

## *A Note on Medical Assistance in Dying (Physician-Assisted Suicide)*

The Freehof Institute of Progressive Halakhah

Introduction. Does *halakhah* permit medical assistance in dying (MAID), often known as physician-assisted suicide (PAS)? May a person suffering a terminal illness, particularly at the end stage, take their life or commission others (usually medical professionals) to do so? The answer given by the overwhelming majority of halakhists is no. To be sure, there is a broad consensus, certainly among halakhists in the liberal and progressive camp, that futile treatment – treatment that is ineffective in curing or controlling an illness or that offers but remote prospects for doing so – may be discontinued and that aggressive medication for the control of pain may be administered even if it unintentionally shortens an end-stage patient’s life.<sup>1</sup> But in the main, halakhic opinion has insisted upon the distinction between commission and omission, between killing and letting die: while it is permitted to remove or discontinue treatments that serve merely to impede death, it is forbidden to take active steps to hasten death.

Recently, however, the CCAR Responsa Committee (RC) has declared in a *t’shuvah*<sup>2</sup> that “A Jew suffering from a terminal illness whose death is not imminent may, where it is legal, avail themselves of physician-assisted dying” under certain defined circumstances. Under the same circumstances, moreover, “A Jew suffering from a debilitating chronic illness that is not inherently fatal may choose to avail themselves of physician-assisted dying as a last resort, if living with the degree of suffering they must endure is intolerable.” This responsum is not the first to take this position; it was preceded by a 2021 ruling of the Committee on Jewish Law and Standards (CJLS) of the Rabbinical Assembly.<sup>3</sup> This dramatic break with the predominant trend in rabbinic interpretation on an issue of life and death deserves our close attention.

We focus here upon the RC’s *t’shuvah*. And we want to make clear that we are quite sympathetic with the conclusion that the Committee ultimately reaches. Our goal is to consider the way in which the RC supports that conclusion, the *how* rather than the *what*. Specifically, our attention is drawn to this language in the responsum:

We believe that the halachic prohibitions against hastening or causing death live side by side with extensive recognition of the just cause of the person who loves life, but finds that life is no longer a blessing given the conditions in which they must live it. Our predecessors did, in fact, acknowledge this dilemma and indirectly admitted its justification. The same tradition that opposes murder and suicide also recognizes that life is sometimes more burdensome and less desirable than death, and preserves.

---

<sup>1</sup> See CCAR responsum [5754.14](#), “On the Treatment of the Terminally Ill.” On aggressive medication for pain control see specifically R. Eliezer Yehudah Waldenberg, *Resp, Tzitz Eliezer* 13:87. Waldenberg’s reasoning is quite reminiscent of the Roman Catholic doctrine of “the double effect.” See Raanan Gillon, “[The Principle of Double Effect and Medical Ethics](#),” *British Medical Journal* 292 (January, 1986), pp. 193-194.

<sup>2</sup> Responsa Committee 5783.1, “Medical Assistance in Dying,” <https://www.ccarnet.org/ccar-responsa/5783-1>.

<sup>3</sup> Committee on Jewish Law and Standards YD 345.1997c, “Assisted Suicide/Aid in Dying Reconsidered,” <https://www.rabbinicalassembly.org/sites/default/files/2021-04/Assisted%20Suicide%20Revisited%20final.pdf>.

As opposed to the CJLS *t'shuvah*,<sup>4</sup> the RC responsum offers a full-throated halakhic argument for its position. Is that argument persuasive? Are its conclusions justified by the halakhic evidence it presents? And if the answer to these questions is “no,” we will want to consider how the RC (or, for that matter, anybody approaching this issue from the perspective of progressive *halakhah*) might construct a stronger, more successful argument for its *p'sak*.

Rules versus Precedents. The halakhic discussion of our subject begins with the recognition that, in general, Jewish law prohibits the taking of one's own life or assisting<sup>5</sup> another in taking their life. The RC does not contest this prohibition, but it argues that the tradition recognizes a medical exception to it, permitting suicide or assisted death in circumstances like those described in its responsum. It supports this contention by citing texts that recount instances of what appear to be suicide or assisted death that the tradition sanctions or at least does not condemn. To put this in legal terms, the general prohibition of suicide is a *rule*, while the accounts of suicide in the texts are *precedents*, “cases” that argue the existence of a medical exception to that rule.

While precedents are the very stuff of legal and halakhic reasoning,<sup>6</sup> they are often contestable, because they rely upon arguments from analogy.<sup>7</sup> An analogy is a comparison between a “target case” (A), one for which we seek an answer, and a “source case” (B), a question for which we know the answer, that has already been decided, and that seems to be an appropriate starting or reference point for deciding the target case. We consider the two cases, find that (A) is sufficiently similar to (B) to warrant the comparison, and then apply the solution reached in case (B) to case (A). The difficulty lies in the words “sufficiently similar to.” Analogies are often contestable because there are always differences as well as similarities between source cases and target cases; it is often unclear whether the cases are more like than unlike. Arguments can frequently be made either way, which is why lawyers will disagree over whether a previous court decision serves as a precedent for the case at hand. The RC's decision, as we'll see, relies heavily upon contestable precedents, which means it confronts this problem again and again.

The Rule. The *halakhah* traces the prohibition of suicide to Genesis 9:5:

וְאֵדָא אֶתְדַמְּכֶם לְנַפְשֵׁיכֶם אֶדְרֹשׁ מִיָּד כְּלַחֲיָהּ אֶדְרֹשְׁנָהּ וּמִיָּד הָאָדָם מִיָּד אִישׁ אֲחִיו אֶדְרֹשׁ אֶתְנַפְּשׁוֹ  
הָאָדָם :

---

<sup>4</sup> See the previous note. The CJLS responsum does not attempt to show that the *halakhah* permits suicide, let alone assisted suicide, in end-stage medical situations. Its only sustained halakhic argument occurs on p. 34 (out of 45 pages; see the previous note), discussing the halakhic tendency to treat suicide leniently *b'di'avad* (after the fact), which as we shall see below is not the same thing as approving it in principle.

<sup>5</sup> The principle here is that of agency: שלוחו של אדם כמותו, “one's agent is like oneself” (*B. Kiddushin* 41b and elsewhere). My agent is not authorized to perform an act for me that I am forbidden to do for myself.

<sup>6</sup> On the distinction between “binding” and “guiding” precedent generally and in Jewish law, see Mark Washofsky, “Taking Precedent Seriously,” in W. Jacob and M. Zemer, eds., *Re-examining Progressive Halakhah* (Pittsburgh, Freehof Institute of Progressive Halakhah, 2002), pp. 1-70, [https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/taking\\_precedent\\_seriously.pdf](https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/taking_precedent_seriously.pdf).

<sup>7</sup> On analogical reasoning and the *halakhah* see Mark Washofsky, “The Woodchopper Revisited: On Analogy, Halakhah, and Jewish Bioethics,” in Walter Jacob, ed., *Medical Frontiers and Jewish Law* (Pittsburgh: Freehof Institute of Progressive Halakhah, 2012), pp. 1-62, [https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/the\\_woodchopper\\_revisited.pdf](https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/the_woodchopper_revisited.pdf).

Moreover, for your own bloodguilt I will require your lives; I will require it by means of beasts or by means of human beings – by means of a fellow human being will I require a (guilty) person's life.

While the *p'shat* of this verse speaks of murder, *Midrash B'reishit Rabah* 34:5 applies it to suicide:

אך את דמכם לנפשותיכם להביא את החונק עצמו.

*Moreover, for your own bloodguilt* – this comes to include the one who takes his own life.<sup>8</sup>

As we'll see, the *midrash* recognizes exceptions to this rule. Still, the general prohibition of suicide and self-harm<sup>9</sup> is clear enough: bloodshed is forbidden, even when the blood shed is one's own. The *halakhah* does not spend much time exploring the theory behind this rule, but we get a hint of that theory in the commentary of R. David ibn Zimra (Radbaz; 16<sup>th</sup>-century Egypt and Eretz Yisrael) in his commentary to the *Mishneh Torah* of Maimonides (Rambam). According to *halakhah* one may not be executed or subjected to corporal punishment on the strength of one's own testimony. Rambam explains this rule as a *g'zeirat hakatuv*, a law that is valid simply because it is a decree of the Torah and that has no other rationale. Radbaz demurs:<sup>10</sup>

ואפשר לתת קצת טעם לפי שאין נפשו של אדם קניינו אלא קנין הקדוש ברוך הוא שנאמר הנפשות לי הנה (יחזקאל י"ח) הילכך לא תועיל הודאתו בדבר שאינו שלו.

We can give something of a rationale, namely that one's life is not one's property but rather the property of the Holy One, as it is said (Ezekiel 18:4) 'all lives belong to Me.' Accordingly, one's own confession cannot affect the status of what one does not own.

We are dealing here with what is sometimes called "the sanctity of life,"<sup>11</sup> or better, perhaps, the *inviolability* of human life, which may not bring to an end at will but only according to the stipulations of its "Owner." This sanctity extends to the very end of one's physical life, as we read in *Shulhan Arukh Yore De'ah* 339:1:

הגוסס, הרי הוא כחי לכל דבריו. אין קושרין לחייו, ואין סכין אותו, ואין מדיחין אותו, ואין פוקקין את נקביו, ואין שומטין הכר מתחתיו, ואין נותנין אותו על גבי חול, ולא על גבי חרסית ולא על גבי אדמה, ואין נותנין על כריסו לא קערה ולא מגריפה ולא צלוחית של מים ולא גרגיר של מלח, ואין משמיעין עליו עיירות, ואין שוכרין חלילין

<sup>8</sup> Literally, "one who strangles oneself." Rashi to the verse (*s.v. l'nafshoteikem*) explains that "strangling" comes to extend the prohibition of suicide to cases where no actual blood is spilled.

<sup>9</sup> See *B. Bava Kama* 91b, where R. Elazar apparently understands the verse to include a prohibition against *havalah*, inflicting physical damage upon one's body. While the Gemara refutes him by insisting that the verse is limited to killing, R. Barukh Halevi Epstein suggests that this refutation merely serves the purpose of debate (דחוי בעלמא) and that the verse does indeed prohibit self-injury; *Torah T'mimah*, Genesis 9:5, note 8.

<sup>10</sup> Radbaz to *Mishneh Torah, Hil. Sanhedrin* 18:6.

<sup>11</sup> The term קדושת החיים is not found in the classical sources, although recent rabbinical authorities use it. For an example in connection with the issue of treatment of the terminally ill see R Hayyim David Halevy, *Resp. Aseh L'kha Rav* 5:29.

ומקוננות, ואין מעמזין עיניו עד שתצא נפשו. וכל המעמץ עם יציאת הנפש, ה"ז שופך דמים.

The *goses*<sup>12</sup> is like a living person in all respects. We do not tie up his cheeks,<sup>13</sup> anoint him or cleanse him; we do not stop up his orifices; we do not remove the mattress from beneath him or place him upon sand or clay or earth; we do not place upon his abdomen a vessel of water or of salt; we do not inform other communities of his death, nor hire musicians and professional wailers for his funeral; and we do not close his eyelids until he has died. Indeed, whoever closes the eyelids of the *goses* [even] at the moment of his death is guilty of bloodshed.

The original version of this text appears in tractate *S'mahot* 1:1-4,<sup>14</sup> where Rabbi Meir compares the *goses* to a flickering candle that is extinguished with but the lightest touch. This explains the passage's concern that we avoid as much as possible any physical contact with the *goses*. Rabbi Moshe Isserles, who adds the Ashkenazic gloss to the *Shulhan Arukh*, continues in this vein and then adds a significant detail:<sup>15</sup>

וכן אסור לגרום למת שימות מהרה, כגון מי שהוא גוסס זמן ארוך ולא יוכל להפרד, אסור להשמט הכר והכסת מתחתיו, מכח שאומרין שיש נוצות מקצת עופות שגורמים זה וכן לא יזיזנו ממקומו. וכן אסור לשום מפתחות ב"ה תחת ראשו, כדי שיפרד.

Similarly, it is forbidden to accelerate the death of the dying person. For example, when one has lingered as a *goses* and is having difficulty in dying, it is forbidden to remove the pillow or mattress from beneath them, which is done because some say that certain bird feathers serve to delay death. We likewise do not move them from their place. It is likewise forbidden to place the keys to the synagogue under their head so that they will die.

אבל אם יש שם דבר שגורם עכוב יציאת הנפש, כגון שיש סמוך לאותו בית קול דופק כגון חוטב עצים או שיש מלח על לשונו ואלו מעכבים יציאת הנפש, מותר להסירו משם, דאין בזה מעשה כלל, אלא שמסיר המונע.

If, however, there is any factor present that hinders the departure of the soul—such as the sound of a woodchopper close by the house, or if there is salt on the patient's tongue—it is permitted to remove those factors, because this is not a positive action but the removal of an impediment.

This is the classic statement in the sources of the legal distinction between (forbidden) killing and (permitted) letting die. And if it is forbidden to take a positive action to end the life of the *goses*, whose death by definition is imminent, then by way of *kal vahomer* it is certainly forbidden to provide assistance in dying to one who is not yet a *goses*.

<sup>12</sup> One whose death is imminent, who will almost certainly die within 72 hours; *Shulhan Arukh Yore De'ah* 339:2.

<sup>13</sup> The prohibited actions mentioned were associated with the preparation of the corpse for burial.

<sup>14</sup> See also Alfasi, *Mo'ed Katan*, fol. 16b and Rambam, *Hil. Avel* 4:5

<sup>15</sup> *Yore De'ah* 339:1. In his *Darkhei Moseh to Tur Yore De'ah* 339 he identifies his source as *Hagahot Alfasi*, which apparently is the *Shiltei Giborim* of R. Y'hoshua Boaz, Alfasi *Mo'ed Katan*, fol. 16b.

The Exceptions. If suicide is prohibited by a halakhic rule, the sources contain exceptions to it. Let's go back to *B'reishit Rabah* 34:5, to Genesis 9:5, this time quoting the passage in full.

אך את דמכם לנפשותיכם להביא את החונק עצמו.  
יכול כשאול? ת"ל "אך".  
יכול כחנניה מישאל ועזריה? תלמוד לומר "אך".

*Moreover, for your own bloodguilt* – this comes to include the one who takes his own life.

Does the prohibition hold in a case like that of Saul? No, because the verse reads **אך**, which comes to exclude.

Does the prohibition hold in a case like that of Hananiah, Mesha'el, and Azaryah? No, because the verse reads **אך**, which comes to exclude.

This is an example of a midrashic *mi'ut* (“exclusion”). The Rabbis often understand the word **אך**, “moreover,” which adds nothing substantive to the literal meaning of the verse, to indicate an exception to the general rule or principle it states. In this instance, the midrash learns that two Biblical examples of suicide, along with cases similar to them (“in a case like that of”), are exempted from the prohibition in Genesis 9:5. The second of these exceptions, that of Hananiah, Mesha'el, and Azaryah in chapter 3 of the book of Daniel, concerns a situation of religious martyrdom, to which we'll return.

The Death of King Saul. The first exception is the death by suicide of King Saul, as recounted in I Samuel 31:1-4:

וּפְלִשְׁתִּים נִלְחָמִים בְּיִשְׂרָאֵל וַיִּנָּסוּ אֲנָשֵׁי יִשְׂרָאֵל מִפְּנֵי פְלִשְׁתִּים וַיִּפְּלוּ חֲלָלִים בְּהַר הַגִּלְבָּעַ:  
וַיִּדְבְּקוּ פְלִשְׁתִּים אֶת־שָׂאוֹל וְאֶת־בָּנָיו וַיִּכּוּ פְלִשְׁתִּים אֶת־יְהוֹנָתָן וְאֶת־אֲבִינֶדָב וְאֶת־מִלְכִישָׁי:  
שׁוּעַ בְּנֵי שָׂאוֹל : וַתִּכְבַּד הַמֶּלֶכְמָה אֶל־שָׂאוֹל וַיִּמְצָאֵהוּ הַמּוֹרְתִים אֲנָשִׁים בַּקֶּשֶׁת וַיַּחַל מְאֹד  
מִהַמּוֹרְתִים : וַיֹּאמֶר שָׂאוֹל לְנִשְׂא כִלְיוֹ שְׁלֹף חַרְבְּךָ וְדַקְרְנִי בָּהּ פֹּרֵץ־בָּאוּ הָעֵרְלִים הָאֵלֶּה  
וְדַקְרְנִי וְהִתְעַלְּוּ־בִי וְלֹא אָבָה נִשְׂא כִלְיוֹ כִּי יָרָא מְאֹד וַיִּקַּח שָׂאוֹל אֶת־הַחֶרֶב וַיִּפֹּל עָלֶיהָ :

The Philistines attacked Israel, and the Israelite soldiers fled before the Philistines; many fell on Mount Gilboa. The Philistines pursued Saul and his sons. They killed Saul's sons Jonathan, Avinadav, and Malkishua. The battle grew heavy around Saul, and the enemy archers wounded him severely. Saul said to his arms-bearer: “Draw your sword and run me through, lest these uncircumcised ones come and run me through and have their way with me.” But the arms-bearer, in his great fear, refused to do this. So Saul took the sword and fell upon it.

The CCAR responsum, citing the commentary of Don Yitzhak Abravanel to this passage, ascribes Saul's act “to his desire not to be tortured, shamed, or humiliated by the Philistines, a desire they regarded as logical and well-founded... Saul's suicide was justified by his fear of what might happen to him if he remained alive.” The implication is that an end-stage patient for whom “life... has become, or will imminently become, a form of torture” is analogous to Saul and is justified in making the same decision. Indeed, the *t'shuvah* uses the word “justified” twice, to emphasize that in Abravanel's view Saul acted in accordance with the *halakhah*.

However, the RC's interpretation of Abravanel cannot be sustained. In his commentary to the very next chapter - II Samuel 1:14-16, the account of David's execution of the Amalekite *ger* who confessed to killing Saul<sup>16</sup> - Don Yitzhak *condemns* the act of "assisted suicide":

והנה צוה דוד להרוג את הנער העמלקי הזה, לפי שעל פי התורה האומר לחבירו חבול לא יחבול ואם חבל חייב, כמו שהתבאר בתלמוד, כל שכן בענין המיתה, וכ"ש על המתת המלך, ואין מצות שאול אליו ממה שתנצל אותו מהעונש כן, דברי הרב ודברי התלמיד דברי מי שומעין?

David ordered the execution of the Amalekite *ger* because according to the Torah one is forbidden to cause physical injury to another even if the other person instructs one to do so.<sup>17</sup> Even more is this true of an act of killing, and especially killing the king. The fact that Saul instructed the *ger* to kill him is no defense; "when the instructions given by the Master differ from the instructions given by the student, whom shall we heed?"<sup>18</sup>

Abravanel does not "justify" Saul's suicide; he clearly thinks that it transgresses the law of the Torah. His comment in I Samuel 31, upon which the RC relies, comes to *explain* Saul's action, not to justify it. Saul's fear of torture and humiliation helps us understand why he fell on his sword. It is a *sympathetic* understanding, and as we'll see it shapes the *halakhah's* ultimate teaching regarding suicide. But this sympathetic understanding must not be confused with moral approbation. Abravanel does not condone Saul's actions, either the falling upon his sword or his instruction to the arms-bearer to assist him in his suicide.

The RC responsum would have done better to cite the words of another commentator, R. David Kimḥi (Radak; 12<sup>th</sup>-13<sup>th</sup> c. Provence) to I Samuel 31:5.

לא חטא שאול בהרגו עצמו ואף על פי שכתוב אך את דמכי לנפשותיכם אדרוש כלו' מידכם אדרוש אותו אם תהרגו עצמכם וכן מיד כל חיה אדרשנו ומיד איש אחיו אף על פי כן לא חטא לפי שהיה יודע שאול כי סופו היה למות במלחמה כי כן אמר לו שמואל ועוד כי ראה כי מצאוהו המורים אנשים בקשת ולא היה יכול להמלט מיד' טוב היה שיהרוג הוא עצמו ולא יתעללו בו הערלים וכן אמרו רז"ל אך את דמכם לנפשותיכם אדרוש יכול כשאול ת"ל אך.

Saul committed no sin when he killed himself. Although we read (Genesis 9:5), "But for your own lifeblood I will require a reckoning...of man, too, I will require a reckoning for human life", Saul nonetheless did not sin, for he knew, as Samuel had previously told him, that he was to die in battle.<sup>19</sup> Moreover, since he could not escape from the archers, it was better to kill himself rather than allow the Philistines "to have their way with him." Thus say the Rabbis (*Midrash B'reishit Rabah*): "But for your own bloodguilt I will require your lives...". Does this

<sup>16</sup> The accounts of Saul's death in the two chapters contradict. They can be harmonized (see Radak to I Samuel 31:5), but that's not directly germane to our discussion.

<sup>17</sup> See *B. Bava Kama* 92a.

<sup>18</sup> *B. Bava Kama* 56a

<sup>19</sup> I Samuel 28:19.

include a case like that of Saul? No, because the verse reads *akh*, which comes to exclude.”

Radak’s statement “Saul committed no sin” (לא חטא שאול) would seem to support the RC responsum’s contention that Jewish tradition permits the choice for suicide in cases where “life... has become, or will imminently become, a form of torture.” But before we jump to that conclusion, we ought to consider some contrary evidence that the responsum does not discuss.

First, there’s that midrash in *B’reishit Rabah* that exempts “cases like that of Saul” from the prohibition of suicide. Rabbi Yosef Caro, in his *Beit Yosef* commentary to *Tur Yore De`ah* 157, offers another interpretation.

ויש אוסרים ומפרשים הך "תלמוד לומר אך" שאינו יכול להרוג עצמו וחנניה מישאל  
ועזריה מסרו עצמם ביד אחרים אבל הם לא פגעו בעצמם ושאול בן קיש שלא ברצון  
חכמים עשה.

Some authorities read the word אך [in Genesis 9:5] to mean that one is not permitted to kill oneself. Hananiah, Mesha’el, and Azaryah [did not violate this law, because] they handed themselves over to others and did not actively harm themselves. And Saul acted even though the Sages disapproved.

In this reading, the *midrash* goes out of its way to declare that Saul was *not* excluded from the prohibition against suicide. We’re not claiming that this is the better interpretation of *B’reishit Rabah*, but we *are* saying that the interpretation exists. Unfortunately, the RC responsum does not mention it.

Second, even if we accept that the midrash exempts “cases like that of Saul” from the prohibition, we do not yet know the *grounds* or reasons for that exemption. On this point, the commentators offer several options. For example, there’s Ritva (R. Yom Tov b. Avraham Ishbili, 14<sup>th</sup>-c. Spain) in his *hidushim* to *B. Avodah Zarah* 18a:

אך את דמכם לנפשותיכם אדרוש מכאן אזהרה לאדם שלא יחבול בעצמו. יכול אפי'  
כשאול מלך ישראל, פירוש שחבל בעצמו מפני שהיה מתירא שמא יעבירוהו על דת.  
תלמוד לומר "אך" – מיעט.

“Moreover, for your own bloodguilt – this comes to prohibit one from inflicting physical harm upon oneself. Does the prohibition hold in a case like that of Saul, king of Israel?” That is, Saul killed himself out of fear that his captors would force him to sin (commit idolatry). “No, because the verse reads אך, which comes to exclude.”

According to Ritva, Saul’s “fear” was not pain, torture, and humiliation but that he would be coerced by his captors into committing an action – idolatry – that one must avoid even under pain of death. His act, therefore, comes under the category of religious martyrdom, which we’ll consider more fully when we discuss the case of R. Hanina b. Teradyon. Saul would not be a good analogy for our case, which concerns assisted dying in cases of terminal illness.

R. Sh'lomo Luria (Maharshal; 16<sup>th</sup>-c. Poland) offers yet another take on the story of Saul.

ואולי שאול עייה כיון על זה שנפל על חרבו. שסבר אם יפול חי בידם יתעללו בו ויענו אותו, ומסתמא בני ישראל לא יכולים לראות ולשמוע בצרת המלך ולא יעמדו על נפשם מלנקום נקמתו ולהצילו, ויפלו כמה רבבות מישראל... וגם אפשר משום כבוד המלך משוח ה' שאין ראוי שימות בידי הערלים ויעשו בו מיתת עינוי ובזיון והוא חילול השם בדת אמונתנו.

Saul may have feared that were he captured and tortured by the Philistines, the Israelites, unable to watch their king suffer thus, would surely attempt to rescue him. Many Israelites would die in that attempt... It is also possible that Saul was permitted to do this because of his honor as the king of Israel. That is, for the Philistines to torture the king to death would be a desecration of the divine name (חילול השם).

In other words, Saul may have been permitted to take his life because... well, the king of Israel isn't like the rest of us. His reasons for suicide do not apply to other people, and they certainly don't apply to the cases cited in bioethical discussion.

If there *is* an interpretation that dominates in the tradition, it's the one we find in *Shulhan Arukh Yore De'ah 345:3*:

קטן המאבד עצמו לדעת חשוב כשלא לדעת וכן גדול המאבד עצמו לדעת והוא אנוס כשאול המלך אין מונעין ממנו כל דבר.

A child who kills himself is not considered a suicide. Similarly, if an adult who kills himself was under duress like King Saul, we do not withhold any of the rites of mourning from him.

The Hebrew phrase for suicide, המאבד עצמו לדעת, specifies that the act is a *rational* one, performed with full considered intention (*l'da'at*). Saul, however, was "under duress" and therefore could not have acted rationally. He therefore did not, legally speaking, "commit suicide," and we therefore do not punish him (that is, his relatives) by forbidding the usual rites of *aveilut* (mourning). And see *Arukh Hashulhan, Yore De'ah 345*, paragraph 5:

כללו של דבר במאבד עצמו לדעת תלינן בכל איזה תלייה כל שהוא כגון לתלות ביראה או בצער או שיצא מדעתו... שזהו באמת דבר רחוק שאדם יעשה נבלה כזו בדעת צלולה צא ולמד משאול הצדיק שנפל על חרבו לבלי יתעללו בו הפלשתים וכיוצא בזה מקרי אנוס.

The rule for suicide is that we adopt every possible pretext in order to presume that one killed him/herself out of fear or great pain, or that they became insane (שיצא מדעתו)... for it is difficult to believe that one could do such a horrendous thing with a clear mind (בדעת צלולה). Go and learn from the righteous Saul (שאול הצדיק), who fell on his sword so that the Philistines would not "have their way with him." Such persons are considered "under duress" (אנוס).



This is what we meant above, in our discussion of Abravanel's "sympathetic understanding" of Saul's action. This reading of the story enables the *halakhah* to soften its "classic" attitude toward those who take their lives, namely to express our condemnation of the act by withholding from family members the opportunity to engage in the rites of mourning.<sup>20</sup> When one is driven by forces beyond one's control to commit a prohibited act – even a "horrendous thing" (נבלה), in the language of *Arukh Hashulḥan* – we do not rule that they undertook that action *l'da'at*, out of intent or premeditation. According to *halakhah* one is *patur*, not held liable for acts one commits under coercion.<sup>21</sup> Since Saul was driven to suicide by severe emotional duress, his act does not qualify for punishment under the terms of Genesis 9:5 as interpreted by the *midrash*. That is what the word אך comes to exclude. But *patur* does not mean *mutar*, "permitted," wholly unobjectionable. Moreover, one who assists an individual to end their life is acting out of choice and is most certainly not "coerced" into doing so.

The RC responsum might have argued, of course, that "our interpretation of the story of Saul's death makes as much sense (if not more) as those of Ritva, Abravanel (to II Samuel 1), Maharshah, the *Shulḥan Arukh*, et al." And, who knows, maybe it does. But the responsum wants to read the story as offering *halakhic* support for MAID/PAS, and we cannot adequately understand how the story functions in the *halakhic tradition* without considering *all* these sources and interpretations. It is to be regretted that the RC responsum chooses one reading – its own – without acknowledging just how complex the issue truly is.

*The Death of R. Hanina ben Teradyon.* The Talmud (*B. Avodah Zarah* 18a) recounts how the Romans burned Rabbi Ḥanina ben Teradyon at the stake for violating their decree against teaching Torah in public. As evidence of their cruelty, they placed woolen sponges soaked in water around his body to retard the flames and lengthen the duration of his suffering. When Rabbi Ḥanina's students urge him to breathe in the flames and hasten his death, he responds: מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו, that is, it is better for God to take my life than for me to bring harm to myself. Thus far, he adheres to the rule prohibiting suicide. But when the Roman executioner offers a deal to Rabbi Ḥanina – "I will increase the flame and remove the sponges from around you if you promise me a place in the World to Come," Rabbi Ḥanina accepts the offer. Does he thereby *transgress* the rule prohibiting suicide? While removing the sponges does not present a problem – as R. Moshe Isserles would say, "this is not a positive action but the removal of an impediment" to death – adding fuel to the flame meets the definition of a positive act aimed at hastening death. How do we account for this apparent contradiction between what Rabbi Ḥanina says to his students and what he tells the executioner?

The RC responsum explains that "when [Rabbi Ḥanina] reaches a point where he can no longer endure the suffering, he accepts the executioner's offer to hasten his death... There is not a hint in this story that either man has done wrong." The responsum learns from this that suicide is *permitted* to Rabbi Ḥanina (and by analogy to any end-stage patient) once he has "reached the limit of how much suffering he can endure." Again, this interpretation cannot be sustained, for it does nothing to resolve the contradiction. If Rabbi Ḥanina is permitted to appoint the executioner to hasten his death, he would by that token be permitted to swallow the fire, since one's agent

---

<sup>20</sup> *Shulḥan Arukh Yore De'ah* 345:1: ואין מספידין אותו, ואין מתאבלין עליו, ואין מתעסקים עמו לכל דבר, ואין מתאבלין עליו, ואין מספידין אותו.

<sup>21</sup> אונס רלמנא פטריה; *B. K'tubot* 51b and elsewhere; Rambam, *Hil. Isurei Bi'ah* 1:9.

does not enjoy a greater legal authority than one's own.<sup>22</sup> Yet Rabbi Ḥanina steadfastly refuses to swallow the fire, which is explicable only on the grounds of his recognition that *halakhah* prohibits suicide. The better explanation is that Rabbi Ḥanina does not grant the executioner the power to hasten his death. The decision as to how and how quickly he dies isn't up to him; it lies in the hands of the Roman government, which chose to subject him to an excessively cruel death and could just as easily choose a less gruesome method. The government is represented here by the executioner, who emphatically does *not* function as Rabbi Ḥanina's legal agent.<sup>23</sup> Rather, the executioner in this story plays the role of the idol worshiper who, witnessing Rabbi Ḥanina's heroic sacrifice, acknowledges the truth of the Torah he taught. Having "seen the light," the executioner wishes to perform an act of mercy for the scholar, who rewards him for that intention. The story, in other words, comes to testify to the spiritual greatness of Rabbi Ḥanina and not to serve as a precedent for MAID or PAS.

Ironically, perhaps, the story *does* serve later authorities as a precedent for suicide in a most limited set of circumstances. We read in *Tosafot, Avodah Zarah* 18a, s.v. *v'al y'ḥabel atzmo*:

אור"ת דהיכא שיראים פן יעבירו עובדי כוכבים לעבירה כגון ע"י יסורין שלא יוכל  
לעמוד בהם אז הוא מצוה לחבל בעצמו כי ההיא דגיטין גבי ילדים שנשבו לקלון  
שהטילו עצמם לים.

Rabbeinu Tam rules that when one fears that the idolaters, subjecting him to unbearable torture, will coerce him into sin, it is a *mitzvah* to harm himself [*i.e.*, to commit suicide], as is the case in *Gitin* [57b] of the children held captive and subject to sexual abuse, who threw themselves into the sea.

The "sin" referred to here is *avodah zarah*, the worship of idols, which is forbidden to a Jew even when the oppressor threatens the Jew with death.<sup>24</sup> The rationale is that, since the Jew is obliged to die rather than violate the prohibition, suicide may be permitted if it is the only way to avoid transgressing it. The sources give no indication, however, that this permit and its rationale have ever been extended beyond the realm of martyrdom to apply to the situation of a terminal medical patient, that is, the context of MAID/PAS.

Other "Precedents." The RC responsum cites other familiar cases, though again to limited effect. Rabbi's maidservant (*B. K'tubot* 104a) and the elderly woman tired of living (*Yalkut Shimoni* II, sec. 943) both take actions that allow a person to die, but that's just it: in each case the action involves the removal of an artificial impediment to an otherwise timely death. As such, they provide further evidence for the traditional halakhic distinction between killing and letting die,<sup>25</sup> and they do not support the responsum's central argument that this distinction may be ignored in certain cases. The story of the death of R. Yoḥanan (*B. Bava Metzi'a* 84a) also does not erase the distinction. The tradition has long accepted that one may pray for another's

---

<sup>22</sup> See note 5, above.

<sup>23</sup> For a similar argument see R. A. S. Avraham, *Nishmat Avraham*, vol. 5, p. 102.

<sup>24</sup> *Yehareg v'al ya'avur*; see *B. Sanhedrin* 74a and parallels.

<sup>25</sup> That is, the maidservant interrupts the prayers of Rabbi's students but does not harm him directly, and the elderly woman stops going to synagogue but does not commit an act that *halakhah* would define as *ḥavalah*, self-harm.

death out of compassion and love.<sup>26</sup> The responsum claims that such prayers are evidence that the tradition accepts “intervening to bring about a death,” but this exaggerates. The prayers of R. Yoḥanan’s colleagues are not comparable to a lethal injection of morphine, which is a direct action that kills a patient. They are rather a supplication for mercy, that God bring an end to the rabbi’s suffering, in the recognition that it is God alone – *not* R. Yoḥanan and *not* his agents – who will decide and act to take his life.<sup>27</sup>

*A Better Approach.* The responsum claims to have located in the tradition “multiple stories that affirm both ending one’s own life and assistance in dying.” That claim is refuted by a careful reading of those stories and of how they have been interpreted in our tradition. To be sure, we *can* derive from them a demand that we treat the dying with love and compassion and that we respond to instances of suicide with sympathetic understanding and a disinclination to judge. And, as we’ll see, that’s important. But we should face the fact that the halakhic tradition offers no “precedents” supporting the responsum’s proposition that suicide or (*kal vahomer*<sup>28</sup>) assisted suicide is a morally appropriate response to terminal illness.

As we say at the outset of this essay, we are sympathetic to the RC responsum’s effort to build an argument for MAID/PAS that will pass muster with Jewish tradition. How might we do that in the absence of halakhic precedents? The answer, we think, begins with that very fact: there are no precedents because the situation we are addressing is itself unprecedented. The halakhic distinction between killing and letting die *in situations of terminal illness*<sup>29</sup> emerged in a time when death usually followed quickly upon illness. But as the RC responsum notes in its section I. B., “Context,” advances in medical technology, nutrition, sanitation, and related areas of human endeavor, praiseworthy in themselves, have created a situation in which death has frequently become a long and lingering process. The responsum argues, persuasively, that had the Rabbis been familiar with the contemporary medical situation, their attitude toward suicide and assisted suicide would have been more nuanced. That argument suggests that we can dispense with the effort to find precedents for MAID/PAS in the literature, because those stories and cases by definition do not speak to contemporary medical reality. At this point, the question becomes: does the *halakhah*<sup>30</sup> change when the surrounding technological (pr social, or political, or cultural) context changes? The responsum, in its section I. A., “New Knowledge,” argues that it

---

<sup>26</sup> See R. Nissim Gerondi (Ran, 14<sup>th</sup>-c. Spain) to *B. Nedarim* 40a, who cites as support the prayer of Rabbi’s maidservant in *B. K’tubot* 104a. The RC responsum also cites R. Nissim.

<sup>27</sup> We might also note that those who cite this story as a “precedent” for MAID/PAS must account for the fact that R. Yoḥanan never asks to die. On the contrary, his colleagues pray for his death when they see that his grief has caused him to lose his sanity (והיה קא צווח עד דשף דעתיה; see Rashi *ad loc.*). They conclude, in other words, that death would be preferable to life for him. If anything, the story serves as a “precedent” for euthanasia, an act of “mercy killing” undertaken when somebody (a physician? the relatives? society?) determines that a person’s life is no longer worth living. The RC responsum obviously does not advocate such a conclusion; see its note 3.

<sup>28</sup> *Kal vahomer*, because the one who assists another to end their life cannot claim to be acting out of emotional duress, without premeditation.

<sup>29</sup> The italicized section is important, because the distinction between killing and letting die can occur in other contexts. See, in general, Fiona Woollard and Frances Howard-Snyder, “Doing vs. Allowing Harm”, *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=doing-allowing>.

<sup>30</sup> A traditionalist who is uncomfortable with the idea of “change” in Divine law might put it this way: does the state of *p’sak*, halakhic decision, change with the changing context? One’s understanding *halakhah* might evolve even if one insists that *halakhah* itself is eternal.

does, citing as evidence the changing contemporary halakhic approach to those who are deaf.<sup>31</sup> Many more examples could be cited.<sup>32</sup> And, of course, the CCAR Responsa Committee has long accepted changing states of knowledge as valid grounds for changing *halakhah*.<sup>33</sup> This approach would have been sufficient for a Reform responsum to make its case for MAID/PAS.

In addition, the responsum might have followed the suggestion advanced in the 1994 RC *t'shuvah*<sup>34</sup> that the key element in making decisions about the treatment of the terminally ill is the *mitzvah* of *r'fu'ah*. We are obligated to heal, to practice medicine, so that when medical treatment loses its therapeutic rationale it may and arguably must be withdrawn. One could argue that at a certain point in an individual's illness, the obligation to practice medicine *includes* medical assistance in dying. Given that medical science is largely responsible for the situation in which death is now often a long, drawn-out, and painful process, one could make a reasonable claim that it is morally appropriate for the practitioners of that science to correct the intolerable situation it has produced. This is but a suggested line of argument, and this is not the venue to develop it in detail. But it would seem to avoid the pitfalls of citing "precedents" from the tradition that do not prove what they are supposed to prove.

It is understandable, of course, that responsa writers wish to seek precedents in the halakhic literature to support their conclusions. In general, that is how responsa base their truth claims. In this case, where the so-called precedents are weak and unpersuasive, the CJLS wisely chose not to pursue them, and the RC would have been wise to follow that example. This is not to say that those stories have no role to play in the argument. As we've suggested, while they do not constitute a persuasive halakhic argument for MAID/PAS, they *do* support a duty to show compassion and understanding toward those who seek to end their lives due to terminal illness. In the end, it is that duty that justifies the search for an argument that is truly up to the task.

---

<sup>31</sup> The responsum provides only one citation, presumably because this is a much-discussed question in the *halakhah*, and a full list of citations would exhaust both the writers and the readers. But we *should* note the discussion in CCAR responsum 5752.5, "Disabled Persons," section 2, "Deaf Persons," (*Teshuvot for the Nineties*, pp. 298-299; <https://www.ccarnet.org/ccar-respona/tfn-no-5752-5-297-304>), which offers additional sources.

<sup>32</sup> A good place to start is Louis Jacobs, *A Tree of Life: Diversity, Flexibility, and Creativity in Jewish Law* (New York: Littman Library/Oxford University Press, 1984), pp. 122-165.

<sup>33</sup> See note 30 about avoiding exhaustion! Still, we can offer two examples: CCAR responsum 5781.1, section II (on the virtual *minyan*), <https://www.ccarnet.org/ccar-respona/5781-1>, and CCAR responsum 5774.4, "Same-Sex Marriage as Kiddushin," <https://www.ccarnet.org/ccar-respona/same-sex-marriage-kiddushin>.

<sup>34</sup> See note 1.