

The Provision of Decent Care for Individuals Living with HIV/AIDS

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The point has been made that the religio-ethical precepts of Judaism are a matter of duties rather than human rights. However the very concept of obligations in the Pentateuch (Judaism's primary Scriptural source), presumes the rights of those who are the object of these obligations. Indeed one can only make sense, for example, of a prohibition against theft, if the owner has a recognized right to possession, which is violated by the thief. "Rights and obligations are two sides of one coin and the same medal" (R.J.Z. Werblowsky, *Religion and Human Rights – Comprendre, Revue de Politique de la Culture, Societe Europeenne de Culture, Venice, 1984*). Above all, obligations towards our fellow human beings (and indeed towards ourselves) are rooted in the Biblical teaching (Gen. 5 v. 102) that every human person is created in the Divine Image and thus with the sacred right to life, freedom and dignity (see Mishnah Sanhedrin 4:5). "The belief in the sacredness of the human personality not only governs the relations of one individual to another, it defines (the individual's) relation to society as a whole" (Samuel Belkin, "In His Image", *Abelard-Shuman, Congress Library Catalog 60-72301, p.117*).

Furthermore, Judaism teaches that the individual has the right not only to life, but to health and protection, as well as dignity of the right to make a living and provide for one's basic needs and those of one's dependents. (Mishnah Bava Kama, 2:6)

The concept of Dignity particularly embodies the foundational idea of the sacred and inalienable value of the individual person. Especially prominent in commenting on this idea is the second century sage Rabbi Akiva, who in the Mishnah (Bava Kama, 8:6) emphasizes that even if a person does not show respect for her or his own dignity, that does not permit us to show less respect towards that person's dignity which is Divinely given and thus inalienable. Another sage, Rabbi Tanhuma, dramatically emphasizes this idea by declaring that any act of disrespect towards another person is an act of disrespect to God Himself, precisely because "in the image of God He made (the human person)" (Sifra 4:12).

The scriptural duty to preserve our health (Deut. 4:9) and thus to obtain healing when sick, is understood as first and foremost an individual's responsibility towards her or himself (Leviticus Rabbah 16:8; cf Sirkes on Code of Jewish Law, Yoreh Deah 116:5; cf Sirkes on the Arbaah Turim, Yoreh Deah 336:1). However in keeping with the right of all persons to life and dignity, the Bible obliges us (Leviticus 19 v. 17) to come to the aid of another when his/her life is threatened (Yad Hahazakah, Hilchot Rozeach 2:3). In the words of the 12th century scholar Maimonides: "Whoever is able to save another and does not do so, transgresses the commandment: "nor shall you stand idly by the blood of your neighbor". This injunction is applied in Jewish law to a broad range of circumstances but clearly address those who have the knowledge and or resources to provide healing but fail to do so. Such a person or groups would be considered in Jewish law to be complicit in the "assault" on the victim's health and in the latter's death as a consequence.

While Maimonides uses Leviticus 19 v.17 and the obligation to save life as the religious basis for mandating medical treatment, the thirteenth century luminary Nachmanides draws upon a different Biblical source, namely Exodus 21 v.19 which explicitly states "he shall surely provide for his healing". Nachmanides provides a fascinating rationale for his preference for this text. "The explanation is that the physician might say 'Why do I need this trouble; perhaps I may err (in my treatment) with the result that I have taken life by mistake? Therefore the Bible gives him permission to heal (and) there are those who compare a physician to a judge who is obliged to rule. Moreover (this permission is explicitly granted) so that (people) should not say that God (alone) wounds and heals. "Permission" here means the authority to perform this obligation which God has appointed him to do."

Nachmanides' approval of the analogy between a judge and a doctor is noteworthy. The Bible views the administration of justice as Divine work and exhorts judges to pursue this goal even though of necessity (as human beings) they cannot guarantee absolute justice. Thus judges are adjured "You shall not fear any man, for judgment is God's (Deuteronomy 1:17). Similarly God is described as a physician "for I the Lord am your healer (physician): (Exodus 15 v.26). Thus the Bible affirms that all healing comes from God. But as with justice, this truth does not allow us to avoid our human responsibility but to the very contrary – it obliges us to engage in what are seen as Divine goals. The sages of the Talmud accordingly describe humans as partners in the Divine Creation and this is especially so in the application and pursuit of healing.

Yet beyond the responsibility to provide healing and medication to all persons in need of such, there is another fundamental value that Judaism teaches in relation to the sick, and that is not just the need of cure, but also the value of care. Indeed such care is considered to be one of the most basic religious moral values and obligations in and of itself. The duty to "visit and care for the sick" is considered by Judaism to be one of the cardinal daily moral obligations that "has no measure" (Mishnah, Peach, 1:1).

The Talmud (BT, Nedarim, 39b) describes this duty in a radical fashion. "We learnt 'visiting the sick has no measure'. What is meant by 'has no measure'? Rabbi Yosef was of the opinion that it meant that there is no measure to its reward. Abbaye said to him 'and (are you suggesting) that for all other (Biblical) commandments there is a measure (i.e. limitation) for (their) reward? After all we have learnt (that we should) be as careful in the observance of (what appears to be) a minor commandment as much as (what appears to be) a major one, for you do not know the reward for the commandments'. Rather, said Abbaye, it means that 'even a great person (is obliged to pay) visits to a junior one'. Rava said '(it means that you should visit the sick) even a hundred times a day.' when one of the students of Rabbi Akiva was sick, the sages did not enter (at first, to attend on the sick man) but Rabbi Akiva entered to visit him and because he did so, they entered and administered to him and he lived; and he said to him 'Rabbi, you have saved my life' and Rabbi Akiva went out and taught 'anyone who does not visit the sick is like one who sheds blood'."

The message here of course is not in the fact that the sick man did not die, but primarily that appropriate care is as important as actual healing – and perhaps even more important as it relates to the psychological and spiritual needs of the patient beyond the physical itself.

That same Talmudic passage emphasizes the need, especially for caregivers, to be sensitive to the condition (often changing) of the patient and the interactive process between them. Special warning is given to do all possible to avoid embarrassment and to affirm the dignity of the person. Accordingly the Code of Jewish law, (Yoreh Deah 335:8) notes that while we should not visit the sick if the visit will be a burden or cause discomfort, one should try to administer to the patient to see if there is some way in which one can be of service and lighten his burden.

The obligation to provide appropriate care for the sick is seen not only as one of the most universal obligations in Jewish law, but as in fact the opportunity to emulate the Divine Attributes (Imitatio Dei) (cf TB, Sotah 14a).

Maimonides rules (Yad, Hilchot Melchim 10:12) on the basis of the Talmud (Jerusalem Talmud, Gittin 5:9; Babylonian Talmud, Gittin 59b) that it is an obligation to attend to the sick of all, even of idolators (referring in particular to those who transgress universal moral laws): "as we are obliged to do with those of our own community – for the sake of Peace (in keeping with the Talmudic dictate that the whole of Judaism is for the sake of Peace – Gittin 59b)." "Behold it is said 'Her ways are pleasant ways and all her paths are Peace' (Proverbs Ch. 3); and it is written, 'God is good to all and His mercy extends to all His creatures' (Psalms 145 v.9)". In adding this reference, Maimonides emphasizes that it is especially how we relate to those who are "outside our own camp" that reflects the degree to which we truly emulate the Divine Attributes (Imitatio Dei) (see I. Unterman, "Darkei Shalom Vehagdaratam", kol Torah, Jerusalem, 1966) of Mercy and Compassion. In the words of the ancient Jewish sage Abba Shaul, "Just as He is Merciful and Compassionate so must you be Merciful and Compassionate (Canticles Rabbah, 3)

Thus Maimonides teaches that promoting and pursuing health care for all – affirming the Divine image in every person – is itself an expression of the highest human obligation to behave and create a society in a manner that reflects the most sublime Divine qualities of compassion and respect.

Arguably these principles have never been more challenged than by the HIV/AIDS pandemic. Individual sufferers have to contend with the additional burden of stigmatization and prejudice and the dimensions of the pandemic require a sense of universal responsibility of the widest dimensions.

Determining the minimal requirements of appropriate and decent care must inevitably be resolved by medical knowledge and expertise. However the obligation to provide the care that affirms and upholds the inalienable dignity of every human person remains the overriding guideline of our Biblical heritage.