Bar Kamtza Should Not Have Been Invited to This Event Either:

By Guest Contributor, on January 13th, 2011

On Brain Death, Cardiac Death, Defining Halakhic Death, and Trying to Hurt Torah Jews Who Disagree with You

Dov Fischer

Fair-minded people are torn by the subject of when a dying person has passed away. Outside the Torah community, doctors and patients wrestle with "when to pull the plug." With enhanced technologies prolonging life externalities, the questions become harder and more urgent for everyone. Not long ago, a shul member told me of his relative who essentially could not die, despite his dead body, but who the implanted coronary defibrillator (ICD) would jolt electric charges to re-start the dead heart, every time it stopped beating. The device was powered by a battery with a quasi-lifetime guarantee; it just would not stop working, and the lifeless body was being jolted every few minutes for days. The hospital ethics committee had to work with the device manufacturer to bring in a company specialist to neutralize the battery by remote control because they ethically recoiled from cutting open the chest and pulling out the battery to stop the device.

In this brave new world, halakhists must wrestle, too. If secular medical and scientific society agrees on a definition of when death happens, while Torah defines that stage as still a period of continuing but ebbing life, then it would be murder for a Torah Jew to acquiesce at that pre-terminal stage to ending life. This commentary does not seek to contribute to or assess the halakhic positions on the subject. Rather, it emerges from the painful way that one halakhic school has sought to advance its belief and interpretation in this debate.

If one wishes to donate body organs at death, more organs can be donated successfully if removed not long after neurological death ("brain stem death"). A machine can keep the heart pumping temporarily, supplying the organs, as they are harvested for transplant. Thus, a definition that halakhic death comes with brain stem death allows for a maximally fruitful donation of vital organs for transplant in others. By contrast, for example, if one believes that halakhic death comes at a time well after brain stem death, say at coronary death, when the heart completely has stopped, then fewer organs can be salvaged from the deceased for successful transplant. Because the respected halakhists endorse donating vital organs for transplant after death, the differing views — brain stem death vs. cardiac death — carry enormously important secondary ramifications that overlay but do not transcend the existential question of when life ends according to halakah. Clearly, for example, a prominent patient desperately waiting into his final hours for a suitable heart could be saved if someone just would find another person, perhaps homeless, with such a matched heart and murder him. But no civil society could countenance such a value system that elevates organ donation over the donor’s life.

Tough questions these, with much at stake. In late November 2010, the Rabbinical Council of America (RCA) published a 110-page report by its Va’ad Halakah (Halakhic Council) assessing the various positions proffered by the Torah Giants among the Poskim. The weight of the report, though not definitive, clearly positioned the RCA Halakhic Council well towards the camp that defines cardiac death as the criterion for life’s end. Thus, the other halakhic camp, which defines death as coming earlier at neurological death, brain stem death, emerged less authoritative by the report.

This is a fair disagreement, worth rigorous scrutiny and vigorous scholarly debate. Within the ultimate verdict will emerge ramifications for organ transplant and other satellite issues that also bear deep gravity and sensitivity. The subject should be debated honestly, respectfully, and fearlessly in an environment free of intimidation and devoted solely to finding the truth.

Unfortunately, one side broke those rules of Jewish fair play.

There is no more vile canard against the Jewish people than the blood libel. Over the centuries, the most heinous outright blood lies against us have inspired massacres, pogroms, even expulsions from countries. People did not know, but they trusted “learned men” who presumably did know. The “learned men,” for their own sinister theological reasons, propagated the lie throughout the Middle Ages that “they kill babies to use the pure innocent blood in baking their Passover matzah.” One foolish lie like that caused tens of thousands of murders, expulsions, and led to related lies like the “Desecration of the Host” lie. Books have been written just on that one lie, the blood libel. The lie reviled in certain Tsarist and Arab societies in the nineteenth century and in twentieth-century Nazi Europe. To this day, talk of nefarious Jews, animated by hate and by pursuit of money, secretly murdering people to harvest their organs comes to life on the pages of Israel haters.

Against this background, in the face of the legitimate halakhic and scientific debate over when life ends — because all agree that vital life organs, on which life depends, cannot be removed from a living person — certain advocates for the definition based on brain-stem death circulated a blood libel. They claimed that Jews following the RCA paper’s opinion, initially weighted more heavily towards cardiac death, essentially were advocating accepting transplanting organs for themselves, taken from people they deem to have been living until the organ-removals would have murdered them, even as those same Jews never would allow any of their own to have such vital life organs harvested from them while alive. From these circles came the public pronouncements. Particularly striking, a story in the November 30, 2010 New York Jewish Week pressed the issue, pursuing this absurd premise by asking one after another interviewee whether the RCA position would mean that Orthodox Jews will be denied organ transplants by the American medical community. Does the RCA paper compel the American medical community to deny organ transplants to Orthodox Jews?

It was profoundly unfortunate, in this historic Torah debate and discussion that centers around the most sobering concepts being struggled with by l’shem Shamayim, that some people sought to affect and even to pressure the scholarly and considered halakhic analyses by emerging with screeds against those adhering to the RCA Paper’s positions as originally expressed.

Non-Jews were not lining up to accuse “The Jews” or “The Orthodox” of parasitically accepting donor organs that the recipients themselves never would provide to others under reciprocal terms. Fair-minded people do not think like that. When a Christian Scientist needs blood, and quietly decides below the radar to accept a transfusion for his child without government coercion, no one screams: “Hey, wait a second! You don’t give blood, so you should not receive blood.” Indeed, even though they do not give blood, the medical society forces blood transfusions on them and their children if believed to offer life-saving possibilities. It is understood that Christian Scientists are racked by religious conscience and limited by the conduct parameters prescribed by their church.

In my decade as an attorney at the kinds of prominent law firms that pay boatloads of salary but that expect round-the-clock servitude and work, no one ever said: “Hey, why does he get paid what we get paid, and why is he getting the same bonus that I get, even though he never comes in on Saturday before 9 p.m. and always leaves every few minutes for days. The hospital ethics committee had to work with the device manufacturer to bring in a company specialist to neutralize the battery by remote control because they ethically recoiled from cutting open the chest and pulling out the battery to stop the device.

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If a non-halakhic person, Jewish or non-Jewish, asks the hospital to pull a plug at neurological death and to harvest organs for donations, that person or family does so by every few minutes for days. The hospital ethics committee had to work with the device manufacturer to bring in a company specialist to neutralize the battery by remote control because they ethically recoiled from cutting open the chest and pulling out the battery to stop the device.

Among fair-minded Jews conscious that other people of other faiths and cultures share the planet with us, there are Rubicons that sensible Jews do not cross. The
Kamtza/Bar Kamtza narrative is instructive. The Babylonian Talmud (Gittin 56a) teaches that we lost our Second Temple because a party host snubbed a fellow who mistakenly had been handed an invitation to the celebration. The host saw him and ordered him ousted. The snubbed guest pleaded not to be humiliated so publicly, even offering ultimately to bear the cost of the entire party. Rabbis at the party watched the spectacle unfold and did nothing. When the guest finally was evicted, he avenged himself on everyone by proceeding directly to Rome and persuading the Emperor that the Jews of Israel were in rebellion. The Emperor had no idea, had never given the subject any thought until then.

Sometimes non-Jews just do not care about "The Jews." Particularly in a fair-minded society like America, we are not on their minds their every waking hour. Indeed, they often wish we just would keep our "Jewish thing" to our internal universe and not emote, seemingly in every television program and every movie that they watch, about our being Jewish. We comprise two percent of this country, and the other 98% really do not care. Whether it be the Coen Brothers deprecating Torah and rabbits, or Larry David or Sarah Silverman, or the multiplicity of intermarried Jewish men writing movies and TV scripts in Hollywood reproducing on the big and small screens their marriages to non-Jewish women, always mocking Judaism and the Torah, they demonstrate a strange need to win friends by knocking the Jews, their community. Similarly, the notion that the RCA's paper would have generated angry sermons from Presbyterian pulpits to Baptist churches is absurd. It was for internal Orthodox rabbinical use. There would have been some people, here and there, who criticized ostensible inconsistencies, but the compelling need some had to bring our internal deliberations before the world court of opinion with such strident demonization is tragic.

Thus, it was particularly disheartening that this very difficult halakhic debate, a painfully difficult subject, was marred by the effort by some to change the tenor from a mutually respectful elu elu to a public alarum and neo-blood-libel suggesting that RCA Orthodox Jews are posturing for hypocritical acceptance of organs that they themselves will not donate. Think about it: Would any fair-minded person think it hypocritical and unethical for a >>hospital patient to be saved with a life-saving transplant even though the recipient herself has not filled out an >>organ-donor card, even refusing overtly to do so? The people of America are a fair-minded and good people. They do not need their Jewish countrymen to feed them with a calf blemished by Bar Kamtza.

Rabbi Dov Fischer, adjunct professor of law at Loyola Law School, is a columnist for several online magazines and is rabbi of Young Israel of Orange County. He blogs at rabbidov.com

25 comments to Bar Kamtza Should Not Have Been Invited to This Event Either:

Dovid Shlomo
January 14, 2011 at 1:02 am

>>neo-blood-libel suggesting that RCA Orthodox Jews are posturing for hypocritical acceptance of organs that they >>themselves will not donate. Think about it: Would any fair-minded person think it hypocritical and unethical for a >>hospital patient to be saved with a life-saving transplant even though the recipient herself has not filled out an >>organ-donor card, even refusing overtly to do so?

I thought the issue was about someone's taking an ideological stand that something is considered murder and yet be willing to be the catalyst for it being done to someone else. (Organs don't just "show up" or "become available." They are removed expressly for the sake of the intended recipient. The surgeons who do so are acting as the recipient's agent, and their services are being billed to the recipient.

I don't disagree with you that this debate has no place in the public sphere and that the rhetoric / tactics used by the anti-RCA parties is reprehensible, however it seems to me that you are being a bit disingenuous when assuming that we need only worry about the reactions of "fair-minded people," when the reality is that we have to consider how our policies look to ALL people, whether fair-minded and not.

In addition, as I said above, I would think that, lacking an understanding of the sophisticated lomduis, even "Fair-minded people" could be excused for finding this policy not just hypocritical, but deeply offensive.

(Again, I'm not saying that the halacha should be shaped so as to accommodate public sensibilities, but I am saying that it's simply not realistic to deny that the "take but don't give" policy can legitimately be considered deeply offensive to many.)

Miriam
January 14, 2011 at 3:33 am

Now that the Western world is less religious, this idea of being a "fair-minded person" -- instead of aligning with a religious crusade -- is very common. It reminds me of eLamdan's comment regarding "reasonable people" vis-a-vis non-Jewish viewers of the $3000 shetil episode.

While I'm not so sure how many of these "fair-minded people" actually put down their soda cans and get out of their armchairs to stand up for fairness (many are more interested in personal comfort), it is important to remember they are the majority of people out there. We have external enemies, but we don't need to encourage more to join them.

But back to the Bar Kamtza analogy, is there anything us bystanders could be doing, perhaps that will keep the Bar Kamtzas from creating bad PR?

Menachem Lipkin
January 14, 2011 at 4:28 am

Actually, applying the term “blood libel” in this case is more of a blood libel than the issue at hand. Like Rabbi Fischer states, the original blood libels were just that, libels. They were falsehoods, lies specifically intended to generate antisemitism. While it may not be wise to have the discussion in “public” (something virtually, if not literally, unavoidable today), discussing whether or not it’s moral for people to receive organs if they won’t donate is certainly not a libel. And though it’s probably intended to heighten the debate, it’s far fetched to say that the intent is to generate antisemitism.

Rabbi Fischer’s analogy to Christian Scientists taking but not donating blood is faulty on two counts. First, since when do we base our morals on the tenants of other religions? More importantly, the reason they shun giving and receiving blood is their belief that all healing should be left to God. In our case the issue is one of murder not divine healing.

Further, this is not nearly the first time that this issue has been introduced into the public sphere. Over a year ago Israel tried to address the issue of an insufficient organ supply by passing a law giving priority to those who sign donor cards. The ethics of this law and concept have been hotly debated here for years. Also, the European cooperative that handles international organ sharing has questioned Israel’s extremely low donor rate.

As far as I know we don’t refrain from discussing the issue of Eiva because of Eiva. Here too, the moral component of taking without giving, no matter which side of the debate one is one, is core component of the issue and should not be avoided just because we’re worried about the ramifications of the discussion itself. While antisemites will always find reasons to hate us, more open minded, enlightened people will see this as laudable moral struggle.

joel rich
January 14, 2011 at 5:46 am

In my decade as an attorney at the kinds of prominent law firms that pay boatloads of salary but that expect round-the-clock servitude and work, no one ever said: “Hey, why does he get paid what we get paid, and why is he getting the same bonus that I get, even though he never comes in on Saturday before 9 p.m. and always leaves early on Fridays?” It is understood that we pay in other ways. Orthodox Jews pay school taxes even though our children do not use the public schools. Our taxes contribute to the police patrols of cities where our community does not commit street crimes.

While reserving comment on the rest of the post, I would like to discuss this section. I have no doubt that RFisher is describing his perception of the world around us. I am not aware of any studies of these issues (if anyone is, please post) but from over 30 years of anecdotal experience I would say that there is at least a significant minority (miyut hamatzui) that perceives us differently. Unless an employee makes it very clear how he/she is making up those hours/yom tovim etc., they will be judged accordingly in compensation, advancement and, more importantly, in the eyes of man, especially bosses and coworkers (and so I ingrained in my firms frm associates).

In our local town’s last election, the school budget was defeated. It was made known to our shul that the “blame” was placed on the orthodox community who didn’t send their kids there and didn’t care about quality education for others. As for crime, I’d say the front page “frum” criminals have done more for us than whether our street crime numbers are low.

As RYBS taught – it says veleh shmot in the present tense – a Jew should always feel the insecurity of just having arrived and being a stranger in a strange land and long to be home.

KT

Zedd
January 14, 2011 at 6:42 am

If cardiac death is the halachic definition of death, then is the acceptance of a heart for transplant not a tacit participation in murder? Can non-Jews, who are still bound by the Noachide laws, define death differently from halacha and therefore define away what would be murder for a Jew?

January 14, 2011 at 9:03 am

You said: Think about it: Would any fair-minded person think it hypocritical and unethical for a hospital patient to be saved with a life-saving transplant even though the recipient herself has not filled out an organ-donor card, even refusing overtly to do so? The people of America are a fair-minded and good people. They do not need their Jewish countrymen to feed them with a calf blemished by Bar Kamtza.

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KT

January 14, 2011 at 9:34 am

Dovid, you wrote: “Organs don’t just “show up” or “become available.” They are removed expressly for the sake of the intended recipient.”

Your assertion, however, is simply not the case.

A rabbi friend of mine sent me the following e-mail yesterday:

“The organization which oversees all organ transplants in the USA is called UNOS. Their FAQ page can be found on the transplantliving.org website. See these 3 Q & A’s:

How long will I have to wait?
There is no set amount of time, and there is no way to know how long, a patient must wait to receive a donor organ. Factors that affect waiting times are patient medical status, the availability of donors in the local area and the level of match between the donor and recipient.

How will they find the right donor for me?
When a transplant hospital adds you to the waiting list, it is placed in a pool of names. When an organ donor becomes available, all the patients in the pool are compared to that donor. Factors such as medical urgency, time spent on the waiting list, organ size, blood type and genetic makeup are considered. The organ is offered first to the candidate that is the best match.

How are organs distributed?
The organs are distributed locally first, and if no match is found they are then offered regionally, and then nationally, until a recipient is found. Every attempt is made to place donor organs.

This fits with what I have been told by several cardiologists. There are far more potential recipients than there are donors of hearts.

While the best case scenario is that donor’s heart be a 100% perfect fit for the recipient, that is rarely the case. The heart usually ends up being as close a fit as possible (thus, some patients will require more anti-rejection drugs than others).

Within each blood type, there is a range of patients who could be potential candidates for that heart.

UNOS decides who the organ goes to based on compatibility, illness, time accrued on the waiting list, location, etc.

No donor heart will ever go to waste – as they are in such short supply VS. the potential recipients, and somewhere in the USA (if not the local UNOS region) a match can be found.

As such, whether a Jewish name appears on a waiting list or not, the person who signed up to be a donor will have his/heart harvested (assuming they are still a candidate to donate when they are declared brain-dead).

While UNOS will determine which patient on the waiting list will get the heart before it is removed, that heart would have been removed regardless of whether or not
the Jewish recipient was on the list.

I hope this helps in sorting some of this out."

dr. bill
January 14, 2011 at 9:40 am

There is little question that receiving organs but being unwilling to donate organs, is a morally difficult position. the fact that some argue it to be halakhically justified, only serves to place the halakha into a morally difficult position as well. Unquestionably laws of Amalek and Mamzer, to name two, place the halakha in such a light. However, in all such cases, poskim over many generations have worked to limit the scope using various halakhic mechanisms.

The issues of what is commonly called "brain death" are complex. The rhetoric on all sides has not been balanced. Unquestionably, as medical science advances, the camp of those who will accept "brain death" will grow. The debate is over whether that point has already been reached. Quoting a psak from 10+ years ago, without including its assumptions, rationale and circumstance, is as useful as quoting a psak on a sheailah that was asked about a different event.

There are two approaches among the "brain death adherents" – both changing continuously – one more meta-halakhic and the other more typical of halakhic reasoning. 1) meta-halakhic: Some argue that the halakha does not provide a formal definition of death; rather it provides an operational one. We need to know that absent artificial means, the patient will never be viable. This cuts both ways as medicine is able to more often revive and more definitively declare one as dead. The halakha relies on what it considers the state of the art. 2) Halakhic: a more traditional halakhic position continues to rely on respiration as a formal definition; however it argues for allowing a brain function mechanism to determine whether independent respiration is possible.

Both approaches change continually. Read RMF ztl and RSZA ztl and what they struggled with; the issue is what they would have said given our current state of medical technology. While advertising the ostensible immorality of a position is hardly defensible, the language attacking one prominent rabbi and declaring a position as contrary to RSZA ztl is hardly balanced. Of all topics, this is one i would moderate off of blogs except those permitting halakhic debate.

mycroft
January 14, 2011 at 10:40 am

"Would any fair-minded person think it hypocritical and unethical for a hospital patient to be saved with a life-saving transplant even though the recipient herself has not filled out an organ-donor card, even refusing overtly to do so?"

Yes-there have been proposals in some jurisdictions that state that priority will be given for transplants to those who have signed donor cards. Of course, I agree that halacha can't be changed for that reason-assuming something is rechitza one can't change ones policy to save someone else.

Bob Miller
January 14, 2011 at 11:45 am

There are many instances in halacha where different rules apply to different classes (Kohanim vs. Yisraelim, Jews vs. non-Jews…). The idea that reciprocity has to be 100% in everything, including transplants, for all people, does not seem to come from halacha. I wonder if those who believe in 100% reciprocity are motivated in this by halacha as opposed to a general sense of "fairness". Possibly, some have darchei shalom aspects in mind regarding the transplants.

Michael Rogovin
January 14, 2011 at 12:32 pm

If the non-halachic community were to determine that it was permissible to harvest organs from a vulnerable population (say inmates on death row, impoverished persons, etc) in a way that was life threatening or even involving murder, and the society sanctioned this as moral under its own definitions or ethics, would we, as halachically observant Jews accept such organs in order to save our lives? While you may say this is a legal reductio ad absurdum, I do not see the ethical distinction between taking organs from a living donor as described above and the case of brain stem death (and by the way, it is more than the heart, it is also lungs and other vital organs that require brain stem death rather than cardiac death for transplants to be done). In both cases, the "donor" is halakhically alive, regardless of how secular society views him and is being murdered in order to save the life of the orthodox Jew (would it make a difference if the organs were banked? I suspect not since a Jew would benefit from murder, though I can see a potential for psikut to try to make up in such a case were it to become medically feasible).

Had the RCA paper presented a more balanced and medically accurate presentation (which it purports to be but has been shown is not), then it is unlikely that the debate would have degenerated as far as it has. If some of the rhetoric on the part of the "pro-brain-stem death" criteria camp is high, so is the use of the term "blood libel" which seems to be a popular term this week. The fact is, many people feel that it is morally repugnant to adopt a public posture as a community that it is permissible to accept organs from people whom we regard are alive and are murdered for our sake. You can disagree since these feelings are subjective. But I think that trying to match over the top rhetoric with over the top rhetoric does a disservice to the discussion and turns it into a competition.

Ori
January 14, 2011 at 6:19 pm

Am I allowed to sacrifice my own life to save another, for example by jumping on a hand grenade? How is that different from promising to donate my organs, even when it would hasten my death?

yehudis
January 15, 2011 at 6:21 pm

Well, we are about to hit the point here in Israel where the priority for transplant will indeed go to those who have signed on as potential donors or whose family members have. This is being discussed here right now, and although it will be fought about ad nauseum, I imagine that it will eventually become fact. In a way I am ambivalent, precisely because of the point raised by commenter #1–if I am the beneficiary of an act that I consider murder, have I not participated in this issur?

roam stadian
January 15, 2011 at 10:30 pm

Rabbi Fischer- Your article contains a huge factual error. The paper put out by R. Asher Bush and the Va'ad Halacha attempted to mislead the reader into thinking it was fair. However, it was incredibly one sided and biased. I have demonstrated this in my post on TorahMusims.com in December . Since my name was referenced in the paper, I asked Rabbi Bush to issue either a note stating that I was not in agreement with the paper, or send out ALL the relevant medical information(which I had sent him in 2008), but he refused to do either. I am aware of some members of the RCA who also attempted to have some formal response or other positions noted and this too was refused. Essentially the paper was presented and no discussion was allowed. All the responses were, as far as I know, in Jewish papers. Because, how else were people, RCA members, scientists, and others, to dispute this biased(and in some cases, plainly incorrect) paper? Certainly it would have been better to have a quiet non-confrontational discussion or conference. But when Rabbi Bush put out his paper in the way that he did, the only option to get out the real facts was via public media.
Bar Kamtza Should Not Have Been Invited to This Event Either: | Cross-C... http://www.cross-currents.com/archives/2011/01/13/bar-kamtza-should-n...
Again, regarding the term "blood libel," When Jews criticize other Jews on a matter like this, we need to remember that we live in the following world:

http://www.cross-currents.com/archives/2011/01/13/bar-kamtza-should-n...  

We do not need to give the likes of this more quotes in which to laununate.

Some Jewish commentators made comments that went over the line beyond fair debate and played into the universe of these sorts of people. I will not reprint those comments here and provide yet another vehicle for someone to find those words via "Google." The words were a blood libel. You do not know me, but I assure you that I do not use the term lightly, have my own boatload of academic degrees and recognize the responsibility one bears when printing such words as a Jewish scholar commentator, not merely as a politician inundated by grievously unfair calumnies.

Dr. Mike: My article begins explicitly by conveying that it is not written to contribute to the separate discussion between the two schools. Yes, the criticism in my article is leveled at those who are "brain death" advocates and are going outside the parameters of fair debate. However, it would be a major leap of inference for you to infer from my article that I adhere to either of the two schools. Suffice to say that HaRav Tendler sh"a was my rebbe in RIETS and always has been, through thirty years, a dominating influence on my thinking and a Posek to whom I have turned with sh'eilot.

Ben
January 16, 2011 at 8:49 am

"Would any fair-minded person think it hypocritical and unethical for a hospital patient to be saved with a life-saving transplant even though the recipient herself has not filled out an organ-donor card, even refusing overtly to do so?"

Absolutely. If this organ could also be used to save one who did fill out an organ-donor card, then it is immoral to use the organ to save the one who DIDN'T fill out the card. I have asked many people this question, including charedim, and they all agree that it would not be unethical for a hospital to refuse to give an organ to one who refuses to be an organ donor himself.

S Goldwater
January 16, 2011 at 11:59 am

The psak to accept but not donate organs from brain-stem dead patients is moral. By refusing to donate under such circumstances, one is saying: 'please do not kill me in order to save another's life'. If asked by a doctor: 'should I take the heart of this brain-dead person? we would surely (even according to this psak) be obliged to say: 'please do not kill that person, even if doing so will save me'. Accepting an organ does not, however, involve such a question. What is asked of the patient receiving an organ (or their family) is: 'here is an organ from someone who was brain-dead – can we use it to save your (relative's) life'? Even if one must view the organ here as the end-product of an act of murder, the murder has already occurred, and benefiting from it, while unpalatable, is perfectly moral. Does anyone argue that the organs of the victim of a suicide bomb or a shooting who proudly carried a donor-card should not be used because 'it's wrong to benefit from an act of murder?'

Charlie Hall
January 16, 2011 at 12:16 pm

"If cardiac death is the halachic definition of death, then is the acceptance of a heart for transplant not a tacit participation in murder?"

See below.

"While UNOS will determine which patient on the waiting list will get the heart before it is removed, that heart would have been removed regardless of whether or not the Jewish recipient was on the list."

This is misleading. The heart is never removed until the specific recipient is prepped for surgery. Time is of the essence; no more than four hours may elapse between the removal of the heart and the implantation of the heart in the body of the recipient. Essentially, according to the position that harvesting organs of a brain-death patient is murder, the donor is murdered for the "specific" benefit of the recipient. The heart must still be beating at the time the heart is removed from the donor. Everything is coordinated.

You can find a description of the entire procedure, including a very informative video including a video of part of an actual heart transplant on the montefiore.org website

Montefiore Medical Center is the main hospital affiliate of the Albert Einstein College of Medicine of Yeshiva University.

cohen y
January 16, 2011 at 3:53 pm

To michael Rogovin
Rav Elyashiv forbade accepting organs from china,as they would speed the death of criminals to fill organ requests.

Binyomin Eckstein
January 16, 2011 at 5:01 pm

It rises to the bar because it contains two elements: incitement of others against one group, and incorporation of lies.

Charedi Leumi's comment smacks of incitement against Rav Elyashiv, when he is singled out because he is an easier target for incitement – by pandering to the anti-Elyashiv establishment sentiment so pervasive on the blogosphere – than R' Shlomo Zalman, the cosigner on the very piece he quotes.

It is also a lie, because they both retracted after the famous sheep experiment. This was written later, in response to a well-known Rabbi in the US claiming that R' Shlomo Zalman allowed brain death:

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Notes on the change to 'עון'
Shemhuna ותבוא אינן
אינן
יוסף לאב
יאב

yeodus
January 16, 2011 at 6:41 pm

Rav Fischer,

Your comparison to the complicity in that which is either ר"ס ותבוא או ר"ס ותבוא to being the passive recipient of an inheritance procured by "treiff" means falls short.

In the case of organ harvesting (let's call it what it is), there is a direct link between a person's legal acceptance of the organ and medical preparation for receiving it
and the removal of organs prior to cardiac death, which initiates cardiac death.

In the case of the uncle and nephew, yes the nephew may either reject the "treife" money or see that he can be mekadesh it, but the accumulation of the money was already accomplished before he came into the picture. As far as I know, the proceeds of such sales are not assur b'hana'ah. Yes, if the uncle made all of his money from the manufacture of cheeseburgers, then I think you have a real halachic problem, don't you? And would the case of organ harvesting not be much more severe than a run-of-the-mill proceed that is assur b'hana'ah since murder is a question of yeihareg v'al yaavor?

As an aside, I have a whole different question about the subject of organ harvesting, which is the transformation of the body into a commodity. We are going to be living in a world, if we are not already in it, where those who have the resources will have access to the organs of the less fortunate.

When I was in university I learned a little about this process through the donation of bodies to our medical school for dissection. Whose body ends up on the table? To put it bluntly, the person who cannot afford his own burial. This is the usual course of events. Because the average person would not subject his dead body to the slow grinding away at it which is the process of use of a cadaver for study.

Who makes a good donor? The young and healthy victim of a severe neurological trauma that was caught immediately so the person could be preserved as an ideal storage facility for his organs. Until the time comes to remove them.

His family is prepared for this harvesting by being told that the victim is already dead. The fact that his heart beats is an illusion–he is already dead. "If we were to take him off of the machines, he would die. This means that he is dead, so now we can take him off the machines."

As the demand for transplant organs has grown, the definition of death has moved back. As the rising cost of medical care has made long-term vegetative states impossible to sustain, the definition of death has rolled back.

Call me dystopian, but if things continue this way all we will see is that people who can raise large amounts of money will essentially be buying the organs of those whose families cannot afford to keep them in the hospitals or nursing facilities.

Of course, lives are being saved through organ donation, and this is a very great thing. Nevertheless, if the poskei hador find what to worry about, I suspect that my ambivalence has some basis in fact.

Robert Lebovits
January 16, 2011 at 10:31 pm

In the early 1900's when Hadassah Medical School was first established there was a need for cadavers for the training of medical students. Since Nituchei Meisim is forbidden other than for the direct & imminent saving of a person's life, the school faced the dilemma of how to acquire bodies. Then Chief Rabbi A. Y. Kook, zt"l, was consulted & a dispensation was requested. Rav Kook refused & instead recommended that the school purchase non-Jewish cadavers from abroad. The school's dean expressed concern that this approach would generate great anti-Semitism & Jews would be thought of as ghoulish. Rav Kook responded & said that those non-Jews who understood the sanctity Jews placed on the human body would be sympathetic & accepting. Those who would vilify us would find some other justification to do so & therefore ought not be a source of concern.

Seems to me that this logic would apply to the issue of organ donation as well.

Robert Lebovits
January 16, 2011 at 10:48 pm

BTW: I attended a panel discussion where Dr. Thomas Starzl, the pre-eminent transplant pioneer, was asked his opinion about the brain death criterion. He offered his point of view that brain death is NOT the cessation of life but it is useful for the greater good. Prior to the acceptance of that criterion many doctors were very reluctant to put someone on artificial life-support for fear that they would not be able to end it if the patient remained unresponsive. As a consequence many patients were not provided with extraordinary efforts who might have then survived. Since the advent of the brain death definition – which now allows an avenue for "pulling the plug" even if the patient is still breathing – many patients are given much more aggressive treatment. Dr. Starzl stated that he believes this benefit made it worthwhile to accept the brain death view even if the true onset of death is cessation of cardiac activity.

I wonder how many other medical experts have validated brain death for the same reason, notwithstanding the total unacceptability from a halachic perspective of such a view, without openly acknowledging the fact.