

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 have witnessed 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 – smallpox and polio come to mind. 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 health-care modalities is exponential.

One of the most promising and successful cures for certain diseases has been organ transplantation. The transplantation of a heart, lungs, kidney, liver and other organs has given a new lease of life to the recipients.

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. And here is the dilemma. In order for organs to be useful for transplantation they must be viable and healthy. As such, removal of organs from a donor was generally fraught with great difficulty because removing them before the patient had died would be homicide, and removing them after the patient had died would require great speed to retrieve a still viable organ. Of course a heart transplant was 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 deathly ill or suffering catastrophic injury, who are unable to breathe on their own, are placed on a respirator which continues to breath 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, a respirator can artificially continue the breathing. So when does death occur? When breathing stops though 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

Viewpoint



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brain stops functioning even though the heart continues to beat and respiration continues artificially with a respirator?

Halachah of course deals with these issues, as does Australian law, and most interestingly there are significant parallels. In halachah, there is a difference of opinion among the modern-day decisors as to when death occurs, and indeed generally speaking, this difference of opinion actually mirrors two definitions of death recognised by law in Australia.

The first definition of death is the irreversible cessation of circulation of blood in the body of the person. In simple terms, this is when the heart irreversibly stops as does respiration. We will call this cardiac death.

The second halachic definition is the death of the entire brain. This halachic school of thought, based on a Talmudic teaching that utilises the verse “and He (God) blew into his (Adam’s) nostrils the breath of life”, argues that death is determined by the irreversible cessation of respiration. When the brain stem has died, and how much more so when the entire brain has died, respiration has certainly irreversibly ceased. This we call respiratory-brain death

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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-respiratory 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 Rabbinate in a unanimous decision made in the year 5747



Photo: Flynt/Dreamstime.com

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.

As a result of an initiative by the federal government to reach out to all ethnic and religious groups within Australia with a view to encouraging organ donation, the Sydney Beth Din (SBD) was approached by the federal Organ and Tissue Authority (OTA) to give clear halachic guidance to the government as well as to the Jewish community in all matters related to organ donation. To that end, in 2013 the SBD brought to Australia Rabbi Professor Abraham Steinberg from Israel, a foremost halachist, ethicist and medical practitioner who acts as an adviser to the government of Israel and the Chief Rabbinate. Rabbi Professor Steinberg met with the OTA and assisted both the Beth Din and government to achieve that aim.

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 Rabbinate, the OTA has agreed that a brain scan will be carried out in addition 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.

For more information on organ donation and the Jewish perspective, visit www.donatelife.gov.au.

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MEDIA WEEK

ALLON LEE

Occupational hazards

ATTORNEY-GENERAL George Brandis’s announcement that the federal government will cease referring to east Jerusalem as “occupied” set the cat among the pigeons.

An excellent analysis from *The Australian’s* Greg Sheridan (09/06) lauded Brandis’s “political courage,” stating that “in international law, occupied territory normally means the territory of one sovereign nation which is occupied by another sovereign nation” which until 1967 meant Jordan, which had no legal right to claim ownership.

Therefore, he said, “it is much more accurate, and much more helpful, to describe East Jerusalem and the disputed

parts of the West Bank as disputed territories”.

Sheridan also noted that only “Israel is singled out for linguistic discrimination”, while “in the South China Sea, no one describes the islands which China has taken control of, but which the Vietnamese and Filipinos passionately believe belong to them, as occupied territories. They are always called disputed islands. Similarly it is not normal parlance to describe India’s presence in Kashmir as an occupied territory ... Ditto the Turkish-controlled area of northern Cyprus.”

AIJAC executive director Colin Rubenstein told ABC Radio *World Today* (06/06) reporter Tanya Nolan that calling Israeli settlements illegal is “overwhelmingly rooted in politics rather [than] any

definitive international law.” He also explained how former Israeli prime ministers Ehud Barak and Ehud Olmert offered to the Palestinians a capital in Jerusalem for peace but received no positive response from the Palestinian Authority.

The Australian’s (10/06) John Lyons quoted Palestinian Authority spokesperson Xavier Abu Eid saying that an “emergency” meeting of the Arab League and Organisation of Islamic Cooperation would be asked to take “concrete measures” against Australia but he refused to “detail those measures.”

Also cited was an unnamed Palestinian official saying that the “meeting would be asked to consider a ban on Australian meat imports,” which is hardly a reasonable basis for the sensationalist

headline: “Arabs threaten Aussie meat ban.” The story would have benefited from an independent expert capable of assessing whether the boycott threat was realistic or just PA grandstanding.

An op-ed in *The Age/Sydney Morning Herald* (10/06) by former Labor foreign ministers Gareth Evans and Bob Carr attacked the government’s announcement, claiming it “will 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 wisdom has been ignored.

Not for the first time, advice from “then-legal counsel to the Foreign Ministry and now a leading international

judge, Theodore Meron” to “Prime Minister Eshkol at the start of the occupation in 1967 that settlements would be illegal” was misrepresented as demonstrating West Bank settlements are illegal.

That advice only applied to the Golan Heights, while Meron counselled that Israel had a right to establish temporary military settlements on the West Bank, that Israeli civilians were likely entitled to return to their privately owned property in the Gush Etzion settlement, and even suggested possibly creating settlements in the Jordan Valley. This indicates that Meron did not see the West Bank as “occupied” under the terms of the Fourth Geneva Convention.