

Treatment of Hunger-Striking Prisoners

By: SHIMON GLICK*

In 2023 the death of an Arab hunger-striker prisoner after an 87-day fast precipitated a short, but serious, armed conflict between Israel and the Jihad terror group in the Gaza strip. The controversy about the proper treatment of hunger-striking prisoners has received attention once more. The immediate issues involved Arab prisoners incarcerated for alleged terrorist activities, but the principles, for the most part, are generalizable to any hunger-striking prisoners.

Hunger Strikes: Medical Aspects

We should be precise about our definition of hunger striking. A hunger strike is a nonviolent act of political protest assumed voluntarily and is usually not an expression of a wish for suicide. At its minimum, prisoners may deliberately forgo a few meals in protest, and this relatively common practice is not generally categorized as a hunger strike. In its extreme form, a so-called “dry” strike, neither food nor fluids are ingested, and the strikers do not permit the infusion of fluids by vein. This most severe form of hunger strike is very rare, because it cannot last more than a week or two before death ensues. Most hunger strikers need a longer period of protest to pursue their goals, get adequate publicity, and have enough time to negotiate with authorities. Therefore, most hunger strikers drink vary-

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Shimon (Seymour) Glick received his Jewish education at Yeshiva and Mesivta Torah Vodaath and his MD from State University of NY, Downstate Medical Center with specialties in internal medicine and endocrinology. He served as physician in the US army, and did his research training in a laboratory which won the Nobel Prize in medicine. He served as chief of medicine at the Coney Island Hospital in Brooklyn, and as clinical professor of medicine at the State University of NY Downstate. He served as chairman of the Division of Internal Medicine at the Soroka Medical Center in Beer Sheva and as professor of medicine at Ben Gurion University. He subsequently served as dean of the medical school and as head of the center for medical education. He is currently professor emeritus (active) at Ben Gurion University.

ing amounts and types of fluids in order to stay alive and be able to continue their protests. There is often a discrepancy between a hunger-striker's public statements to the media and what they do in private. This may be due to peer pressure and/or the unwillingness to "lose face." The variety and severity of different types of hunger strikes are discussed in detail by Reyes et al.¹

The ability to survive starvation varies greatly, depending on the totality of the deprivation; if small amounts of fluids containing glucose and B vitamins are taken and if the faster has abundant initial body stores of fat and protein the striker may survive for over a month or even longer. In the famous Northern Ireland prisoners' strike, death occurred between 45 and 73 days.² In Turkey, deaths were reported³ in three fasters who died after 165, 173 and 180 days of fasting. Serious medical problems may occur much earlier. Neurological and psychological deterioration may occur long before death, and these may impair the faster's judgment and decision-making competence.^{1,4,5,6}

History

Hunger striking as a form of protest has a long and interesting history, most of it in the past century. There seems to be an increasing use of hunger striking as a form of protest by prisoners the world over. Among the earliest such protesters were the suffragettes, who fought for women's voting rights. During their strikes, it was public policy to apply force-feeding by prison authorities. Irish hunger strikers were common in the 1920s, and in keeping with public policy at that time were often force-fed. But in 1974 the British government policy changed, and force-feeding became non-acceptable in the UK. In one of the most famous strikes, Irish hunger

¹ Reyes H, Allen SA, Annas GJ, "Physicians and hunger strikes in prison: confrontation, manipulation, medicalization and medical ethics," *World Medical Journal* 2013; 59:27-36.

² Beresford D, "Ten Men Dead: The story of the 1981 Irish hunger strike," *Atlantic Monthly Press*.

³ Altun G et al, "Deaths due to hunger strike: post-mortem findings," *Forensic Science International* 2004;146:35-38.

⁴ Wei M, Brendel RW, "Psychiatry and hunger strikes," *Harvard Human Rights Journal*, 2010; 23:75-109.

⁵ Brockman B, "Food refusal in prisoners; a communication or a method of self-killing? The role of the psychiatrist and resulting ethical challenges," *J Med Ethics*, 1999;25:451-456.

⁶ Fessler DMT, "The implications of starvation induced psychological changes for the ethical treatment of hunger strikers," *J. Med Ethics*, 2003;29:243-247.

strikers in 1981 during Margaret Thatcher's term in office were allowed to fast until death, because the prime minister refused any concessions to their demands. Their deaths had serious repercussions; Thatcher was roundly criticized for her position, and the entire episode was a strong positive stimulus for the Irish cause. Large numbers of hunger strikers protested in South Africa and in Turkey over many years. Famous individual hunger strikers included Gandhi, who declared hunger strikes repeatedly during his lifetime career. In the post 9/11 era the policies at the Guantanamo Naval Base Prison of repeated force-feeding received considerable international attention and criticism.⁷ The state of California was faced with one of the most massive hunger strikes in history when some 30,000 prisoners struck. Among the countries in which strikes have taken place in recent years are the former Soviet Union, China, Sudan, Poland, the former Yugoslavia, Bangladesh, France, Egypt, Canada, Bahrain, Iran, Cuba, Italy, and the Netherlands.

Whereas in the early part of the twentieth century force-feeding of prisoners, often by rough and inconsiderate means on the part of prison officials, was the almost universally accepted practice, the mid twentieth century witnessed the growth of the various civil rights movements, and the development of the primacy of patient autonomy and patient rights. While there are four widely accepted principles of bioethics in the West—autonomy, beneficence, non-maleficence, and justice—autonomy is currently the dominant value in the West, particularly in the United States. One of the most articulate bioethicist advocates of autonomy, Robert Veatch, has stated⁸ that he knows of no cases in which patient welfare is so weighty that it could outweigh autonomy. He claimed that “no competent patient in the United States has ever been forced to undergo medical treatment for his or her own good. No matter how tragic, autonomy should always win if its only competitor is the paternalistic form of beneficence.” In line with these changes in public policy, it was no longer obvious and readily acceptable to force-feed fasting prisoners in most Western countries.

Interestingly enough, Israeli law in this area is unique in the Western world. While its Patient Rights Law passed in 1996⁹ places strong empha-

⁷ Dougherty SM, Leaning J, Greenough PG, Burkel Jr FM, “Hunger strikers: Ethical and legal dimensions of medical complicity in torture at Guantanamo Bay,” *Cambridge University Press*.

⁸ Veatch R, “Which grounds for overriding autonomy are legitimate?”, *Hastings Center Report* 1996; 26:42-43.

⁹ Patient's Rights Law, 1996, Laws of State of Israel. Government Printing Office, 1996:327.

sis on the requirement for informed consent before treatment of a competent patient, it does specifically provide for coerced treatment of non-consenting competent patients under specific conditions. If an institutional ethics committee after speaking to the patient and explaining all the relevant facts feels that although the patient refuses therapy, if coerced he/she will give retroactive consent after the treatment, such therapy may be imposed. This law is a clear example of the emphasis on sanctity of life in the Israeli culture, granting it priority over autonomy in certain situations.

Legal and Ethical Positions

The World Medical Association in several of its documents has come out forcefully as opposing any interference in prisoner autonomy and any imposition of coerced feeding on prisoners. The initial statement was the World Medical Association Declaration of Tokyo in 1975.¹⁰ Their most recent Declaration of Malta on Hunger Strikers¹¹ reinforced and strengthened their earlier position by stating unequivocally, “forcible feeding of mentally competent hunger strikers is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment.” Even if a striker becomes incompetent, the physicians should follow the striker’s prior directives, even to the point of allowing the death of the striker. This is also the position of the Dutch Medical Association, the American Medical Association, and the International Committee of the Red Cross.¹²

In 2005, the Israel Medical Association aligned itself with the position of the World Medical Association¹³ condemning force-feeding of hunger-striking prisoners, with some of their leaders even threatening physicians who do so with disciplinary action. Only if and when a fasting striker loses consciousness does the Israel Medical Association allow the physician an

¹⁰ World Medical Association, Declaration of Tokyo: Guidelines for medical doctors concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment, Adopted October 1975, last revised May 2006.

¹¹ World Medical Association, Declaration of Malta on hunger Strikers, Adopted November 1991, last revised October 2006, *World Medical Journal* 52 2006.

¹² International Committee of the Red Cross, “Hunger strikes in prisons: the ICRC’s position,” January 31, 2013, <http://www.icrc.org/eng/resources/documents/faq/hunger-strike-icrc-position.htm>.

¹³ Israel MA.

option to act according to his/her conscience and possibly feed the striker.

Whereas the medical associations have taken a clear position forbidding force-feeding of hunger-striking prisoners, courts in several countries have decided differently. United States federal courts have generally upheld force-feeding because of the state's interests in preserving life, preventing suicide, protecting third parties, and maintaining prison order and security. A Washington Supreme Court decision¹⁴ stated, "This court declines to place medical professionals in the ethically tenuous position of fulfilling the death order of an otherwise healthy incarcerated individual. Therefore, we conclude that here the State has a compelling interest in maintaining the ethical integrity of the medical profession." Similar decisions have been reached by District Court judges in California and Connecticut. A United States Supreme Court judge¹⁵ stated, "We do not think a state is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death." Whereas judges in the United Kingdom and in the Netherlands have forbidden force-feeding of hunger-striking prisoners, courts in Australia, Germany, Switzerland, and Austria have permitted force-feeding in order to save life. The European Court of Human Rights also has indicated¹⁶ that "a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food."

Israeli Hunger Strikes

Over the years, Israeli prisons have had thousands of Arab prisoners, and hunger strikes by many of these prisoners became frequent. Fortunately, very few of these strikers died. The successful resolution of the various strikes occurred as a result of intensive personal negotiations with the prisoners on the part of physicians and others not directly identified with the prison authorities. It is not entirely clear what concessions, if any, were made to the strikers to persuade them to cease their fasts. But their efforts were usually crowned with success.

However, in one of the most publicized cases, one prisoner, Mohammed Allaan, who had been on administrative detention, and who was a lawyer as well, persisted in his fast, reached a stage in which the physicians

¹⁴ McNabb v. Department of Correction, 163 Wn.2d 393, 404, 180 P.3d 1257 (2008).

¹⁵ Cruzan v. Director, Missouri Department of Health, 497 US 261, 280 (1990).

¹⁶ Nevmerzhitsky v. Ukraine, European Court of Human Rights, 54825/90 (2 April 2005).

thought he was in life-threatening danger, and was sent to the hospital. The hospital ethics committee ruled that according to the Israeli Patient Rights law it was permitted to feed him against his wishes after explaining to him the consequences of continued fasting. They considered his clear indication that he did not want to die. But no physician was found who would act in opposition to the position of the Israel Medical Association and impose feeding. The prisoner indicated as well that if he loses consciousness he did not want to be fed. He then had a convulsion, lost consciousness, following which he was fed via nasogastric tube, albeit in contradiction to his previous instructions. He may have suffered permanent brain damage.

The Israeli government, fearing that the death of an Arab hunger-striking prisoner would have negative effects both within Israel and elsewhere, passed a law¹⁷ which specifically permits force-feeding of a fasting prisoner, when there occurs an imminent threat to the prisoner's life, with the permission of both an institutional ethics committee and a district court judge. The Israel Medical Association, in keeping with its stated position, appealed to the Israeli Supreme Court that this law should be declared unconstitutional, but a three-man group of judges unanimously upheld the Israeli law.

Interestingly enough, Israeli prison regulations in the past already expressly permitted force-feeding of hunger striking prisoners, but the subsequent passage of the Patient's Rights Law strongly requiring informed consent for patient treatment was felt by some to perhaps change the ground rules, therefore requiring specific new legislation permitting such feeding. The debate about the new legislation unfortunately became the fertile ground for a political battle between right- and left-wing politicians.

Whereas the Israel Medical Association has been firm in its position forbidding force-feeding of hunger-striking prisoners, a large group of Israeli physicians, ethicists, and legal experts have publicized a position paper which takes strong issue with the position of the Israel Medical Association and this position is presented here together with its rationale. The present writer was one of three physicians who organized the opposition by this group.

Interesting and relevant is an Israeli court decision which ordered a hunger-striking Jewish prisoner to be force-fed. District Court judge Miriam Sirota¹⁸ wrote: "Both the legislator and the Supreme Court have ruled that in the conflict between the two basic rights, that of human life on the

¹⁷ Amendments to Prison Regulation (#48) 2015.

¹⁸ State of Israel v Rahamim Gibli et al, Originating motion 829/96 A;199.

one hand and human dignity on the other, the right to life and health takes precedence.” She quoted from an earlier Israeli Supreme Court decision¹⁹ in the case of a drug pusher who swallowed bags of heroin and who refused surgery to remove the bags, whose bursting would threaten his life. The court supported the surgery, stating that “... the principle of sanctity of life and its rescue as a supreme value justifies not following those rules which support almost rigidly the ban on invading the body of a person without his consent without regard for the results... when a person is in danger of immediate and certain death or of certain serious damage to his health, it is definitely permitted to perform surgery or other intervention even without the person’s permission.”

In this regard is it important to be aware that as mentioned earlier, the Israeli Patient’s Rights Law⁹ is unique in that—in spite of its express emphasis on detailed informed consent before treatment of patients—it contains a clause, which allows for imposition of treatment on a competent patient in spite of that person’s refusal to consent. This applies to therapy of life-saving nature or of prevention of serious harm to health.

Options in Reaction to Hunger Strikes

When prison authorities and governments are faced with a prisoner’s hunger strike, there are only three available options: 1. Permit the strike to continue until death of the prisoner; 2. Impose feeding on the striker; or 3. Accede to the striker’s demands.

The first alternative has been used in a number of countries. Perhaps the most publicized was under the former British Prime Minister Margaret Thatcher who permitted 10 Irish strikers to starve to death in 1981, and subsequently came under severe almost universal criticism for her decision. The prisoners endured lengthy agonizing periods of suffering which were widely publicized until death, and their death and accompanying sympathy for them actually helped their cause immensely.

Tens and perhaps hundreds of other hunger-striking prisoners throughout the world have also been permitted to die; for example, Kurds in Turkey and blacks in apartheid South Africa. Individual strikers have also been permitted to fast until death in Italy, Cuba, and elsewhere. As I will point out, this, to my mind, is an ethically unacceptable solution.

The second alternative is to impose feeding on the prisoners. Such feeding, as by insertion of a nasogastric tube, has been labeled “inhuman treatment” and “torture.” Protest demonstrations have been held in front of the White House in Washington trying to demonstrate the cruelty of

¹⁹ Kurtam J v State of Israel, appeal 480/85, 527/85, Israeli Supreme Court 6/16/86,8/19/86.

such feeding. Yet insertion of nasogastric tubes to feed patients is a daily procedure in most hospitals, and if performed sensitively, while not pleasant, should certainly not justify the description as “torture and degrading punishment.” George Annas, an expert on law and medicine, although a vigorous opponent of force-feeding has pointed out,²⁰ “We restrict the rights of prisoners in many ways. Force-feeding them rather than permitting them to starve themselves to death is probably one of the most benign.” Moreover, no democratic country to my knowledge permits prisoners to commit suicide, a right available to other citizens in most Western countries. If a prisoner unsuccessfully tries to commit suicide he/she will invariably be treated over his/her objections. Prison and government authorities have a legal and moral obligation to protect the lives and health of their prisoners, as well as to preserve law and order in the prison. Under these conditions, authorities will do all in their power to prevent death of prisoners from whatever cause.

The third alternative is to accede to hunger-strikers’ demands. This approach makes a hunger-strike the prisoners’ “ultimate” weapon and could lead to total prison anarchy. Any prisoner could demand freedom from prison under the threat of a total fast. No society can countenance such an approach. Michael Gross²¹ has written extensively on the societal considerations which might lead to intolerable anarchy in prison life if accommodation to prisoners’ demands becomes public policy.

Halakhic Considerations

What is the attitude of the Halakhah to this issue? To my knowledge, there have not been any direct decisions relating to force-feeding of hunger-striking prisoners against their will, but there are enough discussions on related matters to be able to reach a clear conclusion.

According to the reigning Western view of autonomy, the individual has ownership over the body and thus the authority to deal with his/her body and health as he/she sees fit, even to the point of suicide, which has been removed from the list of crimes in most Western societies, including Israel. In contrast, the Torah view does not grant the individual property rights over his/her body, but only stewardship, with clear conditions and ground rules. In accord with this policy, it is forbidden for an individual

²⁰ Annas GJ, “Prison hunger strikes; why motive matters,” *Hastings Center Reports* 1982;12:21-22.

²¹ Gross ML, “Force-feeding, autonomy, and the public interest,” *New Engl J Med*, 2013;369:103-105.

to injure his/her body. Maimonides states,²² “There are many actions forbidden by our sages because they are dangerous, and an individual who violates these prohibitions and states I am merely endangering myself and what is it other’s business, or I do not care, is punishable by lashes.” The late Israeli Chief Rabbi Shlomo Goren²³ concluded that an individual is not permitted to endanger his life, and the courts may be permitted to enforce life preservation. In line with this position, if an individual takes an oath that he will not eat for several days, the oath is invalid because it is in direct violation of a Biblical edict, that of endangering human life. Leading rabbinic figures in the past have appealed to Jewish hunger strikers to cease and desist because they regarded such actions as forbidden. The late Chief Rabbi A. I. Kook pleaded with Vladimir Jabotinsky who had been on a hunger strike in a British prison in 1920 to cease his fast because it is halakhically forbidden.

In addition, in contrast to the situation in the United States of America, where in the great majority of states there is no legal requirement to grant medical care to an individual in need even of emergency treatment,²⁴ there are several Torah commandments which obligate the rendering of assistance to endangered individuals in need of treatment. Maimonides, in discussing the obligation to render medical aid,²⁵ cites the positive commandment of return of a lost item, namely one’s health, to the sufferer. Other commentators cite a variety of other Biblical commands to support an obligation to render medical care. In addition to these positive commandments, there is also the negative admonition,²⁶ “Do not stand idly by your fellowman’s blood,” forbidding inaction in the face of the ability to come to the aid of an individual in distress or danger. Interestingly enough, the Israeli Knesset enacted a law titled “Do not stand idly by your fellow man’s blood” applying not only to health-care workers but also to any citizen.

The issue of feeding has been dealt with by halakhic experts with respect to the treatment of patient end-of-life care. Even in those cases in which the halakhah permits the withholding of certain treatments near the end of life, because of lack of significant benefit in the face of suffering, there is general agreement that food and fluids must always be provided.

²² Maimonides, *Mishneh Torah, Hilkhot Rotzeah* 11:4-5.

²³ Goren S, “Use of medication and physicians; obligation or elective?”, *Torat Ha-Refuah*, Jerusalem 5761, p. 21.

²⁴ Hendel N, “The law, ‘Do not stand idly by your fellow man’s blood; inspiration and reality’,” (Hebrew) *Bar Ilan Law Review* 2001;16:229-275.

²⁵ Maimonides, *Commentary on the Mishnah, Nedarim* 4:4.

²⁶ Leviticus 19:16.

However, Rabbi Moshe Feinstein, זצ"ל,²⁷ has raised the caveat that actual force-feeding might be so traumatic that the stress involved by the act of coercion may be harmful rather than helpful. But this entire discussion and hesitation relates only to a suffering terminal patient, and not to a healthy individual voluntarily fasting.

Policy Proposal

In the public statement on the subject initiated by two colleagues of mine (Gil Siegal and Avraham Steinberg) and myself, we addressed ourselves to the issues involved, and expressed what we felt was a policy which was both ethically and halakhically consistent.

Hunger striking represents one of the few avenues of peaceful protest available to prisoners who feel that they are being mistreated by the authorities. Therefore these actions should be permitted. In the situation in the Guantanamo prison,⁷ force-feeding by the authorities was instituted after only three days of missed meals. The feeding there began long before the prisoner was at a serious risk of death. The decision to impose feeding was made by the prison authorities and was not based on a medical determination. This action by the authorities is more of a political and coercive step to suppress protest rather than a concern for human life.

The hunger strikers should be allowed to continue their strike while the authorities may proceed to negotiate with them as both sides see fit. It is essential to ensure that unfair pressures about fasting are not imposed on prisoners either by their colleagues or by prison authorities. Detailed medical observation and care should be granted the strikers. As the strike progresses, physicians not identified as part of the prison establishment should have confidential ongoing access to the prisoners, since it is critical for the physicians to have a trusting relationship with the prisoners. The importance of this kind of physician-patient relationship cannot be over-emphasized. If done well, it can bring most hunger strikes to cessation without the necessity of imposing nutrition by coercion.¹ To the credit of the Israel Medical Association, there have been almost no deaths of hunger strikers in the strikes of recent years, because extraordinary efforts were made in discreet one-on-one negotiations with fasters. The strikers can often be persuaded to accept nutrient fluids and vitamin B1 during the fast to prevent permanent brain damage.

However, when in the assessment of the treating physicians there is impending threat of death or serious permanent damage to health, one


²⁷ Feinstein M, *Iggerot Moshe, Hoshen Mishpat* 2:74.

should remove the prisoner from the prison to a civilian hospital and impose life-saving feeding, by infusion or by nasogastric tube, if necessary. Skilled personnel should insert the tube in a gentle professional manner in the same manner as performed for other patients. According to the current law in Israel, such feeding may take place only after approval by both a hospital ethics committee and a district judge.

The overwhelming majority of hunger strikers are not suicidal, and do not wish to die, although the most determined of them are indeed often willing to die. It is also important to determine to what degree the strikers are really capable of making a truly autonomic decision, either because of peer pressures from their colleagues or because of psychological changes induced by prolonged fasting. Indeed, in many cases in which force-feeding has been carried out, both the strikers and their families are grateful. However, in those few situations in which the striker clearly states that he/she wants to die for the cause of his protest, and requests not to be resuscitated if he loses consciousness, one nevertheless must treat. No prison allows prisoners to commit suicide, and hunger strikers should be no exception. Here the value of human life must take precedence over autonomy.

Waiting for the prisoners to lose consciousness before beginning to provide nutrition, a possibility implied by the Malta Declaration, and as carried out in the case of Mohammed Allaan, represents an unfortunate and illogical “compromise.” On the one hand, it often violates patient autonomy if the prisoner had previously asked not to be resuscitated, and on other hand, it exposes the prisoner to the danger of death and permanent damage.

My distinguished colleagues and I believe that our position represents a humane and ethical position, which is also in full keeping with Halakhah. We disagree with the virtual consensus of leading Western bioethical groups, which grant primacy to autonomy even in the face of death. The imposition of autonomy over human life on a society which feels otherwise, may be called “ethical imperialism.”²⁸

I have chosen to write about a subject which has achieved considerable prominence in Israel during the past few years and has resulted in much controversy—the forcible feeding of hunger-striking prisoners. The immediate issues involved Arab prisoners incarcerated for alleged terrorist activities, but the principles for the most part are generalizable to any hunger-striking prisoners. 

²⁸ Angell M, “Ethical Imperialism? Ethics in international collaborative clinical research,” *New Engl J Med*, 1988;319:1081-1083.