

Massachusetts residents will vote next month whether to legalize the prescription of lethal medication on request for some terminal patients. I hope to address this issue directly before the election, but this week I want to engage in a preliminary discussion of the issues and of some of the challenges confronting anyone who wishes to approach this topic Jewishly.¹

One fairly thick strand of Jewish tradition emphasizes that human beings are stewards rather than owners of their own bodies, and Rabbi S. Y. Zevin z"l in his celebrated essay "The Case of Shylock" argued that this generates an absolute ban against self-wounding, let alone suicide.

Among R. Zevin's cited precedents is a responsum by the great rishon Rabbi Yosef ibn Migash which declares a vow to abstain from meat and wine on weekdays to be a violation of Biblical principle. This is legally effective, but philosophically challenging – while arguably maintaining our physical health is in G-d's interest, as it enables us to better fulfill more of his commands, why should stewardship of our bodies generate obligations to avoid pain, and perhaps even experience pleasure?

R. Shaul Yisraeli z"l challenged R. Zevin directly in "Maaseh Kebiyah", a defense of an Israeli reprisal attack that led to the deaths of noncombatants. His fundamental assumption is that Judaism legitimates the establishment of functioning Gentile governments with the capacity to establish laws and punish and even execute lawbreakers – but why does this principal of *dina demalkhuta dina* not violate the universal prohibition against murder? R. Yisraeli concludes that government power is halakhically legitimated by the consent of the governed, and therefore – if (at least Gentile) human beings can authorize their own executions, they must actually own their bodies.

R. Yisraeli's thesis faces the challenges of all social contract theories, and his distinction between Jews and Gentiles deserves extensive and searching moral analysis, but for our purposes, I think its key weakness is that it is not necessary – one can argue more simply that Halakhah actually *mandates* that Gentiles establish a viable criminal justice system, and that this *commandment*, known as *dinnim*, is sufficient to legitimate punishment. Furthermore, casting humans as owners of our bodies does not require granting us absolute discretion to dispose of them – we might, for example, construct ourselves as recipients of conditional Divine gifts.

My own sense is that the distinction between stewardship and ownership should, at least for now, be constructed out of extant halakhic data rather than being used to generate new halakhic conclusions. Stewards have rights, and owners have obligations, and therefore a determination of status carries no necessary legal conclusions.

What halakhic data do we have? Let us grant R. Zevin the prohibitions against gratuitous self-wounding, *kal vachomer* gratuitous suicide, and presume as well that these extend to Gentiles.² But no halakhic prohibitions – with the likely exception of the ban on idolatry – are absolute, so the question remains as

¹ A previous article of mine on end-of-life ethics and halakhah generally can be found [here](#). A vitally important survey and analysis of the primary halakhic literature is "A Historical Introduction to Jewish Casuistry on Suicide and Euthanasia", Chapter 17 of Dr. Rabbi Baruch Brody's excellent book [Taking Issue](#).

² In full awareness that these issues are the subjects of extensive halakhic debate

to what circumstances might be exceptions to those prohibitions, or what considerations might overcome them. And this question brings us to Parashat Noach.

Genesis 9:1-7

ויברך א-להים את נח ואת בניו, ויאמר להם:
פרו ורבו ומלאו את הארץ!
ומוראכם וחתכם יהיה על כל חית הארץ, ועל כל עוף השמים, בכל אשר תרמש האדמה, ובכל דגי הים - בידכם נתנו.
כל רמש אשר הוא חי - לכם יהיה לאכלה; כירק עשב נתתי לכם את כל.
אך -
בשר בנפשו דמו לא תאכלו;
ואך -
את דמכם לנפשותיכם אדרש - מיד כל חיה אדרשנו,
ומיד האדם, מיד איש אחיו - אדרש את נפש האדם.
שפך דם האדם - באדם דמו ישפך,
כי בצלם א-להים עשה את האדם:
ואתם - פרו ורבו שרצו בארץ ורבו בה!

E-Iohim blessed Noah and his sons, and said to them:

Be fruitful and multiply and fill the land!

Awe and terror of you will be upon the beasts of the land, and on all the fliers of heaven, everything that creeps on the ground, and on all the fish of the sea – into your hands they are given.

Every creeper that lives – will be yours to eat; like the greens of the field I have given you all.

Akh –

flesh with its lifeblood you must not eat;

Another *akh* –

your own lifeblood I will demand – from the hand of every beast I will demand it,

and from the hand of a human, from the hand of his brother person – I will demand the life of a human.

The shedder of human blood – *ba'adam* his blood will be shed,

because in the mold of G-d He made the human,

So you – be fruitful and multiply, swarm in the land and multiply in it!

Rabbinic legal interpretation of Torah (*midrash halakhah*) generally takes the word *akh* as qualifying the subsequent rather than the preceding statement, meaning that there is an implicit “but” or exception to the subsequent statement. Here, on the assumption that “your own lifeblood I will demand” is a prohibition against suicide, the tradition records two exceptions³, each in the form of a historical paradigm – those like Shaul, who attempted suicide (by falling on his weapon) to avoid falling into Philistine hands, and those like Chananiah, Mishael and Azaryah, who may have attempted suicide (by jumping into a furnace⁴) to avoid being tortured and thereby coerced into worshipping idols. These exceptions were cited to excess in medieval Ashkenaz in response to the Crusades – especially when they were extended from suicide to homicide - and thus serve as an instructive example of how slippery the slope is here. My preference, therefore is not to use them as generative models for our issue.

Another source of data is Rabbinic narrative. Here we must state upfront that there is an array of Talmudic stories in which characters commit suicide, and in which the narrator seemingly shows either a

³ The history of those exceptions – and why they are always recorded independently – is beyond my scope today.

⁴ I leave aside the question of whether the text clearly indicates that they jumped instead of being pushed)

neutral or positive evaluation of that action. I want to focus instead on a story which is explicitly more complex, the martyrdom of R. Chanina ben Tradyon.

Here is the story as it is generally cited (you can find the full original and translation [here](#)):

They said: It was not many days before Rabbi Yose ben Kisma died, and all the greats of Rome went to bury him, and they eulogized him greatly, and on their return they found Rabbi Chanina ben Tradyon sitting engaged in Torah and gathering great congregations with a Torah scroll lying in his bosom. They brought him and they wrapped him in a Torah scroll and they heaped prunings of him and kindled the flame on them, and they brought tufts of wool and soaked them in water and placed them on his heart, so that his soul would not leave rapidly.

His daughter said: "Father, must I see you thus?"

He said to her: "Had I been burnt alone it would be difficult for me, but now that I am being burnt together with a Torah scroll, He Who will seek redress for the Torah will also seek redress for me."

His students said to him: "Rebbe, what do you see?"

He said to them: "The parchment is burning and but the letters are flying off".

"You should open your mouth and let the flame enter you!"

He said to them: "Better it be taken by Who gave it, and I should not wound myself."

The executioner said to him: "Rebbe, if I increase the flame and remove the tufts of wool from on your heart, will you bring me to the Coming World?"

He replied. "Yes."

"Swear to me!"

He swore to him.

Immediately he increased the flame and removed the tufts of wool from on his heart, and his soul departed rapidly.

The executioner jumped into the flame. A metaphysical voice emerged and said: Rabbi Chanina ben Tradyon and the executioner are invited to the life of the Coming World.

Rebbe cried and said: There are those who acquire their Worlds in a moment, and those who acquire their Worlds only after many years.

The text confronts our question three times:

- 1) when the students urge R. Chanina to open his mouth
- 2) when the executioner asks R. Chanina if he wishes the soaked wool removed and the flame increased
- 3) when the executioner jumps into the fire himself.

R. Chanina answers his students with a memorable sentence that seems in full concord with R. Zevin:

Better it be taken by Who gave it, and I should not wound myself.

But R. Chanina then promises the executioner ultimate reward for hastening his death, and having been promised a share in the World to Come, the executioner hastens to commit suicide, and a *bat kol* and Rabbi Yehuda HaNasi each confirm that he has in fact received that share. How can this be reconciled with an absolute duty to preserve life?

Many have resolved the contradiction between R. Chanina's responses in 1) and 2) by distinguishing between passive and active suicide, and between R. Chanina's response in 1) and the executioner's actions in 2) and 3) by distinguishing between Gentiles and Jews, or perhaps combining the two distinctions.

However, it seems to me that such distinctions may fit within the story *literally*, but they do not fit with it *literarily*. The story qua story does not seem interested in conveying the nuances of end-of-life issues.

Here is my alternative reading. The story as cited above is actually an excerpt – our narrative is preceded by the following dialogue:

When Rabbi Yose ben Kisma became ill, Rabbi Chanina ben Tradyon went to visit him. He said to him: Chanina my brother, do you not know that this nation (Rome) has been coronated from Heaven, as they have destroyed His house and burnt His sanctuary and killed His pious ones and destroyed all his goods, and she nonetheless survives? But I have heard of you that you sit engaged with Torah and gather great congregations with a book lying in his bosom!?
Rabbi Chanina said: They will have mercy from heaven.
Rabbi Yose said: I say sensible things to you, and you respond “They will have mercy from heaven”! I would be astonished if they don’t burn you and the Torah Scroll with you!
Rabbi Chanina said: What is my status with regard to the Coming World?
Rabbi Yose said: Has anything unusual happened to you?
Rabbi Chanina said: I confused [my] moneys of Purim with moneys of charity, and distributed them to the poor [and did not repay myself].
Rabbi Yose said: If so, let my share be from yours, and let my fate be from your fate.

The issue between Rabbi Chanina ben Tradyon and R. Yose ben Kisma is whether to surrender culturally to the military ascendancy of Rome, *because that military ascendancy indicates that G-d wants Torah to disappear*. R. Chanina argues that he must continue to teach Torah regardless – if G-d wants Torah to disappear, He will have to actively stamp it out. Furthermore, R. Chanina asks R. Yose *the same question that the executioner asks R. Chanina*. Finally, R. Chanina expresses concern that a previous sin of his will prevent him from gaining *olam haba*.

All this leads to the conclusion that R. Chanina was actively seeking martyrdom, for two reasons:

- a) his personal interest in dying “wrapped in Torah” so as to gain *olam haba*
- b) his ideological interest in forcing G-d to take direct responsibility for the end of Torah (here the passive/active distinction is the point of the story)

On this reading R. Chanina’s statement that **“Better it be taken by Who gave it, and I should not wound myself”** is not about surrendering to Divine ownership, but rather about confronting a G-d Who seems not to be concerned for His own Torah’s survival. If G-d wants me to stop teaching Torah, said R. Chanina, He will have to kill me, and if he wishes Torah to die, I will not let him do so with “clean hands”.

If this reading is correct, we might think that the story is left supporting assisted suicide, and perhaps even suicide, under extreme circumstances. But this might involve falling into a different category error, namely the assumption that the halakhah as it appears in Talmudic narratives is realistic. I suggest instead that Talmudic narratives often require “suspension of halakhic disbelief”, that is they change an aspect of Halakhah for the purposes of the story. For example, I do not think (although I am aware that others have thought) that the wonderful midrashic narrative in which Yiftach and Pinchas stalemate as to who will go to whom so as to undo Yiftach’s oath should be read as suggesting that an oath to sacrifice one’s daughter is binding unless annulled. Here as well, even the case-specific valorization of suicide and/or assisted suicide may not be intended to represent genuine halakhah. It may be useful to formulate this by saying that positive evaluations of illegal behavior in Talmudic narratives may be presumed to reflect *hora’at sha’ah*=emergency decrees rather than law.

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One might think that all this evidence for the ambiguity and multivalence of our tradition would lead to the conclusion that we cannot usefully participate as Jews in the public discourse about this ballot question. I intend to argue the opposite, however – that the fact that our tradition leaves us space to – requires us to–think not only about precedent, but also independently about right and wrong, means that we are engaged in a discourse with direct meaning for every other citizen. Stay tuned:)

Shabbat shalom
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