

# 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, because the implanted coronary device automatically 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 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 halakhah. 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 civilized 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 Halakhah (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" libel. Books have been written just on that one lie, the blood libel. The lie revived 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 transplanted 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 idea, 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 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 proscribed 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 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. We do not condition marrow donations on a litmus test, nor do we require that our blood donations be denied to followers of Mary Baker Eddy or, for that matter, of Yasser Arafat. Fair-minded people just do not think in such terms.

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 feeling blessed that the deceased continues to generate life, that his death has added meaning. If that same non-halakhic person just-so-happens to hear somewhere that Orthodox Jews do not allow the grieving family and the dying patient respite until the heart stops beating, they may just as well feel sorry for us as anything else. That is how most fair-minded non-halakhic people feel about Orthodox Jews and the Sabbath: "You poor person. I feel so sorry for you. You can't watch TV, can't go to the movies, can't drive a car, can't answer the phone. How awful! What do you do – just sit in the dark all day? Is there anything I can do to help you?"

Much depends on motive. Fair-minded people do not ascribe sinister intent to people wrestling with religious conscience. In this matter, there obviously is no RCA motive to blood-suck from others, just as no one Torah-observant seeks to blood-suck by accepting the availability of donor bodies or otherwise-available cadavers for medical schools while instructing clearly that the halakhic community oppose autopsies being performed on Torah adherents. Moreover, fair-minded people would quickly discover that there is no Orthodox bar to organ donation. The objection is only to the donation of hearts, which at the moment must be harvested from patients that are still considered alive by those who use traditional criteria. Orthodox Jews can and do donate kidneys and corneas, and one day will donate hearts as well, provided that medical science finds a way to use organs harvested after cardio-pulmonary death.

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 rabbis, 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 *eilu v'eilu* to a public alarm 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.

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## 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 *lomdus*, 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 sheitl 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 I 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 on, 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 R'Fisher 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 engrain in my firms from 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 R'YBS 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?

joel rich

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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ou might want to think about this: "According to organ trade expert Nancy Scheper-Hughes of Organ Watch (in 2001), Israel had become a "pariah" in the organ transplant world. The lack of donations due to Jewish custom heightened the disparity between the supply and demand of organs. This led to the popularity of "transplant tourism" in which patients in need of organs travel to medical centres abroad to receive organs.[11] Prior to the 2008 law prohibiting it, some Israeli organ brokers advertised on the radio and in newspapers. Kidneys, which are the most traded organ, may fetch up to \$150,000 for brokers who usually pay the donors far less.[10]"

I'm not debating the halacha, just your view of the implications.

KT

Alan S.

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](http://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.”

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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 sheilah 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 not ever 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.

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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.

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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.

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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 halachically 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 be benefiting from murder, though I can see a potential for poskim to be makel 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 as 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.

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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?

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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 issue?

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noam stadlan

[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 TorahMusings.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.

Dr Mike

[January 16, 2011 at 12:28 am](#)

The difficult with this post is that it gives little more than lip service to the multiplicity of legitimate opinions as to when death occurs, either with brain stem or cardiac death, and then goes on to act as if cardiac death is the de facto accepted position by all groups involved.

The other problem is that while the outside world does not obsess over us as much as we would like to believe/fear, it does pay more attention to us than to many other ethnic groups far larger than us. Certainly our cause is not helped when certain groups claim that their position on when life ends is THE position al pi halacha, then declares that opposing or different opinions are murder, and then says that it's okay to take organs from people who, according to them, are murder victims. While some may appreciate how halacha does not always allow reciprocity, to the outside world it very much smacks of hypocrisy.

Chareidi Leumi

[January 16, 2011 at 3:33 am](#)

How is this more of a "blood libel" than what R' Elyashiv wrote about the opposite halachic opinion:

בעניין השתלת הלב, או שאר איברים לצורך חולה מסוכן, בזמן שלב התורם פועם ומוחו כולל גזע המוח אינו מתפקד כלל הנקרא 'מיתת המוח' – דעתנו שאין שום היתר להוציא אף אחד "מאבריו ויש בזה משום שפכות דמים"

Is this not implicitly accusing the opposing halachic opinion as murder?? You can not have it both ways. If pointing out that people who advocate the receiving of organs but not the donating of organs are basically advocating – lesheitam – that orthodox Jews benefit from the murder of others is a blood libel. Then it is also a blood libel to claim that those who advocate halachic post-brain-death organ donation are guilty of murder.

[YA - It is not the strong words that make it a blood libel.

Stating that some Orthodox Jews accept donor hearts but will not donate themselves is accurate.

Stating the same in public, for the purpose of inciting it to change existing policies towards allocating hearts is incitement, and repugnant. It is still not blood libel

Stating the above and adding that those recipients live by a flawed, hypocritical system that does not allow them to donate to others, and that they immorally benefit from the murder of others is a blood libel. It rises to the bar because it contains two elements: incitement of others against one group, and incorporation of lies. (Those who reject brain death still donate other organs, and one day will likely donate hearts as well; they do not callously benefit from murder, because the murder will take place regardless of whether they receive the organ.)

Stating - not in the Jerusalem Post or the NYT - that those who take organs before criteria of death are satisfied commit an act of murder according to those who accept those criteria is neither blood libel nor incitement. It is accurate representation.

So is the Pope stating that for Catholics who accept life as beginning and sacrosanct from conception, that abortion is murder.]

All in all, I don't see how you can claim that "one side broke those rules of Jewish fair play" when statements such as the one above (as well as many stronger statements regarding those who accept some forms of brain-death as halachic death) have been circulating for a long while.

Rav Fischer

[January 16, 2011 at 4:34 am](#)

Menachem Lipkin writes compellingly. I use the term "blood libel" because the comments made went beyond the euphemistic description I have offered within this Cross-Currents contribution. I choose not to reprint the libels in this journal. When I publish something, if it be a heinous quote, it thereupon can be found on Google, even as the prior journal may not come up on as early a Google page. What some have said is a blood libel.

At bottom, if a non-halakhic Jew or a non-Jew opts, of his own accord, for his own reasons, pursuant to his own separate beliefs, to have his life ended and to have a "plug pulled" at a time earlier than I would have recommended to his family that it end, such a decision by that person is not in our hands. If it pleases that person or his family to donate organs to others in need of them, so as to impart a consolatory sense of deeper meaning in the death, that his organs are helping other people to live, there is no moral basis for refusing to accept the donation.

Joel Rich offers some fascinating insights. Briefly, Israel is a pariah no matter what she does. She is a pariah in the UN, a pariah on certain campuses. Nothing she does can change that. She sent the best emergency response doctors in the world to Haiti, and those who hate claimed that the Israelis were there to harvest organs. See below for a link to one such observer.

Jews who engage in economic crimes do indeed contribute mightily towards the worst of chilulei Hashem. <http://ravfischer.blogspot.com/2008/12/on-bernie-who-madoff-with-money-fifty.html>

Is it immoral for someone who does not fight and risk his life in the armed forces to benefit from the safety and security that our armed forces help assure him by their service and sometimes by giving their lives for freedom? Is it immoral for someone who does not pay taxes to benefit from the infrastructure that others' taxes provide? Different people make different decisions based on different circumstances. They participate in different ways. If an observant Jew believes that the soul leaves the body only at cardiac death, not at brain stem death, he is acting consistent with his belief by refusing to have a plug pulled at brain stem death. Yes, it certainly would be immoral and heinous for him to induce others to believe erroneously (in terms of his belief) that they should pull their plugs at brain death so that he can receive their organs. But he is not doing that. They are giving their organs anyway. The doctors at the hospitals are tellign them to pull their plugs, and the families are acquiescing. Meanwhile, our "cardiac death" adherent may already have given a kidney earlier in his life, and perhaps further has instructed that, upon his death, all organs that can be harvested should be harvested. It is disingenuous to accuse him of immorality.

If a liberal advocates tax increases, it is not immoral for him to take deductions on Schedule A, take exemptions for his family members, and to benefit from the tax deductions that legally are available to him. One can have an honest belief, yet benefit from someone else's contrary belief.

To Michael Rogovin — I, too, would have liked to see more attention in that paper paid towards the neurological death (brain death) position associated with the perspectives of the Israeli Rabbanut HaReishit, HaRav Gedalia Dov Schwartz, and HaRav Moshe Tendler, among others. In the end, the RCA took the position that rabbonim should follow their respective perspectives, based on the authorities whom they follow.

To the question asked by Yehudis: If someone's uncle is non-observant and became wealthy through his life by profiting from hunting or some other contra-halakhic (but not secularly illegal)source of income, then opts to leave an inheritance to the Orthodox nephew, is the nephew obliged to refuse the inheritance because he always taught people not to hunt, etc.?

To Noam Stadlan: I cannot speak to your comments about Rav Bush. The paper was a team effort of the RCA Va'ad Halakha. As I noted above, I would have liked to see more attention given to the other side's perspective, too. When someone is unsatisfied with something in the RCA, it can be discussed openly and honestly within the RCA. You and I do not know each other, but if someone in my shul were to say to me "Rav Fischer, here is a problem I believe should be raised within the RCA," I would raise it. We have a robust process of feedback and communication. My goodness, how you would be surprised by the intensity and robustness of our internal communications! We simply are prohibited from sharing that robust dialogue outside the walls where we discuss. That rule makes good sense because it encourages incredibly frank and open debate. The paper has been discussed. It is understood that each rav is free to follow the halakhic perspective and school that accords with his Torah learning.

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://alisonweir.org/journal/2009/9/1/israeli-organ-harvesting.html>

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

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 scholarly 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 shlit"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:

נטבקשנו לגלות דעותינו, דעת תורה, בענין השתלת הלב לצורך חולה מסוכן, וכן בענין השתלת שאר איברים לצורך חולים שיש בהם סכנה – הנה כל זמן שהוא מונשם ולב התורם פועם, ואפילו במקרה שכל מוחו כולל גזע המוח אינו מתפקד כלל, הנקרא "מיתת המוח", עם כל זה דעתנו שאין שום היתר להוציא אף אחד מן איבריו, ויש בזה חשש שפיקת דמים.

**(Note the change to חשש)**

שלמה זלמן אייערבאך  
יוסף שלו' אלישיב

yehudis

[January 16, 2011 at 6:41 pm](#)

Rav Fischer,

Your comparison to the complicity in that which is either משום שפ"ד or משום שפ"ד to being the passive recipient of an inheritance procured by "treife" 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 yehareg 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.

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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 Nituche 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.

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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.

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