

Rationalist Judaism

EXPLORING THE LEGACY OF THE RATIONALIST MEDIEVAL TORAH SCHOLARS, AND VARIOUS OTHER NOTES

Friday, February 25, 2011

Analogy Vs. Inference

Yesterday, we noted that the Gemara does not directly determine the halachah regarding activating electrical circuits on Shabbos. But that does not mean that the Gemara is irrelevant. Rather, a posek decides whether electricity is sufficiently analogous to categories that the Gemara does discuss. Because there can be no exact analogy, this means that ultimately it is a matter of the personal judgment of the posek, which is why there are disputes on the matter. In other words, the halachah cannot be *directly* or conclusively *inferred* from the Gemara; but a Posek can exercise his judgment that it is *sufficiently* - albeit not exactly - *analogous* to something in the Gemara. As a rough analogy rather than a precise inference (I am not yet sure whether the stress should be on the adjective or the noun - input would be welcomed!), the halachah is ultimately based much more on non-Talmudic considerations rather than on the Gemara itself, even though it may be ultimately rated as falling under a Talmudic category. The recognition of that allows for more incorporation of non-Talmudic-halachic reasoning. For example, one could say that because electricity is not in the Gemara, therefore it is permitted; or, one could say (or subconsciously feel) that because activating electrical circuits destroy the spirit of Shabbos, therefore we will consider it analogous to one of the forbidden *melachos*.

Now, back to brain death!

In an [earlier post](#), I noted how Rav Shlomo Zalman Auerbach admitted that he was mistaken in attempting to determine the halachah of brain death based on the Gemara regarding the impossibility of delivering a live baby from a woman who dies. What happened here is that Rav Auerbach realized the impossibility of *inferring* the halachah from the Gemara. One cannot infer that since a brain-dead woman can deliver a healthy child, then brain death is not death - for when the Gemara says that a dead woman cannot deliver a live baby, this was merely describing the reality of 1500 years ago, and it has no bearing whatsoever on the modern question of brain death.


By the same token, one cannot draw inferences from the Gemara in *Yoma* regarding a person found under a collapsed building, where respiration is ruled to determine whether he is alive. This only tells you (and correctly so) whether with a person found under a collapsed building 1500 years ago, respiration determined whether he was alive; it does not tell you what the ruling is regarding someone brain dead and breathing via a respirator.

What about the Mishnah regarding a decapitated animal being considered dead even if the limbs twitch? Again, one cannot draw any direct inferences to brain death, which is not exactly the same. One can judge that it is sufficiently analogous, but because this is a personal judgment regarding sufficient analogy, there can be - and are - those who disagree.

The Gemara really does not address the situation of brain death at all. How could it? In order to do so, the Gemara would have to differentiate between the functioning of different organs and systems. It would have to reflect an awareness of the differentiate between respiration, circulation and neural activity - and the correct identification of which organs are responsible for each. But 1500 years ago, there was no concept of the difference in these functions, or in keeping part of the body alive while another part has died, let alone correctly

identifying the function of each part of the body. Thus, no clear inferences about brain death - either way - could possibly be drawn from anything that the Gemara could conceivably say.

But what we can do is to decide that brain death is analogous to something in the Gemara - either to a case in which someone is considered alive, or to a case in which someone is considered dead. So, we will subsume it under a category in the Gemara. But to determine which, we will have to make a judgment call based on ideas, facts and values. How to do this is a thorny problem, which we have touched upon in the past and to which we may return on a future occasion.

Posted by Natan Slifkin [16 comments](#) 

Reactions:

16 comments:

Eric said...

Interesting post. I wonder if you've seen Moshe Halbertal's

מהפכות פרשניות בהתהוותן: ערכים כשיקולים פרשניים במדרשי הלכה

where I think his basic thesis is that the halachic discussions in the Gemara themselves always involve implicit value judgements (for example not implementing the sota ritual as a reflection of changing mores in the Biblical vs. Rabbinic period)

Eric

[February 25, 2011 10:09 AM](#) 

Elliot Pasik said...

"The Gemara really does not address the situation of brain death at all."

All poskim look to the passage in Yoma, dealing with the man buried upside down, for guidance and understanding on whether physiological decapitation is halachic death. My unspoken assumption has always been that this particular passage in Yoma is precisely there so that 21st century poskim can decide this issue.

Elsewhere, you refer to a "respirator". On the HODS web site, it is said that the correct term is "ventilator". What the difference is between the two machines, I don't know.

[February 25, 2011 7:39 PM](#) 

Y. Aharon said...

R' Natan, the issue is not whether we can use the simple absence of breathing criterion of Yoma 85a to determine death today. Of course, if EMS or emergency room personnel come across an individual who is still warm but has neither pulse nor is breathing, they aren't permitted to simply abandon him. They must attempt to resuscitate him. We don't use either the talmudic breathing criterion nor the pulse

criterion added in the 19th century. Our knowledge of the function of organs and sustaining life is far greater than in the past, and we can't rely on the views of those with lesser knowledge when it comes to life and death decisions. However, the brain death criterion of modern medicine that necessarily involves absence of spontaneous breathing satisfies both a medical as well as the talmudic-Mishne Torah-Tur-Shulchan Aruch determination of death. That agreement is what justifies and legitimates the harvesting of organs from someone whom other halachic authorities consider to be possibly alive.

[February 25, 2011 8:51 PM](#) 



[Charlie Hall](#) said...

"It would have to reflect an awareness of the differentiate between respiration, circulation and neural activity "

Considering that nobody understood blood circulation until the 17th century, there is no way that it could have been used as a standard by the authors of either the Talmud or the Shulchan Aruch.

[February 25, 2011 11:11 PM](#) 



[Natan Slifkin](#) said...

All poskim look to the passage in Yoma, dealing with the man buried upside down, for guidance and understanding on whether physiological decapitation is halachic death.

I wouldn't say "all," and those that do are committing exactly the same error that Rav Shlomo Zalman Auerbach admitted to after years of arguing that one can derive the halachah from the halachach about a pregnant woman.

All that the Gemara in Yoma is telling us is that a person found under a collapsed building 1500 years ago is only alive if he is breathing. That has no bearing whatsoever on the question of brain death.

[February 26, 2011 7:00 PM](#) 



[Natan Slifkin](#) said...

However, the brain death criterion of modern medicine that necessarily involves absence of spontaneous breathing satisfies both a medical as well as the talmudic-Mishne Torah-Tur-Shulchan Aruch determination of death.

But by incorporating the idea of absence of spontaneous breathing, this raises other problems. For example, there are people with fully functioning brains who nevertheless suffer from conditions that prevent spontaneous respiration, and nobody considers them dead! So you have to make the definition more complicated, and this is exactly what some anti-BSD poskim used to disprove the BSD position.

[February 26, 2011 7:02 PM](#) 

Avi said...

"My unspoken assumption has always been that this particular passage in Yoma is precisely there so that 21st century poskim can decide this issue."

Would that it remained so.

[February 27, 2011 2:54 AM](#) 

Sholom said...

The problem, of course, is that "brain death" in secular terms, is really nothing more than a consensus position on what a person who has experienced a maximal degree of neurologic devastation will look like. "Maximal" meaning according to commonly accepted tests. If we were willing to implant EEG depth electrodes into a person's brain, who was considered brain dead, we might very well notice differences between individuals deemed to be in this state--greater and lesser degrees of minute cortical activity. No one would recommend such a thing, but it is important to keep in mind that the neurologic definition of brain death was arrived at by consensus. It is not tantamount to a scientific determination of "when the soul has left the body."

So throwing halachah out the window (God forbid) still leads us to a place where consensus rules the day, as opposed to some sort of objective criterion, that completely removes all doubt.

[February 27, 2011 5:15 AM](#) 



[Natan Slifkin](#) said...

Nobody is suggesting "throwing halachah out of the window"! Rather, the idea is to find some other Torah-based way of resolving it other than by making inferences from halachic sugyas. One way is along the lines of that mentioned by Rav Ezra Bick in an earlier post regarding surrogate IVF. There are other ways, which I will discuss.

[February 27, 2011 5:21 AM](#) 

YA said...

"All that the Gemara in Yoma is telling us is that a person found under a collapsed building 1500 years ago is only alive if he is breathing. That has no bearing whatsoever on the question of brain death."

Rabbi Slifkin,

It has a bearing. It says that if someone is breathing then in Halacha they are alive. A question dealt with by the Poskin is whether breathing with artificial means is breathing. If it is the Talmud would definitely rule it out. You seem to feel forced to make the whole issue one not addressed by the Talmud and it seems artificial.

You can have an opinion on brain death and it doesn't have to conform to a Halachic definition. There is no reason for you to try to determine Halacha here.

[February 27, 2011 11:47 AM](#) 



[Natan Slifkin](#) said...

It says that if someone is breathing then in Halacha they are alive.

No, it doesn't. It says that if someone under a collapsed building is breathing, then in halachah they are alive.

Just like when the Gemara says that a dead woman cannot give birth, it means a woman dead in their particular circumstances, not ours.

[February 27, 2011 2:00 PM](#) 

Ameteur said...

"No, it doesn't. It says that if someone under a collapsed building is breathing, then in halachah they are alive."

It would seem to say a bit more than that. A person who is "crushed" or "buried" but still breathing is halachically alive.

I think any rational person would agree that the gemorah is not talking specifically about a building, and not even specifically about a building with the same construction consideration that existed 1500 years ago.

If this applies to a person who is breathing under water, or a person who is breathing in high altitude while on their way to hit the ground is still considered alive, or any other non, "buried" or "crushed" instance I think is more reasonable to argue that the gemora is not talking about those situations, then suggesting that it is only under a building from 1500 years ago.

I don't believe anyone could argue that a person using Scuba equipment is questionably dead even though the breathing might appear artificial.

[February 27, 2011 3:17 PM](#) 

BA said...

"You seem to feel forced to make the whole issue one not addressed by the Talmud and it seems artificial."

The way it seems to me, you are the one forcing the issue not R' Slifkin. Does it not seem weak to you, to attempt to derive from a statement made by Chazal (regarding their times) that a person under a collapsed building is alive if breathing that they are making any statement about brain death whatsoever??

How could this statement possibly be used as an origin for a concept, if the people that made the statement did not even know such a concept existed? other statements of chazal that can be related to

modern medical advancements are possible because when Chazal discussed those ideas the basic fundamental concept of the idea existed. Therefore their commentary holds weight

[February 27, 2011 3:23 PM](#) 



[Natan Slifkin](#) said...

I think any rational person would agree that the Gemarah is not talking specifically about a building, and not even specifically about a building with the same construction consideration that existed 1500 years ago.

Of course. You can extrapolate to any similar case. But what you cannot do is extrapolate to a case which may be significantly different. Such as brain death.

[February 27, 2011 5:04 PM](#) 

YA said...

Natan Slifkin said...

"...No, it doesn't. It says that if someone under a collapsed building is breathing, then in Halachah they are alive."

As opposed to before they were in a collapsed building? It is obvious it is teaching they are alive because they are still breathing. There are no special definitions for people under debris. You may argue that there can be more complicated cases now but still breathing would be an indication of life straight out of this Gemara. As a result a part of the issue is whether there is real breathing according to Halacha when it is through a machine. Are you trying to formulate Psak? If you are I must say so far as far as logic here you are more sophistry than anything else.

"BA said..."

The way it seems to me, you are the one forcing the issue not R' Slifkin. Does it not seem weak to you, to attempt to derive from a statement made by Chazal (regarding their times) that a person under a collapsed building is alive if breathing that they are making any statement about brain death whatsoever??

How could this statement possibly be used as an origin for a concept, if the people that made the statement did not even know such a concept existed? Other statements of Chazal that can be related to modern medical advancements are possible because when Chazal discussed those ideas the basic fundamental concept of the idea existed. Therefore their commentary holds weight"

They clearly held that breathing is a sign of life. Are we to say that because we are unaware of concepts to come our proposed ideas can be said to have no bearing on them or that laws can be overturned because of that? Laws work with what they say and are then applied to new circumstances.

[February 27, 2011 7:02 PM](#) 



[Natan Slifkin](#) said...

"...No, it doesn't. It says that if someone under a collapsed building is breathing, then in halachah they are alive."

As opposed to before they were in a collapsed building?

No, as opposed to if they are not breathing!

You may argue that there can be more complicated cases now but still breathing would be an indication of life straight out of this Gemara.

No, it wouldn't, because those cases are more complicated!

As a result a part of the issue is whether there is real breathing according to Halacha when it is through a machine.

Exactly. Which is why the Gemara is not any proof.

Are you trying to formulate Psak?

At this point, I am explaining why anyone who does formulate a psak based on this Gemara is mistaken.

If you are I must say so far as far as logic here you are more sophistry than anything else.

It's strange that you keep throwing out such accusations when to others it seems that it is you who are engaging in sophistry and forced arguments.

Are we to say that because we are unaware of concepts to come our proposed ideas can be said to have no bearing on them or that laws can be overturned because of that?

Certainly if new CIRCUMSTANCES arise then our laws might not apply!

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