

## Jewish Contemporary Ethics Part 41: Medical Ethics 3 – Saving Others II: Organ Donation

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Live organ donation, for example when a healthy person donates one of their kidneys to save someone else, is considered an act of phenomenal *chesed* – loving-kindness. Yet the ethical issues regarding the donation of vital organs, such as the heart and lungs, harvested after the death of the donor, depend on the definitions of death in medical practice and Jewish law.

In previous generations, death was exclusively determined by an irreversible cessation in cardiopulmonary activity (i.e. the activities of the heart and lungs). Yet the phenomenal advancement of medical science has not only given clinicians new resuscitative techniques and the ability to artificially ventilate patients, it has also produced a range of tools to evaluate and quantify physiological measurements, such as the electrical activity and blood flow in the brain. As such, patients can be kept alive artificially even though doctors know that they have experienced an irreversible cessation of critical brain functions, known as brain death or brainstem death.

Rabbi Professor J. David Bleich (of Yeshiva University, NY) notes that “death is the term employed for the physiological state in which any further attempt to provide medical or physical assistance of any kind is an exercise in futility” (*Time of Death in Jewish Law*, p. 87). The sages of the Talmud discuss saving the victim of a collapsed building on Shabbat (Yoma 85a). Many later authorities, such as Rabbi Shmuel Wosner (1913-2015) refer to this discussion as the source that breathing and cardiac activity are the necessary signs of life.

Elsewhere, the Mishnah discusses the concept of decapitation as a sign of certain death, even though the remaining body may convulse and show signs of continuing life (Ohalot 1:6). Rabbi Dr. Moshe Tendler (also of Yeshiva University)

cites halachic rulings of his late father-in-law, Rabbi Moshe Feinstein (1895-1985), in which he links the concept of decapitation to brainstem death, implying that brainstem death can be considered a halachic definition of death. Others, such as Rabbi Bleich, disagree, pointing out that in other areas of halacha, the cessation of function in an organ is not halachically equivalent to that organ being physically separated from the body (*Contemporary Halakhic Problems IV*, pp. 322-333).

This has far-reaching implications, for while vital organs can be successfully harvested after brainstem death, if the patient’s heart has stopped, the organs quickly deteriorate, making them unfit for transplantation. God allows us to violate any commandment to save another person’s life, except for the three primary sins of idol worship, immorality and murder (Talmud Sanhedrin 74a). If brainstem death does not constitute a halachic definition of death, harvesting those organs would be akin to murder in Jewish law, and therefore forbidden even to save the life of another patient.

Given the shortage of potential organ donors and the many worthy recipients waiting endlessly for life saving treatment, these difficult ethical and halachic issues provoke intense emotion. Let us hope and pray that the remarkable medical advances we have witnessed bring about a technological solution to our global organ transplant crisis.

