

## Facing End-of-life Issues in Jewish-Protestant Families

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### 1. Introduction\*

The high percentage of intermarriage between Jews and non-Jews in Germany as well as in the United States means that diverse religious traditions' perceptions and attitudes regarding end-of-life issues might become relevant in considering how to assist terminally ill family members to die. This is even more exigent since a situation that forces the family members to face the impending death of a beloved family member might expose conflicts deriving from different religious backgrounds that were not perceivable before. This research paper deals with a Jewish-Protestant case in Germany in order to explore the complex aspects and layers involved in interreligious end-of-life issues. For this purpose, I will analyze the halakhic arguments in their historical context and development that are frequently referred to in responsa and articles dealing with suicide and assisted suicide. From the results of this analysis, I will derive additional arguments that contribute to a response to this complex case.

#### 1.1. The Case

A congregational rabbi in Germany is approached by a female member (A), 18 years old, regarding her Jewish mother (B) who is terminally ill with breast cancer: due to radiotherapy, the skin of the upper part of B's body is blotched with lumps that are pus-filled and excrete a fetidness that is difficult to tolerate; B perceives disgust by herself and by others leading her to feel disgraced and diminished in her dignity (*kavod*). The father (C), who is Protestant, ignores the situation and still believes that there is a chance for his wife to survive whereas B has given up any hope and is looking forward to her death. Moreover, she has collected sleeping pills secretly and hidden them in the bedroom on the second floor in order to commit suicide in case she cannot tolerate the suffering anymore. Currently, she is still at home lying in the living room on the first floor since she cannot climb the stairs to the bedroom on the second floor anymore. She is treated by a physician and a nurse who comes twice a day (morning and evening). However, the pain reliever has to be administered mainly by her husband and her daughter and thus is insufficient. During pain attacks, she asks her daughter (A) to bring her the sleeping pills in order to commit suicide. She did not talk with her husband about her desire to die since she is absolutely convinced that he would refuse her request and even destroy the sleeping pills if he

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found them. Whereas B is Jewish but religiously uninvolved, attending services and observing rituals only infrequently, her Protestant husband (C) was very attached to his Protestant community before they fell in love. Because of their marriage, C abandoned his Protestant affiliation, but now in the crisis, he feels attracted to Protestantism again.

This case illustrates the kind of problem that may arise in many interreligious families. This paper will demonstrate some options how for dealing with different religious traditions.

The controversial issues in this case are: 1) Can B's will to commit suicide be justified in the Jewish tradition? 2) Can A assist her according to the Jewish tradition? 3) How can this be explained to C in ways that are understandable for him as a Protestant?

Before these questions are discussed, the German legal situation is described because it frames the context.

## 1.2. The German legal situation

The legal situation in Germany is ambiguous since the German Parliament adopted an amendment of the Criminal Law Code on November 6, 2015 that on one hand criminalizes any commercial assisted suicide and only exempts "close relatives or other people who are close to the person wishing to commit suicide ... from criminal liability."<sup>1</sup> This might be interpreted to mean that a relative who assists suicide is not liable according to criminal law but nevertheless commits a (criminal) transgression. The German reservation against assisted suicide derives to a large extent from the Nazi crimes when the word "euthanasia" was used as a euphemism for the murdering of disabled persons who were regarded as "use- and worthless" and as a burden for the economy system.<sup>2</sup> Moreover, the Nazi propaganda movie "Ich klage an" (I accuse) from

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<sup>1</sup> „Strafgesetzbuch (StGB) § 217 Geschäftsmäßige Förderung der Selbsttötung: (1) Wer in der Absicht, die Selbsttötung eines anderen zu fördern, diesem hierzu geschäftsmäßig die Gelegenheit gewährt, verschafft oder vermittelt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft. (2) Als Teilnehmer bleibt straffrei, wer selbst nicht geschäftsmäßig handelt und entweder Angehöriger des in Absatz 1 genannten anderen ist oder diesem nahesteht“. Online on: [https://www.gesetze-im-internet.de/stgb/\\_\\_217.html](https://www.gesetze-im-internet.de/stgb/__217.html) (last access 07/22/16); English translation and summary on <http://www.loc.gov/law/foreign-news/article/germany-parliament-adopts-draft-act-to-criminalize-commercial-assisted-suicide/> (last access 07/24/16). On the other hand, any killing on request is generally punished by imprisonment between six months and five years: „Strafgesetzbuch (StGB) 216 Tötung auf Verlangen: (1) Ist jemand durch das ausdrückliche und ernstliche Verlangen des Getöteten zur Tötung bestimmt worden, so ist auf Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu erkennen. (2) Der Versuch ist strafbar“. Online on: [https://www.gesetze-im-internet.de/stgb/\\_\\_216.html](https://www.gesetze-im-internet.de/stgb/__216.html) (last access 07/24/16).

<sup>2</sup> Immanuel Jakobovits and Henry Friedlander, Euthanasia, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 6, Detroit: Macmillan Reference, 2007, pp. 569-571. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587506148&it=r&asid=e05daa094dd8ca03854b95720ba1ebb5](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587506148&it=r&asid=e05daa094dd8ca03854b95720ba1ebb5) (last access 01/14/17).

1941 promulgated “killing on request” of terminally ill persons.<sup>3</sup> Therefore, in this paper the word “euthanasia” is not used. Instead, I use the term “assisted dying” in order to describe various forms of assistance to die: by withdrawal of impediments, or by interrupting life-prolonging measures, even artificial nutrition, i.e. actions that are intended to remove everything that prolongs the process of dying, in contrast to “assisted suicide”, i.e. to help someone to commit suicide.” Assisted dying” and “assisted suicide” are to be distinguished from “killing on request”.

Due to Nazi history, a strong aversion prevails in the German society against a utilitarian approach to the idea of the “worth of life,” also out of fear that legalization of assisted suicide might induce terminally ill persons to perceive themselves as a burden for the family so that they might decide to commit suicide out of this feeling, but not out of what is best for them. This so-called “slippery slope”-argument that is also given in American and Israeli articles assumes that “once voluntary euthanasia is permitted [...] we shall unavoidably go downhill to allowing quasi-voluntary and finally even involuntary euthanasia.”<sup>4</sup>

In any case, according to the German legal situation, the person who assists suicide has to justify his/ her decision. How far might this person find support in a Jewish perspective on assisted suicide? Can this Jewish perspective moreover be translated into a German Protestant context?

## 2. Suicide and assisted suicide in the Jewish tradition

In order to discuss Jewish perspectives on assisted suicide, first of all the attitudes in the Jewish tradition regarding suicide and assisted suicide should be analyzed.

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<sup>3</sup> The movie is still forbidden in Germany; for a clip with English subtitles see <https://www.youtube.com/watch?v=PmJpL3XZglE> (last access 01/22/17).

<sup>4</sup> Cf. No’am J. Zohar, *Alternatives in Jewish Bioethics*, Albany: State University of New York Press, NY 1997, pp. 61-62, Peter Knobel, Suicide, Assisted Suicide, Active Euthanasia. A Halakic Inquiry, in: Walter Jacob/ Moshe Zemer (eds.), *Death and Euthanasia in Jewish Law: Essays and Responsa*, Pittsburgh, PA/ Tel Aviv: Rodef Shalom Press, 1995, pp. 27-59, here p. 49, n. 3; for Israel cf. the (German translation) of the report of the public commission that prepared the draft of the new Israeli law on assisted dying, presented to the Israeli government on January 20, 2002: Bericht der öffentlichen Kommission betreffend den Patienten am Lebensende. Gesetzesvorschlag, abweichende Meinungen, Empfehlungen, in: Peter Hurwitz/ Jacques Picard/ Avraham Steinberg (eds.), *Jüdische Ethik und Sterbehilfe. Eine Sammlung rabbinischer, medizinethischer, philosophischer und juristischer Beiträge*, Basel: Schwabe, 2006, pp. 189-219, here p. 217; cf. David A. Teutsch, Preserving Quality of Life toward the End-of-life: A Values Based Approach (Unpublished draft 01/28/16), pp. 4-5, referring to the development in Belgium and the Netherlands with a very liberal legislation regarding assisted suicide.

## 2.1. Ancient Jewish perspectives on suicide

Generally, life is considered a great good,<sup>5</sup> given and taken by God. For instance, the daily morning blessing “Elohay neshamah”, based on the Babylonian Talmud, Berakhot 60b, reserves the right to take life to God as the creator. Therefore, God as creator (*koneh*) is regarded as the possessor (*koneh*) all of creation,<sup>6</sup> including every life.

Therefore, only few cases of suicide are known in the ancient Jewish tradition. Four cases of suicide are mentioned in the Bible, that of King Saul and his arm-bearer (1 Sam. 31:4-5), Samson (Judges 16:30) and Ahitophel (2 Sam. 17:23);<sup>7</sup> they do not support a conclusion that suicide was generally permitted in biblical times. Moreover, according to some interpretations in ancient rabbinic Judaism, suicide is generally prohibited, as Midrash Genesis Rabbah explains on Gen. 9:4 “‘but [*akh*] for your own life-blood’ (NJPS): to include somebody who strangles himself – Saul, too? It teaches ‘but’ [*akh*]”<sup>8</sup>; thus, the additional *akh* signifies that God will require a reckoning of “your blood” but [*akh*] not of Saul’s blood. Therefore, the cases of Saul and Samson were to be explained and justified<sup>9</sup> whereas Ahitophel’s suicide was rejected as illegitimate murder.<sup>10</sup>

Not surprisingly, the ancient rabbinic tradition only mentions a few further cases of suicide. One of these rare exceptions is the case of 400 children in the Babylonian Talmud who jump into the sea in order not to become victims of child abusers (bGittin 57b). The fact that this suicide is commented on in the Talmud only by quoting Ps. 44:23 might demonstrate the silent agreement that the suicide is perceived as legitimate martyrdom/ *kiddush ha-shem* (sanctification of the divine name): “It is for Your sake that we are slain all day long, that we are regarded as sheep to be slaughtered” (NJPS).<sup>11</sup> Consequently, martyrdom becomes limited in

<sup>5</sup> Cf. for instance the commandment to choose life (Deut 30:19); cf. Kassel Abelson, Suicide. YD 345:2.2005, [https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/abelson\\_suicide.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/abelson_suicide.pdf) (last access 12/11/16), p. 2.

<sup>6</sup> Elliot N. Dorff, Assisted Suicide. YD 345.1997a, [https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff\\_suicide.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff_suicide.pdf) (last access 12/11/16), p. 380, and *ibid.*, n. 3.

<sup>7</sup> Abelson, Suicide, p. 2. Cf. Louis Isaac Rabinowitz et al., Suicide, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 19, Detroit: Macmillan Reference, 2007, pp. 295-297. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587519339&it=r&asid=bcd2a2f5043600898b0b5624b3c59aea](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587519339&it=r&asid=bcd2a2f5043600898b0b5624b3c59aea). (last access 01/21/17).

<sup>8</sup> My own translation of the text provided by Jehuda Theodor/ Chanoch Albeck, *Midrash Bereshit Rabbah. Critical Edition with Notes and Commentary*. 3 vols. (Hebrew), 2<sup>nd</sup> ed. with additional corrections by Ch. Albeck, reprint Jerusalem: Shalem Books, 1996, p. 324, *parashah* 34:9, § 5.

<sup>9</sup> For instance that Saul would have died anyway if not by himself then by the Philistines, cf. Abelson, *ibid.*, p. 2 n. 8.

<sup>10</sup> Cf. Abelson, *ibid.*, p. 2 n. 9.

<sup>11</sup> Dorff, *Matters*, p. 181. Cf. the famous case of Masada reported by Flavius Josephus: The rebels who had fled to Masada from Jerusalem in 70 C.E. not only killed themselves but also their wives and children in 73/74 C.E. in order not to fall into the hands of the Roman conquerors; cf. Guy D. Stiebel, Masada, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 13, Detroit: Macmillan Reference, 2007, pp. 593-599. *Gale*

the Talmudic tradition to three exceptions: if otherwise someone is forced to commit murder, public idolatry, or incest instead of choosing death. In these three cases, suicide is even commanded, however it is committed for the sake of God, not for one's own sake or benefit.<sup>12</sup> On the other hand, these exceptions underline that the Jewish tradition recognizes an ultimate obligation to protect, serve and save life, *pikkuach nefesh*.

Significantly, this ultimate value of life is traditionally only limited by the right to cause death actively in the case of war or death penalty. Consequently, a *mitah yaffah*, a "nice/ good death," is defined in the Babylonian Talmud and in Rashi's commentary as a "quick death," *sheyamut maher* (bSanh 45a) regarding a person who is sentenced to death<sup>13</sup> – not a terminally ill person. On the other hand, if the pain of a person sentenced to death is taken into consideration, why should an "innocent" person suffering from intolerable pain not be allowed even more to benefit from a *mitah yaffah*?<sup>14</sup>

While rabbinic tradition does not relate the concept of *mitah yaffah* to terminal illness, there are cases of accelerated death that are discussed in the traditional sources. In the following, I will reread the three best known and most quoted stories (two from the Talmud, one from the Middle Ages) dealing with accelerated death in the rabbinic tradition, analyze them in the context of the development of Halakhah, and consider how these three stories might build a bridge to the actual case by raising arguments that permit assisted suicide in clearly defined circumstances.

## 2.2. Two Talmudic stories about accelerated death

### 2.2.1 Rabbi Chaninah ben Teradyon

The most famous and therefore most frequently quoted case dealing with the issue of "assisted dying"<sup>15</sup> is that of Rabbi Chaninah ben Teradyon whom the Romans had sentenced to death by

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*Virtual Reference Library,*

go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587513369&it=r&asid=0cf7d168020a8d1dbc3630be914f3c09. (last access 01/14/17).

<sup>12</sup> Dorff, *Matters*, p. 181.

<sup>13</sup> Leonard S. Kravitz, Einige Gedanken über jüdische Tradition und Patienten am Lebensende, in: Peter Hurwitz/ Jacques Picard/ Avraham Steinberg (eds.), *Jüdische Ethik und Sterbehilfe. Eine Sammlung rabbinischer, medizinethischer, philosophischer und juristischer Beiträge*, Basel: Schwabe, 2006, pp. 71-90, here 74; this article is rather similar to an earlier English article by the same author: Leonard Kravitz, Euthanasia, in: Walter Jacob/ Moshe Zemer (eds.), *Death and Euthanasia in Jewish Law: Essays and Responsa*, Pittsburgh, PA/ Tel Aviv: Rodef Shalom Press, 1995, pp. 11-25.

<sup>14</sup> Cf. Kravitz (2006), p. 74.

<sup>15</sup> Dorff, *Matters*, p. 181; Zohar, *Alternatives*, pp. 51-53; Kravitz (1995), pp. 13-15; Kravitz (2006), pp. 77-78; Tom Kučera, Halacha, Aggadah und Sterbehilfe. Nicht den Tod beschleunigen, aber auch nicht das Sterben verlängern – eine Auseinandersetzung mit den Quellen (Halakhah, aggadah, and assisted dying. Not to hasten death but not to

burning (bAvodah Zarah 18a). In order to prolong his painful dying process, the Romans put tufts of wool soaked with water around his chest. First, Rabbi Chaninah refused his students' advice to inhale the flames thus accelerating his death with the argument that only the One who had given life may take it and therefore a person is not allowed to injure himself. However, when the executioner asked Rabbi Chaninah to assure him the life of the world to come if he increased the flames and removed the tufts of wool in order to hasten his death, Rabbi Chaninah agreed and even swore to him that he would do so. The executioner not only acted accordingly so that Rabbi Chaninah died but even jumped himself into the flames, thus committing suicide, whereupon a heavenly voice announced: Rabbi Chaninah ben Teradyon and the executioner are appointed (*mezummanin*) to the life of the world to come. Rabbi Chaninah's case demonstrates an active intervention by the executioner in the category of *kum ve-ase*.<sup>16</sup> With R. Chaninah's explicit agreement, the executioner actively increased the flames and withdrew the impediment, thus accelerating death. Moreover, this decision and action, even the suicide, are justified by the heavenly voice. Consequently, Rabbi David Teutsch calls the executioner "the hero of the story" and considers the "aggadic tale" a support for "the possibility of interpretations about end-of-life pain avoidance."<sup>17</sup> Instructively, contemporary thinkers who reject any kind of active assisted dying either omit mention of the increasing of the flames<sup>18</sup> or explain it not as an acceleration but as a "restoring ... to its original intensity" after the fire had been reduced in the meantime in order to extend the suffering, comparable to the function of the tufts of wool.<sup>19</sup> The far-fetched nature of this explanation demonstrates how provocative the fact is that Rabbi Chaninah asked to increase the flames, a detail that can indeed serve as support for assistance in active dying. Significantly, however, apparently no interpretations try to relativize Rabbi Chaninah's case as a precedent by interpreting it as an exceptional case that does not allow one to draw conclusions from it.

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prolong dying – a debate with the sources), in: Elisa Klapheck (ed.), *Jüdische Positionen zur Sterbehilfe*, Berlin: Hentrich, 2016 (Injanim. Vol. 1), pp. 61-87, here p. 73.

<sup>16</sup> Kučera, p. 75.

<sup>17</sup> Preserving Quality of Life, p. 5.

<sup>18</sup> For example Abraham S. Abraham, Euthanasia, in: Fred Rosner (ed.), *Medicine and Jewish Law*. Vol. 1, Northvale, NJ 1993, pp. 123-136, here p. 129.

<sup>19</sup> Moshe D. Tendler as co-author of Moshe D. Tendler/ Fred Rosner, Quality and Sanctity of Life in the Talmud and Midrash, in: *Tradition* 28,1, 1993, pp. 18-27, here p. 23: "One of us (MDT) has suggested that, as an extra measure of cruelty not mandated by the Emperor or Governor, the Executioner had placed the wads of wet wool and had lowered the flame. 'Burning at stake' had a formal protocol which was not followed by the cruel Executioner. Restoring the flame to its original intensity is not considered an act of hastening death but merely the removal of the extra measure of cruel torture introduced by the Executioner." Also Kučera, pp. 78-79, notices this far-fetched explanation.

### 2.2.2. Rabbi's maid

In another frequently quoted case (bKetubbot 104a)<sup>20</sup>, the students of Rabbi Judah ha-Nasi or Rabbi prayed to God to save his life, thus trying to prevent him from dying although he was already “sought by those on the high,” as Rabbi’s maid realized. Since she observed his serious suffering from illness, she decided that “those on the high should conquer those below,” hoping that her decision would be approved “on high.” The students, however, did not interrupt their prayers until she threw a vase from the roof, thereby silencing the students so that Rabbi’s soul could depart. Here too, death is accelerated by the maid’s active and physical withdrawal of the impediments: throwing of the vase to interrupt the students’ prayers that are understood as the life maintaining mechanism.

This active interference advocating death was not acceptable to the later commentators: When the Spanish talmudist Rabbenu Nissim ben Reuben Girondi or RaN (?1310-?1375)<sup>21</sup> referred to this story in his commentary on bNedarim 40a, he used it as a proof for his ruling: “According to my view one teaches [in the Talmud] that sometimes one must pray for mercy for a patient so that he will die when he is suffering a lot and cannot live any more as we say in chapter ‘*ha-nose*’ [bKetubbot 104a].”<sup>22</sup> RaN based his ruling on the interpretation that the maid only prayed for Rabbi’s death and did not intervene more actively. However, even this abridged and simplified interpretation was too far-reaching for later authorities and therefore not accepted; for instance, R. Joseph Karo did not mention it in his authoritative code *Shulchan Arukh*.<sup>23</sup> In their discussions of this case, RaN and many later halakhists who reject actively assisted dying omit the fact that the maid actively intervened to hasten Rabbi’s death by throwing the vase.<sup>24</sup> This demonstrates that this story is indeed provocative and confirms that active assisted dying is an outlying position in halakhic discourse.

As aggadic stories, both these cases have limited normative influence, but their inclusion in the Babylonian Talmud means that they are frequently referred to in halakhic discourse.<sup>25</sup> In

<sup>20</sup> Kravitz (1995), pp. 15-16; Kravitz (2006), pp. 78-79, Kučera, pp. 77-78.

<sup>21</sup> Leon A. Feldman, Nissim ben Reuben Gerondi, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 15, Detroit: Macmillan Reference, 2007, pp. 280-281. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587514885&it=r&asid=b9ae4dee4fc2a1cb17efc2318e61d319](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587514885&it=r&asid=b9ae4dee4fc2a1cb17efc2318e61d319) (last access 01/14/17).

<sup>22</sup> My own translation of the commentary follows the text printed in the Romm edition of the Babylonian Talmud. Cf. the translation in the compilation of sources provided by Daniel Eisenberg, *Praying for the Death of a Patient: A Halachic View*, online available as: [download.swdaf.com/DafDocs/ketubot/ketubot104\\_Praying\\_for\\_Death.pdf](http://download.swdaf.com/DafDocs/ketubot/ketubot104_Praying_for_Death.pdf) (last access 12/27/16). Abraham’s translation is rather loose.

<sup>23</sup> Yoreh Deah, Chapter 339: Laws of a Moribund Patient.

<sup>24</sup> Abraham, p. 123. Cf. Kravitz (1995), p. 23, n. 15, with a similar observation regarding Fred Rosner, *Jewish Bio-Ethics*, 1979, p. 271; J. David Bleich, *Judaism and Healing: Halakhic Perspectives*, New York 1981, p. 142.

<sup>25</sup> Cf. Zohar, p. 66, n. 28; Tendler and Rosner (p. 27, n. 12) refer to R. Tam as an authority who even used Midrash as a “source of practical Jewish law (*halakha lemaase*) if it is unopposed by any Talmudic reference”.

scholarly articles about assisted dying, these cases are often cited in arguments that seek to legitimate the active withdrawal of impediments.<sup>26</sup>

However, the post-Talmudic tractate *Semachot/ Evel Rabbati* and its reception in the Sephardic Codes had a decisive impact on the medieval and modern interpretations of these two stories since *Semachot* absolutely prohibits any form of accelerating death.

### 2.3 The post-Talmudic tractate *Semachot/ Evel Rabbati* and its reception in the Sephardic Codes

Already the Mishnah (mShabbat 23:5) prohibits closing the eyes of a dying person; anyone who does this sheds blood (i.e. causes death) and thus becomes a murderer. In the Babylonian Talmud the person who does this is compared to someone who puts his finger on a flickering light and thus extinguishes it (bShabbat 151b).

Similarly, the post-Talmudic tractate “*Semachot*” not only quotes this tradition but mentions further prohibitions of changes in the situation of the moribund, or *goses* (traditionally defined as the terminally ill within the last 72 hours of life),<sup>27</sup> out of fear that by doing so his death might be accelerated: “Whoever touches and moves him [the moribund] is a murderer;” this prohibition even includes any withdrawal of impediments<sup>28</sup> and actions that might accelerate death.

The prohibitions of *Semachot* are quoted in the first halakhic compendium, the *Hilkhot Ha-Ri”F* or *Hilkhot Alfasi* by Rabbi Isaac Alfasi (ha-Ri”F), and from there adopted into the Sephardic codes and thus became halakhically normative: Rabbi Isaac Alfasi quotes the prohibitions with only some small variations and additions that do not change the content,<sup>29</sup> similarly the RaMBaM/ Maimonides in his Code *Mishneh Torah* (Hilkhot Avel 4:5)<sup>30</sup> and Rabbi Jacob ben Asher in his *Turim* (Tur Yoreh De’ah 339) offer more details but without changes in content.<sup>31</sup> Finally, R. Josef Karo bases the rulings in his *Shulchan Arukh* on the *Turim* (Yoreh De’ah 339:1).<sup>32</sup> However, since the *Shulchan Arukh* represents Sephardic tradition, it was only accepted as an authoritative code by Ashkenazic Jewry thanks to the glosses by Rabbi Moses Isserles (1525 or 1530–1572) from Cracow<sup>33</sup> that add the Ashkenazic tradition as the *Mappah*, the “tablecloth,”

<sup>26</sup> See below 5.

<sup>27</sup> Cf. for instance Kravitz (2006), p. 81 n. 28 who refers to Joshua Falk, quoted by Immanuel Jakobovits, *Jewish Medical Ethics*, New York: Philosophical Library, 1959, p. 121 and p. 349 n. 18.

<sup>28</sup> *Semachot* (Evel rabbati), chap. 1 (quoted in the appendix of sources); translation into English quoted in Kravitz (1995), p. 18. If not otherwise noted, all texts are quoted according to the Bar Ilan University Database, version 17.

<sup>29</sup> Appendix of sources, source 2.

<sup>30</sup> Appendix of sources, source 3, marked in grey.

<sup>31</sup> Appendix of sources, source 4, marked in grey.

<sup>32</sup> Appendix of sources, source 5, marked in grey.

<sup>33</sup> Cf. Shlomo Tal and David Derovan, Isserles, Moses ben Israel, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 10, Detroit: Macmillan Reference, 2007, pp. 770-772. *Gale Virtual*

to the *Shulchan Arukh*, the “arranged table.” After the *Shulchan Arukh* was printed together with Isserles’ *Mappah* inserted into it in Cracow 1578-1580, both works were thereafter always printed together in this way and thus formed an inseparable unity among Ashkenazic Jewry. In this way, the Sephardic *Shulchan Arukh* together with Isserles’ *Mappah* became authoritative for Ashkenazic Jewry.

Isserles’ gloss on Yoreh De’ah 339:1 changes the trajectory of the halakhic discussion of assisted dying. In contrast to the absolute prohibition to even touch a dying person that the *Shulchan Arukh* adopted from Semachot, Isserles introduces a crucial differentiation: On the one hand, Isserles forbids the acceleration of death for instance by putting keys of the synagogue under the head of the dying. On the other hand, Isserles allows the removal of any impediment that prevents the soul from leaving, even if this active removal explicitly includes touching, for instance by removing salt from the tongue, without interpreting this action as acceleration of death.

Isserles vote for a compromise seems to reflect his reliance on an earlier source that takes an ambivalent approach to assisted dying: *Shiltei Ha-gibborim*, the glosses of Joshua Boaz ben Simon Baruch (Italy, 16<sup>th</sup> century)<sup>34</sup> to the *Hilkhot Alfasi* to bMoed Katan 26b, first published in the Italian Sabbioneta in 1554/55. Joshua Boaz’s gloss explicitly refers to medieval Ashkenazic sources that fundamentally differ from the absolute prohibition in the Sephardic tradition since they take the perspective *of* the moribund instead of the perspective *on* the moribund and thus his/ her interests into consideration. By incorporating this gloss into his *Mappah*, Isserles made consideration of the moribund’s interests part of the halakhically authoritative code.

## 2.4. Developments in medieval Ashkenaz regarding suicide and assisted suicide

### 2.4.1 *Sefer Chasidim*

*Sefer Chasidim*, the major work of medieval Ashkenazic piety attributed to Judah he-chasid (c. 1150-1217) from Speyer and Regensburg<sup>35</sup> reads: “One does not cause that someone does not die quickly, for instance [if there is] a woodchopper close to the house of a moribund (*goses*) so

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*Reference Library,*

go.galegroup.com/ps/i.do?p=GURL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587509761&it=r&asid=bb20edc3777392f7d4af59cd8af7f5db. (last access 01/11/17).

<sup>34</sup> Cf. Yehoshua Horowitz, Joshua Boaz ben Simon Baruch, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 11, Detroit: Macmillan Reference, 2007, p. 455. *Gale Virtual Reference Library*, go.galegroup.com/ps/i.do?p=GURL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587510363&it=r&asid=48469f8363ba7a16d0e60ad9ec9ab587. (last access 01/15/17).

<sup>35</sup> Joseph Dan, Judah ben Samuel he-Hasid, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 11, Macmillan Reference USA, 2007, pp. 490-491. *Gale Virtual Reference Library*, go.galegroup.com/ps/i.do?p=GURL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587510433&it=r&asid=5bb6b5bb0c6cf418b668776428f78eac. (last access 01/11/17).

that the soul cannot leave, one removes the woodchopper from there. And one does not put salt on his tongue so that he cannot die. [But] if he said that he can only die if one puts him in another place, then one does not move him from there”.<sup>36</sup>

According to *Sefer Chasidim*, one does not delay death, but if there is a cause for delay in place, one is allowed to remove it. However, one is not allowed to move someone from his place, i.e. to touch him in order to hasten death, even if this is the dying person’s desire. Thus, this new distinction reflects an ambivalence: On the one hand, one is not allowed to change anything that is directly connected with the dying person; on the other hand, one may actively remove an exterior cause not directly connected to the dying that delays his/ her death. However, the will of the dying person is not taken into consideration.

#### 2.4.2. Tosafot to bAvodah Zarah 27b

In contrast to *Sefer Chasidim*, the Tosafot to bAvodah Zarah 27b introduce the category *l'tovato*, “in his interest” [of the moribund], in order to explain two Talmudic traditions that seem to contradict each other at first glance.<sup>37</sup> According to the first tradition in bYoma 85a, it is permitted to violate the Shabbat even in order to save a small amount of life (*chayyei sha'ah*, “life of an hour”) whereas according to the second tradition in bAvodah Zarah 27b it is permissible to hire a Gentile physician—an allowance normally prohibited to Jews— to help a Jew who will certainly die soon since one is not concerned with the “life of an hour.” The Tosafot explain that in both cases one acts according to the interest or benefit (*l'tovato*) of the moribund; i.e. in the second case the terminally ill person will surely die and so the Gentile physician cannot cause lasting harm but might provide temporary relief. However, in both cases the Tosafot define the moribund’s interest or benefit, *tovato*, as living longer.<sup>38</sup> By contrast, the argument *l'tovato* in modern articles dealing with assisted dying is used to justify the opposite, i.e. to help someone to die earlier;<sup>39</sup> therefore, it should be accompanied by other arguments derived from the medieval sources in order to be effective.

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<sup>36</sup> See appendix of sources, source 6; here translated according to Bologna Print 1538, p. 86r, that differs only little from Joshua Boaz’s quotations so that it reflects a version that was very close to his master copy or was his master copy and was corrected by him, see appendix of sources, source 6, marked in grey; cf. *Sefer Chasidim*, edited by Ruben Margaliyot, Jerusalem: Mosad Harav Kook, 1956/57, p. 443, § 723.

<sup>37</sup> See appendix of sources, source 7.

<sup>38</sup> Cf. Reisner, A Halakhic Ethic of Care for the Terminally Ill, pp. 36-38, n. 22.

<sup>39</sup> Dorff, Matters, p. 205: „When we apply that standard to some contemporary cases, we may have to abandon the attempt to save life in the name of acting in the patient’s general best interests.” Cf. Teutsch, Preserving Quality of Life, p. 2.

### 2.4.3 The story about the very old lady

Maybe not incidentally, another medieval source switches the perspective, too, from the divine to the human evaluation of life. Although this story is attributed to the well-known ancient rabbi Jose ben Chalafta from Sepphoris in Galilee who was active in the third generation of the Tanna'im (around 130-160 C.E.)<sup>40</sup> it is only attested in a rather late compilation of Midrashim, *Yalkut Shim'oni*, presumably dating from the 13<sup>th</sup> century and attributed to Shim'on *ha-darshan*, "the preacher", from Frankfurt on Main,<sup>41</sup> maybe thus demonstrating that it only became relevant in 13<sup>th</sup> century Ashkenaz. At first glance, the ancient story of Rabbi's maid is rather similar to this medieval case of a very old woman who was tired of living and therefore told Rabbi Jose ben Chalafta that she disliked her "life of degeneracy or disgrace" (Hebrew *chayyim shel nevel*), since she could not enjoy the taste of food and drink anymore and therefore would like to die.<sup>42</sup> Asked by Rabbi Jose why she had lived so long, she replied that she went to synagogue early every day even if she had to interrupt something for that. Rabbi Jose recommended that she should not go to synagogue for three days. This she did, falling ill and dying on the third day. Apparently, going to synagogue and thus praying had served as a life-maintaining measure; interrupting these behaviors caused her death. In this sense, this story might be interpreted as a case similar to that of Rabbi and his maid.

However, there are very significant differences between the two cases: The very old lady is not suffering from a serious illness and pain but rather considers her life as *chayyim shel nevel*, "life as degeneracy or disgrace." This expression is not found in the ancient rabbinic literature but is used here for the first time. Also unprecedented is the very old lady's evaluative judgment according to her own criteria of a worthwhile life – enjoying the taste of food and drink – leading to the conclusion that without this enjoyment her life is meaningless. Moreover, her criteria are not questioned by the rabbi but implicitly confirmed since he gives her important advice on how to die quickly by interrupting the life maintaining-measure—going to synagogue.

Rabbi Jose's advice can be interpreted as active assistance in dying;<sup>43</sup> the very old lady's death is essentially caused by his telling her how to actively withdraw a life-maintaining measure (stopping synagogue attendance). Moreover, the story presents a case where someone is not

<sup>40</sup> Cf. Günter Stemberger, *Einleitung in Talmud und Midrasch*, 9<sup>th</sup> totally revised ed. München: Beck, 2011, p. 92.

<sup>41</sup> Jacob Elbaum, *Yalkut Shimoni*, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 21, Detroit: Macmillan Reference, 2007, pp. 275-276. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587521181&it=r&asid=3ee83e2d75fd3fa97eb7fa0feb03230b](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587521181&it=r&asid=3ee83e2d75fd3fa97eb7fa0feb03230b). (last access 01/11/17).

<sup>42</sup> Appendix of sources, source 8; twice related in *Yalkut Shim'oni* (2 vols., reprint Jerusalem 1979/80): vol. 1, Ekev § 871, v. 2 § 943 (the first one relating to Deut. 11:19; both ending with Proverbs 8:34), see appendix of sources, source 9. With no significant textual changes in the critical edition: *Yalkut Shim'oni l'Rabbenu Shim'on ha-darshan. Osef midrashei Chaza"l la-Tora, Nevi'im, Ketuvim al-pi ketav-yad Oxford ...*, 7 vols., Jerusalem: Mosad Harav Kook, 1972/73-2009/10, here vol. 5:1 Sefer Devarim, ed. by Dov ben ha-rav Aharon Hayman and ha-rav Yitzchak Shiloni, p. 197. On the story cf. Kravitz (1995), pp. 16-17, Kravitz (2006), p. 80, Kučera, p. 78.

<sup>43</sup> Kučera, p. 78.

suffering physically but “only” from the loss of the enjoyment of life and dignity, *kavod*. Or conversely: Losing the enjoyment of life and *kavod* is considered a kind of suffering. Thus, this case concedes a great measure to the agency of the very old lady by evaluating the value of her life from her own perspective – against the characterization of the Jewish tradition as a mandate “to evaluate life from God’s perspective.”<sup>44</sup>

#### 2.4.4 *Piskei Ha-tosafot* to *Tosafot*, bGittin 57b § 215, and its reception in late medieval Ashkenaz

The *Tosafot* to bGittin 57b (the already mentioned story of the 400 children who jumped into the sea to avoid becoming victims of abusers) try to justify why these children committed suicide, whereas Rabbi Chaninah stated in bAvodah Zarah 18a that it is better that the One will take it (the soul) who has given it and that he should not hurt himself, i.e. one is not allowed to commit suicide even in the case of torture. The *Tosafists* reconcile this alleged contradiction between bGittin 57b and bAvodah Zarah 18a by arguing that “the 400 children were afraid of suffering as we said [in bKetubbot 33b] if one had struck Chananiah, Mishael and Azariah [who were thrown into the burning fiery furnace since they had refused to worship Nebuchadnezzar’s statue of gold but were not burnt; Dan. 3] they would have worshipped the idol [i.e. they would have been afraid of suffering, too, like the children]; and moreover, against their will they were tortured but not killed,”<sup>45</sup> i.e. it was unclear in the case of the children if there was an end to their suffering [as in the case of Rabbi Chaninah]; therefore, they were allowed to commit suicide.<sup>46</sup>

In the 14<sup>th</sup> or 15<sup>th</sup> century at the latest, the unknown author of the *Piskei Ha-tosafot*, literally “rulings of the *Tosafists*,” compiled summaries of the *Tosafists*’ explanations, shaped as halakhic rulings.<sup>47</sup> When he referred to the *Tosafists*’ explanation on these two specific cases in bGittin 57b, he significantly formulated the *Tosafists*’ explanation as a general rule: “In a time of persecutions, it is allowed to kill oneself if one is afraid of suffering” – ד"ה קפצו: בשעת גזירות – מותר להרוג את עצמו כשדואג מן היסורין. Consequently, this ruling of *Piskei Ha-tosafot* is also quoted in manuscript versions of the *Piskei Ha-tosafot*<sup>48</sup> that passed down independently from

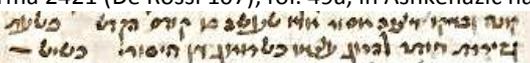
<sup>44</sup> Dorff, *Matters*, p. 187.

<sup>45</sup> My own translation, appendix of sources, source 9.

<sup>46</sup> Cf. the explanation by R. Jacob Ch. Charlap in his responsum “King Saul’s suicide in the light of the Halakhah” [Hebrew], <http://shaalvim.co.il/torah/maayan-article.asp?id=296> (last access 01/01/17), pp. 6-7

<sup>47</sup> On the *Piskei Ha-tosafot* cf. Ephraim E. Urbach, *The Tosaphists: Their History, Writings, and Methods* [Hebrew], 2 vols., 5<sup>th</sup> expanded ed., Jerusalem: Magnes, 1986, here vol. 2, pp. 734-736.

<sup>48</sup> Cf. the two manuscripts, both dating from the 15<sup>th</sup> century and today preserved in Parma, Biblioteca Palatina: Cod. Parma 2421 (De Rossi 107), fol. 49a, in Ashkenazic handwriting: בשעת גזרות מותר להרוג את עצמו כשדואג מן היסורין – כשיל – היסורין,

  
[http://web.nli.org.il/sites/NLI/Hebrew/digitalibrary/pages/viewer.aspx?presentorid=MANUSCRIPTS&docid=PNX\\_MANUSCRIPTS000072204-1#|FL16444186](http://web.nli.org.il/sites/NLI/Hebrew/digitalibrary/pages/viewer.aspx?presentorid=MANUSCRIPTS&docid=PNX_MANUSCRIPTS000072204-1#|FL16444186) (last access 01/21/17); and Cod. Parma 2757 (De Rossi 1305), fol. 52a, in

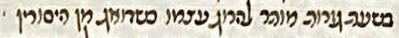
the Tosafists' commentary on bGittin 57b and thus demonstrate that the *Piskei Ha-tosafot* received an autonomous authority.

Moreover, the ruling in *Piskei Ha-tosafot* derived from bGittin 57b is quoted twice by Rabbi Alexander Suesslin ha-kohen (Erfurt, Frankfurt on Main, murdered 1349)<sup>49</sup> in his *Sefer Ha-aggudah* (glosses on the tractates of the Babylonian Talmud), in his gloss on Rabbi Chaninah's statement in bAvodah Zarah 18a, however with significant additions: "It is better that the One will take it [the soul] that has given it than to hurt oneself [i.e. to kill oneself]': And these words [refer to the case] that he knows by himself that he is able to endure the suffering but now, in the time of persecutions, one is allowed to kill oneself so that one will not come into temptation."<sup>50</sup> First, someone may decide by himself if he can withstand the torture or not and in the latter case prefer to kill himself in order not to be led into "temptation" *nissayon*, apparently to submit to idolatry. Moreover, in his gloss on bGittin 57b (the story of the 400 children who jumped into the sea), Alexander Suesslin ha-kohen quotes an explanation of "R'1", the Tosafist R. Isaac ben Samuel "the Elder": "Rabbi Isaac explained that – in contrast to the words in Avodah Zarah 18a: 'It is better that the One will take her that has given her [the soul] than to wound oneself [in order to kill oneself]' – here [in the *Tosafot* bGittin 57b "*kaftzu*"] they were afraid of the suffering for we say 'if one had struck etc. [Chananiah, Mishael and Azariah]' [in bKetubbot 33b]; and from here, a support [may be derived] for those who killed themselves and their children besides them in the time of persecutions."<sup>51</sup>

Thus, this explanation only addresses the experience during the persecutions of the Crusades when Jews killed not only themselves in order not to be handed over to their persecutors but even killed their wives and children as once the rebels in Masada had done. This suggests that the Ashkenazic experience had an impact on the perception of suicide and killing as legitimate forms of martyrdom.

These sources leave the decision to kill oneself to the evaluation of the person who "is afraid of suffering." Might it be possible to extend this rule to another case in which the effect of suffering is unclear, not because of persecution but because of illness? An answer on this question would be given only at the beginning of the 20<sup>th</sup> century.

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Italian handwriting: בשעת גזרות מותר להרוג עצמו כשדואג מן היסורין;  : see [http://web.nli.org.il/sites/NLI/Hebrew/digitalibrary/pages/viewer.aspx?presentorid=MANUSCRIPTS&docid=PNX\\_MANUSCRIPTS000080153-1#|FL20872027](http://web.nli.org.il/sites/NLI/Hebrew/digitalibrary/pages/viewer.aspx?presentorid=MANUSCRIPTS&docid=PNX_MANUSCRIPTS000080153-1#|FL20872027) (last access 01/06/17).

<sup>49</sup> [Without author], Alexander Suslin Ha-Kohen of Frankfurt, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 1, Detroit: Macmillan Reference, 2007, p. 630. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587500759&it=r&asid=f19d068f3298378d5d7c80a0235385c3](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587500759&it=r&asid=f19d068f3298378d5d7c80a0235385c3). (last access 01/17/17).

<sup>50</sup> Elazar Brizel (ed.), *Sefer Ha-aggudah of Alexander Suesslin ha-kohen*, 6 vols., Jerusalem: [no publisher], 1991-92, here vol. "Nezikin", p. 207 § 12 (my own translation).

<sup>51</sup> Brizel (ed.), *Sefer Ha-aggudah*, vol. "Nashim", p. 283 § 96 (my own translation).

#### 2.4.5 Customs in late medieval Ashkenaz as reported by Joshua Boaz in his *Shiltei Ha-gibborim*

Joshua Boaz begins his gloss on the absolute prohibition in Semachot (2.3) by referring to a custom practiced by some people that should be prohibited: These people used to remove the cushion beneath a dying person so that the moribund can die quickly for they say that feathers of poultry in the bed of the moribund cause the soul not to leave.<sup>52</sup> Joshua Boaz adds that he “shouted” several times against this “bad custom” (*ha-minhag ha-ra*) in order to abolish it, but was unsuccessful. Moreover, his rabbis differed from him and even Rabbi Nathan from Eger (in Bohemia, today Cheb in the Czech Republic) wrote about it to allow it.

The custom that Joshua Boaz rejects not only involves the removal of the supposed impediment in order to hasten death but also the touching of the dying person, an act that is clearly forbidden according to Semachot. Significantly however, other rabbis did not forbid it; Nathan Eger (c. 1360-c. 1435), who was a well-known rabbi in Bohemia and the neighboring territories and cities in the west like Nuremberg,<sup>53</sup> explicitly allowed it, a decision that was apparently established and thus became known to Joshua Boaz in northern Italy nearly a century later. Moreover, Joshua Boaz gives evidence of an even more far-reaching custom where people tried actively to shorten the suffering and hasten the death by putting keys under the head of the dying person. This is evidence of the desire to actively assist dying persons already in pre-modern times.

After some years, Joshua Boaz found support for his opinion in *Sefer Chasidim*, § 723, which prohibits the removal of a dying person. Joshua Boaz admits that these words need consideration (*tzarikh iyyun*) since at first glance the beginning of the paragraph states the opposite, i.e. to remove the woodchopper. He resolves the putative contradiction in this way:

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<sup>52</sup> Appendix of sources, source 10. Joshua Trachtenberg mentions this custom in his *Jewish Magic and Superstition. A Study in Folk Religion* (New York: Atheneum, 1939, p.174), and explains: “Chicken feathers, no doubt because of the relationship that existed between demons and this fowl, were believed to prolong the death-agony, and therefore bedding containing such feathers was removed from beneath the dying man.” A. P. Bender (Beliefs, Rites, and Customs of the Jews, Connected with Death, Burial, and Mourning, in: *Jewish Quarterly Review* 6,2, 1894, pp. 317-347, here pp. 343-346) refers to the very long-living or even immortal bird called *chol*, phoenix, in Gen R 19:5, or *milcham* in other ancient traditions and other ancient Jewish traditions. R. Zelikman Bing (d. c. 1473, a talmudist active mostly in Bingen near Mainz) mentions the custom practiced by women on Rosh Chodesh who wore clothes with patches of fur on them because the fur and its hair resembles wings and feathers pointing to Ps 103:5 “so that your youth is renewed like the eagle’s” (NJPS): Similarly, God will renew the women in the future for they had not contributed their earrings to the Golden Calf. Thus, the feathers in the cushion may resemble renewal of life according to the medieval Ashkenazic tradition and therefore had to be removed in order not to prolong life (Zelikman Bing, *MHR"Z Bing: Novellae, Explanations, and Rulings by Zelikman of Bingen, Outstanding Student of Maharil* [Hebrew], ed. by Binyamin S. Noyzatz, Mosheh Ch. Nayman and Yisrael M. Peles, Jerusalem: Makhon Yerushalayim, 1984/5785, pp. 117-118; on Zelikman Bing see extensively Israel Jacob Yuval, An Appeal Against the Proliferation of Divorce in Fifteenth Century Germany (Hebrew), in: *Zion* 48, 1983, pp. 177-215, XVif.

<sup>53</sup> Cf. Israel Jacob Yuval, *Scholars in Their Time. The Religious Leadership of German Jewry in the Late Middle Ages* (Hebrew), Jerusalem: Magnes, 1988, pp. 172-194. In the literature quoting this ruling, his name is rendered incorrectly, for instance by Steinberg as “Igara” or Zohar as “Hungary”, thus wrongly identifying his geographical location.

Of course it is forbidden to do anything that delays death like chopping wood so that the soul delays to leave or to put salt on his tongue so that he does not die quickly. Consequently, it is allowed to do everything that derives from there, i.e. to remove the impediment, but it is forbidden to do anything that accelerates death and the departing of his soul. Therefore, it is forbidden to remove the dying from his place and to put him down at another place so that his soul can depart. Hence, it is also forbidden to put keys of the synagogue under the head of the dying person so that he dies quickly because this, too, makes his soul depart quickly. Accordingly, anything that causes his soul not to depart may be removed, and there is nothing in it for he does not put his finger on the candle and does not do a deed. But to put something on the dying or to move him from place to place so that his soul may depart quickly seems to be definitely forbidden for he puts his finger on the candle.<sup>54</sup>

Joshua Boaz found a compromise between the active customs to accelerate death and the absolute prohibition in Semachot and turned the ruling in *Sefer Chasidim* the other way round by transferring it from an absolute prohibition into a positive prescription that even involves the touching of the dying person. This compromise is picked up by Moses Isserles in his *Mappah* at *Shulchan Arukh*, Yoreh De'ah 339:1, and thus codified: "If there is something that prolongs [causes a delay of] the leaving of the soul, for instance if there is a sound of pounding close to this house for instance a woodchopper or one has salt on his tongue that prevents him from dying one is allowed to remove it since there is no other act in it other than the removal of the impediment."<sup>55</sup> At the same time, Moses Isserles omitted the tradition of the *Piskei Ha-tosafot* and *Sefer Ha-aguddah* that in times of persecutions one might kill oneself out of fear of suffering.

## 2.5. The further development in halakhic sources until the beginning of the 20<sup>th</sup> century

When the talmudist Tzvi Hirsh ben Azriel from Vilna (d. May 23, 1737)<sup>56</sup> collected updated rulings on Yoreh De'ah of the *Shulchan Arukh* in his *Beit Lechem Yehudah* (printed Amsterdam 1732/33 and Fuerth 1747), he added to Moses Isserles' gloss to Yoreh De'ah 345:3. According to

<sup>54</sup> My own translation; cf. the translation in Zohar, Alternatives, pp. 40-41.

<sup>55</sup> My own translation, cf. Elon, Medicine and Law, pp. 744-745; Dorff, Matters, p. 199; cf. Avram Israel Reisner, A Halakhic Ethic of Care for the Terminally Ill. YD 339:1.1990a, 1990, [www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/reisner\\_care.pdf](http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/reisner_care.pdf) (last access 12/13/16), p.

<sup>56</sup> Cf. on him Solomon Baruch Nissenbaum, *On the History of the Jews in Lublin* (Hebrew), Lublin 1899-1900, p. 69.

Isserles, a Jewish thief who is executed by the non-Jewish authorities is not considered as having committed suicide willingly so that all regular mourning rituals are performed.<sup>57</sup> Ben Azriel added the following case: Even if such a person kills himself in prison, he is not considered as having committed suicide since he had feared the tremendous tortures as regular part of the non-Jewish trial. As a support, he referred to the *Tosafot* to bGittin 57b “‘*kaftzu*’ they were afraid of the suffering ...”<sup>58</sup>

The Ashkenazic traditions of the *Tosafot*, the *Piskei Ha-tosafot*, the *Sefer Ha-aguddah* and the *Beit Lechem Yehudah* were discussed by the well-known Sephardic halakhist, kabbalist, emissary, and bibliographer Chayyim Joseph David Azulai or Chida (Jerusalem 1724–Livorno/Leghorn 1806) in his responsa collection *Chayyim Sha’al*.<sup>59</sup> Asked if a Jew should be mourned who had hanged himself in the king’s prison, Chida had to balance between the Sephardic tradition on one hand presented by Rabbi Joseph Karo who had extensively quoted those halakhic authorities in his commentary *Beit Yosef* on Tur Yoreh Deah (§ 157) who had voted against suicide even in times of persecution and forced conversions (*bi-sh’at ha-shmad*) and therefore even criticized Saul’s suicide,<sup>60</sup> and the numerous Ashkenazic traditions on the other hand that allowed suicide out of the fear of suffering. Chida was quite aware of Ashkenazic tradition thanks to his travels to Germany. Therefore, Chida distinguished between the case of someone who killed himself “only” out of fear of suffering and torture and the case of one who killed himself out of fear of transgression, i.e. one who converts out of fear of suffering. According to Chida, it is only in the latter case that suicide should be tolerated. However, Chida’s tendency is quite obvious to justify the regular mourning ritual retrospectively or *b’diavad* in the case of this discussed suicide, inter alia even arguing the Jew might not have committed suicide but was murdered in the prison. Chida quoted the commentary of *Beit*

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<sup>57</sup> Appendix of sources, source 11.

<sup>58</sup> Therefore, Zohar’s statement (Alternatives, p. 57) that Tzvi Hirsh ben Azriel based his ruling “on the mainstream tradition with regard to King Shaul” is incorrect.

<sup>59</sup> Part I, no. 46. On this responsum cf. Israel Zvi Gilat, Exegetical Creativity in Interpreting the Biblical Laws on Capital Offenses, in: *Jewish Law Annual* 20, 2013, pp. 41-101, here pp. 90-92 whose analysis, however, is not always correct.

<sup>60</sup> Karo primarily refers to the *Orchot Chayyim* (Din ahavat ha-shem) of the Provençal scholar Aaron ben Jacob ha-kohen of Lunel (end of 13th and first half of 14th century), and the *Toledot Adam ve-Chavvah* (N’tiv 18 III, fol. 165d) of the Spanish talmudist Jerocham ben Meshullam (c. 1290–1350); on them cf. Shlomoh Zalman Havlin, Aaron ben Jacob Ha-Kohen of Lunel, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 1, Detroit: Macmillan Reference, 2007, pp. 213-214. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587500026&it=r&asid=2a2c0459914f7e8ad0ddd83437f018bc](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587500026&it=r&asid=2a2c0459914f7e8ad0ddd83437f018bc). (last access 01/18/17), and Israel Moses Ta-Shma, Jerocham ben Meshullam, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 11, Detroit: Macmillan Reference, 2007, p. 142. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587510085&it=r&asid=a06f38848f6e9360642a0a3cbe97d87f](http://go.galegroup.com/ps/i.do?p=GVRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587510085&it=r&asid=a06f38848f6e9360642a0a3cbe97d87f). (last access 01/18/17).

*Lechem Yehudah* to *Shulchan Arukh*, *Yoreh De'ah* 345:3, in his *Birkei Yosef*,<sup>61</sup> a collection of his glosses to the *Shulchan Arukh* that was highly appreciated.

Chida's gloss with the commentary of *Beit Lechem Yehudah* was again quoted by Raphael Aaron Ben Simeon (1848–1928), chief rabbi of Cairo 1891-1921,<sup>62</sup> where he reported a suicide in his *Nehar Mitzrayim* (1908) on the rituals of the Jews in Egypt: A terminally ill woman suffering great pain had thrown herself out of a window and died soon afterwards. Ben Simeon decided that she should not be treated as somebody who had committed suicide and thus should be regularly mourned. He derived his decision as a *kal va-chomer*, an *a fortiori* reasoning, from Chida's gloss with the quotation of *Beit Lechem Yehudah*, thus basically refining and further developing the Ashkenazic tradition: If in the case mentioned there by *Beit Lechem Yehudah* someone who is healthy and kills himself only out of fear that he might be tortured in the future is not considered a suicide – then how much the more so here in the case of the very ill woman. Therefore, she should not be considered a suicide since she is already suffering great pains and nearly already dead.<sup>63</sup> To sum up, according to Ben Simeon suicide can retrospectively be justified under certain circumstances, i.e. suffering that cannot be relieved.

## 2.6 Summary of the historical halakhic analysis and its implications

The Ashkenazic medieval traditions added new arguments to the halakhic discussion of assisted dying: that one might take into account the suffering person's own interest, and that he/she is entitled to evaluate by him-/herself when suffering becomes intolerable and to evaluate the value of his/ her life from his/ her own perspective. Beginning with the *Tosafot*, these perceptions increasingly took the suffering person and his/ her perspective into account.

Moses Isserles adopted Joshua Boaz's ruling with the trend-setting innovation that allowed the active removing of impediments including the touching of the dying person, without interpreting this active intervention as acceleration of death. He did not, however, mention the tradition that traces back to the *Tosafot* that allows one to kill oneself out of fear of suffering in times of persecutions.

These different traditions demonstrate that there have been divergent traditions regarding suicide and assisted dying in Judaism before the 20<sup>th</sup> century that can be characterized as Sephardic vs. Ashkenazic. Beginning in the 18<sup>th</sup> century, however, the Chida offers a bridge

<sup>61</sup> Vol. 2, Livorno 1774, fol. 79a, on *Shulchan Arukh*, *Yoreh De'ah* § 345:3 (<http://www.hebrewbooks.org/19312>, last access 01/15/17); appendix of sources, source 12.

<sup>62</sup> Eliyahu Ashtor, Ben Simeon, Raphael Aaron, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 3, Detroit: Macmillan Reference, 2007, pp. 374-375. *Gale Virtual Reference Library*, [go.galegroup.com/ps/i.do?p=GURL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587502540&it=r&asid=9819afdba86e02f0a03fb481822f4cdc](http://go.galegroup.com/ps/i.do?p=GURL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587502540&it=r&asid=9819afdba86e02f0a03fb481822f4cdc). (last access 01/16/17).

<sup>63</sup> Appendix of sources, source 13; cf. Zohar, *Alternatives*, pp. 57-58, on this source.

between the two traditions: Citing Ashkenazic tradition in his glosses, he enables the adoption of the Ashkenazic tradition of leniency in a Sephardic environment.

The halakhic developments laid out above demonstrate that Ashkenazic tradition was indispensable to those who sought to justify suicide out of tremendous suffering--at least retrospectively--even in Sephardic Judaism like Cairo at the beginning of the 20<sup>th</sup> century. The evidence also demonstrates that concern with the experience and perspective of the dying does not reflect a modern rejection of traditional sources; both Ashkenazic and Sephardic authorities had to address pastoral issues regarding suicide and thereby showed compassion with terminally ill persons.

### 3. Modern Arguments

The medieval Ashkenazic traditions anticipated the modern development that focuses on the individual's perspective and his/ her autonomy. Modern discussions of assisted dying appeal to the dignity of the dying person and to his/ her agency as God's co-creator and partner.

#### 3.1. Dignity of the dying person, *kevod ha-briyot*

The *dignitas hominis*, human dignity, is not an original biblical and rabbinical value and principle but may be traced back to a concept in Latin antiquity, for instance when Cicero referred to *dignitas hominis* in order to define the social position and standing of a person. In neo-stoic legal philosophy, the concept of *dignitas hominis* was extended regarding to a person's authority and influence (Grotius, Lipsius) and from there incorporated into the American and European constitutions of the era of Enlightenment.<sup>64</sup>

In Jewish tradition, the term *kevod ha-briyot*, literally "dignity of the creatures," is mentioned in a more limited sense in antiquity for the first time by Rabban Jochanan ben Zakkai (passed down in the ancient Midrash *Mekhilta de-R. Yishmael*, Mishpatim 13) in order to explain why in Ex. 21:37 someone who has stolen an ox has to pay a fine that is five times of the value of the while the fine for stealing a sheep is only four times its value:

רבן יוחנן בן זכאי אומר, הקב"ה חס על כבודן של בריות: שור לפי שהוא הולך ברגליו משלם חמשה, לפי שהוא טוענו על כתפו משלם ארבעה.

According to Rabban Jochanan ben Zakkai, God takes the "dignity of creatures" into consideration and because the thief has to take the sheep on his shoulders in order to carry it

<sup>64</sup> Hubert Cancik, *Würde des Menschen*. 1. Begriffsgeschichtlich (Antike), in: *Religion in Geschichte und Gegenwart* 4, vol. 8 T-Z, Tübingen: Mohr Siebeck, 2005, columns 1736-1737; cf. extensively Markus Rothhaar, *Die Menschenwürde als Prinzip des Rechts: Eine rechtsphilosophische Rekonstruktion*, Tübingen: Mohr Siebeck, 2015 (Perspektiven der Ethik, vol. 4).

away, his dignity is reduced and therefore his fine is also reduced.<sup>65</sup> In bBerakhot 19b, the principle that *kevod ha-briyot* overrides prohibitions is restricted to rabbinical prohibitions so that prohibitions imposed by Rabbis can be removed by Rabbis on the basis of Deut. 17:11 if otherwise *kevod ha-briyot* would be violated.<sup>66</sup> This exemption from a rabbinical prohibition is defined in bShabbat 81b as the permission to carry stones to the roof of his house on Shabbat in order to clean oneself after having relieved because of the *kevod ha-briyot*, thereby violating the rabbinical prohibition to carry stones on Shabbat.<sup>67</sup> In bShabbat 94b one might carry a corpse on Shabbat in “neutral area” (*karmelit*), thus violating the rabbinical prohibition to carry, too.

It is difficult to deduce a general principle of “human dignity” from these very specific cases that would entitle someone to decide autonomously regarding God and the Torah,<sup>68</sup> especially while considering how to shape the end of one’s life. On the other hand, “the rabbis ruled that the positive obligation to honor other human beings, and the negative injunction to avoid humiliating or contemptuous behavior, takes precedence over all other rabbinic verdicts, and many Torah commandments as well. The rabbis elevate human dignity to such paramount, exceptional importance that they grant it priority over their own authority”.<sup>69</sup> Therefore, this principle becomes even more significant for end-of-life issues<sup>70</sup> if it is combined with another

<sup>65</sup> Cf. Rashi’s explanation to bBava Kamma 79b, ד"ה שה שהרכיבו, "שה שהרכיבו הגב על כתיפו וזלזל את עצמו בו לפיכך היקל הקב"ה עליו בתשלומין."

<sup>66</sup> Cf. Menachem Elon, Human Dignity and Freedom, in: *Encyclopaedia Judaica*, ed. by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 9, Detroit: Macmillan Reference, 2007, pp. 585-588. *Gale Virtual Reference Library*, go.galegroup.com/ps/i.do?p=GvRL&sw=w&u=hsjs&v=2.1&id=GALE%7CCX2587509304&it=r&asid=1919b7b4458941a6ab20a7b9cbd97695. (last access 01/14/17), here p. 587.

<sup>67</sup> Cf. Nahum Rakover, *Human Dignity in Jewish Law* (Hebrew), Jerusalem 1998 (The Library of Jewish Law), pp. 48-49, 177-182. According to Rakover (The Protection of Human Dignity, in: idem [ed.], *Jerusalem – City of Law and Justice*, Jerusalem: Library of Jewish Law, 1998, pp. 187-227, here p. 209 n. 57), the principle was limited by a few early halakhic authorities further for they suggested that only those rabbinic verdicts without a biblical basis or explicitly mentioned in the Talmud can override a prohibition.

<sup>68</sup> Cf. Melissa Weintraub, *Kvod Ha-Briot: Human Dignity in Jewish Sources*. Human Degradation in American Military Custody, p. 15 ([www.truah.org/images/stories/pdf\\_torture\\_resources/Human\\_Dignity\\_Weintraub\\_0.pdf](http://www.truah.org/images/stories/pdf_torture_resources/Human_Dignity_Weintraub_0.pdf) (last access 12/10/16): “The trumping priority of human dignity is not unlimited. According to all authorities, one may not transgress a negative, Biblical command in a non-monetary matter where it clashes with human dignity; one may not murder or even wear ‘mixed species’ (linen and wool together) in order to avoid violations to human dignity. Furthermore, even in cases of rabbinic injunctions, one must do all one can to preempt the conflict. In BT Shabbat 81b, the permission to carry a stone into a toilet on Shabbat is immediately followed by a hairsplitting counterexample; one cannot, for the sake of one’s dignity, pick up a chip in a public place in order to clean one’s teeth after a meal, because unlike one’s choice of toilet location, one could have predicted where one would eat one’s meal and thus have prepared toothpicks in advance.” Abraham de Wolf’s and Elisa Klapheck’s account of bShabbat 81b and 94b in their article is imprecise and therefore their hereupon drawn conclusion too far reaching: “Das Recht, in Würde zu sterben. Juristische und rabbinische Gesichtspunkte zur Sterbehilfedebatte” (“The right to die in dignity. Legal and rabbinical aspects to the debate on assisted dying”), in: Elisa Klapheck (ed.), *Jüdische Positionen zur Sterbehilfe*, Berlin: Hentrich, 2016 (Injanim, vol. 1), pp. 89-139, here pp. 114-117.

<sup>69</sup> Weintraub, *Kvod Ha-Briot: Human Dignity in Jewish Sources*, p. 15.

<sup>70</sup> Cf. Teutsch, *Preserving Quality of Life*, pp. 1-2, deriving this value from the well-known story about the grandfather who was separated from the common table by his son because of his misbehavior; he was only

concept or “meta-principle”<sup>71</sup> or “basis axiom,”<sup>72</sup> man’s creation in God’s image, that is widely considered to be a fundamental Jewish value.<sup>73</sup>

### 3.2. Creation in God’s image as an argument for human agency

According to Gen. 1:27, God created humans in God’s image, *b’tzelem elohim*. A person’s worth and dignity are defined by an extrinsic divine concept that sanctifies all human life: “Whoever sheds the blood of man, by man shall his blood be shed; for in His image did God make man”(Gen. 9:6, NJPS). However, this concept primarily confirms the utmost value of every life<sup>74</sup> and thus at first glance contradicts any attempt to use it as justification to decide autonomously about one’s end of life.

It is only when this concept is interpreted in the context of the creation stories in Gen. 1-2 that it can support the agency of a person to make end-of-life decisions. Immediately after their creation the first woman and man are commanded to be fertile and increase, to master the earth and rule over every living being (Gen. 1:28). According to Gen. 2:15, man was placed by God in the garden of Eden to work and to protect it. Created in God’s image, men and women continue God’s creation by their procreation and thus receive agency as God’s co-creators and partners.

The modern “open Orthodox” Rabbi Herzl Hefter, Rosh Beit Midrash Har’el in Jerusalem, goes even further by arguing “that human consciousness is the instrument of divine revelation” since humans are created in God’s image. Therefore, “God is revealed through human consciousness,” too; hence “our refined moral convictions and religious sensibilities may be considered a form of divine revelation.”<sup>75</sup>

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readmitted after the grandson had shown his father that he would similarly act with his father when he would be old; on the story cf. Sharon Barcan Elswit, *The Jewish Story Finder. A Guide to 668 Tales Listing Subjects and Sources*, Jefferson, NC/ London: McFarland & Co., 2012, p. 40 no. 56 “The Grandfather Who Was Thrown Out of the Sukkah” = “The Wooden Bowl”.

<sup>71</sup> Cf. Justice Elon’s judicial decision of the Israeli Supreme Court in the case of the minor Yael Shefer (CA 506/88, Yael Shefer, Minor by way of her mother v. State of Israel, 48 (1) PD 87): “This supreme value is based, as stated, on the meta-principle of man being created in the image of God, with all that implies”, quoted according to Elon, *Medicine and Law*, p. 745.

<sup>72</sup> Elon, *Human Dignity and Freedom*, p. 586: “The origin of human rights in Judaism lies in the fundamental notion of man’s creation in the image of God”.

<sup>73</sup> Cf. the ruling of the Israeli Supreme Court: “Human dignity means not to disgrace or embarrass the divine image in man”, quoted according to Elon, *Human Dignity and Freedom*, p. 588.

<sup>74</sup> Cf. more extensively Doron Shultziner, *A Jewish Conception of Human Dignity. Philosophy and Its Ethical Implications for Israeli Supreme Court Decisions*, in: *Journal of Religious Ethics* 34,4, 2006, pp. 663-683, here pp. 667-668, 672-675.

<sup>75</sup> Cf. Herzl Hefter, *Why I ordained women*, *The Blogs. The Times of Israel*, July 19, 2016, <http://blogs.timesofisrael.com/why-i-ordained-women/> (last access 05/22/16).

If God is not the absolute owner of life anymore and has enabled humans created in God's image to refine "moral convictions and religious sensibilities" – why should this not be true for end-of-life decisions?<sup>76</sup>

#### 4. The German Protestant position regarding suicide and assisted suicide

Liberal mainstream Protestantism in Germany opposes any general legal ruling that allows assisted suicide but leaves the decision to the individual conscience in each case.<sup>77</sup> The Protestant and Catholic churches released a joint press statement in November 2015<sup>78</sup> that affirms the amendment of the German criminal law as a "decision for life and to die in dignity" by underlining that the prohibition criminalized any commercial assisted suicide and thus pointed the way for the protection of life. The statement emphasizes that the law protects terminally ill and old persons from the social pressure to die early and that physicians and caregivers are protected from expectations that they will render suicide assistance within the frame of health care services. The joint press statement calls for the expansion of hospice and palliative care. It neither condemns suicide or assisted suicide explicitly, nor does it attempt to justify it under certain circumstances.

The most well-known public controversy about the Protestant position is owed to the couple Schneider: the former EKD (Evangelical Church in Germany) council chair Nikolaus Schneider who resigned from his position in 2014 in order to assist his wife Anne who had fallen ill with a very aggressive form of breast cancer. Since Anne Schneider had also studied Protestant Theology and worked as a teacher for religious instruction, she was able to develop her own theological approach. The couple had already made public their experiences and theological approaches toward suffering and death when their daughter had died from leukemia at the age of 22; when Anne Schneider became ill, they also published their differing theological positions regarding suicide and assisted suicide of terminally ill patients.<sup>79</sup> In his statement, N. Schneider clearly opposes the idea that humans have the right to return the gift of life autonomously. At the same time, he distinguishes between his own theological position and his function as a pastoral care-giver. He expresses respect for theological insights that are biblically and theologically based and subjected to a high amount of ethical reflection. He rejects the criticism that his promise to accompany his wife even if she commits suicide undermines the position of

<sup>76</sup> Cf. Zohar, *Alternatives*, p. 50.

<sup>77</sup> *Positionspapiere aus Kirche und Diakonie: Sterben in Würde – Beihilfe zum Suizid. Eine Stellungnahme des Rates der EKD* ("Position papers of the church and diacony: Dying in dignity – assistance to suicide. An opinion by the Council of the Evangelical Church in Germany"), February 10, 2015, online: [https://www.ekd.de/download/sterben\\_in\\_wuerde\\_beihilfe\\_suizid\\_17\\_21.pdf](https://www.ekd.de/download/sterben_in_wuerde_beihilfe_suizid_17_21.pdf) (last access 10/18/16).

<sup>78</sup> <http://www.dbk.de/nc/presse/details/?presseid=2957> (last access 01/18/17).

<sup>79</sup> Hermann Gröhe/ Nikolaus Schneider, *Und wenn ich nicht mehr leben möchte? – Sterbehilfe in Deutschland – Mit einem Interview mit Anne Schneider und einem Beitrag von Frank Ulrich Montgomery*, Aßlar: Adeo, 2015.

the EKD. Against this, he argues that no one has the right to make prescriptions to somebody else in such intimate and basic questions like dying; his wife, however, would be held responsible for her decision by God.<sup>80</sup>

According to Anne Schneider, appropriate theology has to be contextual theology. If it becomes the case that she will have given up hope for a meaningful life on earth, she will consider the option of a medically assisted suicide. From the “wisdom to die”, based on Ps. 90:12: “Teach us to count our days rightly, that we may obtain a wise heart” (NJPS), and the concept that human beings are created in God’s image, she derives the responsible freedom to shape the process of dying. She opposes the categorical prohibition of the Evangelical and Catholic churches regarding suicide since she perceives the option to decide under certain circumstances as part of the responsibility transferred to her by God. To return the gift of earthly life to God gratefully does not have to be limited to “natural methods” like interruption of eating and drinking but can also include asking physicians for a lethal cocktail of drugs to shorten the process of dying. She wants to be accompanied by her husband even if her acting contradicts his theological-ethical belief. She believes that humans are not surrendered powerlessly to the alleged will of God and do not have to wait for God to act but can act while praying. She refers to the theologian Dietrich Bonhoeffer who says that God waits for and responds to wholehearted prayers as well as responsible deeds: “God wants us to take our lives – as well as our dying – in our hands;” this does not necessarily include clinging to earthly life. God can be addressed with grievances and questions. According to Anne Schneider, healing does not depend on achievement of belief since God does not use his power to prevent suffering of human beings.<sup>81</sup> She opposes stories about healing in the New Testament that end with the message, “your belief has helped you,” for they suggest that the acceptance of prayer is the reward for a good and right belief.

Anne Schneider’s statement clearly reflects a problem that is aroused by Christian mainstream theology: Since God is perceived as sovereign over suffering, suffering might be interpreted as intended by God. Although this perception is not totally unknown in Judaism, well-known Jewish authorities rejected the concept of “*yissurim shel ahavah*.”<sup>82</sup> However, this merely “Christian” problem has to be addressed in a Jewish-Christian setting. Moreover, Schneider’s statement demonstrates the importance she attributes to the official theological position of the churches, indirectly expressing her desire that the churches publish an official statement that might consider suicide as an option under certain circumstances. As a theologian, she is privileged to develop her own theological position but her statement reflects that she feels

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<sup>80</sup> *Ibid.*, pp. 17, 20, 22, 32.

<sup>81</sup> *Ibid.*, pp. 166, 169, 170, 172, 173, 175.

<sup>82</sup> Cf. the well-known story about R. Chiyya bar Abba, R. Yochanan and R. Eliezer in *bBerakhot* 5b, and Dorff, *Matters*, p. 185.

isolated in her position and would appreciate the explicit theological acceptance by the churches.

## 5. Proposal about how to proceed in the concrete case

Common to both the Jewish and the Protestant traditions is the shared belief that humans are created in God's image. Thereby God passed agency to humans and even enabled them to refine "moral convictions and religious sensibilities" as a "form of divine revelation."

In both traditions, God is perceived as compassionate. As the compassionate One, God is not the absolute owner of human life. God does not interfere creation anymore, but depends on the creatures' work as God's partner. This partnership relation is also expressed in the concept of the covenant, *berit*. Does this mean that the human partner should be allowed to decide under which circumstances s/he wants to return the gift of life? The German Liberal rabbi Tom Kučera has formulated this idea as an open question: Is someone created *b'tzelem elohim* allowed to return the gift of life gratefully? In contrast to Anne Schneider, who affirms that this is possible, Kučera does not provide an answer but leaves the question open.<sup>83</sup>

No contemporary halakhic statement would clearly support this position. A broad consensus exists that one should not prolong life "even if only for a moment" (*chayyei sha'ah*) in the case of a moribund, terminally ill patient.<sup>84</sup> However, how much the process of dying may be passively or actively accelerated is still disputed, with some affirming only that one should passively refrain from action (i.e. medical treatment that prolongs life as well as suffering) and others allowing for the active removal of external impediments to death.<sup>85</sup> It is also disputed whether a moribund person may receive drugs to relieve pain without considering that this treatment might shorten the life:<sup>86</sup> An Orthodox authority like R. Moshe Feinstein<sup>87</sup> allows

<sup>83</sup> Kučera, pp. 83-84.

<sup>84</sup> Cf. Moshe Feinstein, *Iggerot Moshe*, Choshen Mishpat II 73:1, insofar the patient is suffering great pain (see below, n. 87). However, the influential R. Eliezer Waldenberg, *Tzitz Eliezer* IX, 47:5, states that generally life has to be prolonged, even independently from the patient's explicit will:

והאם חיי השעה האלה שיאריכו לו לא מלאים יסורים הם? והדין הזה הוא פשוט והוא כן אפילו אם החולה בעצמו יצעק הניחו לי ואל תגישו לי שום עזרה כי נבחר לי המות. וא"כ הרי מכל זה ראייה חותכת שגם חיים מרים כאלה ל"ע יקרים הם עד כדי כך שנחשבים בהלכה כזכות לאדם הזה שלא מת מיד אלא מאריך בחיותו....

cf. inter alia Kučera, pp. 73, 86 n. 37 and 38.

<sup>85</sup> Cf. for instance Avraham Steinberg, *The Halachic Basis of "The Dying Patient Law"*, <http://98.131.138.124/articles/JME/JMEM12/JMEM.12.3.asp> (last access 07/03/16); for the German Orthodox position cf. the interview with R. Jaron Engelmayer (at this time rabbi of the Cologne community) votes generally against an active acceleration but permits to suspend this ruling under certain circumstances after consulting a rabbi: Ayala Goldmann, *Fünf Minuten mit ... Rabbiner Jaron Engelmayer über jüdische Positionen zur Sterbehilfe*, *Jüdische Allgemeine*, December 4, 2014, <http://www.juedische-allgemeine.de/article/view/id/20872> (last access 01/20/17).

<sup>86</sup> Kučera, p. 71 and p. 86, n. 26-28.

<sup>87</sup> *Iggerot Moshe*, Choshen Mishpat II 73:1:

giving pain relief as long it does not shorten a second of life. While Conservative rabbi Avram Israel Reisner does not allow an unlimited rate dose,<sup>88</sup> other Conservative rabbis like Elliot N. Dorff<sup>89</sup> and Reform rabbis like Walter Jacob<sup>90</sup> vote in favor of using an unlimited rate dose of pain reliever if that is needed for pain control, thereby taking death as byproduct into account. This might be interpreted as a “halakhic fig leaf”, as Rabbi David Teutsch suggests from a Reconstructionist perspective.<sup>91</sup> However, this “halakhic fig leaf” has not yet been used to explicitly justify assisted suicide in an officially published rabbinic statement. On the contrary, a clear halakhic consensus forbids assisted suicide, defining the prohibition “to cause death even indirectly” as “Torah law”<sup>92</sup> in keeping with Sephardic tradition as represented by Maimonides: “Anyone who causes a death is guilty of a great sin and liable to the death penalty imposed by Heaven.”<sup>93</sup>

However, by considering the halakhic development, especially the Ashkenazic traditions and their adoption, one might refine the ongoing halakhic discussion and thus even justify a position that prioritizes the decision-making agency of the dying over the absolute value to protect life.<sup>94</sup> In so doing, one continuously adjusts the more flexible and lenient Ashkenazic traditions that prioritize the situation of the suffering ill and his/ her perspective and evaluation over absolute rulings and prohibitions (2.4.4.): The fact that they were even referred to by Sephardic rabbis (2.5.) demonstrates their inalienability for the halakhic discourse in end-of-life issues.

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ואף לא שיחיה כמו שהוא חולה בלא יסורין אבל אפשר ליתן לו סמי רפואה להאריך ימיו כמו שהוא נמצא עתה ביסורין, אין ליתן לו מיני רפואות אלא יניחום כמו שהם, כי ליתן להם סמי רפואה שימות ע"ז וכן לעשות איזה פעולה שיגרום לקצר אפילו לרגע אחת הוא בחשיבות שופך דמים, אלא שיהיו בשב ואל תעשה, אבל אם איכא סמי מרפא שיקילו היסורין ולא יקצרו אף רגע מחייו צריך לעשות כשעדיין אינו גוסס.

<sup>88</sup> A Halakhic Ethic of Care for the Terminally Ill. YD 339:1.1990a, [www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/reisner\\_care.pdf](http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/reisner_care.pdf) (last access 12/13/16), id., Mai Beinaihu? YD 339:1.1990c, [www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/maibeinaihu.pdf](http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/maibeinaihu.pdf) (last access 12/13/16).

<sup>89</sup> Assisted Suicide. YD 345.1997a, [https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff\\_suicide.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff_suicide.pdf) (last access 12/11/16).

<sup>90</sup> Drugs to Relieve Pain (August 1991), in: idem, *Questions and Reform Jewish Answers. New American Reform Responsa*, New York: Central Conference of American Rabbis, 5752/1992, No. 151, pp. 239-241: “There is a fine line of distinction between alleviating pain and prescribing a drug which may hasten death. When the pain is great the physician should alleviate the pain and not be overly concerned about the latter consequence, as death is certain in any case.” (p. 240).

<sup>91</sup> Preserving Quality, p. 5.

<sup>92</sup> Steinberg, *ibid.*; similarly Kassel Abelson, Suicide. YD 345:2.2005, [https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/abelson\\_suicide.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/abelson_suicide.pdf) (last access 12/11/16).

<sup>93</sup> Mishneh Torah, Hilkhot Rotze’ach 2:2; translation quoted according to Steinberg, *ibid.*

<sup>94</sup> Of course, this argument will not be accepted by Orthodox *poskim* like R. Eliezer Waldenberg (Tzitz Eliezer IX, 47:5) who only rely on the halakhic development that is reflected by the Shulchan Arukh and its Sephardic predecessors.

Moreover, the step is very small from the active interruption of life-sustaining measures--like the decision to stop eating by the terminally ill or the decision to suspend artificial nutrition by care-givers --to the drinking of a fatal drug cocktail under intolerable pain and suffering.<sup>95</sup> In this case, the retrospective justification of suicide *a posteriori* as expressed by Ben Simeon is only partly helpful for a dying patient who considers suicide, yet would feel much more supported by explicit official empathy for his/her decision, even if this includes suicide.

In the concrete situation, the congregational rabbi should encourage the family members to talk openly about their feelings and fears. Moreover, she should present the complex ethical-theological dimensions and implications to them and accompany and support them in their process of decision-making. In addition, the congregational rabbi should meet with a Protestant pastor as soon as possible, preferable the one who is in charge of the father (C), in order to present the complex Jewish approach to the pastor and to discuss with him/ her the ambiguous Protestant position expressed by the Schneider couple. In the best case, the pastor would be willing to adopt Anne Schneider's position or at least support Nikolaus Schneider's pastoral approach (that actively accepts Anne's decision) and explain it to the father (C) in the most extensive way possible. Thus, the case of the Schneider couple might be helpful for C in accepting his wife's decision; Anne Schneider's theological arguments might allow him to reflect on his own position and perception of God so that he does not have to interpret the fact that his prayers cannot prevent his wife's death as his failure or as a proof of his inadequate belief.

As a result, A and C as well as the rabbi and the pastor could support the terminally ill mother (B) in her desire to decide about her life and to evaluate it, considering her extreme pain and the loss of *kavod* due to the external excrescence of the cancer. Anyone who is going to actively assist her (especially A) should be supported, too, to do this without feeling guilty as a result of doing something theologically/ religiously forbidden. The best solution might be to fix a drug pump with morphine that allows B to decide by herself about the dose rate, thereby taking into account that the dose rate might not only relieve pain but moreover cause death as a side effect.

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<sup>95</sup> Cf. Kravitz (2006), pp. 82-83.

## Appendix of sources

1) Semachot/ Evel Rabbati, chap. 1<sup>96</sup>

מסכתות קטנות מסכת שמחות פרק א

הלכה א

הגוסס הרי הוא כחי לכל דבר, זוקק ליבום ופוטר מן היבום, ומאכיל תרומה ופוסל מן התרומה, ונוחל ומנחיל, פירש ממנו אבר כאבר מן החי, בשר כבשר מן החי, וזורקין על ידו דם חטאתו ודם אשמו, עד שעה שימות.

הלכה ב

אין קושרין את לחייו, ואין פוקקין את נקביו, ואין נותנין עליו כלי של מתכות ולא כל דבר שהוא מיקר על טיבורו, עד שעה שימות.

הלכה ג

אין מזיזין אותו, ואין מדיחין אותו, ואין מטילין אותו לא על גבי החול ולא על גבי המלח, עד שעה שימות.

הלכה ד

אין מעצמין את עיניו, הנוגע בו ומזיזו הרי הוא שופך דמים, רבי מאיר היה מושלו לנר שהוא מטפטף, כיון שנגע בו אדם מיד כיבהו, כך כל המעצם את עיני הגוסס, מעלין עליו כאילו הוא שומט את נשמתו.

הלכה ה

אין קורעין, ואין חולצין, ואין מספידין, ואין מכניסין עמו ארון בבית עד שעה שימות.

הלכה ו

אין משמעין עליו, ואין משננין עליו את מעשיו, רבי יהודה אומר אם היה חכם משננין את מעשיו.

2) R. Isaac Alfasi, *Hilkhot Ha-Ri"ף*, Moed Qatan 16b

רי"ף מסכת מועד קטן דף טז עמוד ב

תניא באבל רבתי הגוסס הרי הוא כחי לכל דבר אין קושרין לחייו ואין פוקקין את נקביו ואין מניחין כלי מתכות וכלי מיקר על טבורו עד שעה שימות שנאמר עד אשר לא ירתק חבל הכסף ואין סכין אותו ואין מדיחין אותו ואין מטילין אותו על החול ולא על גבי המלח עד שימות ואין מעמצין את עיניו והנוגע בו הרי זה שופך דמים למה הדבר דומה לנר המטפטף שכיון שנגע בו אדם מיד נכבה: ואין קורעין ולא חולצין ולא מספידין עליו ואין מכניסין עמו ארון בבית עד שימות

<sup>96</sup> If not otherwise noted, all texts are quoted according to the Bar Ilan University Database, version 17.

3) *Mishneh Torah*, Hilkhhot Avel 4:5

רמב"ם הלכות אבל פרק ד, הלכה ה

הגוסס הרי א הוא כחי לכל דבר, אין קושרין לחייו, ואין פוקקין נקביו ואין מניחין כלי מתכות וכלי מיקר על טבורו שלא יתפח, ולא סכין אותו, ולא מדיחין אותו, ולא מטילין אותו על החול ולא על המלח עד שעה שימות והנוגע בו הרי זה שופך דמים, למה זה דומה לנר שמטפטף כיון שיגע בו אדם יכבה, וכל המאמץ עיניו עם יציאת נפש הרי זה שופך דמים אלא ישהא מעט שמא נתעלף, וכן אין קורעין עליו, ולא חולצין כתף, ולא מספידין, ולא מכניסין עמו ארון ותכריכין בבית עד שימות.

4) *Tur*, Yoreh De'ah 339

טור יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלט

הגוסס הרי הוא כחי לכל דבריו אין קושרין את לחיו ואין סכין אותו ואין מדיחין אותו ואין פוקקין את נקביו ואין שומטין הכר מתחתיו ואין נותנין אותו לא ע"ג חול ולא ע"ג חרסית ולא על אדמה ואין נותנין על כריס לא קערה ולא מגריפה ולא צלוחית של מים ולא גרגיר מלח ולא משמיעין עליו עיירות ואין שוכרין חלילין ומקוננות ואין מעמיצין עיניו עד שתצא נפשו וכל המעמץ עם יציאת הנפש ה"ז שופך דמים ואין קורעין ואין חולצין ולא מספידין עליו ולא מכניסין עמו ארון לבית עד שימות כללו של דבר כל שהוא משום עסקי מיתה אין עושין לו עד שתצא נפשו ואין פותחין עליו בצידוק הדין עד שתצא נפשו וכתב הר"מ מרוטנבורק דוקא בעודו לפניו חשוב כחי לכל אבל מי שאמרו לו ראינו בנך או אחיך גוסס היום ג' ימים הוא בחזקה שמת וצריך להתאבל עליו תניא כשמת רבי נכנס ר' חייא אצלו ומצאו בוכה א"ל מפני מה אתה בוכה והא תניא מת מתוך השחוק סי' יפה לו מתוך הבכי סי' רע לו פניו כלפי העם סי' יפה לו כלפי הכותל סי' רע לו פניו למעלה סימן יפה לו למטה סימן רע לו פניו צהובין סימן יפה לו ירוקין סימן רע לו עצובין סימן רע לו מת בע"ש סימן יפה לו במוצאי שבת סימן רע לו במוצאי י"ה סימן יפה לו בערב יום הכפורים סימן רע לו בחולי מעים סי' יפה לו שרובן של צדיקים מתים בחולי מעים א"ל אתורה ואמצות קא בכינא ת"ר מת פתאום זו מיתה חטופה חלה יום א' זו מיתה דחופה ר"ח ב"ג אומר זו מיתה מגיפה ב' ימים זו מיתה דחופה ג' ימים זו מיתה גערה ד' ימים זו מיתה נזיפה ה' ימים זו מיתה כל אדם ובאבל רבתי תניא לד' ימים ולה' ימים זו מיתה דחופה לו' ימים מיתה האמורה בתורה לז' ימים מיתה של חיבה יותר מכן ביסורין בן נ' שנה זו מיתה כרת בן נ"ב שנים זו מיתה שמואל הרמתי בן ס' שנים זו מיתה כל אדם בן ע' שנים שיבה בן פ' שנים גבורה ר"ח בן אנטיגנוס אומר זקן שחלל שבת או אכל חלב מי מודעני שמת בהכרת אלא המת בג' ימים מת בהכרת מת לד' וה' מיתה דחופה לו' מיתה האמורה בתורה לז' מיתה של חיבה יותר מכן ביסורין:

5) *Shulchan Arukh*, Yoreh De'ah 339:1

### שולחן ערוך יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלט

סעיף א

[א] הגוסס, א הרי הוא (א) כחי לכל דבריו. ב <א> אין קושרין לחייו, ג ואין סכין אותו, ואין מדיחין אותו, ואין פוקקין את נקביו, ד 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 ומקוננות, ואין מעמצין עיניו עד שתצא נפשו. ה וכל המעמץ עם יציאת הנפש, ה"ז שופך דמים. ואין קורעין ולא חולצין ולא מספידין עליו, ולא מכניסין עמו ארון לבית, עד שימות. [ב] ואין פותחין עליו בצדוק הדין, עד שתצא נפשו. **הגה: ג] וי"א דאין חוצבין לו (ב) קבר אע"פ שאינו עמו בבית, עד אחר שימות (ריב"ש סימן קי"ד). אסור לחצוב שום קבר להיות פתוח עד למחר שלא יקברו בו המת באותו היום, ויש סכנה בדבר (רבינו ירוחם בשם הר"י החסיד ז"ל). וכן אסור לגרום למת שימות מהרה, כגון מי שהוא גוסס זמן ארוך ולא יוכל להפרד, ז אסור להשמט הכר והכסת מתחתיו, <ב> מכח שאומרין שיש נוצות מקצת עופות שגורמים זה וכן לא יזיזו ממקומו. וכן אסור לשום מפתחות ב"ה תחת ראשו, כדי שיפרד. 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 (הכל בהגהת אלפסי פרק אלו מגלחין).**

6) *Sefer Chasidim*, Bologna Print 1538, fol. 86r

([https://etc.princeton.edu/sefer\\_hasidim/manuscripts.php](https://etc.princeton.edu/sefer_hasidim/manuscripts.php), last access 01/15/17)

ואין גורמין שלא ימות מהרה כגון שהיה אחד גוסס והיה אחד קרוב לאותו בית חוטב עצים ואין הנשמה יכולה לצאת מסירים החוטב משם ואין משימים מלח על לשונו כדי שלא ימות ואם גוסס ואומר אינו יכול למות עד ששימוהו במקום אחר אל יזיזוהו משם.

Parma 3280 H, paragraph 315, fol. 39r (according to

[https://etc.princeton.edu/sefer\\_hasidim/view2.php?id=2&s=315&e=315](https://etc.princeton.edu/sefer_hasidim/view2.php?id=2&s=315&e=315), last access 01/15/17)

**אם אדם סובל ייסורין גדולים ואומר לאחר פלוני אתה רואה שלא יחיה הורגני כי לא אוכל לסבול אל יגע בו**

ומה שכתוב ויקרא מהרה אל הנער נושא כליו ויאמר

39v

לו שלף חרבך ומתתני פן יאמרו לי אשה הרגתה וידקרהו נערו וימות ברע עשה הנער או תוכל' לומר לא חטא כי אמר אם אמיתנו מיד יפוצו ישראל מעליו ולא ישרפו את המגדל שנאמר ויראו איש ישראל את אבימלך כי מת וילכו איש למקומו ומן הנער נושא כליו של אבימלך {נשא} רצה עמלק לפטור את עצמו שנאמר' ואמתתהו כי ידעת כי לא יחיה אחרי נפלו ודוד הרגו וכתוב ולא אבה נושא כליו כי ירא מאד אבל שאול מותר מפני שלא יתחלל שם שמים בישראל **ואם ייסורי' גדולים באים על אדם וידע שלא יחיה אינו יכול להרוג עצמו וזה למדנו מר' חנניא בן תרדיון שלא**

**רצה לפתוח פיו** ואם גורמין שלא ימות מהרה כגון שהיה אחד גוסס והיה אחד קרוב לאותו בית חוטב עצים ואין הנשמה יכולה לצאת מסירין החוטב משם ואין משימין מלח על לשונו כדי שלא ימות ואם גוסס ואומר אינו יכול למות עד ששימוהו במקום אחר אל יזיזוהו משם אע"פ שאמרו אדם גוסס אין מזיזין אותו ממקומו אם יש דליקה אין מניחין אותו בבית ומוציאו [אם יש דליקה בית ויש מת מוטל בבית ויש ספרים

ואין ספק להציל שניהם יציל המת אם אביו מת מוטל בבית וקטן חי ישראל אע"פ שאינו קרובו ודליקה בבית (וקטן חי) יציל הקטן החי אע"פ שידוע שאביו ישרף טריפה ואחד חי בריא יציל החי הבריא]

7) *Tosafot, bAvodah Zarah 27b* „לחיי שעה לא חיישינן,“

לחיי שעה לא חיישינן - והא דאמרינן ביומא (דף פה.) מפקחין עליו את הגל בשבת לחוש לחיי שעה אלמא חיישינן דאיכא למימר דהכא והתם עבדינן לטובתו דהתם אם לא תחוש ימות והכא אם תחוש ולא יתפא מן העובד כוכבים ודאי ימות וכאן וכאן שבקינן הודאי למיעבד הספק.

8) *Yalkut Shim'oni* (2 vols., reprint Jerusalem 1979/80), vol. 1, Ekev § 871

מעשה באשה אחת שהזקינה הרבה ובאת לפני רבי יוסי בן חלפתא אמרה ליה רבי הזקנתי יותר מדאי ומעכשיו **חיים של נוול** הם שאיני טועמת לא מאכל ולא משקה ואני מבקשת להפטר מן העולם, א"ל מה מצוה את למודה לעשות בכל יום, א"ל למודה אני אפילו יש לי דבר חביב אני מנחת אותו ומשכמת לבית הכנסת בכל יום, א"ל מנעי עצמך מבית הכנסת שלשה ימים זה אחר זה, הלכה ועשתה כן וביום השלישי חלתה ומתה, לכך אמר שלמה אשרי אדם שומע לי וגו'

*Yalkut Shim'oni* (2 vols., reprint Jerusalem 1979/80), vol. 2 § 943

מעשה באשה אחת שהזקינה הרבה, באת לפני ר"י (הגלילי) בן חלפתא אמרה לו רבי זקנתי יותר מדאי ומעכשיו **חיים של נוול** הם שאיני טועמת לא מאכל ולא משתה ואני מבקשת ליפטר מן העולם, אמר לה במה הארכת כל כך ימים, אמרה לו למודה אני אפילו יש לי דבר חביב אני מנחת אותו ומשכמת לבית הכנסת בכל יום, אמר לה מנעי עצמך מבית הכנסת שלשה ימים זה אחר זה, הלכה ועשתה כן וביום השלישי חלתה ומתה, לכך אמר שלמה אשרי אדם שומע לי וגו'

9) *Tosafot, bGittin 57b* "קפצו" דף נז עמוד ב

קפצו כולן ונפלו לתוך הים - והא דאמר במס' ע"ז (דף יח.) מוטב שיטלנה מי שנתנה ואל יחבל בעצמו הכא יראים היו מיסורין כדאמרינן (כתובות דף לג:) אלמלי נגדו לחנניה מישאל ועזריה פלחו לצלמא ועוד דע"כ היו מענין אותן ולא היו הורגים אותן.

10) Joshua Boaz ben Simon Baruch, *Shiltei Ha-gibborim*, on *Hilkhot Ha-Ri"ף* § 237 to bMoed Qatan 26b, Romm edition of the Babylonian Talmud, fol. 16b.

הניא כאבל רבתי הגוסס הרי הוא כחי לכל דבר  
 אין קושדן לחייו ואין פוקקין את נקביו ואין מניחין  
 כלי מתכות וכלי מוקר על טבורו עד שיעה שימות  
 שנאמר עד אשר לא ירתק אבל הכסף ואין סבין קהלת יי  
 יאותו ואין מרחק איתו ואין מטילין אירנו על החול  
 ולא על גבי המלח עד שימות ואין מאמץ את עינו  
 והנוגע יבו דרי זה שופך דמים למה הדבר דומה לנר  
 המטפטף שבין שנוגע בו אדם מיד נכב יי אין קודעין  
 ולא חולצין ולא מספידין עליו ואין מכניסין עמו  
 ארון בבית עד שימות : אמר רב פפא הניא כאבל  
 רבתי אבל לא יניח תינוק בתוך חיקו שמא יביאו  
 לידי שחוק ונמצא מתנגה על הבריו : ואין מכרין אלא  
 על משות זקופות תר הדולד לבית האבל אם היה  
 לבו גם בו יברוהו על מיטות כפיו ואם לאו יברוהו  
 על משות זקופות : תר הדולד ממקום למקום אם  
 יכול למעט בעסקו ימנע ואם לאו יגלגל עמהם  
 כלומר יקנה כל צרכי הדרך שיש בהן צרכי חיי  
 נפש : תר מאימתי כופין את הממו משיצ' מפתח  
 ביהו דבריר אליעזר ר' יהושע אומ' משיסתם הגולל  
 וק'ל כר' יהושע ואין אבלות אלא משיסתם הגולל :  
 הנו רבנן מאימתי זוקפין את המשות בערב שבת מן  
 המנחה ולמעלה אמר רבה בר רב הונא ואצ' פ'  
 כן לא ישב עליה עד שתחשך ולמוצאי שבת א' עפ'  
 שלא נשאר לו אלא יום אחד חוור וכופה : תר  
 הכופה את מ'שתו לא מ'שתו בלכר הוא כופה אלא  
 כל המשות שיש לו בתוך ביתו הוא כופה ואפילו  
 עשרה משות בני עשרה מקומות כופה את כולן ואפי'  
 חמשה א'זין ימית אחר מהן כולן כופין משותיהן ואם  
 היתה מ'טה מיוחדת לכולן אינו צריך לכפות דרגש  
 אינו צריך לכפותו אלא זוקפו רש'בג אומר דרגש  
 מתיר את קרביטיו והוא נופל מאליו א'ד יהושע כן  
 לוי הלכה כרש'בג אמר רבי יעקב בר אהא א'ר אמי  
 מ'טה שנקליטיה יוצאין ממנה זוקפה ודיו : תנו רבנן  
 היה ישן על גבי מ'טה על גבי כסא על גבי אודיני  
 גדולה מכולן אמרו אפילו על גבי קרקע לא יצא ידי  
 הוכחה אמר רבי יוחנן שלא קיים כפית' המ'טה :

שנה כהנייהו מתנגה הס כה יבב  
 על מהו אין מכרין פירש הר"ה בד'  
 מתניתן במועד לפי שאין כפיות  
 המטה מוגנת במועד כלל אצ' ג'  
 דשרי הברא' : לבו גם בו רגיל שה'  
 אוהבו ואינו מקפיד א'ט יושב על  
 מטה כפוייה : ואם לאו שאינו כל  
 כך רגיל ושמא נחש יכתש ליטב על  
 גבי קרקעו י'מ יברוהו לאבל ע'מו  
 לפי שאין דרך הרץ ליטב האבל על  
 מטה כפוייה והמכרין ישובו על  
 מטה זקופה ולפוכך יושבין גם  
 האבל במטה זקופה ודוקא בשעת  
 הבראה דייקי' ליה דקתני ממות  
 זקופות ולא קתני מ'טה זקופה :  
 ההולך ממקו' למקום לסחור ושמע  
 שמוע' קרובה א'ט יכול למעט שלא  
 יעשה כוס עסק בהמה העיר :  
 ואם לאו שה'ס לא יקנה בהמה  
 העיר לא ימלא : מ'גלגל עליו' שלא  
 יקנה אלא צרכי הדרך ודברי' שיש  
 בהם חיי נפש : הנו רבנן  
 מאימתי כוסין וכי' פירש נהלימתי  
 מתחיל לכהו הכל אבלות וה"ה  
 לגמילת הסנדל . משיסתם  
 הגולל שהניחו המת בקברו וכסוהו  
 בעפר והלכתה בר' יהושע : זוקפין  
 כדלמחן שוקפת המטה חובה  
 שלא יהא ניכר האבילות בשבת ומן  
 המנחה נראה למנחה קטנה קאמר  
 דכל שאינו עושה בשבת מן המנחה  
 ולמעלה אינו עושה : אף על פי  
 שלא נשתיר אלא יום אחד שיו'לה  
 מהבלותו ביום א'ח' ובקור משיאלו  
 המנחמים מביטו שרי ליה לרחון  
 חפ'ה מצריכין ליה במולאי שבת  
 שיכפה את המטה וה"ה לשאר דיני  
 אבל' כגון נעילת הסנדל ורחימת  
 ידים ורגלים בחמין לנהגין עד  
 שתחשך : אלא כל מ'טות כדלמרי'  
 כל המתאבל עליו מתאבל עמו

המניח המותב על שניו  
 לנשים ולא יא' דמיס יקר'  
 וחסור לקור כמריכין של  
 חבי ונדיים - ויקחין ה'טלו  
 לנשיא שניסראל ש'ו ב'סות  
 הרוח והסח'תה ומעשה גויס'  
 ג' ומכאן היה נראה לצבור  
 מה שנהגין ק'ת אכס'  
 כמטה גוסס י'חין הכמטה  
 יכונה נ'מ'ת שמועין הכר  
 מתחזין כ'ו ב'מ'ות המרה  
 ב'אומרים כי יש נ'מ'ע' נ'מ'ת  
 כל ע'י'תה ש'מ'ר'ח' ל'כ'ס'  
 כל'ה ה'ט' ו'כ'ת ע'מ'ו'ל'ע'ק'י'  
 כי כ'וכ'ית ל'ס'ר' ה'ט'ג'  
 ה'ט'ג'ול'ת על'ה צ'ר'י ו'ר'מ'י'  
 ח'ל'ץ על'י ו'ד'ר'ר כ'ת' ח'י'ס'  
 ח'ר'ב'ת ד'ל כ'ח'ע'ל ו'ה ל'ח'י'ת'  
 ח'ר'י כ'ת'ה ש'ט'ס ח'ר'י'ת' נ'כ'ס'  
 ח'ת'ר'ים ס'י' ח'ס כ'ס כ'י'נ'ע'  
 ל'ד'ר'י כ'מ'י'ב ש'ס י'ל ו'ח'ס'  
 ה'ח' ג'י'ס'ת ח'י'ו'י' ו'כ'ל ל'ח'ת'  
 פ'ו כ'י'ב'ו'ח'ו'ה נ'ח'ק'ו ח'ר'ר ח'ל'  
 ח'י'ו'ו'ה ה'ש' ע'י'ב' א'ח'ת כ'י'  
 ד'ר'ו ס'ר' ח'ת'ר'ים ל'ע' כ'י'  
 ח'ת'ל'ה נ'כ'ס ח'ס'ת ה'י'ס א'י'ס'  
 ח'י' ג'י'ס'ת ה'י'ס ח'ק'ו'ב ל'ח'ר'ו'  
 ב'י'ת ח'ק'ב ע'י'ס ח'י'ן כ'כ'ש'ה'  
 י'כ'ו'ה ל'ח'ת ח'ר'י'ן ח'ח'ע'ב'  
 ח'כ'ס' ד'ח'ש'ע ח'ק'ב ח'י'ת'  
 ש'ח' ח'י'ב ח'ל'ל ש'י'ס ל'ר'ך'  
 ח'כ'י ו'ח'י' ד'ו'ח'י ל'ע'ש' ד'ר'  
 ח'י'ג'ו'ס' ש'ל' י'מ'ו'ת ח'ה'ר'ה'  
 ח'י'ג'ו'ס' ח'ס'ו'ר כ'ג'ו'ן ל'ח'ט'ו'ב'  
 ע'י'ס' ש'ס כ'ר'י ש'ח'ת'כ'כ'  
 ח'כ'ש'ה ל'ח'ת ח'ו' ל'ש'ס ח'ל'ת'  
 ע'ל ל'כ'ו'ו' כ'ר'י ש'ל' ח'י'ו'ת'  
 ח'ה'ר'ה כ'ל ו'ה ח'ש'ו'ר כ'ח'ש'ע'  
 ש'ס ח'ל'ס'ו' ו'כ'ל כ'י'נ'ע'ל כ'ה'  
 ח'ר'י ל'כ'ס'ר ח'ג'ר'ח'ל ח'ח'ת'  
 ח'כ'ל ל'ב'ש'ו'ת ד'ר'י ח'י'ג'ו'ס'  
 ח'י'ת'ו' ח'ה'ר'ה ו'י'ח'ל'ת כ'כ'ס'  
 ח'ס'ו'ר ח'י'ל'ק ח'ס'ו'ר ל'ו'ו'  
 ח'י'ג'ו'ס' ח'ת'ק'ו'ו' ו'ל'ח'י'ו'ת'  
 ח'ק'י'ס ח'ח'י'כ'ו'י ח'ח'ל' כ'כ'ש'ה'  
 ח'י'ל'ק ח'ס'ו'ר ח'י' ל'ש'ל'  
 ח'ח'ת'ו'ת ב'י'ת ח'כ'ש'ת ח'ח'ת'  
 ח'ר' ז'ו'ח'ת'ו' ש'ל ג'ו'ס' כ'ר'י'  
 ח'י'ת ח'ח'ר'י'ב'י ג'ס ו'ה ח'ח'ר'  
 ח'י'ת'ת כ'כ'ס'ו' ו'ל'כ'י'ז ח'ס'י'ס'  
 ח'ס' ד'ר'י ח'י'ג'ו'ס' ל'כ'כ'ס' ש'ל'  
 ח'ח' ח'ו'ת ח'ס'ו'ר ח'ח'ו' ח'י'ג'ו'ס'  
 ח'ח'ן כ'ק' ג'לו'ס ח'ח'ר'י ח'י'ג'  
 ח'י'ת ח'ל'ט'ע'ו' על ה'ר' ו'ח'י'ו'  
 ח'ו'ש'ת ח'ח'ס'ה ח'ל'ל ל'ח'י'ת ד'ר'  
 ח'ל' ח'י'ג'ו'ס' ח'ו' ל'ט'ל'ע'ל ח'ח'ק'י'  
 ח'ת'ק'י'ס כ'ר'י ש'ח'ת' כ'כ'ש'ו'  
 ח'ח'ר'ה נ'ר'ח'ה ד'ו'ח'ו' ח'ס'ו'ר'  
 ח'ח' ח'ח'ת ח'ל'כ'ו'ו' על ח'ר' :  
 ח'ר'ש'י' כ'ס'י' ח'ח'י'ן

11) Tzvi Hirsh ben Azriel, *Beit Lechem Yehudah*, Amsterdam 1732/33, fol. 112a, on Shulchan Arukh, Yoreh De'ah 345:3 (<http://www.hebrewbooks.org/19533>, last access 01/15/17)

### שמה דין המאבר עצמו לדעת ומנורה והרוגי ב'ד והפורשין מן הצבור ובו ח"ס

**א** המאבר עצמו לדעת אין מתעסקים עמו לכל דבר ואין מתאבלין עליו ואין מספידין אותו (א) ולא קורעין ולא חולצין אבל עושרין עליו בשורה ואומרים עליו ברה"ת אבליהם וכל דבר שהוא כבוד לחיים :  
**ב** אויה מאבר עצמו לדעת (ב) כגון שאמר הרי הוא עולה לראש הגג ראוהו שעלה סיר דרך כעס או שיהיה מיצר ונפל ומת הרי זה בחוק שאיבר עצמו לדעת אבל אם ראנו חנוק ותלוי באילן או הרוג ושישך על גבי סייפי הרי הוא בחוקת כל השמים ומתעסקים עמו ואין מניעין ממנו דבר . (ג) מי שגנב ונזל ועל ידיו נהרג כדון מלכות מתחבליים עליו אם אין בו סכנה מכני חיות המלכות ולא מקרי מאכל לדעת :  
**ג** קטן המאבר עצמו לדעת חשוב כשלא לדעת וכן גדול המאבר עצמו לדעת והוא אנוס בשאלו המלך אין מניעין ממנו כל דבר :  
**ד** שמה ישמת דינו כמאב' עצמו לדעת אין קורעין ו א חולצין ולא מספיין ערו ומוניחין אבן על ארונו וה'ם באפקיהוהא כשעובר על דברי הורה אבל במסוב' כיון שמת כבוד סגוריה ואין מניחין אבן על ארונו ומספידין אותו כראוי :  
**ה** כל הפוישים מרדכי צבור והם האנשי' שפרקו עול מצות מעל צאנם ואין נבדלים בכלל ישראל בעשייתם ובכבוד השוערות וישיבת בתי כנסיות ובתי מדרשות אלא הרי הם כבני חורין לעצמן כשאר האוכות (ד) וכן המוסרים (ה) והמוסרים כל אלו אין אוננים ואין מתאבלין עניהם אלא אחיהם ושאר קרוביהם לובשים לבנים ומתעטפים לבנים ואוכלים ושותים ושחחים \* הכירח מן הצבור ולא נסה לשאות עמהם במסעם וארטיטית מתאבלן עליו אבל אין שחר בני העיר כריכים

**סימן שמה (א)** ולא קורעין כו' אבל קורעין כריכים : כגון ד'מ' : (ב) כגון שאמר כו' כ' המצ'ין אע"פ שלא נאמר מפיל עצמו כיון שאמר סריני עולה לראש הגג חזקה לדעת עשה כ' כש"ל דאפילו אחר ראו שאני עולה כו' ולא נהיה עליהם קדיבורא לחוד לא כמכין ואינו בחוקת מאבר עצמו לדעת : (ג) מי שגנב כו' ואם לו הרב כפס מוסרואל וטודין לתתה כדוג' דמלכותא מתאבלין עליו מהר"ם מ"ק : כ' כש"י אם קיבל על עצמו משהם תשובה דין ד' מ' ית' כ"ד להטביע עצמו כהר' אינו כדון מצד עצמו לדעת ונראה ליה"ם אם תחית עצמו שרא' שלא יבוא לדין עיניהם גדולים כדרך המשפט של הע"ם שתחלה תענין עיניהם כדף' אנו מאבר עצמו לדעת וזה פשוט מת"ם המוספת קטנו ונפל למוך הויס שיריאה הוי מוסריים : (ד) המתין כו' כ' בספר חסידים כהג'ת המרה אר'ך לכבות ולהתאבל עליו כששאלה הנוק' בוכין כשנאלה הנוק' והנמה לא כ"ש וכן הוא מהנה העולם ונ"ל שאינו אלא כגון וכת' חבל לא כשאר כדאין להתאכל עליו ככ"ג : (ה) והמוסרים עיני כע"ש שלי הרכה דברה מהמוסרים ובזמנע או אפשר לעמוד כהמוסרים על הדון שלהם שהמוסר כך מטי שאף על זה יסיה מסירה :

Tzvi Hirsh ben Azriel, *Beit Lechem Yehudah*, Fuerth 1746/47, fol. 100a, on Shulchan Arukh, Yoreh De'ah 345:3 (<http://www.hebrewbooks.org/8067>, last access 01/15/17)

**דבר (ג) מי שגנב ונזל ועל ידי זה נהרג צדין מלכות מהחבליים עליו אם אין בו סכנה מפני חיות המלכות ולא מקרי מאבר לדעת : קטן המאבר עצמו לדעת**

וחינו נחוקה מאבר עצמו לדעת : (ג) מי שגנב כו' ואשי' כרנ נפש מוסרואל וכידון למיחס צדיא דמלכות' סמחבלין עליו מהר"ם מ"ק : כ' כש"י אם קיבל על עצמו משהם קטנום דין ד' מיסות צ"ד לכסניע עצמו בנפר אינו כדון מאבר עצמו לדעת ונראה ליה"ם אם ממים עצמו שירא' שלא יבוא לדין סיני' גדולים כדרך המשפט של כסמ"ם שחולם מפני סיני' בודאי אינו מאבר עצמו לדעת וזו פשוט סמ"ס כסופעה קפנו ונפל לסוף הויס שיריאה כו' מוסרי' : (ד)

12) Chayyim Joseph David Azulai (Chida), *Birkei Yosef*, vol. 2, Livorno 1774, fol. 79a, on Shulchan Arukh, Yoreh De'ah 345:3 (<http://www.hebrewbooks.org/19312>, last access 01/15/17)

**ג** והוא אנוס וכו'. מדרשו מהר"מט בחידושי בתוכות  
 סוף פ' הנושא גבי ההוא קצר' דלא אשתכח כאלשתכתי'  
 דרבי וכו' שכתב דהטעם שהפיל עצמו היינו על  
 שחילל שבת וכרעה לו ע"ש. משמע דשרוי ליה לחיוב להחיות  
 עצמו משום כפרת עונותיו. והכי משתמען מילוי דרב  
 בכלאל בשיטה מקובצת שם פרק הנושא שכתב כדברי  
 מהר"מט וחטי כה הפותיה דרבינו קלונימוס כידושלכ ע"ש  
 וכ"כ הרב שכותן יעקב בח"כ סי' קי"א וכתב דאין זה בכלל  
 מאכר עצמו לדעת.

**אבל** הרב מהר"ש יפה כיפה תואר ב"ר פ' ס"ה פסיק  
 לאסיר אוסר ולא ידבק דבקי מיתה להחית עצמו  
 גבר על חטאיו משום חשיבה וכל הנכו עובדי  
 דאתהרו במדרשא ובאגרתא לחו נדין עבוד עש"כ והזיתיה  
 להרב שכותן יעקב כתשובה הנו' דרך קשתו עד עקר"ה  
 לסברת מהר"ש הנו' ונדרסה קרי לה ואכן בעניינתין אחיבא  
 דיש מקום להליץ בעד הרב מהר"ש יפה ויש פנים לסברתו  
 כאשר עין בעין יסתכל יפה המעיין.

**ולכל** סוכרות ולכל האחירות חסתברא לן דאף  
 לדעת מהר"ש יפה דהאי כהי דבר שהיה בכלל  
 מימרא דרשמנא אך את דמכס מ"ה אינו אלא  
 דאוסורא איכא אבל ליתיה בכלל מאכר עצמו  
 שאין מתאכלין עליו וכיוצא.

**ד** אם ירא שלא יוכל לעמוד כגסיון כתב הרן בדרך הכו'  
 לפיל סי' זקן משכ ארחות חייב דיש אוסרוי' אבל ראיתי  
 להר"טבא בחידושי לעכו"ם דף זח שבת' דר"ת התייר  
 וכבר הורה זקן ובדולי צרפת התיירו הלכה למצשה  
 ע"ש וכן כתב בס' יוחסין דגדולי ישראל עבוד עובדא  
 בכפשיהו.

**ה** אם חמת עצמו שירא שלא יבא לירי עינויים גדולים  
 כדרך המשפט של עכו"ם שהם מעניס עינויי' גדולים  
 אין לוח דין מאכר עצמו לדעת וכמ"ש התוס' פרק  
 הנויקין בילדים וילדות שקפצו לתוך הים יראים הינו  
 מיסורין. בית לחם יהודה.

**ו** דין ר' קטן בן שנה או שנתיב שהמיר ורו' עמ"ש  
 לפיל סי' ש"ס אות ב' כמ"ד ועמ"ש הרב מהר"ר אליה  
 הלוי בהשכות זקן להרן סי' ע' וכתשיכות מרד"ר  
 וחילא באהאן סי' ע' העמיק הרחיב בענין זה וצידד  
 כמה צדדים ע"ש באורך.

**ז** דין ז' מי שגבל לים וכו' פרו צדיק בהגהותיו.

13) Raphael Aharon Ben Shim'on, *Nehar Mitzrayim*, vol. 1: Orach Chayyim and Yoreh De'ah, Alexandria 1908, fol. 142a/b, § 47 (<http://www.hebrewbooks.org/34122>, last access 01/15/17)

**(מז)** עוברא הוה במצרים באשה הולנית חולה ארוך באופן שנתקלקלו כל האיברים הפנימים. והרופאים נלאו לרפאותה ולא נרפאה רח"ל. ולבסוף אמרו הרופאים נואש לרפואתה ולחיייה. ופעם אחת מעצמת מכאוביה רח"ל אשר תקפו עליה. וביודעה כי אין לה ארוכה ומרפא. השליכה עצמה מהחלון ואחרי זמן מועט מתה. והוריתי שאין לה דין מעל"ד כלל. וק"ו הרברים ממ"ש הרב בית לחם יהודה אשכנזי ז"ל הביא דבריו ג"ע בכרכ"י אות ה' שאם המית עצמו מחמת שמתירא ליפול ביד שופטי הגויים שמענין עינויים גדולים אין לזה דין מעל"ד. וראיתו מדברי התוס' בניטין פ' הגיוקין בילדים וילדות שקפצו תוך

תוך הים יעו"ש. והרי התם דהחשיש הוא לעתיד שמא יענהו. הנם שאינו ברור. ועוד דבעת שמאבר עצמו הוא בריא ושלם רק שמתירא שיעונה. כ"ש בנרו"ד דהיא מעניגת ונדכית ביסורים קשים ומרים. והרי היא מתה בחייה רח"ל וגברא קטילא היא. וכ"ש שיש לחשוש טובא שמא נטרפה רעתה מעצמת מכאוביה וכיוצא שאין לה תקוה להתרפא רח"ל. וגם ידעתי שהיתה מן הנשים הכשרות שעמדה לפני לדין עם בעלה בחיותה בחיים עד"פ ומצבה היה מכאיב הלב. ועל כן צויתי לעשות לה כבודה הראוי ולקברה בין בני משפחתה ולהתאבל עליה כדת. ודברים ברורים הם לכל מבין.

## ישראלית הנהר

**(מז)** ואפשר לרמוז ע"י דרך הלני כונת הכתובים צאיז א'. למה יתן לעמל' אור וחיים לנתי נפש. המחכים לנחת ואינו ויחפדו ונמטמוטים. השמחים אלי גיל ישישו כי ינלאו קצר ע"כ. שהכתוב מדבר על צעלי היסורים אשר אינו מתלונן על חייסם כי טוב ונחם. אמר אלו הוורי נפש אשר אין להם חפץ בחיים. והם נמחים למות שיצאו ויפדו ונמטמוטים. אכן אינו. ומה יעשו הם ויחפדו ונמטמוטים שהם חופרים אחריו ויוציאו ונמטמוטים ע"י שימיתו עלמם צייים. זאת תחיס שמחת גילס. ישישו כי ינלאו קצר. כי צנחם ינלאו ונקס קצנם נכון כדרך כל הארץ. ולא להתוות צליהם תיו הקיקלון של מאצדי עלמם לדעת ולקונרם נדיחוק ונקס ונקצרי משפחם. והטעם כי הם נמחים צחייסם רח"ל ונכון הוא.

שם נדברי הרב לחם יהודה יש לתמוה. דלמה זה הוכרח להביא ראיה מדברי התוס' דגיטין צענין ילדים וילדות. והלא צענין זה שמתירא ליפול ביד הגויים ויענהו צפטיים גדולים. א"כ הר"ל נדדף מהם כי ע"כ מקדים להגיל עלמו מיד רודפיו, וא"כ הרי זה עלמו ענין שאלו שאינד עלמו לדעת צאומרו פן יתעללו צו הערלים שהיה נדדף ונפלטשים. וענין שאלו הרי הוא מפורש לפנינו נדברי הטור ופקקן מרן צקעיף ג' שכתב וכן גדול המאנד עלמו לדעת והוא אנוס כשאלו המלך אין מונעים ממנו דבר. וכן יש לתמוה על ג"ע הנכ"י שהוכרח להביא ראיה לדין זה מדברי הרב בית לחם יהודה. והדבר מפורש לפנינו נדברי מרן. ואולי י"ל שענין העיטוי האמור נדברי הרב בית לחם יהודה הוא רק עינויים גדולים שאינד צרור שימיתו כולל. רק לענין הליל עלמו ויקורי העינויים הוא מקדים להמית עלמו צפועל. וללמוד היתר לזה הביא ראיה מעודא דינדים וילדות ששצו לקלן לבד ולא להמיתם. שאם ימיתום א"כ אינדו האויצים שצו אותם את המצרת כמובן. אכן ענין שאלו המלך היה צרור לו המות שימות צמלחמה. הן מלך כי היורד למלחמה להרוג או ליהרג. וגם ידע שלא ימלט מהמות כמו שהודיעו שנואל הנביא עיה צנת שהעלוהו ע"י אור כמפורש נכתובים. וא"כ המות הוא דבר צרור והמלטי ולחשש שאל יתעללו צו צנת המות והקדים להמית עלמו ודאי דלא מיקרי איסור מעל"ד. וא"כ אין ראיה לנדונו מענין שאלו המלך. וטפיר מיייתי ראיה לזה מההיא דגיטין ודוק.