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In my view: Brain dead about brain death

By Rabbi Jeremy Rosen

There has been a running controversy in circles that are committed to Jewish Law over “brain death.” Traditional sources require the heart and lungs to stop functioning. In olden days a mirror or a feather to the nose was the best they could do. Times have changed. Medical science has advanced and “brain death” has now been added to the halachic as well as the medical lexicon. It is of particular significance when it comes to transplants. Waiting until the heart finally runs down can be too late for some organs to be useful to others.

A great deal of halachic discussion has gone on ever since Rav Moshe Tendler, son-in-law of the late Rav Moshe Feinstein, and a qualified doctor as well as a halachic scholar, first suggested accepting brain death in principle. The fact that he affirmed he had his father-in-law’s agreement added weight to his position. There was a furor at the time, as there always is when anything new crops up in traditional circles; but over time more and more experts joined him.

Indeed the whole issue of transplants and organ or skin banks has been dealt with extensively in halacha, and given that new issues and refinements are emerging all the time, there is a massive amount of material readily available on the subject. But equally, opinion is still divided, largely because of the fear that doctors might rush to declare death prematurely when they want to get organs to recipients as quickly as possible. And there is still controversy over definitions. Still, the fact that there might be rogue doctors should not detract from the fact that brain death in principle is approved of by more real halachic authorities nowadays than not.

You might recall the tragic case of Yoni Jesner, a highly gifted young man cut down by a suicide terrorist in Israel some years ago. His courageous and religious family took advice from halachic experts and donated his organs, one of which saved the life of an Arab child. Around the Jewish world the issue of organ donation suddenly became a popular topic. More and more rabbanim encouraged Jews to carry donor cards, and specifically religious organizations sprouted to cover all religious reservations. In Israel, provisions were added to the national donor card system to encourage religious Jews to participate. But sadly, Jewish religious life being what it is nowadays, there has been a reaction against change and progress. It is really political, not spiritual. And strict halachic positions are often taken to be used as a bargaining tool, particularly in Israel, for political or financial gain.

Cadres of new wonder, miracle, mystical rabbis make money out of the pain and helplessness of the sick and dying and their families, promising cures and hocus pocus in exchange for reward.

They too have joined a trend against organ donation and accepting brain death, citing irrational and superstitious reasons.

A year ago a very good friend of mine, Rabbi Yossi Raichik, died in Tel Aviv when a transplant would have saved him. An organ was ready at hand, but whereas his rav approved the exchange, another one objected. The family buckled, and Rav Yossi died.

To make matters worse, the world shortage of organs has led to an unsavory black market in human organs. Too often it's one-way traffic in which the rich benefit at the expense of the poor and too many people are more willing to take from others than contribute themselves. This is the main reason why so much effort has been put into encouraging Jews to donate or carry cards.

The increasingly hard line Rabbinical Council of America recently published a position paper in which it gave both points of view — those in favor of brain death and those against. It decided not to take a definitive position. Many people regretted this act of moral cowardice, but one could at least understand that in a case of differing opinions it is only fair to give both. Still, a recommendation would have been in order. But fear now stalks the rabbinic world and it is hard to judge those who are frightened. By way of contrast the London Bet Din, the authority for the majority of British Jews, took a definite stand with the extremists. It declared, simply, that brain death is not acceptable. No mention of different views, no qualification. The Anglo Chief Rabbi, who one expects to have a better sense of moderation, chickened out yet again. In typical Anglo fashion, you say “no” first, then backtrack. And in equally British fashion, express outrage that you are “misquoted.”

All the Beth Din needed to do was to state clearly and simply that Jews can donate organs but that they also need to take steps to ensure that the halachic parameters for brain death are adhered to. Brain death is a halachic option but there need to be safeguards and expert halachic advice in each case. But in effect they did it the wrong way round. Another public relations disaster, and once again thinking, moderate Orthodoxy has been failed by its leadership and has shot itself in the foot.

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