

This article is dedicated to Rabbi Professor Avraham Steinberg, MD.

In the weekday service we recite the prayer for health, in which G-d is referred to as the *faithful* and *compassionate healer*, apparently attributes that are of supreme importance to fulfilling the role of physician.

To my understanding, whereas *faithful* denotes an uncompromising commitment to professionalism, *compassionate* denotes genuine empathy to each patient.

Dr. Steinberg embodies the quintessential physician in his enduring journey to unlock the mysteries of the human body and his relentless quest to open the human heart.

The Life Process*

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A. Preface

Life is overpowering to the point where it can be trivialized. In fact, the word *life* can mean everything and anything. At its most elemental level, life is the divide between those who feel, think, move, and perceive and those who do not. At its most sublime level, life is a story and so perhaps the best way to introduce this topic is to tell one.

B. A Story

In the book, *Ve'aleyha Lo Yibol*,¹ which relates the conduct and instruction of Rabbi Shomo Zalman Auerbach, the following story is told by Rav Yankele Levine:

My friend, A Torah scholar, after many years of a childless marriage, fathered a baby daughter, born with severe deformities. The majority of doctors were of the opinion that no treatment was

* I wish to acknowledge my sister Bonnie Besdin for her invaluable assistance in preparing this article. Her unpublished words capture the essence of the article.

“After all the matter, we are just hushed lives, under wondrous nights and star-lit skies.”

¹ This phrase, which can be translated, *His leaf shall not wither*, appears in Psalms 1, 3.

available and that the baby would die after a short time. However, one physician was of the opinion that it was possible to attempt an operation on the baby, which would prolong her life. And yet even that doctor agreed that the probability that this operation would succeed was minimal. I came to the home of Rabbi Auerbach together with the father of the baby who then consulted the rabbi on whether the operation should be performed. After hearing the facts, Rabbi Auerbach told the father not to proceed with an operation on the infant. The father then went from the Rabbi's home to the hospital and told the rabbi's decision to his wife, who had given birth just two or three days before. After the couple spoke for several hours, they returned together to the Rabbi's home. The father asked his question to the rabbi again, and since he himself was a scholar, he began to discuss various legal aspects of the decision, and for approximately twenty minutes he continued to press the Rabbi, as he was not willing to accept his advice and ruling. At a certain point, in the conversation between them, the rabbi changed the tone of his speech and asked: "Do you think you are righteous and I am wicked? Do you think you are compassionate and I am cruel? Stop arguing. I am of no less compassion than you. I know of other similar stories, and one should not operate on the baby. You and your wife have finished your mission by bringing the baby into the world. Do not return to the hospital to visit the baby and take care of her. Do not go to the funeral. The baby no longer belongs to you."

It was clear to me that the parents were not obligated to sit Shiva. The rabbi had spoken his words with great force. But I have come to appreciate how important the Rabbi's words and the manner in which they were spoken were, so that the couple would be able to go home and continue to build their home with joy.²

This story is striking and difficult. To appreciate its complexity, it must be noted that Rabbi Auerbach was acknowledged by all as being a man of great compassion and humility. This was borne out in his dealings with people living in a myriad of communities encompassing diverse populations as well as his simple life style and his refusal to accept honors and accolades that others wished to bestow on him.³

What caused this simple tzaddik to act seemingly out of character? This story is not only Rabbi Auerbach's tale but is also the tale of the parents who

² Ve'aleyha Lo Yibol, Vol. 2: 137-138.

³ Allow me to express my gratitude to Rabbi Prof. Steinberg for introducing me to the uniqueness of Rabbi Auerbach as a legal decisor. I am reminded of the time a few years ago, when we were together at a conference in Tzfat. During the two-hour tour of the old city, he impressed upon me Rabbi Auerbach's unique capabilities and approach.

after years of praying for a child, willingly and swiftly agreed to let go. Attention should also be paid to Rav Yankele Levine, the storyteller, the outsider, and the witness to this wrenching human drama. Finally, and certainly of no lesser importance, this is the story of the infant girl, who exits life almost upon entering, and whose brief life experience cannot be fathomed.

My focus here is legal rather than literary. How is one to understand the Rabbi's ruling? To be sure, the baby was not abandoned. She was treated in the hospital where her basic needs were met. She was not cast aside in a lonely alley, or dropped alone near a mountain. The rabbi ruled only that it was not necessary for the baby to undergo a complex surgical procedure that in all probability would not have saved this infant's life. Yet, why not undertake any available procedure, even if there is only a slight chance of success? The former Chief Rabbi of England stressed the infinite value of life and suggested the following arithmetic consequence. He maintained that since infinity is not divisible, so too, each fragment of life is in itself of infinite value.⁴ Prior to suggesting a response to these questions, it would be beneficial to clarify certain points of Jewish Law regarding early infant death.

C. Legal Aspects

As a beam of sunlight, when passing through a prism, is separated into a symphony of colors, so too, a legal term when passing through life's myriad changes, divides into the array of nuances found in each different and unique area of law. For the purposes of this article, I will briefly discuss the legal definition of early infant birth and death, and its impact on the laws of mourning, Sabbath, circumcision and murder.

The legal term *nefel* means a premature, nonviable infant. Rabbi Professor Steinberg explains: "a nefel is a stillborn or a nonviable baby because of either serious birth defects, or because it was born prematurely."⁵ Halacha with its keen insistence on concise definitions, yet also cognizant of life's complexities, declares: "if the hair and fingernails appear appropriately developed in the newborn and the newborn lives for thirty days, there is no presumption of being a *nefel*. However, if the newborn lives fewer than 30 days, or if his fingernails and hair are not appropriately developed, the newborn then falls into the category of 'doubtful *nefel*."⁶ The assumption of the rabbis of the Talmud was that an infant who lives for thirty days is not a *nefel*. Another assumption, which appears counter-intuitive, was that an infant born in the 8th month of his mother's pregnancy is not viable, while an infant born in the 7th month is considered viable. The reason for this distinction surrounds the developmental stages of the fetus in the last trimester of pregnancy.⁷

While Halacha attempts to define the viability of the infant via varying external factors, problems may arise when the fetal signs seem to contradict each other. The three main signs of *nefel* status are: 1) lack of appropriate hair

⁴ I. Jakobovits, *Jewish Medical Ethics*, (Philosophical Library, 1959) p 152.

⁵ Rabbi Prof. Steinberg, *Entzyklopedia Hilchatit Refuit* (new edition), Volume 3: 839 – 840.

⁶ Shulchan Arukh, Even HaEzer, 156, 4.

⁷ Shabbat, 135 b. For a modern day explanation on the issue of viability, see Chief Rabbi of Netanya, D. Slush, Responsa Hemda Genuza, Volume 3: section 21.

and nail growth 2) birth in the eighth month of pregnancy 3) survival for fewer than thirty days. In the laws of circumcision, Maimonides prioritizes these factors when they do not harmonize. The Great Sage teaches that an infant born during the eighth month of pregnancy whose hair and fingernails are appropriately developed is a well-developed newborn. Maimonides explains that an infant born in the eighth month of pregnancy, usually a sign of nonviability, can be seen as a viable infant because of the development of hair and nails and so apparently is actually at the stage of a seventh month fetus who had lingered in his mother's womb. Maimonides, therefore, posits that this infant can be circumcised on the Sabbath. The normative principle in Jewish Law is that an infant may be circumcised on Sabbath despite the fact that desecration of some Sabbath laws may be necessary. On the other hand, if that same infant is born with defective hair and fingernails, he is viewed as an 8th month old fetus who was born prematurely, is not viable, and thus may not be circumscribed on the Sabbath. However, should this infant live for thirty days, he has proven his viability and is treated as a regular infant and is not considered a *Nefel*.⁸ Conversely, the nonviable condition of the infant born in the eighth month of pregnancy who lacks proper hair and nail development, outweighs the justification for desecrating the Sabbath in order to circumcise him. This is striking because Jewish Law requires circumcising a baby before its burial. Some commentators stress that the reason for this stems not from a commandment, since the dead are not obligated to do mitzvot, but rather out of respect for the corpse.⁹

It would seem from the above analysis that Sabbath desecration would not be permitted in order to medically treat the nonviable premature infant such as one who was born during the 8th month. In practice however, this is not the case. Sabbath desecration is permitted to save the premature nonviable baby as is permitted for the doubtful *nefel*, and of course to save any infant. Three reasons can be given for the modern day practice: First, the possible changes that have occurred in nature from the time of the Talmud until today. . The Chazon Ish raises the idea that the non-viability of the 8th month old fetus is no longer accepted, as previously was the case.¹⁰ The second reason is based on medical testimony. Doctors witness the great number of fetuses born in the 8th month who survive. This is due in part to the wonders of modern day medical technology such as advanced incubators which mimic the mother's womb, ventilators and fetal monitoring. A corollary to this approach is that today it has become almost impossible to determine with any certainty who is a nonviable infant.¹¹ The third reason stems from modern medical policy. Rav Shlomo Zalman Auerbach posits that today, even if one can be sure who is a clear *nefel*, doctors may treat any *nefel* on the Sabbath. The reason is to avoid a situation wherein hospitals become accustomed to denying full-fledged

⁸ Mishnah Torah, Laws of Circumcision, 1, 13.

⁹ Arukh Ha Shulchan, Volume 5: 263, 17.

¹⁰ Chazon Ish, Yoreh Deah, Circumcision, 145, 4.

¹¹ Minchat Yizchak, volume 4: 123.

treatment to some patients, which might affect the care and treatment for other infant patients not in the same category.¹²

Nonetheless, the story that is related at the beginning of this article, teaches us that oft times, one is not required or even encouraged to do all that is necessary to save a baby of the *nefel* status. To be sure, one is not allowed to terminate the life of the *nefel*¹³. However, the law in this area is highly nuanced. Maimonides rules that one who murders be it an adult or a healthy one-day-old infant, is deserving of capital punishment. But if a *nefel* is killed within thirty days of his birth, that act is not punishable by death.¹⁴ The unique nature of the laws concerning the prohibition against terminating the life of the *nefel* impacts on the duty to rescue the *nefel*. In fact, the extent to which there is an obligation for saving the *nefel* is a function of many factors due to its nonviable status. Rav Halberstam understands Rav Auerbach's position to be that a *nefel* who needs resuscitation of large quantities of oxygen to the point where this might cause blindness or serious brain damage does not have to receive such treatment.¹⁵ Rav Auerbach is of the general opinion that it is praiseworthy to develop modern technology in order to assist the *nefel* grow out of its status and become a healthy baby. At the same time, since the death rate of premature babies is so high, and the effort so great, one is not obligated to save the *nefel*. One relevant factor in the decision making process is the wishes of the parents. Here too, the picture is more complex; for example, in the article's opening story, the parents were not encouraged to save the *nefel*, apparently because of its severe deformity and the unlikely chance of effective treatment. An actual case, which extends the boundaries of the *nefel* and crosses over to an infant who will live more than 30 days, was presented to Rav Auerbach. The infant was born with Trisomy 18. This condition results in a life expectancy of a few months, but in exceptional cases, the baby can live up to two years. Rabbi Auerbach was asked whether heart surgery which might extend the life expectancy of the infant should be performed, and whether various treatments should be given. He ruled that there is no purpose in the surgery, but the infant should be given normal treatment, such as food and painkilling medicine. A particular medicine was given to this infant, although this was unusual, after Rav Auerbach conferred with Rabbi Professor Steinberg, and it was confirmed that the baby would not have any pain from this medicine. It was also decided that a name may be given to the baby before the circumcision. However, the name should not be that of a family member. The

¹² Nishmat Avraham, volume 4: 49. In calculating the different periods mentioned in the Talmud for defining the *nefel* status there is an interesting modern twist. I refer to young infants kept alive in incubators. Some Poskim suggest that the time period spent by an infant in an incubator should not be counted towards the different definitions of *nefel* because the infant has not proven his viability. Others rule that this time period should be counted because of the medical success of the incubator as a form of treatment. Rav Ovadia Yosef stresses a different aspect and rules towards not counting the time period spent in an incubator regarding the more than thirty day survival period required to obligate mourning. His view is based on the general rabbinic rule that one is lenient in the area of mourning. Yosef, *Yalkut Yosef*, Laws of Visiting the Sick and Mourning, Volume 7: 8,6.

¹³ Chatam Sofer, Responsa 2: 247, B'hag, in collected writings of Nachmanides, Volume 2: 28, Rav Auerbach, in Nishmat Avraham, Volume 4: 54.

¹⁴ Mishnah Torah, Laws of Murder, 2, 6.

¹⁵ Rabbi Prof. Steinberg, supra (note 4) Volume 3: 968.

baby passed away after living more than 30 days. Accordingly, Rabbi Auerbach ruled it was not classified as a *nefel* and was to be buried in a regular manner. Rav Auerbach recommended that the parents not be at the funeral, and that it would be preferred if the chevra chadisha buried the baby and the parents not know the burial site. Shiva and shloshim were to be observed.¹⁶ It should be clarified that one who lives fewer than thirty days, i.e. a *nefel*, does not require shiva and is not buried in a regular manner. The above legal survey illustrates Rabbi Auerbach's ruling in the opening story of this article. This explanation is valid on a formal legal level. It would now be worthwhile to examine the philosophical and moral basis for this halachic approach.

D. Philosophical Considerations

From my perspective, Judaism is primarily a legal based religion, so that any attempt to understand its philosophy and morality should be based mainly, but not exclusively, on its laws. Consequently, it should come as no surprise that to unravel the web of the philosophical underpinning of the *nefel* laws, one might find guidance by studying a different area of law - the terminally ill. This area is wide and complex, but for our purposes a brief highlight will suffice.

The Talmud teaches us: "He who closes the eyes of a dying person is akin to a murderer. This may be compared to a lamp that goes out if a person places his finger on it, the light is immediately extinguished."¹⁷ Rashi clarifies for us that slightly hastening death is murder. Previously mentioned was the law that the killing of a one-day-old baby is an act of murder no less than the killing of a mature person. The logic of this position extends to the above-mentioned conclusion in that one may not hasten even slightly the death of a dying person or, as he is known in the halachik literature: the *goses*.¹⁸ The *goses* is near dying and as Maimonides graphically describes "the death rattle in his throat"¹⁹. The Great Codifier, The Ramah, ruled that it is forbidden to cause the *goses* to die faster. This includes even moving the *goses* from his place; "however, if there is something, which is preventing the departure of his soul, for example, there is a nearby knocking noise such as a woodchopper or there is salt on his tongue and this is preventing his death it is permitted to remove this, because

¹⁶ Supra (note 2) Volume 2: 136 – 137.

¹⁷ Shabbes, 151 B.

¹⁸ To better understand the essence of the *nefel*, I've chosen to compare the *nefel* to the *goses*. As will be demonstrated, the two terms share common points but are different in two basic ways. Unlike the *nefel*, the *goses* is involved with dying rather than the process of birth. The other difference is that the *goses*, i.e. the person who is dying is clearly a fully viable life. Therefore, killing him would clearly be defined as murder. In a certain sense, the *trefah* has more in common with the *nefel* than he does with the *goses*. Maimonides rules that the one who kills the *trefah* is not responsible for murder from the perspective of human law (Mishna Torah, Laws of Murder, 2,8). The *trefah* has been defined as one who for example, lacks a basic internal organ (Igrot Moshe, Section 2: 73,4). This would suggest that the *trefah* is classified in a certain sense as being non-viable, aligning him more with the *nefel* than with the *goses*.

Editor's note: Wouldn't it serve the same purpose of this article if you generalize the term, and use 'dying patient' instead of *goses*? That is because the *goses* has a very specific halachic definition to it; even the greatest poskim of our days found it difficult to apply *goses*-halachot to specific cases in reality (See testimony of my father in his *Entzyklopedia Hilchatit Refuit* (new edition), Volume 5, p. 418: 16).

¹⁹ Maimonides, Commentary on the Mishna, Arachin 1,3.

this is not an action at all, but only the removal of a preventative.”²⁰ This stunning distinction is of great practical importance, more so even today than in 16th century Poland when it was written. Based on this approach, the Chief Sepahrdic Rabbi of Tel Aviv, Rabbi Chaim David Halevi allowed disconnecting a terminally ill patient from an artificial respirator in certain circumstances.²¹ The Supreme Court of Israel in the *Yael Shefer Decision* written by Vice President Menachem Elon²² and based on principles of Jewish Law accepted the distinction between passive and active euthanasia. This decision contributed to the *Terminally Ill Patient Law*, which was passed in 2005 based on the report of a committee headed by Rabbi Professor Steinberg.²³ The Ramah distinguishes between *causing death* and *passive inaction* or action that indirectly affects the moment of death. The former is illegal and the latter may be permissible.²⁴

Note the difference between the *nefel* and the *goses*. While the *nefel* is not clearly alive, the *goses* is clearly not dead. To be sure, in some sense the *nefel* has life; he has, after all, entered the air of this world.²⁵ Yet, in another sense, he is not fully alive. Conversely, the law recognizes that the *goses* due to his pre-*goses* condition is fully alive. Therefore, the prohibition of murder in all its intensity applies to him. One can say, that although the murder of the *goses* is prohibited, there is no obligation to save him.²⁶ This is worth noting, because

²⁰ Shulchan Arukh, Yoreh Deah, chap. 339.

²¹ Asseh Lekah Rav, Volume 5: 29.

²² Yael Shefer (A Minor) by her Mother v. State of Israel, CA 506/88 P.D. 170.

²³ It is a great tribute to Rabbi Professor Steinberg’s tolerance, organizational skills, commitment and personal humility that he was able to chair a committee, which included 59 people from diverse backgrounds, ideology, fields of endeavor, and religions. What is more surprising is that this committee was able to reach a consensus consistent with principles of Jewish Law that was adopted as Israeli Law by an overwhelming vote on the Knesset.

²⁴ In this context, it should be noted that the term euthanasia means a good death. That term is preferable to the phrase mercy killing since Judaism does not sanction murder.

²⁵ Rashi, Talmud Sanhedrin, 32b. This fact is paramount in distinguishing the fetus from the newborn.

²⁶ **Editor’s note:** This sentence requires clarification. We find in Yuma 85a an obligation to save the life of an individual trapped under a pile of rocks even if he has a short life expectancy and even if it happened on Shabbat and there is need to desecrate the Holy day in order to save him. See the powerful words of the *Biur Halacha* 329, 4 beginning words “אלא לפי שעה”. On the other hand we find different sources in Chazal approving of passively ending the life of a person in such a severe situation without attempting to prolong them (for example: Avoda Zara 18a the story of Rabbi Chanania Ben Teradion permitting the Roman executioner to help him die quickly after set on fire; *ibid.* 27b were Chazal derive from the case of Gechazi and his sons that חיי שעה ספק חיי עולם overrides שעה, see Rabbi Moshe Feinstein’s interpretation to this story in *Halacha Urefua*, Volume 1, p. 137). Different approaches are found amongst the poskim of our time to answer this seeming contradiction: Rabbi Moshe Feinstein (*supra*); Rabbi Shlomo Zalman Aueirbach (*Minchat Shlomo*, Volume 1, Siman 91, 24); Rabbi Yosef Shalom Eliashiv (quoted in *Nishmat Avraham*, Volume 4, Yore-Dea, Siman 339, 2) Rabbi Zalman Nechemia Goldberg (*Emek Halacha – Asia*, ff. 64; Rabbi Yaakov Ariel (response *Beohala Shel Tora*, 1: 56) hold that in case of suffering the dying patient has the freedom to decide whether he wishes to continue to live or not, because the obligation of Torah to rescue an endangered human-being is only true when it is for the survivor’s benefit (According to some of the above opinions we assume that a dying patient is suffering even if he isn’t in a state of mind to express what he feels). Other poskim dispute this position (See Rabbi Levi Yitzchak Halperin’s notes throughout Rabbi Goldberg’s article; responsa *Tzitz Eliezer* 9: 47, 13: 87-89, 14: 80-82, 18: 62; Rabbi Bleich JD, *Judaism and Healing*, Ch 24) and hold that even for a suffering dying person one must carryout every treatment possible to try to prolong his life (According to them, the lenient position of the Rama mentioned in the article is true only with regards to superstitious type aids like salt on the tongue or load noise of a craftsman). A summary of the relevant opinions on this matter may be found in my father’s *Entyclopedia Hilchatit Refuit* (new edition), Volume 5, 141-143.

there is a Biblical commandment to rescue one's neighbor.²⁷ Although in a similar way, there is no general obligation to save the *nefel*, this state of law is more striking regarding the *goses*. What accounts for this difference in Jewish law between the ongoing prohibitions against murder as opposed to the weakening of the obligation to rescue the *goses*?

Three solutions to this question arise from the sources. Each solution focuses on a different perspective that can be viewed as the *theological*, the *medical*, and the *condition of human suffering*. The first solution stems from G-d's perspective, as we understand it. In discussing the *goses*, Rav Chaim David Halevi²⁸ allows for passive euthanasia in certain circumstances based on the belief that the soul of each person is the possession of G-d, who has called out to him at this juncture. According to this view, the *goses* is so near to the moment of actual death that G-d, as it were, is making a statement about the person's destiny. The second perspective is from the point of view of the doctor. Judaism has great respect for the medical practitioner. The physician's role is to heal; his goal is to cure disease. Rav Shlomo Zalman Auerbach rules that there is an obligation to continue treatment that fulfills basic needs of the patient such as liquid, food and oxygen. However there is no obligation to administer treatment to the *goses* if it can only prolong his life somewhat, without the expectation that this treatment would result in a recovery or a cure. This is especially pertinent if the said treatment would cause the patient suffering or pain.²⁹ In this situation, the question arises: Is the doctor fulfilling his role? Lastly, the third perspective is from the point of view of the patient. Rav Moshe Feinstein cautions against administering treatment that merely prolongs life for a short time but causes suffering. He adds that even if the doctors claim that the patient no longer feels any pain, this assumption should not be trusted, perhaps because the departure of the soul involves suffering that is not apparent to us.³⁰

These three perspectives may of course overlap with one another. Again, it may be worthwhile to probe deeper. Why is it that these three considerations carry so much weight in saving the *goses* or in treating the *nefel*?³¹

²⁷ Leviticus, 19, 16. N. Hendel, The "Thou Shall Not Stand Passive" law- inspiration and reality, *Bar Ilan Law*, Volume 16, number 2.

²⁸ *Supra* (note 20).

²⁹ *Responsa Minchat Shlomo*, Volume 1: 91, 24.

³⁰ *Responsa Igrot Moshe*, *Yoreh De'ah*, Volume 2: 174.

³¹ **Editor's note:** Previously in this article you pointed to a difference between the two, giving the *goses* preference over the *nefel* due to his pre-*goses* condition. In Halacha we rule by the principle of *Chazaka*, continue the situation until given proof otherwise. So, too, the *goses* has *Chezkat Chaim* from his pre-*goses* condition, therefore it would make sense to relate more stringently to him than to the *nefel*. Poskim holding by strict rulings with regards to a *goses* may very well agree upon less severity when it has to do with a *nefel*. On the other hand, the opinion of Rabbi Eliashiv is the exact opposite: with regards to the dying patient his ruling is somewhat lenient, as mentioned above (foot note 26), whereas by a *nefel* he holds that one must do everything in order to prolong its life, even if it seems to us that the *nefel* is suffering (See testimony of Rabbi Yitzchak Zilberstein of his father-in-law's position, "טיפול בתינוק במצב סופני" elsewhere in this book). We see from all of this, that although in general, the conclusion of this article that there is a process of life and a process of death, remains as is, but from the fine details of these two circumstances one comes to rely that each one should be dealt with individually by its own criteria.

The darling of our age, the computer is binary, working on a two-digit system. Similarly, there is a tendency to categorize life and death in a two-dimensional manner: one is alive or not alive; one is dead or not dead; Reality, however, does not cooperate and refuses to comply with such clear and neat distinctions. Life and death are processes; there is the process of being alive and the process of dying. Neither life nor death is an either/or condition. The *nefel* is at the end of the beginning and the *goses* is at the beginning of the end. There are points in time where the individual stands at destiny's door, not sure if and when he will enter. Could it in fact be, that the *goses* is closer to the end, than the *nefel* is to the beginning? Is it possible that the neonatologist is closer to life's secrets than the practitioner who deals with the terminally ill? Be that as it may, the existence of *process* in life and death, allows for legal flexibility. Different factors can be given more weight in the decision making process. Let us return briefly to the three perspectives mentioned earlier: As for the theological perspective, normally, medical treatment does not concern itself with interfering with G-d's will. Otherwise, Judaism would be in conflict with the role of the doctor, which it is not. However, the *goses* because of his more ambiguous condition, does factor into the theological perspective. As for the medical perspective, in the *non-goses*, *non-nefel* situations, extending life is laudatory. In contrast, because of the precarious status of the *nefel* and *goses*, the healer can be asked the following question: As a doctor you are required to heal. Is this goal accomplished if³² you just marginally extending the quantity of this uncertain status? Lastly, suffering in itself does not justify ending a life. On the other hand, because the status of the *goses* or the *nefel* is process, the legal decisor is allowed to give great weight to the condition of suffering. This status of process extends the boundaries of legal discretion, thereby enriching the opportunity for original rabbinic ruling.

E. Conclusion

In this article, the *process of life* and *the process of death* were highlighted. The moment after birth and the moment that precedes death are inextricably connected. An attempt was made to explain the underlying rationale for the Jewish view³³ of the *nefel* and *goses* status. But is our discussion only relevant in the extreme situation? What about the majority of us, the majority of time, well past life's opening moment and at present not caught up its final stage? I would argue that the laws of the *nefel* and *goses* have something to teach all of us who are standing in the midst of life's journey, far in time and place from these two polarized points. In this way, life may be analogized to a rope. Precisely when one holds and moves the ends of the rope, its middle sections will turn. Similarly, life's endpoints can instruct us about its middle section.

What then can the laws, philosophy and morality concerning the *nefel* and the *goses* teach the rest of us of more defined and less vulnerable status?

³² **Editor's note:** Shouldn't it be "by" or "extend" later on?

³³ **Editor's note:** It may be preferable to use a less encompassing term, since there are various legitimate opinions within Judaism pertaining to these issues (see above note 26). It may be more suitable to use a term like "Jewish authorities."

Three answers come to mind. The first is that life is glorious, precious and to be cherished. How else is one to understand the uncompromising commitment of the members of the medical communities in their heroic efforts to treat and improve the lot of the *nefel* and the *goses*. Secondly, we learn that the Jewish legal system is realistic. By that I do not refer to its practicality, but rather to its unquenchable desire to embrace life without prejudice or preconception. In this way, halacha is scientific; it wishes to examine life as it is. It refuses to ignore the unusual and uncomfortable situation, which may force us to question our basic assumptions in fundamental areas. From a historical perspective, we can see how halachic discussions of flickering flames, wood-chopping, and hair and nail growth in the fetus can lay the foundation for entirely new areas of medical technology in the twentieth century, unimaginable one hundred years ago. Finally, and to my mind most importantly, suffering is a horrific component of the human condition. Job questions, "why did I not die in the womb... or be as the hidden *nefel* that never was?"³⁴ The tortured soul yearns for the status of *nefel*. Suffering may suddenly appear like a great wind, unannounced but with enough force to change our direction instantly. The black rainbow has as many shades as the natural one promised to us by G-d after Noah's flood. It is certainly true that people must learn to suffer with dignity, and if possible to use the experience as a springboard for improvement. However, that is a *de facto* response. Each of us in the center of life's journey, must do his part to lessen the suffering of the other, each according to his ability, each according to his power. Sometimes, a small human kindness can greatly lift the spirit of the downtrodden and in seeming disproportion, lessen their anguish. To be sure, joy abounds, even in the most surprising places and at the most unexpected moments, but even then there are times when misery enters unabashedly, without shyness or discrimination. Suffering must not be romanticized, rationalized or trivialized; rather it must be confronted directly and honestly, and attacked in a myriad of forms. So, too, it is our ongoing task, until that great day, when G-d willing, suffering will be eradicated.³⁵

³⁴ Job 3, 15.

³⁵ A. I. Kook. Orot Hakodesh Volume 2: 24 –25 and compare to Maimonides, Mishnah Torah, Laws of Kings, 12, 2 and 5.