Have a heart, give a heart

Medical advances affecting how we define and determine the moment of death have allowed organ donation to become permissible in Jewish law.

THERE is no greater mitzvah than the mitzvah of saving lives. We live in an age where we know of extraordinary advances in modern medicine that have improved the general health of the population as well as advanced life expectancy. Diseases that even 50 years ago ravaged society have now been eradicated or almost eradicated—from smallpox to polio. Antibiotics, antivirals and various other types of therapies have reduced life-threatening illnesses in many cases to mere annoyances. Stem-cell research is on the cusp of revolutionising how we treat disease and the growth in healthcare modalities is exponential.

However, as successful as organ donation and transplantation has been, it has been accompanied by one of the most significant medico-ethical controversies to face the modern medical world. The determination and definition of the moment of death.

No society can tolerate the homicide of one person in order to save another. At the heart of the dilemma is the need to determine when organs can be used to save a life. The law must balance the need to save a life in order for the organs to be useful for transplantation they must be viable and healthy. As such, removal of organs from a donor who is brain dead is permitted. This is different from heart death. Even with great difficulty because removing them before the patient had died would be homicidal and removing them after the patient had died would require great speed to retrieve a still viable organ. Of course a heart transplant is impossible.

However, this all changed with the advent of one of the most significant advances in the treatment of life-threatening illness. The respirator. Patients either highly ill or suffering catastrophic injury, who are unable to breathe on their own, are placed on a respirator which continues to breathe for them until they are able to breathe for themselves.

In circumstances where normally a patient would cease breathing and subsequently the lack of oxygen would cause the death of the heart and brain, the respirator can artificially continue the breathing. So when does death occur? When breathing stops through the heart continues to beat? When the heart or spontaneous respiration stops even though the brain continues to function by being perfused artificially? Or is it when the brain stops functioning even though the heart continues to beat and respiration continues artificially with a respirator? In halachic course deals with these issues, as does Australian law, and ... there are significant parallels. It is only if we accept the respiratory-brain definition of death that organ donation can take place in a halachically acceptable manner in Australia. If we require the heart definition, either the organs will have died by the time the heart stops beating or keeping them alive will have involved halachically unacceptable practices.

The halachic debate as to whether cardiac death or brain death is the appropriate definition of death has not been resolved and is one of the most significant halachic debates of our time. Great rabbis have taken positions on both sides of the argument. The Israeli Chief Rabbi in a unanimous decision made in the year 5747 accepted the respiratory brain definition of death, but in a later decision also specifically recognised the right of those who wish to accept only the cardiac definition of death.

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accepted the respiratory brain definition of death, but in a later decision also specifically recognised the right of those who wish to accept only the cardiac definition of death. The Australian Chief Rabbi, in an op-ed in The Sydney Morning Herald (10/06) by former Labor foreign minister Gareth Evans and Bob Carr, attacked the government's announce- ment, claiming it would not be helpful to Australia's reputation, the peace process or Israel itself. No real evidence was offered to justify this assertion - and it appeared more like a justification by those unhappy that their claim to greater sovereignty had been ignored.

As a result of those discussions, and further research by the Beth Din, the Beth Din recently issued a detailed ruling and position paper, and guidelines were agreed upon by all parties. These include the OTA training rabbis of the Beth Din to act as “witnesses” who will assist in the oversight of determination of death of a Jewish patient who wishes to donate their organs in a halachically acceptable manner. Furthermore, in accordance with the ruling of the Chief Rabbi, the OTA has agreed that a brain scan will be carried out in advance to clinical tests to ensure that the halachic definition of death has been met. The Beth Din has not decided which halachic definition of death is correct, and for one who chooses the cardiac definition of death, organ donation is not possible. However, the Beth Din has agreed to facilitate organ donation in the correct halachic manner for those who choose the respiratory-brain death definition.

At the recent conference of the Organisation of Rabbis of Australasia, a motion was passed requesting the Sydney Beth Din to work with the Melbourne Beth Din with a view to developing an Australia-wide policy. This work is currently ongoing.