic authorities) and the Jewish People have accepted that turning on such appliances is strictly prohibited on Shabbat and Yom Tov. However, it has been challenging to determine precisely why it is prohibited. In this essay we shall survey six approaches as to why it is prohibited and seek to arrive at a conclusion as to whether it constitutes a Torah level prohibition or rabbinic prohibition. We shall frequently refer to the writings of Rav Shlomo Zalman Auerbach, one of the greatest Halachic authorities of the twentieth century (1910-1995), who lived through the introduction of electric appliances into Eretz Yisrael and devoted much attention to mastering both the science and Halachic implications of these new phenomena.

Approach #1 – Molid Among the first suggestions as to the basis for prohibiting such appliances was Rav Yitzchak Schmelkes' (Teshuvot Beit Yitzchak 2:31 in the addenda) assertion that creating a functioning electric appliance is analogous to the rabbinic prohibition to create a new fragrance in one's clothes on Shabbat and Yom Tov, known as *Molid Reicha* (Beitzah 23a). The Teshuvot Beit Yitzchak argues that *Molid Zerem* (powering an appliance with an electric current) is analogous to *Molid Reicha* and thus powering an appliance with electric current constitutes a rabbinic level prohibition. Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1: pp.73-74) questions Rav Schmelkes' analogy. He notes that one intends the scent to remain in the clothes and the clothing is not made to have scents added and removed. Electric appliances, on the other hand, are made to be turned on and off. Moreover, Rav Auerbach notes that Chazal did not forbid the creation of anything new. For example, they never forbade making juice from fruits that are not normally squeezed for its juice. Thus, one cannot expand the prohibition of *Molid Reicha* to *Molid* or to anything else not explicitly prohibited by Chazal since there is no broad categorical prohibition to create something new on Shabbat and Yom Tov.

Approach #2 – Boneh The second major approach to prohibit powering electric appliances without a heated element was articulated by the Chazon Ish (Orach Chaim 50:9 and in letters to Rav Auerbach printed in Teshuvot Minchat Shlomo 1: pp. 92-94). He rules that completing an electric circuit most likely constitutes a Torah level prohibition of *Boneh* (building) and opening a circuit is an act of *Soteir* (destroying). He argues that completing a circuit is analogous to assembling an appliance consisting of many parts (see Shabbat 57a and Shulchan Aruch O. C. 313:6). He adds that when one completes a circuit he has brought the appliance "from death to life," which the Chazon Ish asserts constitutes an act of *Boneh*. Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:11) also questions these assertions of the Chazon Ish. His primary argument is that an act which is intended to be done and undone on a regular basis is not defined as *Boneh*. Rav Shlomo Zalman sees opening and closing an electric circuit as analogous to opening and closing a door which is not *Boneh* and is undoubtedly permissible on Shabbat (see Mishnah Berurah 313:45). Rav Shlomo Zalman also questions the assertion that bringing something to life constitutes an act of *Boneh*. He notes that planting a shoot in the earth or grafting a tree is forbidden on Shabbat as planting but never as *Boneh*, even though doing so transforms the shoot from death to life.

Approach #3 – Makeh BePatish The Chazon Ish (ad. loc.) also asserts that completing an electric circuit constitutes an act of *Makeh BePatish*. This literally means the "[final] blow of a hammer" and refers to finishing a product and making it useful (Rambam *Hilchot Shabbat* 23:4). Just as the final blow transforms a useless item into a functional product so too one who powers an appliance with electric power renders a useless article into something useful. The Chazon Ish cites as a precedent the ruling of the Chayei Adam (44:19) who forbids winding a watch on Shabbat as a Torah level prohibition of *Makeh BePatish*. Rav Auerbach (Teshuvot Minchat Shlomo pp. 69-73 and 101-102) again questions the Chazon Ish.

He argues "it is very reasonable to say that something that is done one hundred times a day is impossible to classify as Makeh BePatish." He also writes that he is inclined to believe that "Makeh BePatish applies specifically when an item is missing something significant that craftsmen generally perform and [afterwards] remains this way permanently." Since, reasons Rav Shlomo Zalman, completing an electric circuit is a simple process that anyone can perform and is performed constantly it cannot be classified as Makeh BePatish. In addition, the Encyclopedia Talmudit (18:166) notes that of all the great authorities who preceded the Chazon Ish in discussing turning on electricity on Shabbat never even raise the possibility of completing an electric circuit constituting an act of Boneh or Makeh BePatish. These authorities include Rav Yechiel Michel Epstein (the author of the Aruch HaShulchan who addressed issues of electricity in an essay published in the Torah journal Beit Vaad LaChachamim), Rav Yitzchak Schmelkes (Teshuvot Beit Yitzchak ad. loc.), Rav David Zvi Hoffman (Teshuvot Melamed Lehoil 1:49), and Rav Chaim Ozer Grodzinsky (Teshuvot Achiezer 3:60). Indeed, in Rav Moshe Feinstein's writings addressing the prohibition of turning on electricity on Shabbat he never presents the Chazon Ish's approach (Teshuvot Igrot Moshe O.C. 1:50, 3:42, 4:84 and 4:85). These Poskim seem not to accept the assertion of the Chazon Ish that completing a circuit constitutes an act of Boneh and Makeh BePatish.

Approach #4 – Sparks Both Rav David Zvi Hoffman and the Chazon Ish note that it is prohibited to complete circuits due to the sparks that are created when one completes a circuit. They argue that the sparks generated when completing an electric circuit fall into the rabbinic prohibition to create sparks from wood or stones (Mishnah Beitza 4:7). Rav Shlomo Zalman (Teshuvot Minchat Shlomo 1: pp. 86-87) strongly questions this assumption. He notes that not only does one not intend to create these sparks, but also one does not want them at all since they wear out the points of contact in a circuit. He also argues that this is considered an unusual manner (KeLeAchar Yad) to create sparks since one never completes a circuit with the intention of creating sparks. Accordingly, Rav Auerbach argues that there should be no Halachic problem associated with the creation of such sparks. He draws an analogy to a ruling of the Dagul MeiRevavah (O.C. 340:3) where he permits cutting a cake with letters written on it. This permission is based on the combination of the fact that erasing when not done for the purpose of writing is only a rabbinic prohibition, he has no intention of erasing the letters, it is a destructive act (Mekalkel), and this is a KeLeAchar Yad manner of erasing. Accordingly, since the creation of sparks in general is only a rabbinic prohibition, and one does not intend to create sparks when completing an electric circuit, it is an unusual manner to create sparks, and it damages the circuit, the creation of sparks when completing an electric circuit does not constitute a prohibited act on Shabbat. We should note, however, that Rama (ad. loc.) does prohibit breaking a cake with letters on it. Although the Shaarei Teshuvah (340:1) fully accepts the ruling of the Dagul MeiRevavah and the Aruch HaShulchan (O.C. 340:23) essentially supports it, the Mishnah Berurah (340:16) does not fully accept this lenient ruling. Indeed, common practice is to avoid cutting the letters on a cake on Shabbat in harmony with the ruling of Rama.

On the other hand, the fact that Halachah attaches no significance to something that is not visible to the "naked eye" (see Aruch HaShulchan Yoreh Deah 84:36 and Teshuvot Igrot Moshe Y.D. 3:120:5) is another consideration to discount these sparks. The Encyclopedia Talmudit (18:734) states that turning on appliances that operate on a relatively low voltage does not make visible sparks. Moreover, the production of sparks depends to a great extent on humidity. Thus, since it is not inevitable (Pesik Reisha) that these sparks will be produced, it remains an unintended action (Davar SheEino Mitkavein), which is permitted on Shabbat.

Approach #5 – Increased Fuel Consumption Some have suggested that it is forbidden to complete an electric circuit on Shabbat since it causes increased fuel consumption in the power station. Rav Shlomo Zalman Auerbach (cited in Shemirat Shabbat KeHilchata 1:23 footnote 137) dismisses this concern for two reasons. The connection between one's action and its impact in the power plant is remote and is classified as G'rama (indirect action). Moreover, in the majority of situations (Rove) one's actions do not have impact on the fuel consumption in the power station.

Approach #6 – Rav Shlomo Zalman Auerbach Rav Auerbach concludes (Teshuvot Minchat Shlomo 1:pp.74, 84, and 95) that completing an electric circuit and creating a flow of electrons is essentially no different than turning on a faucet and creating a flow of water. He believes that the only technical prohibitions potentially associated with electricity are the actions caused by electricity such as cooking or burning (in an incandescent bulb). Nonetheless, Rav Auerbach rules that it is forbidden to turn on an appliance even if no metal is heated until it glows, since Rav Schmelkes has already ruled on this matter (Kevar Horeh Zaken) and it has been accepted among the Jewish People. Moreover, since people will become confused between electricity that involves a heated filament and ones that do not, it is forbidden to turn on electric appliances even if no metal is heated until it glows.

Conclusion Next week we shall discuss the permissibility of opening a refrigerator door on Shabbat when its motor is not running.

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Faulty Faith? by Shlomo Klapper

The Torah states that Noah went into the Teivah "MiPenei Mei HaMabul," "due to the waters of the flood" (Bereishit 7:7). Rashi comments on this Pasuk that "Af Noach MiKetanei Amanah Hayah, Maamin VeEino Maamin SheYavo HaMabul," "Noach, too, was one of those of little faith; he believed, but didn't believe fully that the flood would actually come." Therefore, Noah did not enter the Teivah until he saw with his own eyes that the waters of the flood had started to fall. Rashi's explanation raises a very difficult problem: How could Noah, who was the biggest Tzaddik of his generation and has been compared to Avraham (though not as great as Avraham), have even the smallest doubt that the words of G-d would be fulfilled?

The Oheiv Yisrael puts a positive spin on this Pasuk, explaining that robust, fervent faith in Hashem is very effective in that it can make one's hopes and desires come true. Therefore, Noah was faced with a troubling quandary. Of course Noah believed that the word of G-d and G-d Himself were omnipotent! Can one think that a Tzaddik on the level of Noah wouldn't believe this? However, Noah knew that, as a Tzaddik, what he believed in had the potential to actually happen. Therefore, Noah didn't want to believe too strongly that the Mabul would come, since perhaps his belief would cause the flood to occur! Noah therefore chose to be a "Maamin VeEino Maamin" until the waters started to pour, at which point it became clear that his belief had not played a role in causing the Mabul to happen. On a similar note, Rav Yitzchak of Vorki relates a different interpretation of Rashi. Of course Rashi cannot assert that Noah had faulty faith! Rashi's observation goes as follows: "Af Noach, MiKetanei Amanah Hayah Maamin," "Even Noah believed in those of diminished faith," and alleged that they would repent before the flood came.

Therefore, "VeEino Maamin SheYavo HaMabul," "(Noach) did not believe that the flood would come," since if people repented, G-d would have no basis for destroying the rest of mankind. However, this substantial atonement never happened, and G-d was forced to cleanse the world through the flood. Rav Simcha Zissel Ziv relates this explanation to a parable which deals with how a person's faith can sometimes falter. Reuven asked his friend Shimon if Levi is trustworthy, since Levi had asked Reuven for a loan. Shimon responded, "You can trust him without reluctance." Based on Shimon's words, Reuven would immediately grant Levi a decently-sized loan. However, if Levi wanted to borrow a small fortune, Reuven might have reservations about his faith in Levi's trustworthiness, because maybe Shimon's words wouldn't apply to such a large loan. This is what Rashi meant by "Maamin VeEino Maamin." Our faith in Hashem must be unrestricted and unreserved. Noah had no problem believing in G-d for the small things, since he knew that they were true. But when a titanic episode, one that required a leap of faith, was set to take place, Noah limited his belief in God, and was "Maamin VeEino Maamin." Rashi is trying to teach us that faith in Hashem is authentic only if one believes what one does not witness with his own senses on the same level that he believes what he perceives with his own senses; if one falls short of this standard, it is considered diminished faith.

The Talmud relates a message of Rabi Eliezer HaGadol, "One who has bread for today but still asks, 'What will I eat tomorrow?' experiences flawed faith" (Sotah 48b). This message of Rabi Eliezer HaGadol in fact parallels Rashi's. Faith is not limited to one's field of vision, so the future bread in one's basket and the unthinkable word of G-d must be as real to people as the present bread in one's basket and the small miracles that Hashem performs on our behalf every day. If one does not have this level of faith, say Rabi Eliezer HaGadol and Rashi, he can be described as "MiKetanei Amanah." This approach can answer a problem that the Gemara (Bava Batra 25b) initiates. The Chachamim wonder how one knows that the land of Babylonia is located farther north than Eretz Yisrael. They answer that Yirmiyahu's prophecy that, "MiTzafon Tipatach HaRaah Al Kol Yoshevei HaAretz," "The evil will develop in the north upon all inhabitants of the land" (Yirmiyahu 1:14) is the source. The evil that is referred to here is the nation that will destroy the Beit HaMikdash and conquer Eretz Yisrael, namely, Babylonia. The Sages' extrapolation of Babylonia's location from a Pasuk presents a simple problem: Any ordinary traveler knows that Babylonia lies to the north of the land of Israel, so why do the

Chachamim need a Pasuk to learn this well-known piece of information? The answer is that since the Sages' belief in Torah was so powerful to them, they believed in what they could not see, the Torah, over what anybody could observe (editor's note: see Radak to Yirmiyahu 1:14 who explains that Babylonia lies to the northeast of Eretz Yisrael). Noach was a very righteous person, but according to this approach, Noach believed in the unthinkable, relenting and entering the Teivah only once the waters started to pour from heaven. These two explanations, both of which explain Noach's delayed entry to the Teivah aptly, represent two different schools of thought. The second approach requires complete faith in Hashem, since He will provide and care for His nation. On the other hand, the first school realizes the potential of Emunah in Hashem, but believes that complete Bitachon is not the only necessity. Although they have the same level of faith in Hashem, proponents of the first view believe that action needs to be taken and that sometimes a person needs to exemplify passive actions.

<http://www.jlaw.com/Articles/phys-suicide.html>
Physician-Assisted Suicide Under Jewish Law
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This Article endeavors to analyze physician-assisted suicide through the prism of Jewish law.³ Of course, to establish the scope of our inquiry, it is essential to examine our terminology. An understanding of "physician-assisted suicide" requires appreciation of at least three preliminary concepts: "suicide," "assistance," and "physician."

"Suicide" has been defined as "self-destruction; the deliberate termination of one's own life."⁴ Because one obviously must be alive⁵ to commit suicide, it might be useful to explore the criteria Jewish law uses to determine whether one is alive.⁶

Nevertheless, for a variety of reasons,⁷ this Article is limited to cases in which it is clear that the people involved are all alive.

The phrase, "the deliberate termination of one's own life," suggests a voluntary and intentional decision by a mentally competent individual. Jewish law perspectives on personal autonomy must therefore be explored. The word "termination" arguably implies some physical action. We will see whether Jewish law makes a distinction between passive or active conduct that leads to one's death and, if so, what is considered to be passive as opposed to active behavior.

An "assisted suicide" suggests a suicide in which a third person either facilitates or enables a person to commit suicide. We will survey Jewish law distinctions between one who actively or passively facilitates or enables a suicide, one who prays for someone's death, and one who - out of a mistaken sense of "mercy" - murders.

Secularists might argue that there is a special physician-patient relationship that might "empower" either the patients and/or the physicians to take steps regarding assisted-suicide that might not otherwise be permitted. Jewish law recognizes that a physician can possibly provide information, such as a diagnosis of a patient's condition and an evaluation regarding the risks of certain treatment, that, as we will see, is relevant to some assisted-suicide issues. Nonetheless, with respect to the provision of assistance to one who wants to commit suicide, Jewish law does not regard a physician as different from any other person.

The Jewish legal system is intellectually sophisticated, flexible and fact-sensitive. In order to understand and apply it, one must, of course, be familiar with its principal features. Consequently, Part I of this Article provides a brief introduction to Jewish law. Part II examines particular Jewish law principles relevant to "physician-assisted suicide" issues and applies them to specific factual scenarios. Of course, given the intricacy and resiliency of Jewish law, the large variety of human and technological variables, and the delicacy of the questions confronted, this Article should in no way be regarded as providing authoritative Jewish law rulings for actual cases. Persons with such questions should personally and carefully consult with a competent Jewish law authority.

PART I: AN INTRODUCTION TO JEWISH LAW Jewish jurisprudence differentiates between biblical commandments, which are those deemed to have been directly transmitted by the Creator to Moses, and non-biblical rules.⁸ Interestingly, Jewish law does not recognize the literal meaning of a verse in the bible, the Torah, as an authoritative statement of law. Indeed, some verses, taken literally, are incomprehensible.⁹ Instead, Jewish law maintains that an oral tradition transmitted to Moses both amplified and interpreted the written Torah.¹⁰ This oral tradition not only contained specific laws and information but also hermeneutical rules to be used to elucidate the Torah.¹¹ According to Jewish tradition, there were a variety of purposes, unrelated to our present subject, for the creation of complementary written and oral traditions.¹²

Religious persecution of Jews, including orders banning the teaching of Jewish law, threatened preservation of the oral law. In response, a concession was made by ancient rabbinic leaders such that a succinct, incomplete form of the oral tradition,

the Mishnah, was put into writing around the year 188 of the common era.¹³ The discussions and debates of early scholars in academies in Babylon and Jerusalem were separately recorded, forming, respectively, the Babylonian and Jerusalem Talmuds. The Babylonian Talmud was completed later than the Jerusalem Talmud,¹⁴ and, because the Babylonian discussions benefitted from knowledge of the Jerusalem Talmud, the Babylonian Talmud is the more influential.¹⁵

The writing of the Talmuds, however, was also seen as an allowance warranted only by the exigencies of the times. Consequently, the language of both Talmuds is terse and ambiguous.

Talmudic discussions typically focus on specific cases, which frequently involve relatively unusual - and, therefore, memorable - facts. The mission of a Jewish law scholar is to discern conceptual principles from these paradigms and to use them to reach legal conclusions regarding modern scenarios with quite different facts. Jewish law scholars must not only inspect the thought processes implicit in the questions, answers and statements of each participant in a given Talmudic discussion, but must test hypotheses in light of apparently inconsistent debates elsewhere in the Talmud. In addition, Jewish law recognizes a multi-tiered hierarchy of post-Talmudic commentators whose concerns and opinions must be considered as well. Talmudic sources, as construed by later rabbinic leaders, are regarded as the most authoritative statement of Jewish law.¹⁶ Because of various practical constraints, however, this Article cannot identify all of the Talmudic sources relevant to physician-assisted suicide and trace how they have been construed and applied by Jewish law experts. Nor will this Article attempt to introduce novel interpretations of Jewish law or to decisively resolve contemporary debate among Jewish law scholars. Instead, our limited purpose is to explain how Jewish law, as understood by most contemporary authorities, applies to physician-assisted suicide.¹⁷

PART II: APPLICATION OF SPECIFIC JEWISH LAW PRINCIPLES TO PHYSICIAN-ASSISTED SUICIDE Part II-A will articulate the fundamental Jewish law principles pertinent to physician-assisted suicide. Part II-B will study how these principles apply, in light of various possible extenuating circumstances, to the case of a competent patient who, because of intractable pain, wants to end her life.

A. Relevant Jewish Law Principles As to physician-assisted suicide, the most important Jewish law concerns include:

The rules against murder and suicide - and the duty to rescue and to preserve life; A person's lack of a proprietary interest in his life; The general permissibility of medical intervention; The special status of a goses; and The prohibition against giving someone improper advice and enabling someone to violate Jewish law.

1. Murder and Suicide - and the Duty to Rescue and to Preserve Life One source of the prohibition against murder is found in the verse, "If one spills the blood of a man, one's [own] blood will be spilled."¹⁸ Each phrase of the immediately preceding passage, "The blood of your lives will I require; from the hand of every beast will I require it, and from the hand of man, from the hand of a person's brother, will I require the life of man,"¹⁹ provides a related rule. "From every beast will I require it" promises punishment to those who incapacitate someone, such as by tying him up, thereby leaving him defenseless to the fatal attack of a wild animal.²⁰ "From the hand of man" assures punishment to those who hire someone to commit murder for them.²¹ "The blood of your lives will I require" assigns punishment to those who commit suicide. These pronouncements, which refer to heavenly imposed punishment, apply not only to direct acts of murder or suicide, but also to acts which indirectly cause the loss of life.²² Similarly, a variety of verses are cited as sources for the obligation to preserve one's own life and to rescue others.²³

Jewish law accords great significance to these rules because it places a supreme value on the life of each individual human being. Thus, in discussing the creation of Adam, the Talmud explains:

[O]nly a single human being was created in the world [at first] 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."²⁴

One cannot kill another person even to save one's own life.²⁵ It does not matter whether the other person is comatose, mentally deranged, physically handicapped²⁶ or terminally ill.²⁷ Similarly, to save one's own life or that of another, virtually all Jewish laws are suspended.²⁸ For instance, despite the religious centrality of the Sabbath, if necessary to save his life, a person must actively do that which would otherwise violate the Sabbath laws.²⁹ Rabbenu Nissim (the Ran), a fourteenth century authority, states that one who, out of a misguided sense of righteousness, fails to desecrate the Sabbath to save his life, "is a murderer and is culpable for [losing] his life."³⁰ Rabbi David ben Shlomo ibn Avi Zimra (the Radbaz), a sixteenth century leader, comments: "There is no righteousness in his refusal, for it constitutes suicide . . . and HaShem [God] will hold him accountable for his [loss of] life."³¹ Moreover, these rules apply even if a person's life can be only momentarily extended, for each instant of life is of infinite value.³²

2. A Person's Lack of a Proprietary Interest in His Life These rules reflect the belief that life is a responsibility. Man is required to safeguard even his own life, because it

is not his "property" to forfeit at will.³³ Rather, Jewish law describes man as the Creator's "bailee," charged with living his life to the fullest extent possible.³⁴ This possibly explains the propinquity of the Pentateuchal passages proscribing murder and suicide. A similar rationale underlies both rules.³⁵ Nobody - not a third party and not oneself - is permitted to destroy the life divinely loaned. Quite the contrary, everyone is specifically enjoined to preserve that life and to promote the divine purpose thus served.

On the other hand, man should not assume that he understands what the divine purpose is. Instead, man is supposed to regard life as an intrinsically and metaphysically valuable experience - not as a means to an end. Consequently, man is not entitled to evaluate the "quality" of a life by considering what that life may accomplish.³⁶ Indeed, there exists no system of measurements that is capable of evaluating the quality of a human life.³⁷

Rabbi Bleich, a contemporary scholar, supports this proposition by referring to the Talmudic discussion of the following biblical passage:

In those days Hezekiah was sick unto death and the prophet, Isaiah the son of Amoz, came to him and said unto him, "Thus said the Lord: Command your house, for you shall die and not live."³⁸

The phrase "for you shall die and not live" seems redundant. According to the Talmud, the verse means "you shall die in this world and not live in the world to come." Hezekiah asked why he warranted such a harsh sentence.³⁹ Isaiah responded by saying it was because Hezekiah had not engaged in procreation. To this, Hezekiah replied, "I saw by means of the holy spirit that wicked children would descend from me." Isaiah retorted, "What have you to do with the plans of the All-Merciful? You should do what you are commanded to do and let the Holy One, blessed be He, do that which is pleasing to Him."⁴⁰

The obligation to procreate is an affirmative commandment. Loss of the opportunity to live in the world to come is not the prescribed punishment for failure to perform an affirmative commandment. The late Rabbi Chaim Shmuelevitz, a twentieth century scholar, explains that the reason the punishment was so severe was because of the reason why King Hezekiah had failed to perform the commandment. Rabbi Shmuelevitz explains that Hezekiah, who the Talmud elsewhere repeatedly and lavishly extols, had improperly impinged upon the province of the Creator. Hezekiah failed to appreciate the relatively limited parameters of personal autonomy with respect to issues of procreation. Consequently, his encroachment into the sphere reserved for Divine decision was regarded as a form of rebellion against the Creator's authority.⁴¹

Rabbi Bleich argues that this Talmudic lesson regarding the generation of life applies equally with respect to the protection and preservation of life.⁴² Indeed, even if a person is so ill that, as discussed further below, some Jewish law authorities believe it would be proper to pray that the Creator take the person's soul and end the person's life, it is nonetheless required to violate the Sabbath - and, if necessary, to do so repeatedly - to try preserve that life.⁴³

There are legal consequences to the principle that man's life is not his to do with what he wants. In a society ruled by Jewish law, the government would compel a person to fulfill his responsibility to safeguard his health. Thus, in the case mentioned above, where a Jew refuses to violate the Sabbath to save his life, the government would ordinarily compel him to do so. Even in a secularly governed society, most authorities rule that a third party's duty to rescue would theoretically demand that the third party try to force the sick person to violate the Sabbath and save his life.⁴⁴ Thus, despite the biblical prohibition against eating on Yom Kippur, a person must eat if doing so is necessary to preserve his life. If the person wrongfully abstains, another person should force him to do so.⁴⁵ One must take such steps even if the risk to life is doubtful.⁴⁶ Moreover, one must take these steps even when the likelihood of their success is slight⁴⁷ or even if such success will only preserve life momentarily.⁴⁸ Nevertheless, as explored in Part II-B, below, additional variables may affect whether a person has a duty to do specific types of things to preserve his life or the life of someone else in a particular case.

3. The General Permissibility of Medical Intervention Given that Jewish law emphasizes that the Creator should decide matters of life and death, one might think that medical intervention would be perceived as an improper interference with the Divine Will. But this is not the case. The Torah specifically states that, in addition to other liabilities, a tortfeasor must "provide for [the victim's] healing."⁴⁹ This verse is construed as permitting physicians⁵⁰ to provide medical treatment.⁵¹ Moreover, once such treatment is permitted, it becomes part of the commandment to preserve a person's health and to save a person's life.⁵² The obligation to treat applies even to those who are terminally ill and who seem unlikely to live for more than a brief period of time.⁵³

Rabbi Bleich asserts that Jewish law does not distinguish between "natural" or "artificial" treatments.⁵⁴ He argues:

G-d created food and water; we are obliged to use them in staving off hunger and thirst. G-d created drugs and medicaments and endowed man with the intelligence necessary to discover their medicinal properties; we are obliged to use them in

warding off illness and disease. Similarly, G-d provided the materials and the technology which make possible catheters, intravenous infusions and respirators; we are likewise obligated to use them in order to prolong life.⁵⁵

Rabbi Bleich also maintains that Jewish law makes no distinction between "ordinary," "extraordinary," or "heroic" treatment. As a general rule, he argues that any treatment that will preserve a patient's life is required.⁵⁶ Nonetheless, as discussed in Part II-B, there are authorities who disagree, particularly in instances involving pain or suffering to the patient.

4. The Special Case of the "Goses" Under Jewish law, a person close to death may have a special status as a *goses*. The experience of being a *goses* is referred to as *gesisah*. According to Jewish law, a very large majority of those who become a *goses* die within 72 hours.⁵⁷ Thus, if someone sees that an immediate relative is a *goses* and then loses contact with that relative for 72 hours, the Jewish laws regarding mourning apply because it is assumed that the *goses* has died.⁵⁸ Similarly, although Jewish law does not allow a widow to remarry unless there is proof that her prior husband has died, some authorities rule that testimony that the prior husband was a *goses* 72 hours earlier is sufficient to permit her to remarry in the absence of more direct evidence of his death.⁵⁹

With respect to most aspects of Jewish law, a *goses* is just like any other person.⁶⁰ Thus, the punishment for killing a *goses* is the same as that for killing a non-*goses*.⁶¹ There are, however, two specific rules regarding *gosesim* that have given rise to an important debate both as to the underlying conceptualization of *gesisah* as well as to specific rules regarding *gesisah*. First, it is generally forbidden to touch a *goses*, because, in light of his condition, such touching might hasten the *goses*' death.⁶² Second, as Rabbi Moses Isserles (the Rema) states, one may remove "anything that prevents the departure of the soul, such as a clanging noise [such as the sound of a nearby woodchopper] or a grain of salt that is on his tongue . . . since such acts do not quicken death but merely remove an impediment to death."⁶³

According to a number of authorities, the laws regarding *gesisah* reflect the belief that a person who exhibits certain symptoms is so weak in the three days immediately preceding his death that any unnecessary touching or movement could hasten that death and is therefore prohibited. On the other hand, medical intervention that could prolong the patient's life is not only permitted but required⁶⁴ to the same extent as it would be required with respect to a person who is not a *goses*.⁶⁵ After all, there is no Talmudic source that suggests that the commandments to save someone's life do not apply to a *goses*. The absence of such a Talmudic source is especially noteworthy given that the Talmud clearly requires that the Sabbath be violated to rescue even those who face imminent death. As to such rescues the Talmud mentions no basis for differentiating *gosesim* from others who are about to die. Indeed, the particular Talmudic examples may in fact be dealing with people who are *gosesim*.⁶⁶

The scholars that believe that it is important to extend the life of a *goses* must explain why the Rema permits⁶⁷ the discontinuance of certain actions that prevent a *goses* from dying. These seem to be two basic approaches.⁶⁸ The first approach restricts the Rema's rule to actions that do not medically affect the *goses*' condition but, instead, are merely believed, perhaps mistakenly, to have a metaphysical effect that may keep the *goses* alive. This position contends that while the religious obligation to preserve life requires resort to established medical therapy, it does not require use of nonscientific practices (*segulot*).⁶⁹ The second approach appears to argue that the Rema's rule only applies to the very end of the *gesisah* period, when a person's soul is trying to escape the body.⁷⁰ The Talmud suggests that there is pain at the moment of death.⁷¹

The Rema⁷² identifies the symptoms of *gesisah* as involving the bringing up of secretions in the throat because of certain severe chest problems.⁷³ Some authorities seem to suggest that a person is not a *goses* unless he exhibits these particular symptoms.⁷⁴ Even if a person has symptoms of *gesisah*, he is not a *goses* unless his condition is irreversibly⁷⁵ terminal within three days. According to this view, it seems that if a person is expected to live more than three days, it is not assumed that he is so weak that needless touching will hasten his death. Of course, if in a particular case, doctors conclude that the touching of someone who is sick could hasten his death, it would be prohibited to touch him, even if the person did not exhibit the symptoms of a *goses*. Where someone is a *goses*, however, Jewish law forbids such unnecessary touching even without a particularized medical diagnosis that such touching could be fatal.

There is some debate among contemporary rabbinic scholars as to whether someone who could only live more than three days through modern medical intervention - such as the use of a respirator - is considered a *goses*.⁷⁶ Those who say such a person is not a *goses* point out that the Jewish laws mentioned above, regarding the laws of mourning and remarriage, must have assumed that a *goses* would have died within three days despite medical intervention.⁷⁷ Otherwise, the possibility of medical intervention extending the person's life to beyond three days would have precluded the woman's remarriage without better proof of the husband's death. If, as according to this view, a person is only a *goses* if it seems clear that he will die within three

days despite all available medical technology, the number of modern cases involving gosesim seems relatively small.⁷⁸

Some other Jewish law authorities appear regard gesisah as a painful period of dying which is not to be prolonged, even by well-established medical intervention.⁷⁹ One recent, influential scholar, the late Rabbi Moshe Feinstein, would apply this rule even to a comatose goses and even if attending physicians would say that the goses experienced no pain. Rabbi Feinstein asserted that, as the soul detaches itself from the body, a goses experiences a severe metaphysical pain that doctors may simply be unable to detect.⁸⁰ Indeed, only by positing the existence of such pain could Rabbi Feinstein explain why the Rema would permit the removal of obstacles to a goses' death. According to Rabbi Feinstein, if there were no such special pain, the general commandment to preserve a person's life would obligate a person to place obstacles in the path of a goses' death. The absence of any Talmudic source stating that a goses feels metaphysical pain is, however, problematic for Rabbi Feinstein's position.

5. The Prohibition Against Giving Someone Improper Advice and Against Enabling Someone to Violate Jewish Law Rabbinical sources interpret the verse, "[b]efore the blind, do not place a stumbling block,"⁸¹ as providing a biblical prohibition, referred to as "lifnei iver," against the giving of improper advice and against enabling another to violate Jewish law.⁸² The verse does not refer merely to someone who is physically blind, but also to someone who is "blind," whether because of intellectual ignorance or inadequate religious sensitivity, as to the proper way to act.⁸³

Thus, a person transgresses this prohibition if he advises another wrongfully to commit suicide or fail to preserve her health - and such counsel causes the violation.⁸⁴ Thus, a doctor who successfully persuades a patient to wrongfully shorten her life in order to permit her organs to be used for someone else would violate this prohibition. Similarly, a person violates this rule if he makes it possible for another to commit a sin that would not have been performed without such help.⁸⁵ Assume, for instance, that the only way a person is willing to commit suicide is by using a special suicide device owned only by one particular physician. If that physician makes the device available to the patient and the patient uses it to commit suicide, the physician violates the rule against lifnei iver.

There are essentially four views regarding an assister's possible culpability in cases in which the person could have committed suicide without the assistance:⁸⁶ (1) some authorities state that the assister is still guilty of the biblical lifnei iver rule;⁸⁷ (2) others say that the assistance constitutes only a rabbinic violation;⁸⁸ (3) still others say it is only a rabbinic violation if the assister did not, pursuant to another Jewish law provision, have the obligation to prevent the person from committing a sin;⁸⁹ and (4) some say that the assister has violated no rule, biblical or rabbinic.⁹⁰ These approaches would be relevant, for example, to cases in which a person wants to overdose on certain prescription drugs and a doctor provided same for that purpose.

B. Application of Jewish Law Principles to Physician-Assisted Suicide This Part B examines how the Jewish law we have discussed apply to the case of a competent person who wants to die because she is experiencing great suffering.⁹¹ There are principally five issues to be explored regarding the person in pain: (1) may she or anyone else do an affirmative act to end her life; (2) may someone encourage or assist such an act; (3) may she or anyone else hasten her death by passive conduct; (4) may someone encourage or assist such passive conduct; (5) may or must someone coerce her to accept medical treatment.

1. Affirmative Acts to Terminate Life Suppose a competent person wants to die because she is experiencing great physical pain.⁹² Even if she is a goses, normative Jewish law would prohibit any affirmative act to terminate her life even according to those authorities who do not allow affirmative actions to prolong the life of a goses.⁹³ Her suffering would not alter the basic Jewish law approach, described in Part II-A, that matters of life and death are to be determined by God.⁹⁴ 95

As proof for the position that, notwithstanding her suffering, a person cannot take an affirmative act to hasten her death, various rabbinic authorities⁹⁶ cite a Talmudic passage describing the execution of Rabbi Chanina ben Teradion, who was burned alive by the Romans. Rabbi Chanina's students implored him to end his suffering quickly by opening his mouth and allowing the flames to enter. He replied, "It is better that He who gave [me my soul] should take it rather than I should cause injury to myself."⁹⁷

If a person convinces her to commit suicide when she otherwise would not do so violates the biblical rule against lifnei iver. So, too, does a person who enables her to commit suicide by providing assistance she could not otherwise obtain. Even if she could manage to kill herself without such assistance, helping her do so would, according to a number of authorities, violate rabbinic law at least.⁹⁸

Similarly, it would be murder if some third party acted to affirmatively end her life, even if (1) she begged him to do so, and (2) he believed that, in light of her great suffering, she would be better off dead. Rabbi Jacob Zevi Mecklenburg, a nineteenth century scholar, derives this from a close examination of the verse cited in Part II-A, supra: "The blood of your lives will I require; from the hand of every beast will I require it, and from the hand of man, from the hand of a person's brother, will I require the life of man."⁹⁹ What is the purpose of the final phrase, "from the hand of

a person's brother, will I require the life of man"? A proscription against fratricide would seem to follow logically from the prohibition against ordinary homicide. According to Jewish law's oral tradition, if a rule can be logically derived, there is no need for it to be explicitly stated in the Pentateuch. Consequently, this biblical passage must communicate some additional message. Rabbi Mecklenburg, argues that the apparent surplusage is necessary to outlaw an act of killing even when the act is motivated by "brotherly love," i.e., by a misguided desire to mercifully end the life of a person suffering from excruciating pain.¹⁰⁰

This is true even if the sufferer is also a goses. As Rabbi Yehiel Epstein, a nineteenth and early twentieth century authority, points out:

Even if we see that the goses suffers greatly from his gesisah and that it is good for him to die, nevertheless it is prohibited to us to do anything that will hasten his death. The world and all that fills it belongs to the Holy One, blessed be He, and such is His wish . . .¹⁰¹

Even the late Rabbi Moshe Feinstein, who, as discussed below, rules leniently in allowing people suffering intractable pain to passively refuse to preserve their lives, states that:

Doing an act to hasten the death [of a goses] is proscribed . . . even though he [the goses] is suffering and doing so would constitute murder violating the injunction 'Thou shalt not kill.' . . . A person incurs the death penalty if he kills someone suffering intractable pain out of a sense of mercy, even though [the deceased] asked him [to do it].¹⁰²

Indeed, according to many authorities, one is required to save a sufferer's life - even if the sufferer is a goses and even if one must violate the Sabbath to do so.¹⁰³

What if there are reasons, other than pain, why a person wants to die? Jewish law arguably recognizes a few reasons for which one might justifiably commit suicide, such as to avoid being forced to commit idolatry.¹⁰⁴ Because these grounds, fortunately, do not commonly arise and because they do not relate to a person's status as a patient of a physician, we will not survey them here.

2. Encouragement or Assistance of Affirmative Acts to Terminate Life A person who convinces or enables someone to commit a suicide which would not otherwise have taken place violates the biblical rule against lifnei iver. Even if the suicide would otherwise have taken place, a person who provides such encouragement or assistance would, according to many authorities, violate rabbinic law at least. In any event, the person who takes her own life is liable for suicide.

One who convinces a person to actively terminate another's life when the person would not otherwise have done so violates the prohibition against lifnei iver. Similarly, one who enables a person to affirmatively terminate another's life when the person could not otherwise have done so violates lifnei iver. Even if the person could have done so without such assistance, one who provides the assistance would, according to many authorities, at least violate rabbinic law.¹⁰⁵

Of course, in any event, the person who actively ends another's life is guilty of murder.

In addition to the proscriptions against convincing, assisting or enabling another to commit murder, a person has a specific obligation to try to rescue another whose life is at stake. A person who sees another drowning, has an obligation to try to save him - either by swimming in after him or by hiring somebody else to do so.¹⁰⁶ According to many authorities, this duty to rescue even applies to the saving of someone who is trying to commit suicide.¹⁰⁷ Obviously, someone who assists an affirmative suicide or a murder fails to fulfill the obligation to rescue.

3. Passive Conduct to Hasten the Death of a Person in Great Pain The considerable debate among Jewish law authorities as to whether a person experiencing pain is entitled to passively refuse life-preserving medical treatment. No one seems to have explicitly stated that someone has a right to refuse a medical, involving virtually no pain or risk, that is fully expected to cure the condition. Instead, the differences of opinion arise when one or more of the following factors are present: (1) the patient is terminally ill and the treatment will only prolong the patient's temporary, extremely painful condition; (2) the treatment is not well-established, is painful, is risky and/or is not likely to succeed.

a. Treatment that will only temporarily prolong a patient's painful condition Some authorities think that the degree of pain someone experiences will only in truly exceptional cases excuse someone from the duty to prolong her life.¹⁰⁸ Others seem less reluctant in ruling that terminally ill patients in great pain can refuse treatment that will only prolong their agonizing existence. Of course, as a practical matter, this debate is only relevant in those instances in which the pain is medically uncontrollable. Where it is controllable, it should be controlled.

Those who appear less reluctant often rely on the Talmudic discussion of the final illness of Rabbi Yehuda HaNasi, known as Rebbe, the compiler of the Mishnah. Rebbe was suffering greatly.¹⁰⁹ Both the rabbis and Rebbe's devoted female servant, well-known for her devotion and intelligence, prayed around the clock for Rebbe's complete recovery.¹¹⁰ As time passed, however, Rebbe's servant saw that the prayers were not to be fulfilled. Although Rebbe remained alive, he suffered excruciating pain. Finally, she concluded that it would be better for Rebbe if he were

to die, and she prayed for that.¹¹¹ But she soon saw that her prayer would not be accepted so long as the rabbis continued their unabated prayers for Rebbe's recovery. She therefore threw an urn from the roof of the academy to the ground, smashing it and startling the rabbis, causing a brief halt in their prayers. At that moment, Rebbe died.¹¹²

Many commentators cite the conduct of Rebbe's servant as evidence that someone who sees another who is greatly afflicted and there is no meaningful prospect for alleviating or curing the person's pain should pray for that person's death.¹¹³ Not all commentators, however, agree that one should pray for another's death even under these circumstances.¹¹⁴ In addition, at least one authority, Rabbi Haim Palaggi, states that persons who might have an improper bias, such as those responsible to care for the patient, should certainly not pray for the patient's death.¹¹⁵

Rabbi Moshe Feinstein, however, states that this Talmudic episode not only justifies praying for a person's death but also calls for the rejection of life-sustaining medical treatment for terminally ill patients who can live no longer than few weeks or so and who are experiencing excruciating pain. If the treatment can only temporarily prolong their life of agony, Rabbi Feinstein argues that non-treatment is appropriate.¹¹⁶ While repeating that, of course, no affirmative act to terminate the patient's life is permissible. Rabbi Shlomo Zalman Auerbach similarly considers a patient's pain and suffering in ruling that it is permissible for a person to refuse surgery that, even if successful at saving her life, would cause her to remain paralyzed for life.¹¹⁷

Among the authorities that agree with the Feinstein-Auerbach approach, some take it a step further as a practical matter. While Feinstein and Auerbach would generally call for the use of medical technology to provide hydration, nutrition and oxygen to terminally-ill patients even though they experience unrelenting pain,¹¹⁸ some contemporary authorities are said to permit rejection of these services as well.¹¹⁹

There seem to be two principal ways of perceiving the conceptual framework for the Feinstein-Auerbach approach. One possibility is that it generalizes the Rema's rule for removing obstacles preventing a goses from dying.¹²⁰ Feinstein, for instance, believes that there is metaphysical pain associated with the process of gesisah. Consequently, a terminally ill person who has little time to live and who is experiencing unmanageable pain may seem quite similar to a goses.¹²¹ With respect to a goses, for instance, a few authorities have suggested that the removal of a respirator would be permissible, because the respirator is perceived as merely preventing the patient's death rather than as providing physiologically enhancing treatment.¹²² Similarly, Feinstein forbids initial use of such machines to prolong the life of a terminally ill patient who suffers from severe, intractable pain.¹²³ Once the machine is attached, however, Feinstein believes that disconnection would be an improper affirmative act. If it became disconnected, however, he would not necessarily require reconnection.¹²⁴ To avoid a debate as to whether disconnection is an impermissible affirmative act, some authorities have suggested that the machines be controlled by automatic timers which, when time ran out, would be the equivalent of a disconnection. A patient's status could then be re-evaluated to determine if the timer should be reset.¹²⁵

There are a number of problems with the analogy to a goses. First, of course, the Feinstein-Auerbach approach is squarely at odds with the many authorities who believe that medical intervention is required even to save the life of a goses. Second, how much pain would the terminal patient have to be experiencing in order to be compared to a goses? Third, how short a period of time must the terminally ill patient have to live before she is compared to a goses? Fourth, how confidently can a person quantify her pain or predict when she will expire?

Moreover, is it really persuasive to argue that the fact one can pray for death means that one can refuse treatment? Those who disagree with the Feinstein-Auerbach position, for instance, argue that while one is alive, one has the duty to perform commandments, including the commandment to prolong one's life. Praying for death is not inconsistent with fulfillment of this duty. A person can always ask the Master of the Universe to release her from her duty. Meanwhile, however, the duty has got to be done.¹²⁶

Bleich suggests a different way to understand the Feinstein-Auerbach approach, based on inherent limits as to what a person is required to do to fulfill a biblical commandment. Jewish law characterizes biblical commandments as either negative or affirmative. Jewish law requires that one forfeit all of one's wealth to passively avoid violation of a negative commandment,¹²⁷ and requires use of no more than 20% of one's wealth to fulfill an affirmative commandment.¹²⁸

In a different context, when asked whether it was permitted to take an organ from a cadaver to make a life-saving transplant against the wishes of the deceased's surviving relatives, Feinstein replied in the negative. He stated that such treatment of the corpse would presumably cause the surviving relatives to suffer more emotional distress than would the loss of their entire fortunes.¹²⁹ There is considerable debate as to whether the duty to prolong one's life and/or to save another's life is a negative or affirmative commandment.¹³⁰ Nonetheless, Feinstein may be justifying a person's right to refuse medical treatment in cases involving excruciating pain on the

assumption that the patients would be willing to give up their entire fortunes rather than suffer for a more prolonged period.¹³¹ If so, however, Bleich questions how often this assumption would be correct, particularly in light of improved palliation procedures.¹³²

b. The Nature of the Treatment Refused Some of the authorities that disagree with the Feinstein-Auerbach approach of somewhat generally permitting terminally ill patients to refuse treatment because of their pain may nonetheless rule that such refusal is justified in individual cases based on the nature of the treatments involved. Thus, a person is not generally obligated to submit to "unproven" experimental treatments.¹³³ Indeed, a person may not even be allowed to take some medications because of the attendant risks.¹³⁴

Other factors considered by scholars in evaluating whether medicines are permissible or required to eat, although they would otherwise be non-kosher, or whether they are permissible or required to take on the Sabbath, although medicines are sometimes prohibited on Sabbath, include: (1) whether the desired effect of the treatment is physiological or metaphysical; and (2) whether the effect is to ameliorate the patient's painful symptoms or merely to prolong the patient's present condition.¹³⁵

4. Encouragement or Assistance of Passive Acts to Hasten Death A person who convinces someone to refuse treatment when the refusal is wrongful violates the biblical rule against lifnei iver. Similarly, one who enables someone to wrongfully refuse treatment when she could not otherwise have done so, violates the lifnei iver rule. Even if the refusal would have been accomplished without a person's involvement, the provision of such encouragement or assistance would, according to many authorities, at least violate rabbinic law.¹³⁶ Of course, someone who so encourages or assists a wrongful refusal of treatment also fails to perform his duty to rescue one in danger. In this case, a "rescue" might have been accomplished by providing competent counseling or adequate analgesics.

Under the Feinstein-Auerbach approach, which treats the subjective state of mind of the person who is sick as a critically important factor, it may be very difficult for a third party to properly evaluate whether a particular person's refusal of treatment is or is not justified under Jewish law.

5. Coercive Treatment Assuming that a patient is obligated by Jewish law to accept a particular treatment, is a third party - such as an attending physician - required to use verbal or physical coercion, if necessary, to ensure that the treatment is accepted? There really are two questions. The first question is whether a third person has the duty to coerce a patient to fulfill the patient's obligation to preserve his own life. Although Jewish courts had such authority, Jewish law scholars debate whether individuals have such a right.¹³⁷ The second question is whether a third person, who under Jewish law has an independent obligation to save the patient's life, may use coercion to fulfill that independent obligation. Most authorities seem to assume that the theoretical answer to this question is not only that such a third person may, but, if necessary, must use such coercion.

Nevertheless, some argue that coercion could easily be counter-productive because of the adverse psychological impact it may have on the patient.¹³⁸ Furthermore, medical uncertainty regarding the effectiveness or attendant risks of a proposed therapy frequently relieve a patient of any obligation to submit to the treatment and relieve a third person from any duty to administer it. Consequently, although coercion is a theoretical possibility, it is often not a practical choice.

Even if a person would be commanded to employ coercion, the concomitant costs of performing the commandment could be high. The physician might face professional sanctions and malpractice liability.¹³⁹ To evaluate whether the physician would be required to sustain such financial costs, one would have to evaluate various factors. In addition to any possible monetary burden, the use of coercion - at least the use of physical coercion - would raise the prospect of possible criminal sanctions as well, which, as a practical matter, might well exceed the personal sacrifice that the Torah imposes.

CONCLUSION Unlike nonreligious legal systems, Jewish law assumes the existence of an omnipotent, omniscient and benevolent Creator whose purposes cannot always be fathomed. Jewish law also assumes a network of relationships between and among the Creator and all human beings. As a result of these assumptions, there is purpose and responsibility in every instant of life, for the individual and for the community, even though the purpose is not always readily apparent.

Jewish law imposes specific responsibilities on individuals to safeguard their own lives and to help others. The extent of these obligations, however, are not unlimited. The continued debate pertains to the nature of these limitations.

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2. Professor of Law, DePaul University College of Law, B.A., Princeton University; J.D., Yale Law School; Rabbinic Degree, Beth Medrash Govoha; Chair, Jewish Law Section of the Association of American Law Schools (1998-1999). The author is grateful to Rabbi J. David Bleich for his generous comments and advice regarding this article. He also thanks Rabbi Aron Small, Dr. Norton Sokol, and Daniel Stuhlmán, with whom he studied many of the authorities cited herein and who offered him many valuable insights, and Prof. Michael Broyde of Emory

Law School, who perceptively commented on an earlier draft. This article, in a slightly different form, first appeared at 1 DePaul Journal of Health Care Law 589 (dated 1997 but published in 1998). A much more developed version of this article is to appear in a symposium edition of the Journal of Law and Religion.

3. The Jewish law principles, priorities and perceptions to be discussed will no doubt inform the contemporary secular dialogue regarding physician-assisted suicide. Nonetheless, this Article leaves to other works the broader issue as to whether, and if so, how, religious law - qua religious law - ought to influence secular law. See, e.g., J. David Bleich, *GodTalk: Should Religion Inform Public Debate?*, 29 Loy. L.A.L.Rev. 1513 (1996). Similarly, this Article leaves for another time an analysis of the practical ramifications, many of which quite unpleasant, of rules that would facilitate physician-assisted suicide.

4. Black's Law Dictionary (6th ed. 1990), at p. 1434.

5. The secular definition of death is subject to a variety of opposing pressures. On the one hand, modern medical interventive procedures provide the apparent ability to preserve life beyond prior expectations. On the other hand, both the demand for organ transplants and the economics of the health care industry (including the costs to insurers of long-term hospitalization) motivate many to argue that although modern technology may effectively preserve a body, the life previously associated with the body has already ended.

6. In most states, secular law provides that a person is dead if there is an "irreversible cessation of all functions of the [person's] entire brain, including the brain stem." N.J.S.A. 26:6A-3. See, e.g., Roger S. Magnusson, *The Sanctity of Life and the Right to Die: Social and Jurisprudential Aspects of the Euthanasia Debate in Australia and the United States*, 6 Pac.Rim.L. & Pol'y J. 1 (1997); Jeff Atkinson, Louis D. Boshes, and John B. Oldershaw, *Persistent Vegetative State: Medical, Ethical, Religious, Economic and Legal Perspectives*, 1 DePaul J. Health Care L. 495 (1997). Although the controversy is quite complex, it seems safe to say that the most of the preeminent Jewish law scholars have not accepted this criterion (known as "brain stem death" or "whole brain death") as definitively establishing death under Jewish law. See Aaron Soloveichik, *The Halakhic Definition of Death*, in J. David Bleich and Fred Rosner (eds.), *Jewish Bioethics* (1978), p. 302; Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), 37:6, p. 188 (citing authorities and stating that someone who is clinically brain-stem dead is not considered dead but, rather, is in the category of a possible goses such that tests to verify the diagnosis are forbidden); 38:6, p. 191 ("Death is established only when spontaneous respiration, heartbeat and brain function have all ceased."); Fred Friedman, *The Chronic Vegetative Patient: A Torah Perspective*, XXVI Journal of Halacha and Contemporary Society 88, 91 (1993) (asserts that most contemporary rabbinic authorities "do not accept 'brain death' as sufficient to define an individual as dead" under Jewish law). Thus, even though secular law may deem a person to be dead, Jewish law may regard the person as either actually or possibly alive.

For an excellent discussion of the weaknesses of the brain death criteria, citing relevant scientific research, see J. David Bleich, *Moral Debate and Semantic Sleight of Hand*, 27 Suffolk U.L.Rev. 1173 (1993). For a defense of the brain death approach and for one perspective of the debate among Jewish law authorities, see Moshe Dovid Tendler, *Responsa of Rav Moshe Feinstein*, Vol. 1 (1996), pp. 67-97.

7. For example, as the text proceeds to point out, suicide involves a deliberate action. All Jewish law scholars would agree that a person capable of performing such a deliberate act is alive. Of course, an inquiry into the criteria of death might still be important to a secular discussion of physician-assisted suicide, because secular scholars might permit the element of "deliberateness" to be satisfied through a doctrine allowing the judgment of a competent third party to be substituted for that of an incompetent whose life is in question. This Article does not attempt to evaluate Jewish law's view of such an approach.

8. There are various sources of non-biblical law, including rabbinic law and custom. See, generally, Menachem Elon, *Mishpat Ivri*; H. Chaim Schimmel, *The Oral Law*.

9. For example, the Torah states that on the holiday of Succot, referred to by some as the "Feast of Tabernacles," one must perform a ritual involving the waving of certain plants. One of these is referred to as a *pri etz hadar*, which literally means "a fruit of the glorious tree." The Torah does not otherwise specify what type of tree it means. The oral tradition explains that the verse refers to a particular citron, the *etrog*. Similarly, the Torah uses certain terms without providing their full legal content. For instance, the Torah states that one may not do *melakha* ("work") on the Sabbath, see, e.g., Exodus 31:14, or on certain other occasions, but does not clarify what does or does not constitute "work." In addition, although the Torah requires ritual slaughtering of certain animals before their meat may be eaten, nowhere does the written text describe the slaughtering process. Instead, it simply states that animals are to be slaughtered "as I have instructed you," Deuteronomy, 12:21, implying that detailed directions had been previously transmitted orally. For a fuller discussion of this topic, see H. Chaim Schimmel, *The Oral Law*, pp. 19-31; Boruch Epstein, *Torah Temimah*, on Deuteronomy 12:21.

10. See Menachem Elon, *Mishpat Ivri* 1:179.

11. *Id.*, at p. 270; Aryeh Kaplan, *The Handbook of Jewish Thought*, p. 181.

12. See Maimonides, *Introduction to the Mishnah*; Aryeh Kaplan, *The Handbook of Jewish Thought*, pp. 178-181.

13. Aryeh Kaplan, *The Handbook of Jewish Thought*, p. 187 (citing sources and calculating date).

14. The Jerusalem Talmud (hereafter referred to as "T.J.") was redacted around the year 350 of the common era, while the Babylonian Talmud (hereafter referred to as "B.T.") was not completed until about the year 500. See Zechariah Fendel, *Challenge of Sinai*, p. 581.

15. See Mahritz Chiyat, *Commentary on babylonian talmud*, T.B., *Taanit* 16a; Aryeh Kaplan, *The Handbook of Jewish Law*, pp. 234-235. See also Menachem Elon, *Mishpat Ivri* 2:901 (states that political and other societal factors limited the intellectual investment in the Jerusalem Talmud and that asserts that for this reason the Babylonian Talmud is more reliable).

16. See *Tosafot Yom Tov*, *Commentary to Mishnah, Berakhot* 5:4; *Rebenu Asher, Commentary to T.B., Sanhedrin* 4:6

In ancient times, there existed a supreme rabbinical court, the Sanhedrin HaGodol, that was the ultimate Jewish law authority. Nonetheless, this institution was dissolved over 1,500 years ago. Since then, Jewish law has lacked any official procedure for resolving differences in opinions

among Jewish law scholars. Informal processes, whereby scholars exchange their views privately or in print, have settled debates over many issues. Of course, the more complex the question, the higher the stakes, and the more ambiguous or scant the Talmudic sources, the more difficult it is to reach universal agreement, especially as to the "details." Thus, there remain important conceptual differences regarding a number of the bioethical issues discussed in this Article. Consequently, in light of the innumerable factual and legal variables that present themselves in a particular case, it is impossible to catalog possible cases and attempt to determine normative Jewish law conclusions for each.

17. Certain procedural requirements must be satisfied before a Jewish court - assuming it had both the authority and the power to act - could punish violators. However, our focus is not on the prospects of actual punishment but, instead, on whether Jewish law prohibits, discourages, encourages or requires particular types of conduct with respect to physician-assisted suicide.

18. See, e.g., Maimonides, *Mishneh Torah, Laws of Murder and Guarding One's Life*, 2:2, 3 (citing Genesis, 9:6).

19. Genesis 9:5, as translated in J. David Bleich, *Life as an Intrinsic Rather than Instrumental Good: The "Spiritual" Case Against Euthanasia*, 9 Issues L. & Med. 139 (1993) (hereafter referred to as "Bleich, LIFE").

20. *Id.*

21. See Maimonides, *Mishneh Torah, Laws of Murder and Guarding One's Life*, 2:2.

22. See, e.g., Maimonides, *Mishneh Torah, Laws of Murder and Guarding One's Life* 3:10: "But one who ties up another and leaves him to die of hunger, or ties him in a place in which cold or heat will result in his death . . . in any of these [cases] he is not liable for capital punishment [imposed by a rabbinic court], but is still considered a murderer. The One that seeks blood will seek from him the blood which he spilled." See also Judah HaHasid, *Sefer Hasidim*, paragraph 675: "The blood of your own souls I will seek: . . . [I]f one goes to a place fraught with danger [e.g., if] during the winter [the treads] on ice which is likely to break [causing his] drowning, or if one enters a ruin which collapses on him, or if one quarrels with a violent man who becomes exceedingly angry [and kills him], these people will be punished, for they caused their own deaths."

23. The verse, "Do not stand idly by your fellow's blood," Leviticus 19:16, is cited both as a source for the obligation to save oneself as well as to rescue others. See, e.g., J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51, n. 12 at 79. The verses, "Be careful, very careful indeed for your lives," see Rabbi Moshe Sofer, *Hatam Sofer, Yoreh De'ah*, 326, and "you shall live by [the commandments] . . ." reinforce an affirmative obligation to safeguard one's life. The verses, "if your fellow is missing something, you shall restore it to him," Deuteronomy 22:2, is applied to a duty to save someone's health in T.B. *Sanhedrin* 73. At least one early authority, Nahmanides, cites "Thou shalt love thy neighbor as thyself," Leviticus 19:18, as a source for a physician's duty to provide medical treatment. See Nachmanides, *Torat HaAdam in Bernard Chavel* (ed.), *Kitvei Ramban* II:43. See also Rabbi Eliezer Waldenberg, *Tzitz Eliezer, Responsa of Ramat Rachel* V:21 (citing Nahmanides' view).

24. T.B. *Sanhedrin* 37a, as translated in Bleich, *LIFE*, supra at n. 19.

25. Maimonides, *Mishneh Torah, Foundations of the Torah* 5:1. See also Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), pp. 23-24 (citing rules and authorities).

26. See, e.g., Eliezer Fleckele, *Teshuvah MeAvahav* 1:53 (there was an affirmative obligation to preserve the life of a child born with animal-like organs and features); Eliezer Waldenberg, *Tzitz Eliezer* XIII:88 (the lives of children born with severe birth defects must be preserved just as the lives of any other children); Judah the Pious, *Sefer Hasidim* 186.

27. Maimonides, *Mishneh Torah, Laws of Murder*, 2:7: "There is no difference between a person who kills either a healthy person or one who is ill and dying or even a goses. In all of these cases, the murderer is put to death."

28. The only categorical exceptions are the laws against murder, idolatry, and sexual misconduct. See Shulhan Arukh, *Yoreh De'ah* 195:3; 157:1; Maimonides, *Mishneh Torah, Foundations of the Torah* 5:1. See also T.B., *Sanhedrin* 84a; Immanuel Jakobovits, *Medical Experimentation on Humans in Jewish Law*, in J. David Bleich and Fred Rosner (eds.), *Jewish Bioethics* (1978), p. 379.

29. See Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), pp. 23-24 (citing rules and authorities).

30. Ran, *Commentary to Rabbenu Alfasi* (the Rif), on T.B., *Yoma*.

31. See Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective*, p. 4, citing this view of the Radbaz. But see Alfred Cohen, *Whose Body? Living With Pain*, *Journal of Halacha & Contemporary Society* 39, 45 (1996) (citing an early dissenting rabbinic view, which Cohen admits is not reflective of normative Jewish law).

32. See Immanuel Jakobovits, *Medical Experimentation on Humans in Jewish Law*, in J. David Bleich and Fred Rosner (eds.), in *Jewish Bioethics* (1978), at p. 379:

Life is itself the summum bonum of human existence. The Divine law was ordained only "that man shall live by it." . . . The value of human life is infinite and beyond measure, so that any part of life - even if only an hour or a second - is of precisely the same worth as seventy years of it, just as any fraction of infinity, being indivisible, remains infinite.

See also Abraham S. Abraham, *Euthanasia*, in Fred Rosner (ed.), *Medicine and Jewish Law* (1990), pp. 124-125.

33. Similarly, under Jewish law one is not considered to own one's body. This is one reason why it is generally forbidden for someone to injure oneself, see, e.g., Maimonides, *Mishneh Torah, Laws of Wounding and Damaging* 5:1; Shulhan Arukh, *Hoshen Mishpat* 420:31; Shneur Zalman, *Shulhan Arukh Ha-Rav, Laws of Bodily Damages* 4. For the same reason, neither a person - through his last will and testament - nor a person's inheritors can donate his body for medical experimentation. See Rabbi Moses Feinstein, *Iggerot Moshe, Yoreh De'ah* IV:59 ("No person is the owner of his body such that he can order what is to be done [after his death] with his body, or even with one of his limbs, for any purpose - not even for the purpose of furthering medical knowledge. A fortiori, his children and his other relatives [have no such right]."); *Iggerot Moshe, Yoreh De'ah* III:140. See also J. David Bleich, *The Obligation to Heal in the Judaic Tradition: A Comparative Analysis*, in J. David Bleich and Fred Rosner (eds.), *Jewish Bioethics*, at 18-19. But

see Alfred Cohen, *Whose Body? Living With Pain*, 32 *Journal of Halacha & Contemporary Society* 39 (1996), at n. 9, pp. 43-44 (discussing a contrary view).

34. As the Radbaz writes: "a person's soul is not his property; it is the property of the Holy One, Blessed be He, as it is written, 'And the souls are Mine.'" See Radbaz, on *Mishneh Torah*, *Laws of the Supreme Court* 18:6 (explaining that this is the reason why a rabbinical court does not impose corporal punishment based on a defendant's admission of guilt). See also Rabbi Eliezer Waldenberg, *Tzitz Eliezer* V, *Ramat Rachel* 29(1); Abraham S. Abraham, *Euthanasia*, in Fred Rosner (ed.), *Medicine and Jewish Law*, p. 123.

35. This also explains how the same verses are construed to apply to protection of one's own life as to rescuing another's. In addition, note that Maimonides categorizes these laws together under the heading "Laws of Murder and Guarding One's Life."

36. See Shlomo Zalman Auerbach, *Minhat Shlomo* 91.

37. *Id.* See also *Is Euthanasia Permissible Under Jewish Law*, *Jewish Law Report* (August 1994), at 24. See also Immanuel Jakobovits, *Medical Experimentation on Humans in Jewish Law*, in J. David Bleich and Fred Rosner (eds.), *Jewish Bioethics*, at 379:

The value of human life is infinite and beyond measure, so that any part of life - even if only an hour or a second - is of precisely the same worth as seventy years of it, just as any fraction of infinity, being indivisible, remains infinite. Accordingly, to kill a decrepit patient approaching death constitutes exactly the same crime of murder as to kill a young, healthy person who may still have many decades to live. For the same reason, one life is worth as much as a thousand or a million lives - infinity is not increased by multiplying it. This explains the unconditional Jewish opposition to deliberate euthanasia as well as to the surrender of one hostage in order to save the others if the whole group is otherwise threatened with death [footnotes omitted].

38. Isaiah 38:1, as translated in J. David Bleich, *Life as an Intrinsic Rather Than Instrumental Good: The "Spiritual" Case Against Euthanasia*, 9 *Issues L. & Med.* 139, 141 (1993).

39. T.B., *Berakhot* 10a.

40. Hezekiah's response was to immediately repent and ask to marry Isaiah's daughter.

41. Chaim Shmulevitz, *Sihot Mussar*, p. 35.

42. J. David Bleich, *Life as an Intrinsic Rather Than Instrumental Good: The "Spiritual" Case Against Euthanasia*, 9 *Issues L. & Med.* 139, 141-142 (1993).

43. See, e.g., Shlomo Zalman Auerbach, *Minhat Shlomo* 91.

44. Magen Avraham, *Shulhan Arukh*, *Orah Hayyim*, 328 (6) "if the patient refuses to accept the prescribed treatment [because doing so would desecrate the Sabbath], we compel him to do so."

45. See Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* 10:3, at 53 (citing authorities).

46. See, e.g., *Shulhan Arukh*, *Orah Hayyim* 328:5; Yisroel Meir Kaganoff, *Mishnah Brurah*, *Shulhan Arukh*, *Orah Hayyim* 328:17; Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), 10:2, at 53. See the more complete discussion regarding coercion, *infra*, in the text associated with notes 136-138.

47. T.B., *Yoma* 83a. See also Rabbi Yaakov Weiner, *Obligation of the Sick to Accept Medical Treatment*, *Jerusalem Forum on Medicine and Halacha* (Report #8).

48. The Talmud states that one must violate the Sabbath even to temporarily preserve the life of one who is soon to die. See T.B. *Yoma* 85a. Similarly, the *Shulhan Arukh*, *Orah Hayyim* 329:4, states: "Even if one finds a wounded person with a crushed skull who will continue living only temporarily, one [violates the Sabbath and] saves him."

It is true that, at one point, the Talmud states that the reason why the Sabbath laws are violated to save a person's life is that "we violate one Sabbath so that [the person rescued] can perform the mitzvah of fulfilling many other Sabbaths." T.B., *Yoma* 85a. Nevertheless, the Talmud concludes that the real reason why this is permitted is that the commandments were given to live by, and not to die by. *Id.* See also Eliezer Waldenberg, *Tzitz Eliezer* VIII, *Ramat Rachel*, ch. 28; Shlomo Zalman Auerbach, *Minhat Shlomo* 91:

[W]e even violate the Sabbath to save an old, sick man . . . even though he is deaf and totally insane, and cannot fulfill any commandment, and his life is only a great burden and ordeal for his family members and prevents them from learning Torah and doing commandments, and, in addition to their severe distress, they become impoverished [through the attendant expenses] . . .

49. *Exodus* 21:19.

50. Before secular licensing systems were instituted, rabbinical authorities were responsible for establishing standards to determine who qualified to practice medicine. See Immanuel Jakobovitz, *Jewish Medical Ethics*, pp. 216-217. Dr. Jakobovitz asserts that "[t]he Jewish system, therefore, would appear to represent the oldest, and certainly the longest established, form of regular control over the practice of medicine." *Id.*, at 217. Once civil authorities implemented licensing laws, rabbinic authorities recognized persons so licensed as qualified as a matter of Jewish law as well. *Id.* (citing authorities).

51. See *Shulhan Arukh*, *Hoshen Mishpat* 336:1. See also T.B., *Bava Kama* 85a.

52. See *Shulhan Arukh*, *Hoshen Mishpat* 336:1 ("[I]f [one who is qualified to practice medicine] refrains from [providing life-saving medical treatment], he is a murderer"). See T.B. *Sanhedrin* 73a stating that a doctor's duty to treat based on the verses "[d]o not stand idly by your fellow's blood," *Exodus* 20:13, and "if your fellow is missing something, you shall restore it to him," *Deuteronomy* 22:2. The detailed rules regarding matters such as which of several available doctors would be obligated to treat, the right to payment for treatment, and liability for improper treatment exceed the scope of this Article.

53. A statement published in Hebrew in 1994 by four leading Israeli authorities, Rabbi Yosef Shalom Eliashiv, Shlomo Zalman Auerbach, Shmuel Ha-Levi Wosznar and S.Y. Nissim Karelitz, reads, in part: "According to the law of the Torah it is obligatory to treat even a patient who, according to the opinion of the physicians, is a terminal, moribund patient with all medications and usual medical procedures as needed." See J. David Bleich, *Treatment of the Terminally Ill*, 30:3 *Tradition* 51 (1966), at p. 58 (translating the Hebrew statement). Attached to this statement was a list of medical treatments including "intravenous or gastric feeding, IV fluid replacement, insulin injections, controlled dosages of morphine, antibiotics and blood transfusions." *Id.*

Similarly, a statement dated February 29, 1996, was issued by Rabbi Ahron Soloveichik, an American rabbinic authority, stating, in part: "It is my unmitigated, convinced opinion that a doctor must do his utmost to treat terminally ill patients. This is true whether doctors believe that

the patient can survive for even an extremely brief period of time, or even if they believe that the patient is brain dead . . ." *Id.*

54. *Id.*, at p. 59: "Any distinction between 'natural' and 'artificial' means of treatment is without precedent in Jewish law." Rabbi Bleich argues that this position is supported by Maimonides' *Commentary on the Mishnah*. *Id.*

55. *Id.*, at 61.

56. *Id.*

57. See Moshe Feinstein, *Iggerot Moshe*, *Hoshen Mishpat* II:75 (argues that if someone deemed to be a goses lives more than 72 hours, it is more likely that the person never was a goses than that the person was from the small minority of gosesim that survive more than 72 hours). But see *Rabbeinu Asher*, *Commentary* 3:97, on T.B., *Moed Katan* (gesisah lasts 3 or 4 days).

58. *Shulhan Arukh*, *Yoreh De'ah* 339:2.

59. See, e.g., Shmuel ben Uri, *Beit Shmuel* *Commentary on Shulhan Arukh*, *Even HaEzer* 17:18 (citing authority) and 17:94. But see Yehezkel Landau, *Dagul Mervavah* *Commentary on Beit Shmuel*, *Shulhan Arukh* *Even HaEzer* 17:94.

60. See *Shulhan Arukh*, *Yoreh De'ah* 339:1 ("A goses is considered alive for all matters . . ."). See also *Mishnah*, *Semahot* 1:1; Maimonides, *Mishneh Torah*, *Judges*, *Laws of Mourning* 4:5.

61. See, e.g., Yosef ben Moshe Babad, *Minhat Hinukh*, *commentary on Sefer HaHinukh*, *commandment* 34: "Even if [the Prophet] Eliyahu would come and tell us that a particular person will live only an hour or a moment, still the Torah does not distinguish between one who kills a lad who would live many years or one who kills an old man who had little more to live . . ."

62. See *Shulhan Arukh*, *Yoreh De'ah* 339:1; *Commentary of Rabbi Shabtai Kohen* (the Shach). The goses is likened to a candle whose flame is about to expire. If one places a finger on it, it is extinguished. T.B., *Shabbat* 151b.

63. The source of this rule is a statement published by the thirteenth century scholar, Rabbi Judah HaHasid, in his work *Sefer Hasidim*, at 723, p. 173: "[I]f a person is dying and someone near his house is chopping wood so that the soul cannot depart, one should remove the chopper from there . . ."

64. See, e.g., Yaakov Reicher, *Shevut Yaakov* I:13; Rabbi Shlomo Egger, *Gilyon Maharsha*, *Commentary to Shulhan Arukh*, *Yoreh De'ah* 339:1; Rabbi Eliezer Waldenberg, *Tzitz Eliezer* VIII, *Ramat Rachel* 28; Abraham S. Abraham, *Nishmat Avraham*, *Orah Hayyim* 329:4(11) (citing sources), *Yoreh De'ah* 339:2 ("[S]o long as it is not clear that the [goses] is definitely dead, he is called a live person for all purposes, and a doctor is obligated to treat him in every way that is possible and appropriate . . . even if there is only a small chance that the patient will remain alive and even if the patient may stay alive for only a short while."

65. See Part II-B as to possible limitations on the obligation to preserve life.

66. For instance, the Talmud states that it is permissible to violate the Sabbath by digging out a person on whom a wall had fallen even after initial digging revealed that the person had a crushed skull, that he person would die extremely soon and that continued digging would only momentarily extend his life. T.B., *Yoma* 85a. This law, memorialized in *Shulhan Arukh*, *Orah Hayyim* 329:4, certainly seems to be describing a person who would surely die within 3 days. Consequently, according to any authorities who do not require the precise symptoms specified by the Rema, see n. 71, *infra*, this person with a crushed skull would seem to be a goses. Moreover, it seems quite possible that this person with a crushed skull might also have the Rema's symptoms.

67. In his earlier work, the *Darkei Moshe*, *Yoreh De'ah* 339(1), the Rema, apparently approvingly, cites an authority forbidding someone to commence such an action. In his commentary to the *Shulhan Arukh*, *Yoreh De'ah* 339:1, the Rema does not seem to retreat from this position. Instead, he appears to focus on a third party who did not initiate the action and states that such a party may put a stop to it. Rabbi Waldenberg indicates that a person responsible for the wrongful commencement of the action may be obligated to terminate the action. See Eliezer Waldenberg, *Tzitz Eliezer* XIII:89.

68. Some commentators use language which purports to provide a third approach which distinguishes between procedures that strengthen the body, which are required, and those that "merely" preserve the status quo, which the Rema supposedly proscribes. The problem, however, is that preserving a patient's life is an important feat and, according to the authorities whose views this part of the text discusses, any established medical procedure that preserves life is required. At least one author seems to conflate this apparently illegitimate distinction - between treatments that enhance one's condition versus those that "merely" preserve one's life - and the apparently legitimate distinction between scientific and nonscientific practices - described in the immediately following text. See, e.g., Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1995), p. 31 ("Medical treatment strengthens the body and prevents a goses from deteriorating towards death (as compared, for example, to salt on the tongue which only metaphysically prevents the soul from departing, but which has no physically ameliorative effect on the body, such as strengthening it).")

69. J. David Bleich, *Treatment of the Terminally Ill*, *Tradition* 30:3 (1996), pp. 69-70.

70. See, e.g., Eliezer Waldenberg, *Tzitz Eliezer* XIII:89(14). One might think this position to be problematic. After all, the Rema refers simply to a goses and seems to set forth his rule regarding the entire period of gesisah. If special rules are to apply only at the end of the period of gesisah, it would seem essential for the Rema to enumerate criteria for determining when gesisah is about to end. Rabbi Weiner's position, which combines the two approaches mentioned in the text, may implicitly answer such objections. Weiner argues not only that the effect of the actions identified by the Rema are metaphysical rather than medical but that, even if initiated at an earlier part of the gesisah period, the actions have their metaphysical impact at the end of gesisah. The actions are therefore prohibited at any time during gesisah because of their ultimate effect. See Rabbi Yaakov Weiner, *Insights on the Treatment of the Terminally Ill*, *Jerusalem Forum on Medicine and Halacha*, Report #5.

71. See J. David Bleich, *Treatment of the Terminally Ill*, *Tradition* 30:51, at n. 47, p. 85 (1996) (discussing T.B., *Yoma* 20b).

72. Rema, *Shulhan Arukh*, *Even HaEzer* 121:7 and *Hoshen Mishpat* 211:2.

73. Commentators disagree as to the Rema's meaning. Rabbi Bleich, for instance, translates the Rema as referring to a patient who "brings up secretion in his throat on account of the narrowing

of his chest." J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51, 63 (Spring 1996). In a phone conversation with this author, Bleich described the secretions as saliva and stated that the goses experiences difficulties in swallowing. Another contemporary writer, however, identifies the secretion is phlegm and states that the goses experiences problems in breathing. See Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1995), at p. 25. See also Fred Friedman, *The Chronic Vegetative Patient: A Torah Perspective*, XXVI *Journal of Halacha and Contemporary Society* 88, 99 (1993) ("The current pathophysiological explanation would be a person who is asphyxiating o his own secretions which accumulate in the airway.")

74. Rabbi Bleich, for instance, states that the Rema's description is a "necessary criterion of gesisah." *Id.*, at p. 63. See also the following statement of Rabbi Ahron Soloveichik writes, "The situation of a goses does not even have to be considered since today very few, if any, patients manifest the symptoms of a goses." *Id.*, at p. 58. The late Rabbi Moshe Feinstein, however, is ambiguous as to whether someone could be a goses even if he does not have the symptoms described by the Rema. Rabbi Feinstein states that he has heard that most doctors are unfamiliar with the signs of gesisah. Nevertheless, Rabbi Feinstein neither recites the symptoms identified by the Rema nor refers doctors to the Rema's words in the *Shulhan Arukh*. Instead, Rabbi Feinstein asserts that members of local Jewish burial societies are familiar with such symptoms because they are often around people who are dying (perhaps because these same people frequently visit the sick). Rabbi Feinstein suggests that doctors could learn these symptoms, too, if they if they would spend time with patients who were near death. See Moshe Feinstein, *Iggerot Moshe*, *Hoshen Mishpat* II:73. Consequently, it is possible that Rabbi Feinstein's position is that anyone whose clinical profile, as observed by those who are experienced with people who are dying, conclusively indicates that he will die within three days is a goses.

75. Yaakov bar Shmuel, *Shut Beit Yaakov* 59, as cited by J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51 (1996), n. 27 at 81-82.

76. See, e.g., J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51, 64 (Spring 1996). Rabbi Bleich argues that Rabbi Moshe Feinstein agrees with him on this point. *Id.*, n. 31, at p. 82. Cf. Abraham Steinberg, *Encyclopedia Halakhatit Refuit*, vol. 4, col. 371, n. 149 (stating that he heard from Rabbi Shlomo Zalman Auerbach that, in light of the ability of modern technology to keep patients alive for more than three days, it is often not possible to characterize a particular patient as a goses); Abraham S. Abraham, *Nishmat Avraham*, vol. 4, p. 138 (reporting that contemporary scholar Rabbi Y.S. Eliashiv stated that he considers a vegetative, respirator-dependent patient to be a sofek-goses (possibly a goses and possibly already dead) and therapy should not be withheld). But see Rabbi G.A. Rabinowitz, 3 *Halakha and Refuah* 102 et. seq. (arguing that in light of modern technology, a person may be a goses even though he survives for many more than 3 days), cited in Abraham Steinberg, *Encyclopedia Halakhatit Refuit*, vol. 4, col. 371, n. 149; Fred Friedman, *The Chronic Vegetative Patient: A Torah Perspective*, XXVI *Journal of Halacha and Contemporary Society* 88, 100-101 (1993).

77. See J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51, 64 (Spring 1996).

78. The number of gosesim is especially small according to those who believe that a person can only be a goses if she exhibits the specific symptoms cited by the Rema.

79. See Yaakov bar Shmuel, *Shut Beit Yaakov* 59; Moshe Feinstein, *Iggerot Moshe*, *Yoreh De'ah* II:174.

80. See Moshe Feinstein, *Iggerot Moshe*, *Yoreh De'ah* II:174(3).

81. *Leviticus* 19:14.

82. See, generally, Michael J. Broyde, *The Pursuit of Justice and Jewish Law* (1996), pp. 53-66.

83. See, e.g., *Sefer HaHinukh*, *Mitzvah* 232.

84. See also Yosef bar Moshe Babad, *Minhat Hinukh*, on *Sefer HaHinukh*, *Mitzvah* 239 (failure to convince someone not to commit a sin is a violation of *lifnei iver*).

85. See *Shulhan Arukh*, *Yoreh De'ah* 151:1.

86. See Michael J. Broyde, *The Pursuit of Justice and Jewish Law* (1996), pp. 59-60.

87. Rabbi Joseph Karo, *Shulhan Arukh*, *Yoreh De'ah* 151:1.

88. *Rabbenu Nissim*, *Commentary on T.B.*, *Avodah Zarah* 6b.

89. Rabbi Shabtai Kohen, *Commentary on Shulhan Arukh*, *Yoreh De'ah* 151:1.

90. *Rema*, *Shulhan Arukh*, *Yoreh De'ah* 151:1.

91. A detailed discussion regarding the significance under Jewish law of emotional distress is beyond the purview of this paper. Consequently, unless otherwise noted, the text's references should be construed as referring to physical pain. Those interested in an introduction regarding the issue of emotional distress should see Moshe Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud and the Midrash*, 28:1 *Tradition* 18, 23-26 (1993). See also Moshe Feinstein, *Iggerot Moshe*, *Yoreh De'ah* II:174(4) (ruling that it would be prohibited to take an organ from a decedent's cadaver to save the life of a prospective organ donee because of the emotional distress of the decedent's surviving relatives) and comments thereon in J. David Bleich, *Treatment of the Terminally Ill*, 30:3 Tradition 51, n. 56 at p. 86 (1996).

92. It should be noted, however, that modern advances indicate that pain can in fact be effectively controlled in most instances. See, e.g., Albert Einstein, *Overview of Cancer Pain Management*, in Judy Kornell (ed.), *Pain Management and Care of the Terminal Patient* (1992), p. 4 ("adequate inventions exist to control pain in 90 to 99% of patients"); Burke J. Balsch and David Waters, *Why We Shouldn't Legalize Assisting Suicide, Part II: Pain Control*, <http://www.nrlc.org/euthanasia/asuid2.html>. Hopefully, additional, aggressive pain palliation research will even further reduce the number of people who experience significant pain.

93. Even those who, in different contexts, consider the extent of a person's suffering as legally significant do not argue that suffering justifies affirmative actions to terminate one's life.

See, e.g., Moshe Feinstein, *Iggerot Moshe*, *Yoreh De'ah* II:174(3) ("But doing an act to hasten the death [of a goses] is proscribed . . . even though he [the goses] is suffering and doing so would constitute murder violating the injunction 'Thou shalt not kill' and would [render a person] subject to capital punishment . . ."); Moshe D. Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud and the Midrash*, 28:1 *Tradition* 18 (1993).

Although the view in the text surely represents normative Jewish law, it is important to note that some argue there is support for a contrary position among early Jewish law authorities. Such alleged support appears in a few of the commentaries regarding King Saul's death, see I Samuel

31:1-6; II Samuel 1:1-16, and is not necessarily inconsistent with the Talmudic discussion of Chanina ben Teradion's death.

Saul's forces were losing a battle with the Philistines, when he realized that the Philistines had surrounded him and that he could not escape. Fearing imminent capture, he asked his arms-bearer to kill him. The arms-bearer refused, whereupon Saul fell on his own sword, which may have killed him. Although Scripture relates that an Amalekite youth later told King David that he found Saul near death and killed Saul at Saul's request, commentators disagree as to whether the youth was telling the truth. They suggest he may simply have been trying to make himself seem important by claiming to have put Saul out of his misery. In any event, commentators assume that unless there were some specific legally acceptable justification, Saul's initial act of falling on his sword would have been blameworthy.

The Talmud reports that there was a famine in all of the land of Israel for three years and that one of the reasons for the famine was the fact that Saul had not been eulogized. See T.B., *Yevamot* 78b. At first blush, this report is puzzling, because Jewish law provides that a person who commits suicide is not to be eulogized. *Shulhan Arukh*, *Yoreh De'ah* 345:1.

Many solutions have been suggested. Some contend that Saul feared not only that the Philistines would torture him, but that, because of such torture, he would accede to his torturers' demands to perform idol-worship. Doing so would constitute a *Chillul HaShem*, a desecration of God's Name. According to this view, suicide is justified to avoid *Chillul HaShem*. See, e.g., Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1996), p. 5 (indicating that this was the view of the fourteenth century scholar, Rabbi Yom Tom Ishbili, known as the Ritva). Another approach states that Saul's action was warranted by his fear that other Jews would foolishly lose their lives trying to rescue him. *Id.* (citing Rabbi Shlomo Luria, *Yam Shel Shlomo*, on T.B., *Bava Kama* 8:59). A third view is that Saul was not justified in what he did but that post-mortem rituals, such as eulogies, are not withheld from those who kill themselves while under duress. Accordingly, while the threat of imminent capture and torture did not excuse Saul's conduct, it prevented him from losing the right to a eulogy. See, e.g., Eliezer Waldenberg, *Tzitz Eliezer* VIII, *Ramat Rachel* 29.

None of the preceding explanations states that active suicide is justified simply to avoid threatened suffering. However, a fourth approach arguably does. This is the approach taken by two fourteenth century scholars, Rabbi David Kimchi, known as the Radak, and Nachmanides. Both of these scholars rely on the *Midrash Rabbah*, on *Genesis* 34:13. The *Midrash Rabbah* is an ancient text that, rather than discussing the oral tradition in a manner organized by subject, comments on Scripture on a verse by verse basis.

In his own commentary to I Samuel 31:4, the Radak states: Saul did not commit a sin when he killed himself. He knew he was anyway going to die in the battle because [the Prophet] Shmuel had told him so . . . In addition, he saw that archers had spotted him and that he was unable to escape them. It was good that he killed himself rather than have the uncircumcised [i.e., the Philistines] make sport of him.

At p. 7 of his book, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1995), Rabbi Yaakov Weiner, a contemporary writer, states that the Radak, "under conditions of certain humiliation, disgrace and torture, . . . permits the shortening of life." Rabbi Weiner says that the Radak "enhances our understanding of the statement of . . . [Rabbi Chanina ben Teradion], who told his students that 'It is better [mutav] that the One Who gave the soul should take it.'" (Emphasis in original) *Id.* Rabbi Weiner argues that Rabbi Chanina did not say that it was prohibited for him to open his mouth and hasten his death, but merely that, for some unstated reason - applicable to a special person such as Rabbi Chanina and not to others - it was better, preferable, that Rabbi Chanina not do so.

Nevertheless, Weiner's interpretation is not particularly persuasive. He adduces no evidence for the proposition that the Hebrew word *mutav*, as used in the Talmud, was intended to signify only a preference rather than an obligation. In addition, by being somewhat less literal in his translation of the Radak, he avoids reference to the "uncircumcised." Yet the Radak's use of that word arguably supports the position that Saul's case was unique because Saul feared a *Chillul HaShem* would result from the fact non-Jews would make sport of the Jewish king.

Nachmanides writes that committing suicide was "permitted" to Saul because he feared torture. See Nachmanides, *Writings of the Ramban* (Heb., ed. Chavel, 1964, p. 84). This same word, "permitted," is used by Rabbenu Asher ben Yehiel (the Rosh), a fourteenth century scholar, in his commentary (no. 94) to the Babylonian tractate, *Moed Katan*. A major Jewish law code, the *Shulhan Arukh*, *Yoreh De'ah* 345:3, states that a person, such as Saul, who commits suicide because of duress is entitled to a eulogy. Rabbi Moshe Rivkes, in his seventeenth century commentary on the *Shulhan Arukh*, the *Beer HaGoleh*, indicates that Nachmanides is the source for this law. Consequently, if Nachmanides' use of the word "permitted" is interpreted to mean that it was a perfectly appropriate thing for Saul to do, one could argue that suicide would be similarly acceptable for someone suffering from uncontrollable pain.

In *Alternatives in Jewish Bioethics*, pp. 54-58, Noam J. Zohar provides a fascinating discussion of Saul's death and of various explanations as to why he should have been eulogized. Zohar spends considerable time on Nachmanides' view while, ironically, not mentioning the Radak. Zohar points out that the former Chief Rabbi of Cairo, Rabbi R. A. ben-Shimon applied the *Shulhan Arukh*'s rule to a sick woman who, being driven by intractable pain, committed suicide by throwing herself out of the window of a building. Zohar asserts that: "We can, then, conclude with confidence that condemnation of such suicide is hardly the only voice in the Halachic tradition; nor is such condemnation entailed by the tradition's basic values."

Zohar's assertion deserves comment. For example, his use of the word "condemnation" is unclear. Rabbi Waldenberg's approach, that Saul's conduct, while wrong, did not forfeit his right to customary post-mortem procedures, is, as Zohar elsewhere acknowledges, follows a "well-known [analytical] model." *Id.*, at 55. Rabbi ben-Shimon's ruling with respect to the woman who committed suicide could just as easily be understood as consistent with Rabbi Waldenberg's approach as with the view Zohar attributes to Nachmanides. Furthermore, in light of the substantial body of rabbinic authority that proscribes the affirmative taking of one's life merely to avoid pain, it is uncertain whether Nachmanides (or the Rosh) meant the word "permitted," as Zohar thinks, to totally justify such conduct. In addition, even if Nachmanides or the Rosh did

mean that Saul's conduct was entirely permitted, their position may have been based, at least in part, to the special circumstances, as identified by other commentators, surrounding Saul's death.

94. A number of authorities explain that Jewish law believes that life, even a life with suffering, is in a person's own best interests. To support this proposition, they cite a Talmudic passage regarding a Sotah, a woman accused of adultery under certain specific circumstances. In the times of the Temple, a Sotah might be required to drink a certain potion. Numbers 5:11-31. If guilty, she would die - but not always immediately. The Talmud explains that if, unrelated to the adultery, the woman had other merits, the potion would cause a degenerative, lingering death. Although this condition would presumably involve physical and emotional pain, it was nonetheless considered a reward in contrast to immediate death.

95. See, e.g., Bleich, LIFE, at p. 141, citing Psalms 118:18, states that this "sentiment . . . is reflected in the words of the Psalmist: The Lord has indeed punished me, but He has not left me to die." See also R. Shlomo Zalman Auerbach, *Minhat Shlomo* 91; Abraham S. Abraham, *Nishmat Avraham*, Yoreh De'ah 339(4). Of course, it may be that a particular person's suffering could exceed the pain involved in a Sotah's lingering death. If so, the case of the Sotah would not prove that continued life coupled with excessive pain would be a boon.

96. See, e.g., Rabbi Moshe Sofer, *Hatam Sofer*, Responsa to Yoreh De'ah 326, as cited by Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1996), at 24; Rabbi Eliezer Waldenberg, *Tzitz Eliezer* V, Ramat Rachel 29.

97. T.B., *Avodah Zara* 18a. Interestingly, the end of this same story seems superficially to contradict the rule proscribing affirmative acts to terminate the life of one who is in great pain. Unfortunately, an analysis of the story and the various explanations offered by Jewish law authorities exceeds our scope.

98. See Michael J. Brody, *The Pursuit of Justice and Jewish Law* (1996), pp. 59-60.

99. Genesis 9:5, as translated by J. David Bleich, *Life as an Intrinsic Rather than Instrumental Good: The "Spiritual" Case Against Euthanasia*, 9 *Issues L. & Med.* 139 (1993).

100. Jacob Zevi Mecklenburg, *HaKetav VeHa Kabbalah* 20 (5th ed. 1946), cited by J. David Bleich, *Life as an Intrinsic Rather than Instrumental Good: The "Spiritual" Case Against Euthanasia*, 9 *Issues L. & Med.* 139, 139-140 (1993). See also Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah*, at 193.

101. Arukh Ha-Shulhan, Yoreh De'ah 339:1. See also Abraham Danzig, *Hokhmat Adam* 151:14 ("[I]t is prohibited to cause [a goses] to die more quickly even if he has been a goses for a long time and . . . [he] and his relatives are suffering a great deal . . .").

102. See Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174(3). See also Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), pp. 193-194 (citing rules and authorities); Moshe Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud and the Midrash*, 28:1 *Tradition* 18, 20 (1993).

103. Rabbi Yaakov Reicher, *Shut Shevut Yaakov* 1:13; Rabbi Meir Kaganoff, *Biur Halakha Orah Hayyim* 329, s.v. Eleh; Rabbi Hayyim Azulai, *Shulhan Arukh, Orah Hayyim* 329(4); *Tosephot*, Commentary on T.B., *Nidah* 44b. See also Abraham S. Abraham, *Nishmat Avraham*, Yoreh De'ah 339:2.

104. See, generally, Sidney Goldstein, *Suicide in Rabbinic Literature* (1989), pp. 27-50 (reviewing various possibly exonerating circumstances). See also note 88, supra.

105. See Michael J. Brody, *The Pursuit of Justice and Jewish Law* (1996), pp. 59-60.

106. See, e.g., Aaron Kirschenbaum, *The Good Samaritan: Monetary Aspects*, XVII *Journal of Halacha and Contemporary Society* 83 (1989).

107. See, e.g., Yosef ben Meir Migash, *Shut Ri Migash* 186; Yitzchok ben Shushet, *Shut Rivash* 48; Schneur Zalman, *Shulhan Arukh HaRav*, *Hoshen Mishpat*, *Laws of Bodily Damages* 4; Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174; Eliezer Waldenberg, *Tzitz Eliezer* 8:15 (citing authorities), 9:45; Yitzchok Weiss, *Minhat Yitzchok* 5:8. But see Yosef ben Moshe Babad, *Minhat Hinukh*, *Commentary on Sefer HaHinukh*, *Commandment* 337.

108. See, e.g., J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51 (arguing that such refusal would be justified only in a rare instance in which intractable pain were so great that the person affected would be willing to give up all of her wealth in order to escape it).

109. This episode is discussed in T.B., *Ketubot* 104a.

110. She prayed:

The immortals [i.e., angels] desire Rebbe [to join them] and the mortals [i.e., the Rabbis] desire Rebbe [to remain with them]; may it be the will [of God] that the mortals overpower the immortals.

See Moshe Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud and the Midrash*, 28:1 *Tradition* 18, 22 (1993).

111. She changed her prayer to: "May it be the will [of God] that the immortals overpower the mortals." See Moshe Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud and the Midrash*, 28:1 *Tradition* 18, 22 (1993).

112. T.B., *Ketubot* 104a.

113. See, e.g., Ran, *Commentary on T.B.*, *Nedarim* 40a; Shlomo Zalman Auerbach, *Minhat Shlomo* 91; Moshe Feinstein, *Iggerot Moshe*, *Hoshen Mishpat* II:73; J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 56 and 59 (1996) (stating own view and quoting statement by Rabbi Ahron Soloveichik); Abraham S. Abraham, *Euthanasia*, in Fred Rosner (ed.), *Medicine and Jewish Law* (1990), pp. 125 (citing authorities). There are additional Talmudic examples apparently approving of praying for the death of someone who is suffering uncontrollably. See, e.g., T.B., *Bava Metsia* 84 (after Reish Lakish died, Rabbi Yochanon was greatly depressed, and the rabbis prayed for his death); T.J., *Sabbath* 19:2 (Rabbi Ada bar Ahava accidentally mutilated his son during circumcision in such a way that the son would not be able to marry; to save his son from disgrace, he prayed that the boy die and his prayer was answered).

The authorities seem to think that it if a third party can pray for one's death, certainly the person who is suffering can pray for her own death, certainly permissible for the person who is suffering to pray that he should die. See also T.B., *Taanit* 23a (Honi the Circle-Drawer awoke from a 70-year sleep, suffered severe emotional distress and prayed for death).

114. See, e.g., Eliezer Waldenberg, *Tzitz Eliezer* V, Ramat Rachel 5, and VII:49, *Kuntres Even Yaakov*, perek 13 (one should not pray for someone else's death).

115. Haim Palaggi, *Hikkekei Lev I*, Yoreh De'ah 50, discussed in J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 56-57 (1996).

116. See Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174(3).

117. Shlomo Zalman Auerbach, *Minhat Shlomo* 91 (arguing, however, that it would be preferable for the patient to choose treatment). Ironically, Rabbi Auerbach begins by stating that we have no measuring stick with which to evaluate life and that we would repeatedly transgress the laws of Sabbath to save the life of someone who is suffering, is totally incompetent, and who could fulfill no commandments. Nevertheless, in rendering his ultimate ruling allowing the patient to refuse the prospective surgery, he counts as a relevant factor the negative qualitative features associated with the life of one who is paralyzed.

118. Rabbi Auerbach states that this should be provided even against the patient's will. Rabbi Feinstein requires that it be made available and that efforts be made to convince the patient to accept the treatment. See Zev Schostak, *Ethical Guidelines for Treatment of the Dying Elderly*, XXII *Journal of Halacha and Contemporary Society* 62, 83 (1991). See also Moshe Tendler and Fred Rosner, *Quality and Sanctity of Life in the Talmud*, 28:1 *Tradition* 18, n.8 at 26-27 (1993); Fred Friedman, *The Chronic Vegetative Patient: A Torah Perspective*, XXVI *Journal of Halacha and Contemporary Society* 88, 105 (1993).

119. See Zev Schostak, *Ethical Guidelines for Treatment of the Dying Elderly*, XXII *Journal of Halacha and Contemporary Society* 62, 83-85 (1991) (discussing these various views). But see J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 70-77 (explaining, analyzing and criticizing the Feinstein-Auerbach approach).

120. See, e.g., Abraham S. Abraham, *Euthanasia*, in Fred Rosner (ed.), *Medicine and Jewish Law*, at 129 (1990) (appearing to implicitly make this argument); Is Euthanasia Permissible Under Jewish Law?, *Jewish Law Report* (August 1994), at 25; Fred Friedman, *The Chronic Vegetative Patient: A Torah Perspective*, XXVI *Journal of Halacha and Contemporary Society* 88, 100, n. 28 (1993).

121. Interestingly, Rabbi Feinstein emphasizes that the justification for refusing life-preserving treatment is only because of pain and is not to be confused with an overall "quality of life" analysis. He explains that the life of a mentally incompetent or a person in a permanent vegetative state must be prolonged as much as possible so long as the person is not experiencing pain. See Moshe Feinstein, *Iggerot Moshe*, *Hoshen Mishpat* II:74(1); J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 71 (1996).

122. See Eliezer Waldenberg, *Tzitz Eliezer* XIII:89. See, generally, Chaim David HaLevi, *The Disconnection of a Terminally III Patient from an Artificial Respirator*, 2 *Techumin* 297 (1981).

123. See Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174(3).

124. See Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah III:132.

125. See Eliezer Waldenberg, *Tzitz Eliezer* XIII:89.

126. See, e.g., J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 56 and 59 (1996) (stating own view and quoting statement by Rabbi Ahron Soloveichik); Eliezer Waldenberg, *Tzitz Eliezer* XV:40.

127. See Shulhan Arukh, *Orah Hayyim* 656:1. Even if the refusal to take life-preserving treatment would be considered violation of a negative commandment, such a refusal would be passive. As the text states, one need only forfeit all of one's wealth in order to avoid a passive violation. The duty to avoid an affirmative violation of a negative commandment, however, would be even greater. Suppose, for example, that a person borrowed property and had the borrowed property, together with all of his own property, in his house. Assume the person had no insurance. On the Sabbath, some third person set a fire that did not threaten anyone's life but that threatened all of the property. The owner of the house would not be permitted to extinguish the fire even though he would not only lose the value of all of his own property but he would become financially liable for the borrowed property as well. Consequently, although the comparison between all of one's wealth and the extent of one's pain and suffering seems relevant, if at all, only to a passive violation such as through a refusal of life-preserving therapy.

128. Id.

129. Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174(4). See also J. David Bleich, *Treatment of the Terminally III*, 30:3 *Tradition* 51, 86 n. 56 (1996) (raising possible objections to Rabbi Feinstein's analysis that are unrelated to physician-assisted suicide).

130. Id., at 73-77 and associated endnotes. While the duty to save others may be an affirmative commandment, the duty to save oneself, according to some authorities, is technically derived from a different source and may constitute a negative commandment. Id.

131. Feinstein seems only to state that a patient has the right to refuse treatment only when the treatment would merely extend the patient's life for a relatively short period of time. See, e.g., Moshe Feinstein, *Iggerot Moshe*, Yoreh De'ah II:174. Prof. Michael Brody has pointed out to me orally that if Bleich is correct and Feinstein's position is based on whether the patient would be willing to forego all of his wealth in order to escape intractable pain, the fact that the patient's life would only be temporary extended rather than extended for a significant period of time seems to be irrelevant.

132. Id., at 76.

133. See Yaakov Emden, *Mor Uktziah* 328; Alfred Cohen, *Whose Body? Living With Pain*, XXXII *Journal of Halacha and Contemporary Society* 39, 49 (1996). See, generally, J. David Bleich, *Contemporary Halakic Problems* IV, pp. 203-217.

134. As to what extent a patient may risk her life by taking experimental treatment or to reduce pain. See, e.g., Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1995), pp. 75-81; Moshe Feinstein, *Iggerot Moshe*, *Hoshen Mishpat* II: 73(9) (allowing surgical removal of patient's testicles in prostate cancer in order to reduce pain; argues that reduction in pain would prolong patient's life); Abraham S. Abraham, *The Comprehensive Guide to Medical Halachah* (1996), 10:4, p. 53; Alfred Cohen, *Whose Body? Living With Pain*, XXXII *Journal of Halacha and Contemporary Society* 39, 49 (1996).

135. See, generally, Yaakov Weiner, *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective* (1995).

136. See Michael J. Brody, *The Pursuit of Justice and Jewish Law* (1996), pp. 59-60.

137. Contrast, e.g., Rabbi Aryeh Leib, *Kitzot HaHoshen*, *Hoshen Mishpat* 3:1 (arguing that only courts could coerce individuals to perform affirmative commandments) with Rabbi Yaakov,

Nitivot HaMishpat, Hoshen Mishpat 3:1 (contending that individuals had the right to coerce other individuals to perform such obligations).

138. See, e.g., Moshe Feinstein, Iggerot Moshe, Hoshen Mishpat II:73(5).

139. See Immanuel Jakobovits, Medical Experimentation on Humans in Jewish Law, in J. David Bleich and Fred Rosner (eds.), Jewish Bioethics, at 381 ("His [the doctor's] obligation to save life and health . . . is altogether independent from the patient's wishes or opposition. The conscientious physician may even have to expose himself to the risk of malpractice claims against him in the performance of this superior duty."); Moshe Feinstein, Iggerot Moshe, Yoreh De'ah IV:54(2) ("Even if through this rescue the doctor will become obligated to spend a great sum of money to pay for the [medical] equipment and other medications, he is obligated to do so.")

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AM subject Peninim on the Torah by Rabbi A. Leib Scheinbaum -
Parshas Noach

PARSHAS NOACH

Make yourself an ark of gopher wood. (6:14)

Hashem instructed Noach to build an ark to save himself, his family and select creatures. Noach followed instructions, so that for the next one hundred twenty years he was busy building his ark. When people asked him what he was doing, his response was: "I am building an ark, because Hashem is going to destroy the world as we know it."

Apparently, the people did not take him seriously, as they continued their previous patterns, committing evil, exhibiting no respect for their fellow man. Since Noach was the preeminent leader of the generation, one would expect that he would have prayed for the people - a phenomenon which we do not note during these one hundred twenty years. In a startling statement, the Zohar HaKadosh posits that Noach deliberately did not pray for them. He feared that his prayer on behalf of the generation might have a negative impact upon him. Subconsciously, he felt that Hashem viewed him as righteous only in comparison to the members of his generation. If he were to pray for them and thereby ameliorate their iniquity, their status in Hashem's eyes would rise. While this would be wonderful for them, it might not accrue to Noach's advantage. After all, Hashem was appraising him relative to them. He might no longer be viewed as a tzaddik, righteous person, and, therefore, Hashem might not spare him.

Horav Chaim Zaitchik, zl, explains that this sentiment was buried quite deeply in Noach's subconscious, to the point that he was unaware of it. He derives from here that if one acts for his own personal interest, however innocuous it might be, it precludes him from thinking about his fellow man. It might be a slight infraction, but it is real. Something is lacking in his empathy for his fellow man. Whether he intends it or not, he simply does not give his all to his fellow man- if he prioritizes himself.

A leader does not think of himself as an individual, "he" does not exist - except as a member of the klal, community. Chazal teach us that when Shmuel HaNavi died and ascended to Heaven, he refused to go to his assigned place in Gan Eden until he had prayed for Klal Yisrael. Imagine, everything was ready and waiting for him, but he was not ready. He still had to daven for the people. The Tiferes Shlomo interprets Shmuel's stance to be reflecting the declaration of his mother, Chanah: v'nirah es Pnei Hashem, v'yashav sham ad olam. "And he shall appear before Hashem, and settle there forever." (Shmuel I, 1:22) Forever means, that even after he has left his earthly abode, his responsibility will not wane.

How can we be at peace, sing with joy, celebrate with laughter, knowing full well that there are Jews in our community and in other communities throughout the world that are suffering? We should walk into shul and look around, gaze at the attendees and realize that a number of these people have "issues" at home. By "issues" I mean anything that hinders the quality of their lives, whether they are financial, social, physical, etc. The least we can do is give a krechs, sigh, for them.

I remember reading about how Horav Avrohom Pam, zl, a man whose heart beat with the rhythm of Klal Yisrael, was menachem avel, comforted a young mourning couple, who had just tragically lost their young son. They were inconsolable, to say the least. At best, they would just sit there in a state of shock and disbelief. The Rosh Yeshivah walked into the house, which was filled with many people who either had nothing to say or, out of nervousness, talked about whatever came into their minds. As Rav Pam entered the room, people began to move over to make room for the venerable sage. He sat down right next to the father. All was quiet in anticipation of what the Rosh Yeshivah would say. He sat there a few moments saying nothing. The room was still. Suddenly, Rav Pam began to cry bitterly. His weeping reached a crescendo as he embraced the young father, who now opened up with bitter crying, his head on the Rosh Yeshivah's lap. Slowly, his wife came over and joined them. There was not a dry eye in the room; everybody witnessed this aged Rosh Yeshivah cradling a young father's head in his arms, as they wept bitterly together. During this entire time, Rav Pam did not utter a word. He simply cried with empathy. Then he stopped, stood up and said HaMakom, the blessing for mourners, and left the home. Shortly thereafter, the father related to a friend that Rav Pam had helped him immensely. He and his wife had been in a state of shock, unable to react, feeling

powerless and inadequate. He opened up their emotions, giving them permission to mourn, to weep over their tragic loss. Rav Pam felt their pain as if it were his own. This was his hallmark.

And G-d spoke to Noach saying, "Go forth from the ark." (8:15, 16)

The Torah relates two instances in which a teivah, Ark, played a critical role in saving: either mankind or the Jewish People. During the generation of the Flood, Noach, his family and select members of every creature, other than fish, were spared from the raging waters of the Flood. When the Jews were ensconced in Egypt, the Moshian Shel Yisrael, the savior of the Jews, who would be Hashem's agent of rescue, was himself saved as an infant-- in the little ark that his mother had fashioned for him. Nothing happens by chance, and there is clearly a corollary between these two instances. A teivah, ark, shelters its occupants from the outside elements. In one case, it was from the destruction of mankind; in the other, it was from the villainous Egyptians. Is this all, or is there a deeper motif connected to the teivah?

We find that Noach left the Ark only when Hashem instructed him to do so. In Koheles Rabbah 10:4, Chazal teach us that just as Noach required permission from Hashem to enter the Ark, so, too, did he need permission to leave it. Why was this? It is understandable that he could not enter on his own. Hashem had to give the signal, inviting him in. If the only purpose of the teivah was to spare Noach and his family, however, was this not achieved as soon as the rain had stopped and the earth had dried? Obviously, the time to leave had arrived. Why did Noach stay in the Ark?

Horav Mordechai Gifter, zl, gives us an insight into the structure which we refer to as the teivah. When Hashem instructed Noach to build the Ark, He said: Kinnim taaseh es ha'teivah, "Make the Ark with compartments." (6:14) The Midrash adds that the word, ken, actually means a nest, alluding to the birds that were brought by the metzora, spiritual leper. Just as a bird-offering expiates the metzora's sin and purifies him, so did the ark purify its occupants.

Rav Gifter explains that the Ark was more than a floating redeemer from catastrophe. The Ark was a "school" which taught its occupants a vital lesson, which they would have to master in order to rebuild the world. Creation was the consummate act of chesed, kindness. It was the greatest act of altruism, because Hashem clearly did not need the world. He created it in order to bestow chesed on its inhabitants and in order that man do likewise. Sadly, man's inability to live in harmony with his co-inhabitants led to the world's near destruction. Rebuilding the world would require the same foundation of chesed, and continuing its existence would require that man live in harmony with his fellow man. In order to facilitate this recreation of the world, the inhabitants of the Ark, the new builders of the world, would have to absorb the character trait of chesed into their psyches. It had to become an integral part of their essence.

The Ark was the establishment which facilitated the instruction and indoctrination of the people in the demands of chesed. Whether it was looking after one another, or attending to the animals' needs, Noach and his family became acutely aware that life in the ark depended only on the chesed that they performed. Without chesed, there was no hope for life. Their "graduation" would occur when Hashem decided that they had achieved the goals that He had intended for them. They would receive their "diploma" and would then be ready to leave the Ark. Hashem had to make that decision - not Noach. This was not merely a boat. It was a school of instruction in the middah, attribute, of chesed.

Having said this, we now understand the significance of the teivah during the generation of the Flood. What was the crucial significance, however, of the teivah for Moshe Rabbeinu, the future leader of Klal Yisrael and its quintessential rebbe? Perhaps we might suggest the following: When Moshe lay in a little reed basket on the river all by himself, he cried to Hashem Who was the One who would listen. This was his leadership training seminar. A leader must be acutely aware that at times his flock has no one to turn to except him, as their leader and Hashem's agent. He must empathize with their plight and feel their pain. To do this, he must experience firsthand the meaning of loneliness, being forsaken and left to float on a river in a small, flimsy basket. He must understand that there are members of his congregation who cry alone and who need moral, spiritual and emotional support from him - because they feel they have no one else. The leader must experience the travail of loneliness. He must learn to cry to Hashem. Moshe did. The little reed basket was his schoolhouse.

Cham, the father of Canaan, saw his father's nakedness. (9:22)

According to one opinion in Chazal, Cham castrated Noach. Rashi explains that Cham was concerned that his father might have a fourth son. When one reads the account of this episode, it is difficult to digest. Cham was Noach's son and, as such, could not have been as evil as we are led to believe. If that is so, what sensible excuse can be given to somehow rationalize his miscreant behavior? Where do we find an act as repugnant as castrating one's father? This is taking "low" to new depths.

Horav Dovid Povarsky, zl, explains that Cham acted more out of selfishness than malevolence. Recognizing that he was on a lower spiritual plane than his two brothers, he was not willing to accept the possibility of his father having another son who would also tower over him. He could not tolerate another "put down."

Therefore, he acted in a manner unbecoming a decent human being-- and certainly unbecoming a son-- but, he was not malicious. He had a perverted sense of self-preservation. The Torah would not relate the activities of one who was essentially evil. He acted in an evil manner, because he was a troubled individual with conflicting objectives. Indeed, he suffered spiritually, because he realized how distant he was from spiritual achievement.

A similar insight may be expressed concerning Kayin, who, even after committing the first murder, still remained a navi, prophet, who was able to speak with Hashem. Apparently, his actions, although heinous, could be rationalized by his troubled mind. He became distraught over Hashem's rejection of his sacrifice. It was an indication that his spiritual plateau left something to be desired. He reacted irrationally, but in a manner that his troubled mind could justify. It is easy to label someone a rasha, wicked person. It takes much more character to seek out the positive in someone that manifests such destructive behavior.

Cursed is Canaan, a slave of slaves shall he be to his brothers (9:25)

The Midrash wonders why Noah cursed Canaan, Cham's son, rather than Cham himself. After all, the perpetrator is the one who should be punished - not his son. They explain that when Noah and his sons left the teivah, ark, Hashem had blessed them. When Hashem bestows blessing, that individual can no longer become an object for curse. Once Cham had been blessed, he could no longer be cursed. Since he caused Noah to become infertile, however, so that he could no longer have a fourth son, Hashem cursed Cham's fourth son, Canaan.

Based upon this principle, the Siach Yitzchak explains in a novel manner the statement in the Talmud Beitza 16 regarding a man's yearly livelihood. Chazal tell us that all of one's annual provisions are decreed on Rosh Hashanah, except for the expenditures for Shabbos, Yom Tov and teaching his sons Torah. Why is Shabbos excluded from the curse of: "By the sweat of your brow shall you eat bread?" (Bereishis 3:19) What makes this mitzvah so unique that it escapes the curse that hangs over our heads? It is because Hashem blessed Shabbos: "And G-d blessed the seventh day." (Bereishis 2:3) When there has been a blessing, there can be no curse.

While this explanation is undisputable, we wonder why teaching one's children Torah is excluded from the curse. Incidentally, this would be an interesting Chazal to share with parents who have a difficult time with tuition payments for their children's Torah education. Tuition is no different than the expenses one has for Shabbos. It is not included in the curse, "By the sweat of your brow shall you eat bread." Why? Hashem did not bless this mitzvah more than He did the others, as He blessed Shabbos.

Perhaps the uniqueness of this mitzvah lies in its enduring legacy. The survival of our people is guaranteed through the Torah education that is transmitted from generation to generation. Without the Torah that parents impart to their children, there are no mitzvos and no Yiddishkeit. We have to peruse history and look at those generations that did not have the option of teaching their children Torah. Regrettably, they became spiritually distant from our nation. A mitzvah that is so crucial to our survival cannot be contingent on money.

The lessons children receive from their parents, both directly and indirectly-positive, as well as negative-remain their lifelong companions. I had occasion recently to daven Shacharis in a small makeshif minyan in a resort city which is usually devoid of Jewish people, but was now catering to the transient tourist crowd. That morning there were about fifteen men from all walks of life and all phases of the Jewish spectrum in attendance. Some wore kipot, while others wore black velvet yarmulkes; yet others were in shorts and sandals, and others in dark suits, white shirts or chassidische frocks. These were the "remnants" of the Jewish community touring the area who recognized the significance of tefillah b'tzibur, davening with a minyan. After davening, I made it a point to ask a number of the guests why they had driven across town to attend davening. Incidentally, it was Rosh Chodesh Elul. Their response was, "Davening with a minyan is important to me. I was raised with it. My father made a big thing out of going to shul in the morning, and it is something that has remained with me." It was part of the way they had been raised. It was their spiritual legacy.

Throughout the generations, Jewish parents have devoted themselves-- to the point of self-sacrifice-- in an effort to ensure their children's spiritual survival. I have previously used the following story in these pages, but its message is so poignant that I feel it is worth repeating. It is the story of a small piece of scrap paper, a father and son, and the Warsaw Ghetto. Shortly after World War II, a small piece of scrap paper was found on which a sentence in Hebrew was written. It made its way to a museum - a memory of a lost world, a relic of "ancient" history.

The paper carried a powerful message, a message ignored by the secular museum, but one that we should value and assimilate into our lives. A group of people had been hiding in a bunker for a number of weeks. Deprived of food and sanitary conditions, the future appeared bleak indeed. The mere fact that they knew that any moment they could be discovered and shot was enough to ameliorate their pangs of hunger. Nonetheless, amid the misery and travail, they persevered and planned for

the future. Their past was gone, but they aspired for a better future. Lamentably, it was not to be realized.

That piece of paper represented their hope. It was an indication that these beleaguered Jews believed in a future - perhaps not for themselves personally - but for Klal Yisrael. The paper contained a simple Hebrew verse, a pasuk from davening: Ashrei yoshvei veisecha od yahallelucha selah. Beneath the pasuk were the corresponding letters - aleph, shin, reish, yud - together with the accompanying nekudos, vowels. This piece of paper was not a prayer; it was a lesson in aleph-beis!

Hiding in the bunker, a father and his young son huddled together, as the father taught his child the aleph-beis. Torah learning is the lifeblood of our people, and it did not come to a halt in the Warsaw Ghetto. Torah has survived and prevailed over the Crusades, inquisitions, pogroms, and ghettos. With the staccato sounds of machine-gun fire penetrating the walls of the bunker, a father spent what might have been his last moments on this earth teaching his son Torah. The torch of the Mesorah, tradition, the chain that stretches back to Sinai, was being transmitted to yet another generation. The piece of paper does not indicate whether the father and son physically survived the Holocaust. One thing is certain: they touched eternity; they linked up with past generations that had sacrificed and prevailed, laying the groundwork for our People's future redemption.

Einei kol eilecha yesabeiru V'Atah nosein lahem es achlam b'to. The eyes of all expectantly look forward to You, and You give them food in the proper time.

The Chafetz Chaim, zl, notes the shift in this pasuk's focus from the third person to atah, You, in second person. He cites Chazal who say that three keys of salvation were not given over to an agent/angel; one of them was the key to parnassah, livelihood, which comes directly from Hashem. The reason for this is that if parnassah were to be given over to an agent to decide, then many people might not be sustained. Agents simply do not have Hashem's compassion and, thus, will be particular about whom they will support. Hashem, however, is the nosein lechem l'chol basar, One Who gives bread to all creatures." We now understand why the pasuk speaks in second person. It is only because You, Hashem, are the One Who sustains each and every creature at the proper time, so that we are able to have parnassah. If a shaliach of Hashem, agent of the Almighty, were to have power over our livelihood, it would be much more difficult for everyone to be supported.

Sponsored by The Klahr Family (New York) In loving memory of our grandparents Phillip and Lillian Finger who were long time friends and family of the Academy. li"n R' Zalman Fishel ben Chanina HaLevi a"h Maras Ettel Leah bas R' Yeshaya HaLevi a"h t.n.tz.v.h.

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Parashat Noah: After the Flood: The relationship between Abraham and Terah

Parashat Noah: After the Flood: The Relationship between Abraham and Terah
The end of Parashat Noah (Genesis chapter 11) details the Tower of Babel narrative, the generations of the line of Shem, and concludes with a detailed discussion of the family of Terah.

When Terah had lived seventy years, he begot Abram, Nahor and Haran. Now this is the line of Terah: Terah begot Abram, Nahor and Haran, and Haran begot Lot. Haran died in the lifetime of his father Terah, in his native land, Ur of the Chaldeans. Abram and Nahor took to themselves wives, the name of Abram's wife being Sarai, and that of Nahor's wife Milcah, the daughter of Haran, the father of Milcah and Iseah. Now Sarai was barren, she had no child. Terah took his son Abram, his grandson Lot the son of Haran, and his daughter-in-law Sarai, the wife of his son Abram, and they set out together from Ur of the Chaldeans for the land of Canaan; but when they had come as far as Haran, they settled there. The days of Terah came to 205 years; and Terah died in Haran (Genesis 11:26-32). The verses at the end of the Book of Joshua states, which ever -so-briefly detail the generations of the patriarchs, explicitly state that Terah was an idolater: The founder of the Israelite monotheistic people was his son, Abraham. Then Joshua said to all the people: "Thus said the L-RD, the G-d of Israel: In olden times, your forefathers- Terah, father of Abraham and father of Nahor- lived beyond the Euphrates and worshipped other gods. But I took your father Abraham from beyond the Euphrates and led him through the whole land of Canaan and multiplied his offspring. I gave him Isaac, and to Isaac I gave Jacob and Esau. I gave Esau the hill-country of Seir as his possession, while Jacob and his children went down to Egypt (Joshua 24:2-4). The beginning of Genesis chapter 12, the beginning of Parashat Lech-lecha, describes the departure of Abram from Haran: The L-rd said to Abram, "Go forth from your native land and from your father's house to the land that I will show you. I will make of you a great nation, And I will bless you; I will make your name great, And you shall be a blessing: I will bless those that bless you, And curse those that curse you; All the families of the earth Shall bless themselves by you. Abram went forth as the L-RD

had spoken to him, and Lot went with him. Abram was seventy-five years old when he left Haran. Abram took his wife Sarai and his brother's son Lot, and all the wealth that they had amassed, and the persons that they had acquired in Haran, and they set out for the land of Canaan (Genesis 12:1-5). The difficulty one has with the verses at the end of Parashat Noah, which conclude with the death of Terah, in light of all the other verses, is succinctly made by Ramban to Genesis 11:32: After Abram had left (Haran, as related in Genesis 12, and had come to the land of Canaan), Terah remained alive for many years after that! {Abram was seventy-five years old when he left Haran (Genesis 12:4), and Terah was seventy years of age when Abram was born (Genesis 11:26, cited above), making Terah 145 years old at the time Abram left Haran. Terah thus lived for sixty more years, as he died at the age of 205! (Genesis 11:32, cited above) Thus, it is mathematically incorrect to assert that Terah died before any of the events that are transcribed in Genesis 12 (which detail Abram leaving Haran at the age of 75) occurred. But that implication is certainly the simple meaning the verse in Genesis 11:32!} Ramban has reservations about Rashi's two answers to the problem. Rashi (commentary to Genesis 11:32) writes: Why then does Scripture mention the death of Terah before the departure of Abram? In order that this matter (his leaving home during his father's lifetime) might not become known to all, lest people say that Abram did not show a son's respect to his father, for he left him in his old age and went his way. (In other words, the Torah purposefully mentioned Terah's death before the actual time of its occurrence.) Although Rashi does not proceed to write *daver aher*, or some other formulation which usually introduces a second answer, he nonetheless proceeds to give what can be viewed as a separate distinct answer: That is why Scripture speaks of him (Terah) as dead. For indeed the wicked even while alive are called dead, and the righteous even when dead are called living, as it is said, And Benaiah the son of Yehoiada the son of a living man (2 Samuel 23:20). (In other words, although Terah was still physically alive, spiritually, he was already dead.) Ramban's objection to Rashi's first answer is the following: This is the customary way for Scripture to relate the life of a father, his begetting a son, and his death, and afterwards to begin the narration of the son in all generations. This is the usual manner of Scripture. (Thus it was not a special exception from the general rule, ...in order that this matter (of leaving his home during his father's lifetime) might not be publicized at all, lest people say that Abram did not show a son's respect to his father...that the Torah wrote in this manner; on the contrary, the Torah usually does write in such a manner, even if it is not chronologically exact.)

Ramban rejects the second explanation of Rashi as well. For the Sages (Bereshit Rabbah 34:4, 38:18) have already deduced from the verse As for you, you shall go to your fathers in peace... (Genesis 15:15) that He announced to Abraham that his father would have a portion in the World to Come. (Thus, it is incorrect to claim that Terah was a wicked man who would be considered "dead." Apparently, Terah was a righteous man who merited a share in the World to Come!)

Ramban first suggests the following approach at harmonization: Perhaps the intent of the Rabbis was that Terah repented at the time of his death (but not before that!), but he lived all his days in wickedness and therefore was called "dead." In the words of Rashi, "Scripture teaches you that Terah did repentance at the time of death." Then, Ramban gives a powerful second answer: Perhaps it may be that Terah has a portion in the World to Come by virtue of his son. And that was the announcement (in Genesis 15:15), for Abraham did not know it until he was informed of it at the time G-d told him As for you, you shall go to your fathers in peace. In other words, perhaps Terah never repented. Indeed, he remained a wicked man up until and including the day that he died. But nonetheless, G-d legitimately announced to Abraham that his father would have a portion in the World to Come. How can that be? To help in understanding the idea, Ramban cites a Midrash: All kinds of wood were valid for use in the altar fire except for the wood of the olive and the vine (Mishnah, Massekhet Tamid 2:3), for since oil and wine were offered upon the altar, the fruits save the trees. And so we find in the case of Abraham, that he saved Terah, as it is said, As for you, you shall go to your fathers in peace. (All the aforementioned extracts from the commentary of Ramban can be found in Rabbi Moses Nahmanides, Commentary on the Torah: Genesis, ed. Chavel, pp. 161-63.) The source that Ramban cites can be found in Midrash Leviticus Rabbah VII:2, at the beginning of Parashat Tzav. The Midrash cites Proverbs 10:12: Hatred stirs up strife, But love covers up all faults. The Midrash discusses how Moses prayed to G-d on behalf of his brother Aaron: 'Love' refers to the prayer which Moses offered up for him (Aaron). How did Moses pray for him? R. Mani of Sheab and R. Joshua of Sakhnin in the name of R. Levi said: From the beginning of the Book (of Leviticus) until this passage, it is written: And the sons of Aaron shall present the blood (Leviticus 1:5) etc., And the sons of Aaron shall put fire, etc. (ibid., 1:7), And the sons of Aaron shall lay the pieces, etc. (ibid., 1:8). Said Moses to the Holy One, blessed be He: 'Can it be that the well is hated while its water is beloved? You have accorded honor to trees for the sake of their offspring, as we have learnt in the Mishnah (Tamid 2:3): 'All trees may be used for the altar fire, except the olive and the vine.' Will You then not accord honor to Aaron for the sake of his sons? The

Holy One, blessed be He, answered, "By your life, for your sake will I reinstate him; moreover, I shall treat him as the chief, and his sons as secondary" (as it is said), "And the L-RD spoke to Moses, saying: Command Aaron and his sons..." (Leviticus 6: 1). {Midrash Rabbah: Leviticus translated into English by Rev. J. Israelstam [London, Soncino Press, 1939], p. 90.}

Although the Talmud (Tamid 29b, and the Rambam (Hilkhot Issurei Mizbeah 7:3) write that the reason why one does not bring twigs of the olive tree or of the vine to the ma'arakhah (of the altar) is because of Yishuv Eretz Yisrael (the economy of Israel needs those twigs to produce grapes for wine and olives for olive oil), Ramban, following the Midrash, understands that there is a profound symbolic significance to the law. Moreover, he expands upon the Midrash's application of the matter. True, the Midrash applies God's treatment to certain trees in consideration of the role that their future fruits would play to the case of human beings whose sins are forgiven because of their children (their "fruits"). But whereas the Midrash only applied it to Aaron and his children, Ramban introduces this idea with respect to Terah and Abraham as well. Perhaps one can add that according to Ramban, the analogy to twigs upon the altar is especially appropriate. Terah was saved from the fires of Gehinnom, and accorded a place in the World to Come, precisely because of the deeds of Abraham. Just as the fruit of the olive tree and the vine saves the trees from being burnt (on the altar in the Mishkan, and subsequently in the Temple), Abraham's good deeds saved Terah from the fires of hell. This beautiful explanation of the Ramban had special resonance in our own days, when so many younger Jews are more religiously observant than their parents. How do the two generations relate? How can they relate? In general, most observant Jews feel that their non-religious relatives are spiritually lost forever? Ramban's notion provides a novel way of looking at this phenomenon. Abraham did not have to feel that his father Terah was doomed to perdition. He knew that his actions could (and did!) save his father. Indeed, fruits save the trees. To subscribe to this email list, please click here To view more shiurim on Parshat Bereshit, please click here Yeshiva University Center for the Jewish Future 500 W 185th St. New York, New York 10033