Do We Have a Right to Die? Rabbi Lisa Hochberg-Miller
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Connie was in her 40s when she was diagnosed with a virulent form of MS. She was married, and had three children. Through the debilitating process of her illness, her husband cared for her, their children and his business, while she slowly became paralyzed. For the last 3-4 years of her life, Connie was a paraplegic, unable to take care of herself at all. With her family support, she chose to end her life. 21 years ago, Connie had no legal recourse to do so, and no legally-allowed medical support. Connie was the sister-in-law of one of our temple members, who vividly recalled her courage and the despair she shared with her family. Connie finally, bravely, chose to stop eating. For those of us fasting today, we have the slightest of glimpses into what will power and discomfort this might entail. 21 years ago, there were few other options, aside from doctors who were willing to risk being charged with murder, than for an ailing patient to choose suicide.

Do we have a **right** to orchestrate the end of our lives, when faced with illness? This issue is amongst the most emotional for us- expressed even in the terms we use to talk about it. Is this euthanizing a loved one, or is this a mercy killing? Does it stem from a place of human compassion, or a realistic concern for allocation of medical resources? Is this insuring death with dignity, or affirming that one has a Right to die? Is this physician-assisted suicide, or aid-in-dying? Is it “care” to keep a loved one alive, or “care” to help them end a painful existence?

And just as our language for discussing this has changed in the last few decades, so too have the legal and medical sensitivities to this issue. In May, the California Medical Association changed its long-standing position against aid-in-dying to a neutral stand. "Times have changed," said CMA's Dr. Ruth Haskins. (This) allows physicians to make a personal decision with their patients to do what's best for them at the end of life." This move opened the door for the California Senate to pass Senate Bill 128, the End of Life Option Act, with a 23-15 vote. The Assembly bill, which was stalled in the Health Committee when I began writing this sermon, was brought to a special session on health care at the end of August, and surprisingly landed before the State Assembly, which passed it , 44-35, a few weeks ago. The Bill waits now, for either the Governor's veto or to go into law. Just like that, the issue of aid-in-dying may be decided in our State. But a legal option does not simplify the emotional, ethical, religious components that issues of life and death always call forth- as well they should.

And perhaps, legally and medically, this is the time for our national discussion. Oregon's "Death with Dignity" law, which passed 17 years ago, has been employed by 752 people- about 44 people per year. Most are suffering from cancer, some are suffering from ALS. Washington State and Vermont voters passed similar laws to Oregon. New Mexico and Montana now are challenging “Death with Dignity “ laws brought about by successful court cases. In this past year, 25 states plus the District of Columbia considered right-to-die legislation, 17 of those states took up the issue for the first time. None passed, but there is surely a growing national discussion. Our California legislature’s consideration was fueled this past year by the publicized death of Brittany Maynard, a 29 year old woman dying of an aggressive, incurable brain cancer, who chose to move to Oregon, and who ended her life on November 1.

Now it may seem incongruous to be talking about the right to die on Yom Kippur- it almost seems like forbidden speech, on a morning when we turn to Torah and read “Choose Life”, affirming the worth of every member of the community. On Rosh Hashanah morning, our choir sang these very words- and our fasting this day—a reminder to us of what death is like-- is done to propel us back toward the sanctity and urgency of well-lived lives. Judaism, like most religions, voices an unequivocal belief that life is sacred, that it connects us to the Divine, that ending a person's life is wrong and that the human being bears a likeness of that which is Divine- which we call b'tzelem Elohim. Yet, aware of this core belief, Judaism also affirms the place of death in the natural order, and discourages us from avoiding death or prolonging life when a person is suffering or ill. There is a time to be born and a time to die. As liberal Jews, we value the wisdom and tradition of Jewish faith even as we value the right to individual choice that is the hallmark of contemporary America.

How can liberal Judaism's stance advocating for the sacredness of life, and for personal choice in matters of life and death, help us think about this End-of-Life issue? How can our Jewish values help us make our own life choices, and how can Jewish teachings help us understand what we should-- and shouldn't-- legislate?

Rabbi Elliot Dorff, the leading Conservative Jewish bio-ethicist, cautions us that sanctity of life means that suicide and active euthanasia, or mercy killing, are not permitted in Judaism. But there is much we do have the latitude to do, to safeguard life but alleviate suffering. Rabbi Dorff expands on the definition of a person who has a terminal illness. Traditionally, a *goses* was a person who might only last three days. In modernity, acknowledging the treatments and medicines that might be available, that category of a *goses* is someone who might live up to a year. Rabbi Dorff goes further, in acknowledging a special category called *terefah*- meaning, imperiled-- for people who have terminal illnesses, whose death may not be immanent but foreseeable in the next year or just beyond. In acknowledging that someone has a terminal illness, we can shift our focus from treatment to comfort. Our conversations can now be about what is beneficial to the patient’s well-being, no longer a conversation about what is effective in fighting an illness and its symptoms. It is here that palliative care or hospice care is advocated- and I note that hospice uses, not the Jewish 12-month, but a 6-month lifespan to determine a person who is dying. We can understand that even food and sustenance, when administered through artificial means like tubes, are more akin to medicine than they are to food, and don’t need to be continued in a fight against a terminal illness. The focus now becomes of relieving pain. And while Rabbi Dorff would caution against active euthanasia, the administering of medicine with the apparent <u>intent</u> of ending a life, he would also say that pain medications can be administered, even if their dosage might <u>increase the risk</u> of death. Nothing is going to stop the progression of the disease, so the focus is on how best to bring relief from the illness to the one who is suffering. The <u>intent</u> behind the administration of the medicine- not to kill, but to relieve-is key.

So-if one can choose medication to treat the physical pain of illness, is there a need for legislation, for aid-in-dying bills, to come to the help of those who are sick?

I would answer, that if palliative care and hospice were able to answer the needs of those who are dying, then there would not be a need. But cases like Brittany Maynard help us understand that in some cases, there is a need to give medical professionals and patients more options to fight the effects of terminal illness. For Brittany, cure and remission were not an option, her life was terminal. Palliative care would have shepherded her through loss of ability as her brain was eaten away, yet her young, otherwise healthy body would have lingered – burdening her husband and family with a tortuous dying process. Could palliative care or hospice have offered her questionably high amounts of pain medicine, without risking illegal behavior? These are the cases where creating a law can give clearer definition and guidelines, and protection to those who aid-in-dying.

The time for legislation has come, to lift practices that for decades have happened under the radar, to a place guided by oversight, and sanctioned methods. 18 years ago, another one of our congregants experienced the death of her mother, who had suffered for 20 years from chronic nerve pain. But this was a death that her mother orchestrated, having researched physicians who might assist her. Her behavior- and the assistance of the doctor, who had shepherded many AIDS patients through their ends-of-life, were then, and are still now, illegal. But she was clear about her desire, and she helped her family members understand what her unequivocal wishes were. She knew that she had reached her life span, that the continued debilitation and demise that were in her future years would be unlivable for her and not what she wanted for her family. There was peace of mind for her and her children.

How much better it might have been if she had been able to talk openly with her doctors, if there were guidelines in place that might have given her legal tools. In California, advocates support Oregon’s designation that a person requesting physician assistance be judged mentally competent, with two doctors independently agreeing that the patient is terminal with 6 months or less to live. Can we create safe legislation that can acknowledge the terminal status of these people, and provides additional options that can be used at the patient’s choice? I believe we can.

As a Reform Jew, I admit an inner conflict in supporting legislation that terminates life. But I don’t believe that this puts us on a slippery slope to devaluing human life. If we didn’t harbor a deep, intrinsic instinct to “choose life”, then we would simply choose suicide. It is because we instinctively want to live that these conversations are so hard. Consider that Oregon records about 50 deaths a year. If all 50 states had aid-in-dying legislation, that rate would account for 2,500 deaths annually. And while that feels startling, it is almost statistically insignificant, given that our annual death rate is more than 1,700,000 adults from illness. Americans of all religious persuasions value life. And it is in fact, religion, I believe, that makes it so difficult to talk dispassionately about end of life options, and why lawmakers are often afraid of being proponents of end-of-life legislation, even though 69% of Americans say they favor it.

I believe there is a precedent for supporting the premise of aid-in-dying legislation. That precedent comes from our Reform Movement stance on abortion. We affirm the sanctity of life yet we may terminate if the fetus is understood as a threat to the mother's physical, emotional or psychological health. In regard to a person's health, our stand on a life-and-death issue such as abortion demands that we consider their psychological condition as a primary factor in their care. When physical or emotional suffering creates a psychologically untenable position for the patient, we have an obligation to respond to their suffering, in accordance with their wishes. If in all other cases we must hear the voice of the patient, we must listen to the voice of a terminal patient as well, and take their psychological needs to heart.

True dignity at the end of life may be more about allowing people to come to that moment, crafting the opportunity for goodbyes, for tears, for love, and prayers. To die with a chance to express regrets, teshuvah and forgiveness, to die not feeling one has committed a crime, or a sin, in the ending of their lives. Every one of us deserves this kind of sacred life, and this kind of sacred death. Amen.