

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into end-of-life choices

Melbourne — 14 October 2015

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Rabbi Dr Shimon Cowen, Director, Institute for Judaism and Civilization.

The CHAIR — I would like to welcome Rabbi Dr Shimon Cowen from the Institute of Judaism and Civilization. Thank you very much, Rabbi, for being with us this afternoon.

Before I invite you to make some opening remarks I will just caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. Today's evidence is being recorded. You will be provided with a proof version of the transcript within the next week. Transcripts will ultimately be made public and placed on the committee's website.

We have allowed 45 minutes for our discussion this afternoon, so I invite you to make some opening remarks, and thereafter the committee will have questions. Thank you again for joining us today.

Rabbi Dr COWEN — Thank you very much. I am sorry, in the rush today I did not bring my original statement, but it is reasonably clear in my memory. There are two points that I would like to make in response to the various questions set out in the leaflet here. One is basically about whether a person should be able to take his or her life or authorise its taking. I think this is the first thing. I feel this is an issue where, while of course, as my submission points out, there are certainly circumstances where a person should not be required to undergo aggressive therapies if they are in the process of a painful and terminal illness, at the same time it is the position, I think, of major world faiths that actively to intervene to terminate life is a wrong thing. Therefore I just wanted to speak initially generally about the concept of actively intervening to take life.

I feel this is a matter which impacts deeply on our culture and civilisation. It has to do with the concept of what a human being is. These remarks which I would like to make have consequences for the way in which we view a whole host of issues. The human being, in the tradition from which I and many other people come, is a composite of a body, a mind and a soul. We know what the body is; it is a physical body with all of its feelings, emotions and needs. Then there is the mind, which is the rational part, which helps a human being to review their impulses and so on and so forth and to act responsibly. But then there is this ultimate component which is called the soul. Some people call it the conscience. It is this element in the human being which the Bible speaks about as being made in the image of God.

What that means is that there is a divine aspect to the human being, and it is that aspect that many people, unfortunately, these days may not necessarily feel because we are living in an extremely secular and materialistic culture, and the kind of sensitivity which allows a person to experience his or her own spiritual dimension has very often not been there for many people. But, nevertheless, this element of the human being, this part which responds and has an affinity with the divine, which is in every single human being as a potentiality of all events, in a sense puts the stamp of the divine on a human being.

Therefore the life of a human being is essentially, you could call it, divine property. We know that there are many levels of ownership in this world. There are things which we possess — for example, I am able to dispose of my own physical property. Government has a higher jurisdiction even than I do, because the government could intervene to conscript me, to imprison me, to do various different things, and to appropriate my property if it were needed for a particular purpose. So government therefore can prevail over my property, and it can even engage my labour against my will if, for example, it conscripts me for military service.

But there is something which neither the individual nor even the government has possession over, and that is life, because the key characteristic of life is the soul of the human being, the highest faculty. When a person dies, that travels — that leaves the body. The fact that the soul is within the human being is what gives it life. This human soul is something which, as I mentioned before, is the divine stamp, and therefore life is not our property to dispose of. That does not mean that there are not circumstances where life is to be taken — for example, in self-defence. We are authorised by universal ethics to take another person's life if we have to save our own. There may be other situations where we have to, similarly. War is also an extension of the concept of self-defence, and there may be terrible enemies within our society with whom we have to engage in some kind of lethal battle, but we are authorised by God to do that.

The notion that we could, however, destroy life itself is in fact an incursion against property which is not our own — divine property. That is the basic foundation of the prohibition of killing. So long as there is a soul within the human being, however greatly that human being is suffering — and we certainly want to do everything we can to ameliorate that suffering — we cannot actively intervene. Passively, we might refrain

from pursuing therapies in a terminal, painful situation, but we cannot destroy this property, which is not our own.

The reason why a lenient view on euthanasia or assisted suicide and so on and so forth, is in our view so deeply troubling is not just because of the point that I have mentioned, but because it also strikes at that concept of the conscience of that universal spirit which is within the human being and which actually informs a whole range of our moral choices. If I say that life can be taken, what I am essentially also simultaneously doing is actually disregarding the significance of the soul of the human being, which guides us in a whole host of moral and ethical choices. It says that there is no guide; it says there is nothing absolute within the human being.

I noticed that one of the questions in the leaflet asks: how do we balance the sanctity of life against personal autonomy? I do not think that is a question at all if we understand the human being as being essentially that spiritual dimension. That faculty of conscience is the highest faculty within the human being, and that is ultimately who the human being is. I do not feel that there could be a conflict between personal autonomy and the sanctity of life, because who I am — the person that I am — is that is spiritual being, essentially. I have a body and a mind as well, but that is my essential being. That is who I am. My soul is who I am, therefore there cannot be a conflict between it and the notion of my personal autonomy. The only way we can say there is a conflict between personal autonomy and the sanctity of life is if I think that I am just a physical being — I am just here for my physical and my mental pleasures, and then there is this thing called life which gets in the way of those pleasures, it burdens me. But if I say, ‘No, the person who I really am includes foremost that spiritual dimension’, then I do not have a problem.

As a matter of fact, I am very much beholden to a great thinker and writer called Viktor Frankl, who wrote a book called *Man’s Search for Meaning*. He was a person who went through the Holocaust and was in the concentration camps, and he knew the depths of human suffering on a daily basis. Yet he came to the recognition that as long as a person has this higher faculty — has this aspect, so to speak, which elevates up out of and beyond the personal predicament of the mind and the body — that person has a power to locate meaning, to find a reason to live and to overcome any kind of suffering. That is because I know that there is something in me which is not just my body and not just my mind — this is my highest self — and the very least I can do is to take up an attitude towards my suffering, to find meaning in it.

Anyway, that is the basic concept of the human soul, which I think is challenged by a notion of a human being’s ability to just dispose of life — his own life, her own life or somebody else’s life.

Another point I would like to bring out with regard to other issues raised here is that I think — and I am sure you have heard this point — if we were to have a regime of assisted suicide and so on and so forth, we would deeply erode the ethic of care and compassion in our society. Older people would have to struggle to justify their existence to others who found their existence a burden. I think it would be a terrible tragedy for our society if old people, in their weakness and frailty, had to desperately try to find the strength to justify their existence against children, or physical amenities, or state amenities or state resources, which are frankly and honestly strained by it. That is what life is. Life involves strains. We have strains in raising children, strains in making a living and so on, but a very worthy strain is the strain to preserve a person in life.

I also would like to make another point, and that is I feel that society needs to find ways in which the elder dying — or people towards the end of life, maybe not quite in that situation yet — can be cared for by their own families. It is an important factor of human tradition that families should care for older generations. We should not cut off our parents, dispatch them. Sometimes it may be that we are just not able to look after them — there may be severe physical issues — but I think it is a tremendous social quality that people are able to look after their own aged parents as much as possible.

I might, if I may, say I was privileged, as a matter of fact, that my own mother-in-law lived out her life in our house. She passed away at the age of 92. She went into the hospital where she died 6 hours before she died. In other words, we were able to take care of her. I will be very frank and say at first I thought, ‘Let’s send her to an old-aged home’, and she said, ‘No, that is not the way’. I had the good sense, with my wife, to listen to her, and we and our family were enriched by her presence and also, I think, somewhat refined by an ethic of care for the elderly. What I am saying now may sound a bit pie in the sky, a little bit abstract, but I think it is also very important. What is obviously going to make it difficult to look after the very elderly in one’s own home, even if you have got carers in and so on and so forth, is the fact that families very often are no longer intact. Obviously if a family has broken up and you have a single mother or a single father or something like that, it becomes

extremely hard for a person with all of those strains to care for an elderly person, even if you have a carer that is coming in.

But that I think itself is a very important point. Instead of just rushing towards the symptom, the specific problem, we always have to think about underlying causes, underlying factors. What could we do to keep families together more? This is something which benefits all generations. Not only does it benefit people themselves to have happy married lives, committed lives together, it is better for their children. I do not think anybody really will disagree with that, that children from a committed married home statistically will be more settled, more secure, more happy than those who are not in that situation. I am not judging the causes. Also the elderly can be better taken care of by families which are intact, where there is a mother and a father in the home and where the strains of everything, of earning the living, maintaining the home and caring for the elderly, would fall on one person.

As a final point, we will be forced to think this way, because ageing is such a huge phenomenon in our society that it is worth investing in measures which promote family integrity, family intactness, just for the purpose alone — apart from all the other benefits — of being able to care for the elderly, for those who are old and those who are passing away. We know also that the idea that we care for people who are vulnerable is not something which is good in itself, it ennobles everybody who is involved in it. Our children were enriched by the fact that we had an elderly parent who we were caring for. We became better people as a result of that.

I think it is very crucial that we do everything we possibly can to foster an ethic of care in our own families, and it would be a very desirable thing if government were able to see to measures which incentivise caring for the elderly and the ill in their own home. Certainly they will be much happier people. Because what we see in the hospitals, unfortunately — and it is a very ugly term that some people use — are the ‘killing fields’. It is terrible that in hospitals doctors and staff want to clear beds. I have seen it. I am not making any specific charges, and I know there is privilege here, but it has been said that they actually starve old people.

The CHAIR — I would caution you — —

Rabbi Dr COWEN — I have to be careful. Okay, then I will not. As has been said, I have got no proof of it. I will be cautious of it. But I will say that I have heard statements that unfortunately there can be an attitude that beds need to be cleared, and what follows from that is of course the opposite of a truly caring ethic. We need to do everything we can to remove that from our midst.

The CHAIR — Thank you, Rabbi, for those remarks. I have to say we have not heard any evidence that supports that last proposition. We have heard a lot of evidence to the contrary from learned, senior, experienced medical practitioners. But I will leave that aside. Accepting the framework you have articulated, thank you, Rabbi, I want to ask you how you see the difference between a decision by a family to allow a life support system to be turned off or a decision by a family that food and water no longer be provided, which currently is legal within our legal framework and I think broadly accepted as ethically acceptable. What is the difference between those two examples and what has been proposed by our previous witness, that someone be able to take a pill which ends their life?

Rabbi Dr COWEN — I was not aware of what the law provided exactly, but I would say that the notion that you can withdraw hydration and nutrition is indefensible from a religious point of view. I was not aware that that is the law, and that is something which our religious tradition would certainly reject, because that is actually tantamount to killing. As far as a life support system is concerned, this is a complex one, or this is more complex. It may be, for example, that if it is on a timer or something like that, and a question of when the person recovers, whether one has to take the measures to resuscitate. One is not always obligated to resuscitate because you can let nature take its course. But that is clearly distinguished from an intervention to kill.

From a religious standpoint, from my own tradition — and I understand there are other religious traditions — the withdrawal of oxygen, nutrition, water, hydration, these are actually totally unacceptable. We know very well that if you take a perfectly viable and healthy person and withhold food and water or oxygen, they will die. The same thing as over here, it is an intervention. I do not accept the concept that that is valid practice from a moral point of view, and certainly not to take the step, even more direct intervention, such as to give a pill which would instantly terminate the life.

Ms SPRINGLE — Thank you for your testimony. I am interested to hear your thoughts around refusal of treatment, so the individual choosing that for themselves and the concept of free will around that.

Rabbi Dr COWEN — Yes. I think what we would say is that obviously for a person who is viable, who has got not a terminal illness, it would be morally wrong for that person not to want to be healed. But if a person is in a terminal illness, coupled with pain, then it is defensible for that person not aggressively to prolong life in pain. Do you see what I am saying? If you have got the condition (a) it is terminal, (b) it is painful, and it is terminal and painful, and the further therapy and treatment — I am not talking about cutting off food, water et cetera, but further therapies and so on and so forth — would simply prolong a life in agony, then that in my view is not required.

Ms SPRINGLE — In your view who would be the appropriate person to make that decision, to accept the premise of refusal of treatment?

Rabbi Dr COWEN — I think first of all you need the doctor to say that this person is in a terminal state, in other words is in a terminal state, and obviously to verify the pain to some extent. But then it would be the patient's decision to say, 'I don't want to pursue it'.

Ms SPRINGLE — That would be isolated to physical pain or would that include existential pain?

Rabbi Dr COWEN — I do not think a person would die of existential pain. I think a person would die from physical illnesses, not necessarily from psychological, unless you want to say the person is suicidal, then they cannot control themselves anyway. But I would say that since physical causes are the ones which are likely actually to precipitate a death, then they can say that. Unless you are talking about a combination of the two together.

Ms SPRINGLE — It could be either-or. I suppose there would be some people who would argue that severe forms of depression or other sort of mental illnesses, can contribute to the demise of a person.

Rabbi Dr COWEN — I would say that that is more remote, because I do not think that necessarily is going to bring a person naturally to die, unless they do something themselves. I am not an expert on that. But I would sincerely hope, even though I realise that certain forms of depression can be extremely deep and may even have some sort of an organic component to it, I would sincerely hope that everything could be done actually to alleviate that. In other words, that whilst we may not be able to cure a physical illness, I would hope that there is more scope to be able to alleviate a psychological illness.

Ms FITZHERBERT — I was going to ask you about your testimony, in which you referred to it being wrong to actively assist in the ending of life, and ask specifically what constitutes 'actively assisting', but I think you may have answered that already.

Rabbi Dr COWEN — Yes. Obviously a pill, a lethal substance, definitely. But even the withdrawal of food, drink and oxygen is also considered as an act, as an intervention, in our tradition.

Ms FITZHERBERT — But it is not always wrong to decline treatment?

Rabbi Dr COWEN — No. If a person, as I mentioned before, is at the end and in pain, then they have the right to say, 'I do not wish to pursue further treatment' — in other words, to passively allow things to occur.

Ms PATTEN — I was looking at a statement made by a Catholic theologian, and in his thoughts on divine property he says:

... God, who has given men and women freedom and responsibility for their lives, has also left to dying people the responsibility for making a conscientious decision about the manner and time of their deaths. This is a responsibility which neither the state nor the church, nor a theologian, nor a doctor can take away.

Rabbi Dr COWEN — I am surprised that a traditional Catholic theologian made that statement. To make a statement which seems to be as open — that a person can make a decision about when their life should end. I am amazed that such a statement would be made from a religious point of view. I do not agree with that; I think it is wrong. A 16-year-old child could have a bad day and say, 'Well, that's it'. It is obviously completely unacceptable under any circumstances.

Ms PATTEN — You would say that we must passively submit to fate?

Rabbi Dr COWEN — When I say ‘we’, who are we? Who am I?

Ms PATTEN — We are divine property, that is who we are.

Rabbi Dr COWEN — There is also something godly within me and within you. It is not something which is colliding with me. God wants me to be here another few minutes, another hour, another day, another week, another two, another year or something — whatever. I should try to embrace that. Now it may be very difficult sometimes; people have had terrible challenges and terrible circumstances. But that is what it means to have something godly within one and to appreciate it, and to actually be able to relate to god with that part of oneself. People in extreme suffering, in whom that consciousness is activated, actually can find a tremendous solace. Victor Frankl was in the concentration camps. Every single day was indescribable in its anguish, seeing factories of killing — murder — going all around.

But if a person could bring out that higher self and say, ‘I still have a reason for living, I embrace my purpose’, then I am not submitting, I am being active. That part of me is actually now saying, ‘I am actually in control. My body and mind might be suffering all kinds of anguish, but there is a part of me which is affirming its existence, which is connecting with god with a purpose in this world’. It is all that we need to be. It is the whole thing: we need to sensitise ourselves to the idea that there is something in us which is more than just the body and the mind. There is this special part which can take extra joy in existing, and pleasure and meaning in existing, even if unfortunately things start — and we do; we get older. We find our faculties failing. But there is a part of it; actually our spirituality grows as we get older.

Ms PATTEN — We had a fellow in this morning who is 41 and has an inoperable brain tumour. He lives his life in three-month stages, and it was incredibly sad. His biggest fear is that as the tumour grows he will become blind and paralysed. He loves reading, he is an IT person, he loves exchanging with his friends. Do we say that he must find some reason to continue living when he is paralysed and blind and in pain?

Rabbi Dr COWEN — Do you know what? There are definitely people in life who face much greater challenges than we do, and this is such a person. However, this person has somehow got the heroic possibility and quality within himself, even notwithstanding all of that, to find a purpose in life. It might be, just to give you an example, IT. He might discover that there is something greater in life than computer skills.

I will give you another example. There is a certain philosopher — Peter Singer — who talks about infanticide. What about a child who is born with Down syndrome? It has been proposed that such a child could be given — let us call it euphemistically post-natal abortion, but really it is killing. He says why? This Down syndrome child will never be able to play a guitar, will not be able to enjoy a Shakespearean sonnet, and so on and so forth. However, I have seen Down syndrome children, and they may not be able to play a guitar, but they can be spiritually very rich people. Not only that, not only can they be very good people but they can also ennoble everybody around them who cares for them. So this person you are speaking about, it is true, he may lose his ability to do the things which he enjoyed doing, but it is simultaneously possible — and I do not know all the possibilities — that he might enter into a whole new range of experience.

We could sit for years in our old age unable to do a whole lot of things. The question is what will do then? What happens when our faculty for enjoyment, all sorts of enjoyments, goes? Is that the end of it? Or does that open now a new realm of the spiritual, a new meditative existence? So maybe he is now entering — and I am not minimising his suffering; we should do everything we can to help him — a whole realm of the spirit, and not only that where he will now call out the best in other people around him to help him. In other words, he may not only grow himself in a certain dimension but he may elevate those around him who help him.

As I say, I feel for this human being very, very much, and certain people are picked unfortunately or fortunately — whatever the case is — for terrible trials, but that does not mean that we blow out the candle because a trial comes. The trial there is for a purpose and to bring out the best in ourselves and in others.

The CHAIR — Thank you, Rabbi. Any final questions from members? Is there anything further you would like to add, Rabbi?

Rabbi Dr COWEN — I do not think so. That is basically it.

The CHAIR — Thank you very much for being here this afternoon. We greatly appreciate it.

Rabbi Dr COWEN — Thank you very much indeed.

The CHAIR — And as I said, the transcript will be with you in the next week or so. Thank you.

Witness withdrew.