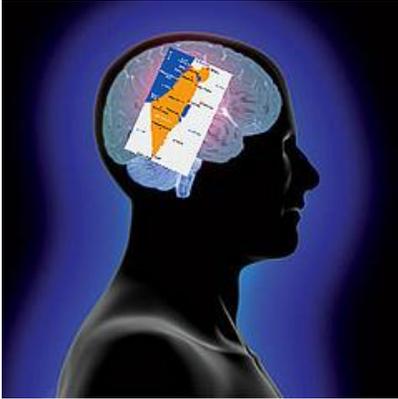


Hirhurim - Musings

Brain Death in Israel

October 4, 2011



I. Israel and Organ Donation

According to the Israeli Chief Rabbinate, which famously ruled in favor of brain stem death criteria in 1986, most organ donations from a brain stem dead patient are contrary to Jewish law. This surprising position and the background that led to it are explored by Naftali Moses, PhD in his recent book, *Really Dead?: The Israeli Brain-Death Controversy 1967-1986*. With rabbinically approved organ donation in Israel once again in the news ([link](#)), this fascinating book, adapted from the author's doctoral dissertation, offers timely guidance on how Israel got to where it is.

Israel's organ donation rates are very low, among the lowest in the Western world, and have consistently remained at that level throughout the past two decades despite efforts to encourage donation. While Ultra-Orthodox conservatism may explain some of the phenomenon, it fails to shed light on the low participation of the majority of Israeli society. However, already in the 1960s, as organ transplantation from brain dead donors was beginning to develop, Israeli doctors recognized the uphill cultural battle they faced. Jewish death rites are among the most observed rituals. The extreme respect for the deceased, including quick and complete burial, permeates Jewish culture even among the otherwise non-observant majority. This ingrained cultural trend, more than any rabbinic ruling, causes the low donation rate. Recognizing this, doctors attempted to change Israeli culture, enlisting the Chief Rabbinate as the representative to the general public of Jewish tradition.

However, the Chief Rabbis saw their role differently. They did not want to be spokesmen but decision-makers. Moses demonstrates that leading Israeli doctors aggressively pushed the view that declaration of death is a purely medical/scientific matter. However, as Moses reviews the literature from 1967 through 1986, mainly in Israel but with highlights from abroad, he shows the complexity of the issue. Doctors debated whether death is a process or a moment in time, whether brain death defines death or indicates that death has already occurred or is inevitable, whether the entire brain must die or just the brain stem, and much more. Additionally, some medical ethicists argued that the moment of death is a purely social-cultural, rather than scientific, decision. Among the many scholars Moses quotes is philosopher Karen Gervais (who is pro-brain death definition), who says that biological death requires cellular necrosis of the entire body but we declare death earlier based on philosophical criteria of features that a person must possess to be considered alive.

II. Debate and Decision

Meanwhile, rabbis debated whether death is determined by the cessation of heartbeat or breathing. Brain stem death criteria fit the latter but not the former. Moses traces the initial rabbinic support for brain death criteria (by a single rabbi - R. Baruch Rabinowitz, the rabbi of Holon) to the growing opposition by leading halakhic decisors. While focusing mainly on Israeli voices, Moses also extensively analyzes R. Moshe Feinstein's responsa due to his importance in the Israeli Chief Rabbinate's deliberations. Moses examines the puzzling textual problems that arise if we accept his family's explanations of R. Feinstein's position and how others understood his view differently. Of particular significance is R. Avraham Steinberg, MD's initial opposition to brain death criteria but later enthusiastic support when his concerns were met. R. Feinstein's son-in-law, R. Moshe Tendler, and R. Steinberg were instrumental in the Chief Rabbinate's eventual ruling.

In 1986, Hadassah Hospital and the Health Ministry petitioned the Chief Rabbinate for endorsement of a new "special transplant" program. After extensive consultation and deliberation, the Chief Rabbinate and a council of advisers ruled that irreversible cessation of breathing

constitutes death and approved the brain stem death criteria, albeit with a number of provisos. The makeup of the Rabbinates council is itself interesting. R. Shaul Yisraeli, R. Zalman Nechemiah Goldberg and R. Yisrael Meir Lau were among the participants but R. Shlomo Zalman Auerbach refused to participate because of his (prescient) distrust of the medical establishment and R. Yitzchak Yaakov Weiss declined for political reasons. It is, indeed, difficult to imagine R. Weiss, a leader of the anti-Zionist Edah Charedis, sitting on a Rabbinate council, although he was invited. Included among the Chief Rabbinates conditions is that another test be performed to guarantee brain stem death in addition to Hadassahs protocol and that a representative of the Rabbinate be part of the independent team to declare brain stem death.

The response to the Chief Rabbinates ruling came fast and furious. R. Eliezer Waldenburg published an extensive responsum to the contrary on the same day that the Rabbinate issued its ruling. The next week, R. Shmuel Wozner also published an opposing responsum. Both responsa were widely publicized in the religious media. In a different vein, the secular newspaper *Haaretz* objected to doctors seeking approval from the Chief Rabbinate, what they called a "rabbi-ization" of Israel. Additionally, having won approval in principle from the Chief Rabbinate, Hadassah Hospital ignored the conditions and refused to implement the new test or allow a representative of the Rabbinate onto the brain death team. Because of this, the Rabbinate rescinded its permission and even criticized the hospital's organ transplantation program when it began the next year.

III. Declaring Brain Stem Death

Over the years, the Chief Rabbinate approved specific cases of organ donation when families requested. In those instances, one of the Chief Rabbis personally asked a physician he trusted to confirm the potential donor's status. This is where the book's most disturbing information arises. In a footnote (p. 318 n. 48), the author relates what R. Mordechai Halperin, MD told him about the times when he was asked by a Chief Rabbi to confirm the status of potential donors who had already been declared brain dead by an independent medical team: "R. Halperin related to me that there were times when he agreed with the medical diagnosis of brain-death, but also times when he did not." This was **after** the Israeli doctors had declared the patient brain dead and, absent the family's inquiry of the Chief Rabbi, would have already harvested organs. As R. Halperin added upon further questioning, when he disagreed with the declaration of death the family did not allow organ donation.

Going back to the Rabbinates 1986 ruling, in response to the halakhic criticisms it received, R. Shaul Yisraeli and R. Mordechai Eliyahu published extensive defenses. Of significant note is R. Eliyahu's position that immediately after brain stem death is declared, all life support must be immediately removed from the deceased patient. If I understand correctly, this greatly shortens the window of potential organ donation. Be that as it may, the absence of a rabbinic representative in the declaration of most brain dead patients, both in Israel and the Diaspora, renders organ donation in such cases contrary to the ruling of the Chief Rabbinate. However, a training program is beginning soon to enable more rabbis and religious doctors in Israel to perform that function ([link](#)).

Why was the Chief Rabbinate so insistent on representation in the declaration process? Moses attributes it partly to distrust of the medical establishment. However, he adds a more essential reason. Moses argues that the Israeli medical establishment saw brain death as a **state**, a medical fact. In contrast, the Rabbinate saw it as a **status**, a *chalos* that must be declared by witnesses who not only observe but participate in the declaration of status (*eidus le-kiyum ha-davar*). I find this explanation farfetched. A dead body will decompose regardless of whether anyone witnesses it. If brain stem death is considered death, then the declaration only formalizes the fact and does not establish it. I believe that Moses was correct in his first explanation; the Chief Rabbinate simply distrusted doctors, apparently with good reason.

Moses's writing is accessible yet thorough beyond what can be discussed in this limited space. His presentation of the medical, ethical and rabbinic discussions is remarkably balanced and his history is authoritative. I only wish he would have continued beyond 1986 through today and reached further into the Diaspora. The complete book on Judaism and brain death has yet to be written but with this important contribution, Naftali Moses has drafted an important chapter in it.

Note the author's website: [link](#).

You might also like:

Symposium on the Ethics of Brain Death and Organ Donation: ...

Symposium on the Ethics of Brain Death and Organ Donation: ...

Symposium on the Ethics of Brain Death and Organ Donation: ...

139 Responses to *Brain Death in Israel*

- Joseph Kaplan on October 4, 2011 at 10:33 pm

I believe that Moses was correct in his first explanation; the Chief Rabbinate simply distrusted doctors, apparently with good reason.

Could you please explain the "apparently good reason"?

- Hirhurim on October 4, 2011 at 10:36 pm

See the quote from Dr. Halperin about declarations of brain death that he thinks were wrong.

- Tal Benschar on October 4, 2011 at 11:13 pm

Why was the Chief Rabbinate so insistent on representation in the declaration process?

I don't see what the big mystery is. The unique and special status of human life and the concomitant prohibition against murder and other forms of homicide has for millenia been a moral and religious one - premised on the the pesukim in Bereishis and Noach that state quite plainly that man was created *be Tselem Elokim*.

At one point in time, cutting out the organs from a person is simply base murder. At some later point in time, after death, then there is no homicide, there is at worst *nivul ha meis*, which *pikuach nefesh* likely sets aside. Where to draw the line between the two is without question a fundamental question of halakha.

Of course the Chief Rabbinate would want to determine this fundamental religious and moral question.

- Joseph Kaplan on October 4, 2011 at 11:50 pm

I thought that's what you were basing it on but wasn't sure. Perhaps, for you who read that book, that's sufficient. But since (a) you haven't told us who Dr. Halperin is, and, more importantly, (b) you haven't told us WHY he and other doctors don't agree at times, you certainly haven't made any case for "apparently good reasons." Maybe yes, maybe no, but all I have is that some doctor disagrees with other doctors. Not very unusual; doctors disagree about professional matters. So do lawyers, accountants, judges and, and, guess what, even rabbis. So I guess you would be okay for someone to say, about halachic decisions where there is disagreement, that they distrust rabbis "apparently for good reason."

- Hirhurim on October 5, 2011 at 12:08 am

http://en.wikipedia.org/wiki/Mordechai_Halperin

- MDJ on October 5, 2011 at 12:22 am

Not clear from that link what his particular qualifications are to determine brain death, and why he would be a *bar samcha* on this matter. Most doctors are not qualified to determine brain death, and being a medical ethicist does not change that. It is generally considered (in the US at least) to be within the domain of neurologists and neurosurgeons.

- [Mordechai Y. Scher](#) on October 5, 2011 at 12:47 am

MDJ, surely you'd agree that a competent physician can learn to verify that brain death was determined properly. It doesn't require a board certified specialty after residency. It does require willingness to learn and time put in with the specialists. Rav Dr. Halperin is a practicing clinical physician (ob/gyn) who has developed an expertise much broader than his board certified specialty. He spends his days seeing patients, learning and fielding questions in medicine and halacha, and consulting with other physicians and scientists and *talmidei hachamim*. I don't find that so difficult to understand. I spent some time at his *Machon* in *Shaarei Tzedek*. It was quite intense and impressive.

- MDJ on October 5, 2011 at 12:55 am

Mordechai,

He certainly *could* learn to do so, but I have no reason to think that he had. It is not something that most ethicists do, even clinical ethicists. I am aware of his reputation, which is tremendous, but broad competence is not omniscience. Indeed, unless clinical ethics is practiced very differently in Israel than it is here, I cannot see why he *would* spend the time to become qualified to pronounce brain death, let alone one whose diagnosis is more reliable than that of others.

- MDJ on October 5, 2011 at 12:57 am

I should add that if the case in question is one where brain death was simply incompetently determined, then the expertise needed to determine that is much lower. But if that is what was going on, then the relevance of the case to broader policy is minimal. The solution would be to tighten standards for declaration, not start being distrustful of physicians.

- MJ on October 5, 2011 at 1:57 am

According to the Israeli Chief Rabbinate, which famously ruled in favor of brain stem death criteria in 1986, most organ donations from a brain stem dead patient are contrary to Jewish law.

I'm not sure if you mean that they are contrary to the ICR's position that a rabbi must confirm the diagnosis, or that the criteria used, in more than 50% of cases, do not match those endorsed by the ICR.

I believe you mean the former, but readers may assume the latter.

- J. on October 5, 2011 at 2:28 am

The following dissertation is also an extremely interesting and comprehensive analysis of the brain-death controversy:

<http://deepblue.lib.umich.edu/bitstream/2027.42/77671/1/eytansht.pdf>

- [Naftali Moses](#) on October 5, 2011 at 2:38 am

First, I want to thank Gil for taking the time and effort to read my book and to write his review.

Second, regarding the distrust between the Israeli medical establishment and the rabbinic establishment—there was a long history of suspicion and conflict over autopsies and the treatment of cadavers by Israelis doctors. Many rabbis, both Zionists and Haredi, felt that doctors' refusal to respect tradition and the wishes of deceased families was an anti-religious affront. After having done not a small amount of research, I think that they were correct. Many Israeli pathologists and others cynically utilized body parts for post-mortem experimentation despite the best efforts of *hevreh kadisha* to prevent this. Doctors used a poorly worded pathology law to claim that all that they did was (eventually) connected to saving lives. Over the 60s and 70s, there were numerous protest rallies (some violent) and even threats against doctors. At any rate, this was just part of the continuing secular-religious tension within Israeli society. I am currently researching my next book which will deal (in part) with this issue.

Additionally, just prior to the Rabbinate decision, Haifa's Rambam Hospital conducted a liver transplant—which seems to have caught the Rabbinate by surprise given that they were under the impression that such "special" cases of transplantation—requiring the death of the donor—would wait until they published their permission.

Third, I agree with MJ's comment about "Jewish law" and I want to add that many transplants have taken place after rabbinic consultation to confirm brain-death.

Finally, *gmar hatimah tovah* to all—and especially to those who buy Really Dead?.

- [Benny](#) on October 5, 2011 at 3:38 am

Does the book have any reference to the *shneier* law?

- Glatt some questions on October 5, 2011 at 3:52 am

Moses argues that the Israeli medical establishment saw brain death as a state, a medical fact. In contrast, the Rabbinate saw it as a status, a *chalos* that must be declared by witnesses who not only observe but participate in the declaration of status (*eidus le-kiyum ha-davar*). I find this explanation farfetched. A dead body will decompose regardless of whether anyone witnesses it. If brain stem death is considered death, then the declaration only formalizes the fact and does not establish it.

ô ô ô ô ô ô ô ô ô ô ô ô ô ô ô

I agree. You could say the same thing about cessation of heartbeat. Using this argument, why wouldn't the rabbis see that as a state, too, and not a status?

- MJ on October 5, 2011 at 4:50 am

You could say the same thing about cessation of heartbeat. Using this argument, why wouldn't the rabbis see that as a state, too, and not a status?

Because after cessation of heartbeat the body is no longer animated and quickly loses semblance of life. Whereas a brain dead patient appears very much alive—because much of the body remains alive.

From the perspective of a doctor the two are just different medical facts: you can know that a patient is brain dead from a variety of diagnostic tests, and you can know that a patient's heart has stopped with a variety of (generally more straightforward) diagnostic test.

From the perspective of a halakhic system you could understandably want something akin to a declaration that concretizes the distinction between the brain dead patient and the (by outward appearances very similar) comatose patient, because the relevant empirical facts are not directly accessible to the halakhic process.

Indeed, in halakha one sees a number of instances where mediated knowledge requires a similar kind of ritualized restatement or performance in order for the facts to become halakhically relevant – testimony being the prime example. And when the performance of the testimony is not done in the presence of the court (for example in signing a get in another city) halakhah treats the signing itself as a performance that effects the change in status. By having a rabbi/doctor take part in the declaration of death, the data is no longer mediated by a third party, and a ritualized performative aspect is introduced as well.

Instead of putting it in halakhic terms that might be confusing (is it after all technically a chalos? Unlikely) I prefer to see it as an important ritualization of brain death – which is a unique kind of death in which all the usual rituals we employ to mark death are absent or suspended until after the procurement has taken place.

- [shachar haamim](#) on October 5, 2011 at 5:44 am

This book might be nice as history but there have been many advances made since 1986. Most importantly was the kneset committee chaired by Rabbi Dr. Steinberg which developed the terminal ill patient law. In addition there has been recent legislation regarding organ donations which was passed with the blessing of the Chief Rabbinate.

Reading this book on its own and out of the recent context is like saying Zionism is bad because the Zionists do autopsies all the time or steal Yemenite children.

- [Elli F](#) on October 5, 2011 at 6:04 am

Rav Aviner recently reiterated his position that while rabbinic supervision is desirable, it is not necessary. It was in one of the shul pamphlets so popular in Israel. He argued that the *Shilvavi* card is superfluous since there's already the *Adi* card.

- [Naftali Moses](#) on October 5, 2011 at 7:55 am

Shachar *Hó*Of course. It is history. But, as a historian of science I think that it is more than *ñ* nice. In fact, if we would agree that *ö* progress in organ transplantation should be measured by actual increase in willingness to donate organs (for the sake of argument) and not the passage of laws we would find that little actual progress has been made. This, in fact, was what I predicted in an interview I gave to the Israel weekly Makor Rishon around the time of Shneller's bill becoming law (and I think will be obvious to anyone who reads my book). The last big upswing in donation came in 2004, when the Ministry of health had a big PR campaign in swing *ó* year of the transplant. The upswing in donation came from Arabs, not Jews. So, by ignoring the lessons of history, my friend

NM

- Joseph Kaplan on October 5, 2011 at 8:56 am

ö Be that as it may, the absence of a rabbinic representative in the declaration of most brain dead patients, both in Israel and the Diaspora, renders organ donation in such cases contrary to the ruling of the Chief Rabbinate. However, a training program is beginning soon to enable more rabbis and religious doctors in Israel to perform that function. *ö*

Does this mean that the CR said that the Rabbinate has to be part of the process and then waited 25 years to train rabbis so they would be qualified to be part of that process. Is it possible (and I ask this for information, not rhetorically), that one of the reasons the doctors did not make *ö* a representative of the Rabbinate be part of the independent team to declare brain stem death *ö* is because there weren't sufficient qualified Rabbinate representatives available?

- [Hirhurim](#) on October 5, 2011 at 9:13 am

Joseph: *Does this mean that the CR said that the Rabbinate has to be part of the process and then waited 25 years to train rabbis so they would be qualified to be part of that process.*

They had a few viable candidates but they were intentionally snubbed by the medical establishment in order to keep rabbis (and their medical representatives) out of the process. This was particularly true when the transplantation began at only one hospital and organ donation was a unique occurrence. Certainly the well-publicized first one could have included a representative of the Rabbinate.

- Joseph Kaplan on October 5, 2011 at 9:51 am

I'm not clear on something. You write, Gil, *ö* I only wish he would have continued beyond 1986 through today, *ö* which implies that the book ends in 1986 when the CR decision was first issued. That is certainly supported by the book's subtitle *ö* *ö*The Israeli Brain-Death

Controversy 1967-1986.ö But other things you write about which seem to come from the book ö e.g., the conversation with Dr. Halperin ö appear to be about post-1986 events. What am I missing?

- abba's rantings on October 5, 2011 at 9:52 am

öThe extreme respect for the deceased, including quick and complete burial, permeates Jewish culture even among the otherwise non-observant majority. This ingrained cultural trend, more than any rabbinic ruling, causes the low donation rateö

does the book provide any data to demonstrate that donation rates are (relatively) the same across the segments of israeli society? haredi vs. RZ vs. masorati vs. hiloni (vs. non-jewish)? or israel vs. galus?

- Hirhurim on October 5, 2011 at 9:54 am

Joseph: The book really goes to 1987, not 1986. But the concluding chapter has bits and pieces about later years, as do a few footnotes here and there. Nothing systematic.

- Noam stadlan on October 5, 2011 at 9:59 am

Looks like a very interesting book and i look forward to reading it. A few small points. Just because a rabbinical representative wasn't present doesn't make the patient less dead.

The issue of physicians failing to adhere to protocols establishing death has been noted in the us as well, but appears to be a very small minority(I am not minimizing the problem, just putting it into context). In addition, there have been over thirty patients documented dead by cessation of circulation who recovered. In the same vein, those who reject want Tobias the concept of cessation of circulation as the basis for determining death need to establish halachic definitions for the terms body, circulation, and cessation/irreversibility, none of which have been done with any cogency.

As an example of outdated medical beliefs still in play, Josh kunin(article in tradition) reported that Rav Vosner believed that the heart could not beat without a connection to the brain, something disproven by functioning heart transplants.

- Joseph Kaplan on October 5, 2011 at 10:00 am

So my follow up question is what is the status today? Are there claims that Israeli doctors are diagnosing brain death in a way that doesn't follow the CR guidelines? And if that is so, (a) in what way are they not following the guidelines, and (b) how prevelant are these cases?

- Hirhurim on October 5, 2011 at 10:03 am

Joseph: I'm not aware of any study on this.

Abba: No, the book does not distinguish between populations.

Dr. Stadlan: Yes, your challenge to every single posek ö none of whom agree with you ö has been noted before on this blog.

- Noam stadlan on October 5, 2011 at 10:10 am

Sorry for the iPhone autocorrect. Those who reject neurological criteria and want to use circulatory criteria for determining death have to define their terms with halachic precision, something they have thus far failed to do

- abba's rantings on October 5, 2011 at 10:13 am

GIL:

öthe book does not distinguish between populations.ö

so then what is the justification for this statement: ööThe extreme respect for the deceased, including quick and complete burial, permeates Jewish culture even among the otherwise non-observant majority. This ingrained cultural trend, more than any rabbinic ruling, causes the low donation rateö

- Hirhurim on October 5, 2011 at 10:16 am

Because the author claims that the concern in the 1960s-1980s was for the entire Israeli culture. I don't think he has statistics to back it up but possibly some quotes showing what the concerns were.

- Joseph Kaplan on October 5, 2011 at 10:18 am

Joseph: I'm not aware of any study on this.

If that's the case, then your lead "According to the Israeli Chief Rabbinate, which famously ruled in favor of brain stem death criteria in 1986, most organ donations from a brain stem dead patient are contrary to Jewish law" means that they are "contrary to Jewish law" because the "condition" requiring "a representative of the Rabbinate be part of the independent team to declare brain stem death" is not being followed, and not because Israeli doctors don't follow the rest of the guidelines about which, you say, you are "not aware of any study."

Dr. Stadlan: Yes, your challenge to every single posek - none of whom agree with you - has been noted before on this blog.

The question that I have is whether the poskim, who you say do not agree with Dr. Stadlan, have specifically responded to the issues raised in Dr. Stadlan's challenges which, to me as a layman, seemed to present serious issues?

- Hirhurim on October 5, 2011 at 10:29 am

If that's the case, then your lead [...] means that they are "contrary to Jewish law" because the "condition" requiring "a representative of the Rabbinate be part of the independent team to declare brain stem death" is not being followed

That was absolutely my intention.

The question that I have is whether the poskim, who you say do not agree with Dr. Stadlan, have specifically responded to the issues raised in Dr. Stadlan's challenges which, to me as a layman, seemed to present serious issues?

I don't know. But from the little I have read of the vast academic literature on the subject, it's all been discussed at length with respected voices on various sides. Dr. Stadlan's chiddush seems to me, again given my limited exposure to the literature, his introduction of one view among ethicists into the halakhic discussion.

- Charlie Hall on October 5, 2011 at 10:34 am

R. Halperin related to me that there were times when he agreed with the medical diagnosis of brain-death, but also times when he did not.

New York requires two independent neurological evaluations to declare brain death. A recent study of 1311 such cases found that the number of times the second examination differed in its conclusion from the first was zero.

<http://www.neurology.org/content/76/2/119.abstract?sid=36a92cc9-1d35-4ca2-be1e-b26aeae1ff41>

- [Naftali Moses](#) on October 5, 2011 at 11:09 am

Regarding different Israeli populations and organ donation: I will endeavor to check if Israel Transplant, the agency responsible for organ donation 1996, has a record of such things. If they do, my guess is that it is almost certainly only since they began their work. Before that, each hospital took care of their own patients with some amount of cooperation but no centralization.

However, it is telling that 1-different doctors involved in the transplant effort have not felt that there is a great divide between the religious and non-religious - perhaps with the exception of the Haredi community; 2- a large Israeli PR effort aimed at donors netted mostly gentiles. Is this a mathematical proof? Of course not. Evidence? Certainly.

Re: Dr. Stadlan - I believe his query (which I also recall from his response to the RCA issue which I read a while back) reveals one of the points that I try to make in my historical work, that there is an underlying philosophical question whether "death/brain-death" itself is indeed a biological fact or a social construct which utilizes some biology. Historically, many Israeli (and other doctors) moved from one to the other, depending upon how transplantation was impacted by such a presentation. I believe that there is still confusion over the philosophical issue and over the role of halakhah regarding its own, what I will call, "competence" in finding an exact "moment" differentiating between life and death or whether this is simply a task beyond both science and halakhah.

This is fleshed out in the last chapter of my book (hint, hint, plug, plug).

NM

- shachar haamim on October 5, 2011 at 11:21 am

Dr. Moses ó 2 points:

1) you speak of an upswing in donations. I think these statistics are skewed by actual appearance of potential donor situations and availability of potential donors. i.e. if there are no viable patients who need a transplant and/or lack of potential donors (from a medical perspective, not a willingness perspective) then donations for that period measured would be zero. this wouldn't indicate a downturn in donations. I think you need to tell us more about trends in willingness to donate ó i.e. increase in registered living wills and/or organ donor cards

2) in light of the first comment do you have any preliminary statistics for 2011 which is the last year that Israelis can sign up for Edi cards and immediately move to the priority list. those who sign up after 2011 will have to wait 3 years to get on the priority list. So it would be interesting to know if this has had an effect on willingness to donate ó which again I think is the truer measure of "increase" donations.

I'd rather have a situation whereby 1,000 people were willing to donate but there were only 5 donations b/c of blood type mismatches, etc. than a situation of 100 people willing to donate but there were 10 donations because everything was "perfectly" aligned for that measured period. The former situation is still better for the overall system.

As we are again on this topic I must state ó as I have done in the past ó that it is immoral and evil to be willing to accept transplanted organs and not be willing to donate. I don't believe that anyone who supports such a view can be considered part of klal yisrael, let alone be considered a posek.

- Hirhurim on October 5, 2011 at 11:27 am

As we are again on this topic I must state – as I have done in the past – that it is immoral and evil to be willing to accept transplanted organs and not be willing to donate.

I disagree and consider it evil and immoral to try to convince dying people to turn down an organ donation. If you think I'm not part of Klal Yisrael, that's fine and dandy.

- Rafael Araujo on October 5, 2011 at 11:42 am

Okay, Reb Gil.

See you at church services this Sunday :)

- Charlie Hall on October 5, 2011 at 11:42 am

I disagree and consider it evil and immoral to try to convince dying people to turn down an organ donation.

By any death standard other than brain death, a heart transplant involves murdering the donor.

- Hirhurim on October 5, 2011 at 11:44 am

I'm not debating this again. Please see prior comments sections for the discussions there.

- [Naftali Moses](#) on October 5, 2011 at 11:47 am

Shachar A-

I agree with your point about measuring donor willingness. I believe that the "upswing" was thus measured ó but I'd have to check.

I don't know what effect the new "online cutting" law will indeed have ó but I think that it is morally difficult on some levels and undoes what many medical experts have argued for for over a generation, ie that only true medical need should be considered in deciding who gets what.

I feel that statements like yours about willingness to donate/receive are detrimental to the entire debate (but often reflective of its unfortunate tenor) and I believe are especially not fitting days before Yom Kippur. Would you have IDF soldiers only guard homes of those willing to serve themselves or all of the country? The question of social solidarity is part of the equation in organ donation and, I think, should not be shunted aside.

- Charlie Hall on October 5, 2011 at 11:49 am

I'm not debating this again.

Rogil, you were the one who posted an essay on brain death on your site!

- Hirhurim on October 5, 2011 at 11:51 am

I did not post an essay on the ethics of organ receipt in circumstances the recipient would not donate, although that does arise in the recent post on the RJJ Journal.

I sometimes wonder whether that issue is used by some (not you!) as a diversionary tactic to avoid discussing the substantive topic of brain death itself.

- Noam stadlan on October 5, 2011 at 12:41 pm

With all due respect this is not one view of ethicists. It is a simple issue of logic. The definition of death has to be the same for all situations where a life and death status of human tissue needs to be decided. I think we all agree that not all functioning tissue is a human being (a kidney from Moshe transplanted into Shimon does not mean that Moshe is still alive.). If you are going to say that Moshe is dead because circulation has irreversibly ceased in his body, you have to define, with precision, what the terms body, circulation, and irreversible cessation actually mean. My position is that it is impossible to do so, and still get results in all cases that are consistent with currently accepted halachic conclusions regarding all these situations. I understand these eminent poskim don't agree with me, but none have proven me wrong. Why don't you ask your poskim to define in precise halachic terms exactly what they mean? Human body, circulation, cessation, irreversible cessation. I don't think it is asking too much.

- J. on October 5, 2011 at 12:48 pm

Dr. Stadlan's your last point is where you err. As we witnessed with the Kosher Switch debacle, poskim often sign letters encouraging projects that they really consider to be ch'ilul shabbos (or at least not muttar lechatchila's they forgot to clarify this) because they well they forgot why. Since when does logical consistency have anything to do with how contemporary halacha works? Poskim don't even have to write teshuvos nowadays's Rav Elyashiv has been paskening through his gabbaim for decades.

- Hirhurim on October 5, 2011 at 12:51 pm

Dr. Stadlan: Thank you for repeating your view.

J: R. Elyashiv has been writing teshuvos for longer than my parents have been alive. He has also been answering questions verbally. Do you know of any posek who answers exclusively in writing and never verbally?

- J. on October 5, 2011 at 1:00 pm

Gil's I would ask if you know of any poskim who answers exclusively verbally and never in writing (a chasima on a kol korei doesn't count), but Rav Elyashiv is not the only example.

Do you really think it's a positive development that the most important halachic decisions are made in a way that is completely impossible to challenge or even comprehend?

Do you know what Rav Elyashiv's opinion on, say, reshus harabbim in large cities is? Do you know how he deals with the opinion of various poskim from R. Moshe Feinstein to the Beis Efraim. I don't, and nor does anyone else. He's written one vague letter on the issue and there are conflicting oral reports. Is this really the best we can do?

- Hirhurim on October 5, 2011 at 1:07 pm

J: R. Elyashiv is 101 years old! He's allowed to slow down. But in his prime he wrote many, many teshuvos and signed others written by members of his beis din. I just recently went through his exchange of letters with R. Shaul Yisraeli (in Mishpetei Shaul) about whether to force a divorce in a case of bigamy's all in writing and starting with a teshuvah he wrote. I don't know at what age he stopped writing's 85, 90, 95's but he has that right.

- J. on October 5, 2011 at 1:14 pm

If he's too old to write teshuvos, why should his opinions be taken seriously? It's perfectly clear that all sorts of interested parties are taking advantage of his fragility to push various agendas's neither I or you know if he is still capable of fully analyzing the various issues that are

involved in deciding complicated shailos, and there's good reason to think that he wouldn't be aware himself. Given the fact that it is in his mind's interests to keep the system they have going, the issues here should be obvious.

- Hirhurim on October 5, 2011 at 1:19 pm

J: The people whom I trust who have spoken to him in the past few years say he has maintained complete control of his mental abilities. He's just old and frail.

But despite that, I don't follow his rulings and never have. I only really care about what he has to say in the way that I care about what any talmid chacham says.

Is he being manipulated? I think so but that is more an issue of handlers than what he does or doesn't write.

- Rafael Araujo on October 5, 2011 at 1:24 pm

J. ó I am sorry but you don't know what you are talking about. There are extensive teshuvos from Rav Elyashiv, and not just what you dismissively call kol korehs.

- Rafael Araujo on October 5, 2011 at 1:26 pm

I guess we should have a mandatory retirement age for poskim?

- J. on October 5, 2011 at 1:29 pm

But the handlers often have a very important role in how the shaila is presented. All we have on the recent anisakis issue is a signature on a piece of paper. When I asked a respected Rav involved in kashrus why he wasn't interested in this opinion, he informed me that Rav Elyashiv's signature on a letter is meaningless ó is this really the ideal situation for halacha to be in?

Rav Elyashiv has the right to do whatever he wants, but the frum community has a right to expect a leader who is fully on top of the situation. Imagine if Rav Elyashiv had communicated the reasons for his opinion effectively ó at least we could have a discussion about it. Now, every single major halachic issue automatically degenerates into a -he said, she said- farce. It doesn't have to be like this.

And for all you don't take into account his opinions more than any other talmid chacham, the fact is that what he says will shape Judaism for decades to come. I don't follow the R. Yoel Teitelbaum but I still can't see pictures of two-year old girls in my frum local newspaper due to him.

- Hirhurim on October 5, 2011 at 1:34 pm

But the handlers often have a very important role in how the shaila is presented.

That's why I agreed with you that the handlers are a problem.

Rav Elyashiv has the right to do whatever he wants, but the frum community has a right to expect a leader who is fully on top of the situation.

Exactly. See tonight's post about leadership.

- Noam stadlan on October 5, 2011 at 1:36 pm

R. Gil, we delve into minutiae of detail in so many halachic issues. Does it not strike you as odd that in a matter literally of life and death, that the terms of a definition are not precisely defined? What exactly is a human body? Does it need a head? A heart? What is circulation, water flowing? Two red blood cells travelling around in a circle? Is circulation only halachic circulation if it is adequate to sustain the function of an organ? why or why not? If a body has no circulation for twenty minutes is it dead? If a circulation machine is attached after those twenty minutes is the body now alive? Does it matter if the brain is still capable of functioning even after those twenty minutes? Shouldn't halachic definitions of life and death be able to address these issues?

Ignoring the questions don't make the questions go away, it just makes people wonder why they are being ignored.

By the way, these questions were raised and addressed by Rav Azriel Rosenfeld back in the late 60s and 70s. He came to the same conclusion that I am writing about.

- J. on October 5, 2011 at 1:39 pm

Rafael ó find me a few that were written in the last ten years. I am not claiming that the man has never put pen to paper, I am just saying that his opinions on many subjects are bandied about when people have absolutely no idea in what context those opinions are held or even why they are held.

Let us say Rav Elyashiv holds that an eruv in Toronto is kosher ó what does that say about an eruv in London? Who knows? Do you know how he learns mefulash? No idea? Is shishim ribo a din in a city or a street or a street that services shishim ribo? Couldn't tell you. There have been plenty of fights about this issue ó imagine if the poskim we looked to for guidance were ones that were actually still prepared to write things down.

And I don't quite get the problem some people have with poskim retiring Rav Soloveitchik did it. Where does this magical idea that once someone is a talmid chacham their mind never degenerates until they ascend to heaven in a carriage come from? It's just stupid, and it causes real damage. Just look at every chassidish yerusha fight.

- [Naftali Moses](#) on October 5, 2011 at 1:54 pm

Dr. S-

1-Could you give us the R. AR source?

2-Logically, even if brain-death (described however you'd like stem, full, upper) by allows you to neatly answer the questions you posed, that makes it convenient and coherent, not correct. There is a difference, although incoherence is not something that one strives for and is usually a sign of trouble.

- Steve Brizel on October 5, 2011 at 2:26 pm

Just curious-is there any discussion in this fascinating book as to whether the halachic discussions re brain death preceded or were a reaction to the Harvard criteria?

Perhaps, RSZA and other Poskim had a distrust of the medical and health care establishments in Israel because of the well known and infamous willingness and almost zeal of the hospitals and physicians to perform autopsies when the same would not have been permitted under Halacha.

- MJ on October 5, 2011 at 2:28 pm

Dr. Stadlan,

Don't you think that you are asking something from the halakhic system that it cannot provide. "What is a human body?" or "what is human life" is not an abstraction supported by the practical orientation of (at least pre-brisker) halakhah. I understand your critique of those like R. Bleich and R. Schachter who try to derive a definition, but for those who do not, we can appreciate that a legal system can be more concerned with precedent than with conceptual clarity?

The halakhic definition of death, whatever it is, needs only to supervene on certain biological facts, it does not have to make sense of them beyond the immediate questions posed. In other words, you offer a number of reductio arguments that are irrelevant because the web of coherence necessary to support many of the halakhic arguments is smaller than you seem to realize.

I very much appreciate what you are trying to do ó and certainly for those halakhists who delve into abstracted definitions you have a very legitimate critique, but it only goes so far.

- Shalom Spira on October 5, 2011 at 3:09 pm

RMJ,

Yeshasher kochakha. But at the same time, I note that your response contradicts what R. Bleich writes in the introduction to his Contemporary Halakhic Problems V. R. Bleich's thesis there is that the Brisker chakirah methodology has always been part of the Oral Torah; Brisk adorned it with fancy terminology, but basically all the lomdut originates from Har Sinai. Therefore, in my opinion, R. Bleich would agree with Dr. Stadlan that the conceptual questions must be addressed.

On the matter of receiving organs: I am delighted to see that I was mekhaven to the now publicized chapter of R. Naftali Moses (in my Dec. 7, 2010, 5:30 p.m. comment on R. David Shabtai's post) that RMF addresses the Jew vs. Noahide distinction in his analysis of the episode of Rabbi Chaninah ben Teradyon (Avodah Zarah 18a) in IM YD 2:174. R. Naftali Moses implies that this (together with the language of RMF's letter to Assemblyman Miller) explains the basis for RSZA's subsequently publicized ruling that a Jew in the Diaspora can receive but not take. But in my opinion this is the source of the very challenge to RSZA: since RMF is *in doubt* whether the laws of homicide are different in the Noahide Code than in Jewish Law (unlike RSZA who was certain of this distinction), it should emerge that we now have a dispute between RMF vs. RSZA whether we can say for certain that the Noahide Code laws of homicide are different. Ergo, one would have to be passive and refuse to accept an organ, since sfek geram retzichah is also yehareg ve'al yaavor.

RoNaftali Moses also cogently points out that Israeli soldiers protect even citizens who refuse to serve in the army. Yeoyasher kocho for raising this valuable argument. But I would respectfully suggest o ketalmid haoyoshev bakarka vedan lifnei Rabbo o a distinction. No one holds that it is a transgression to serve in the Israeli army. Just many would like to be exempted from the army, as per the concept of the Shevet Levi of which the Rambam speaks at the end of Hilkhoh Shemitah Veoyovel. Also, Diaspora Jews (like me) generally don't serve in the army altogether; it is assumed that Diaspora Jews contribute to the State of Israel in other ways (e.g., tzedakah, political advocacy). And so why not allow even some Israeli Jews to be exempted from the army? Not everyone needs to serve. And so it is ethically legitimate for those who serve in the army to protect those who refuse to serve. With organs, however, RSZA himself said that in Eretz Yisrael it is forbidden to receive an organ, since (if one believes that a brain dead patient is doubtfully alive, contra [what I understand to be] RMF who believed the patient is dead) it is sfek geram retzichah. It is only in the Diaspora where o due to his creative understanding of the Noahide Code o RSZA felt one could receive.

- Shalom Spira on October 5, 2011 at 3:13 pm

Sorry I meant oreceive but not giveo I guess I inadvertently typed a language of sagi nahorí

- noam stadlan on October 5, 2011 at 3:18 pm

R. Moses- You are theoretically correct. However, I suggest that showing incoherence with an established position is a time honored talmudic device for showing an opinion to be in error. More fundamentally, the incoherence stems from the continued use of now incorrect assumptions. In previous times, it was not necessary to define the term -bodyo because the entire body failed at essentially the same time. It wasn't necessary to define circulation because only the heart could provide circulation, and it itself was dependent on the circulation. therefore circulation had to mean fluid flow adequate to support the function of tissue. It wasn't necessary to define irreversible, because once the heart stopped for a while, there was no way to restart or reestablish circulation. My point is that current halachic definitions of death based on the cessation of circulation are based on incorrect assumptions. It is necessary to go back and ask a most fundamental question: why is it that a person without circulation for a while was considered dead? Was it exactly the lack of circulation? was it an effect of the lack of circulation? What part of the body had to be effected by the lack of circulation? these issues have not been addressed.

MJ- Certainly precedent is a fine basis for finding concepts(casuistic method). In fact, if you look at all the precedents for deciding between what we consider human life, and when human tissue is not considered human life(and look at conjoined twins, transplants, amputations, substituting machines for organs etc.) you will find that practical halacha equates having a functioning brain with human life. So if we are going to find the rule by looking at precedent, human life is present when there is a brain with the potential to function. The corollary is that human life is gone when there is no potential for neurological function(however you want to define it). :-)

We cant objectively measure the presence of a soul, the presence of self awareness, or other things that can be equated with life. However, in order to make halachic determinations, there needs to be a basis for ordering and assessing facts. While we may not be able to determine with certainty, we do need to draw a line somewhere between what is life and death. As we learn more or become more sophisticated that line may not wind up being THE LINE, but as a matter of practical halacha the line needs to be drawn as best as we can using the best knowledge and understanding that we have at hand.

references: Rosenfeld, Azriel: The heart, the head and Halacha. New York State Journal of Medicine 70 (1970), p. 2615-2619.
this is a pretty obscure journal. I can send you a pdf of the article if you wish. email me at noamstadlan at gmail dot com

there are also articles by him in Tradition, oReligion and the Roboto and others. I dont have all the references in front of me but they are easily found in the Tradition archives.

- Curious on October 5, 2011 at 3:32 pm

Rosenfeld, Azriel: The heart, the head and Halacha. New York State Journal of Medicine 70 (1970), p. 2615-2619

<http://www.hods.org/pdf/head%20heart%20halacha.pdf>

- [Naftali Moses](#) on October 5, 2011 at 3:52 pm

Mr. Brizel-there was already halakhic discussion before the Harvard crit.

- Steve Brizel on October 5, 2011 at 4:01 pm

Dr. Moses-thanks for your comment re the politics and controversy in Israel re autopsies,etc, which I missed prior to posting my comment relative to the same.

- Steve Brizel on October 5, 2011 at 4:04 pm

Dr. Moses-were there any Piskei Halacha from any recognized Talmidei Chachamim in support of BD such as RSZA ,RMF or R Waldenberg Zicronam Livracha prior to the adoption of the Harvard criteria, in addition to R B Rabinowitz?

- Hirhurim on October 5, 2011 at 4:09 pm

Come on, Steve, he wrote a book on it. Don't make him give you all the information for free.

- MJ on October 5, 2011 at 4:24 pm

Steve, I think you are asking whether there are those who supported harvesting organs from BD donors at the time but you are getting the whole timeline wrong. When the Harvard committee was formed the issue was almost entirely about withdrawal of care and vital organ transplants were very experimental. And as far as that goes, even RSZA (unless I am recalling things quite badly) supports withdrawing care from BD patients as a permitted removal of an impediment to death and not an active hastening of death.

- Dan on October 5, 2011 at 4:41 pm

As we are again on this topic I must state as I have done in the past that it is immoral and evil to be willing to accept transplanted organs and not be willing to donate.

I agree with Gil, I think it is the height of evil to try to convince someone that they ought to die rather than accept an organ donation if you yourself think that it is permissible to accept an organ donation!

I thought we want to save lives!

- daat y on October 5, 2011 at 4:49 pm

There was an article by Dr.Koenigsberg and Rav Gedaliah Rabinowitz in HaDarom around 1970 stating that brain and brain stem death was death.

- Hirhurim on October 5, 2011 at 4:53 pm

daat y: And a sharp rebuttal by R. Yaakov (Gerald) Blidstein in a subsequent issue of HaDarom.

- daat y on October 5, 2011 at 4:55 pm

R.Gil though you have explained in the comments your beginning of the article I think you need to make the reason clearer at the outset, why the ruling of the Chief Rabbinate was not followed and therefore contrary to their ruling.

- daat y on October 5, 2011 at 4:57 pm

To your comment of 4:53 that is milchamto shel Torah.

- Shalom Spira on October 5, 2011 at 5:00 pm

R'Dan,
Ye'ayasher kochakha, and well said. But the countervailing argument would be maybe all transplant surgeons should be retrained for other medical specialties, and no one should receive any organs, since we are unable to adjudicate between RMF vs. RSZA both on the dispute of whether the brain dead patient is alive, as well as on the dispute as to whether homicide in the Noahide Code is different than in Jewish Law. I note that RHS has himself vacillated on the latter question, as pointed out on the HODS website. Viz. at the 1988 symposium on this topic, RHS was inclined to suggest that one cannot receive (http://www.yutorah.org/lectures/lecture.cfm/711848/Rabbi_Moshe_D_Tendler/Definition_of_Death_II), whereas at the 2006 symposium, RHS was inclined to suggest one can receive (http://www.yutorah.org/lectures/lecture.cfm/716089/Rabbi_Hershel_Schachter/Time_of_Death:_Cardiac_Death_in_Jewish_Law)
In other words, definitely we want to save lives (precisely as you say) as per the mishnah in Yoma 83a, but that might also (debatably) includes saving the life of the brain dead patient (if he is indeed alive). So it may (arguably) be better for me to passively die rather than actively save my life by my asking the hospital to take an organ from someone else.

- MJ on October 5, 2011 at 5:04 pm

if you look at all the precedents for deciding between what we consider human life, and when human tissue is not considered human life (and look at conjoined twins, transplants, amputations, substituting machines for organs etc.) you will find that practical halacha equates having a functioning brain with human life.

If you start with the assumption that there is a theory of what constitutes human biological life then you will surely find it. But if you look at all the talmudic sources you find that if there is a definition of a human being it is an ensouled body \acute{o} which is obviously irrelevant to BD as it is a metaphysical definition. What you would need is a concept of human biological life \acute{o} which you find no where in the talmud. What you do find is criteria to determine when someone has already died, which is sufficient for a casuistic method that takes you to cases which are relevantly similar (and here there is lots of room to find precedent for an acceptance of BD \acute{o} of this I have no doubt) but it is insufficient to figure out what the Tannaim and Ammoraim thought defined human life in biological terms. In fact, I strongly doubt they ever did formulate such a definition as it was never necessary.

Honestly, in the absence of marginal cases why would one ever need such a definition? I don't need a definition to figure out that the person sitting next to me on the bus is alive. The idea that I should be able to derive such a definition from these sources is misguided.

As far as practical contemporary halakha goes, once again you are looking for a biological definition when what is clearly operative is an understanding of a person in holistic terms as a functioning organism \acute{o} not a functioning brain or any other sub-personal property. From a medical perspective you can see a BD person and say that this is no longer a functional organism \acute{o} but that's only because you know that as a contingent matter a brain is the organ that coordinates the behaviors that we intuitively read as "living." That is not a connection that halakha must per force recognize.

[The functioning brain as halakhic criteria also leads to problems because it quickly leads to the conclusion that loss of higher brain function should be determinative.]

- noam stadlan on October 5, 2011 at 5:45 pm

My point regarding the results of a casuistic analysis pertained to current decisions regarding the status of organs or lack of them. Since there is no objective way to know when the soul has left the body, all determinations of death, including circulation, are determination not of the time of death, but the first point in time where there is certainty that death has occurred. The circulation definition of death also fails to account for when the soul has left the body, it is no better than neurological determinations in that regard.

How do you know that moshe is dead when his kidney is functioning inside reuven? or if moshe's heart liver, kidney lung and some intestine has been transplanted into reuven? how do you know that that hybrid isn't actually moshe, and the reuven is dead? in an era when we can move tissue around, and machines can provide circulation, it is a practical necessity to decide what tissue is necessary for a person to be present, and what isn't.

I also would disagree that neurological criteria lead automatically to higher brain criteria. that has not occurred in 40 plus years and there is plenty of basis for that not to happen.

- Joseph Kaplan on October 5, 2011 at 5:50 pm

"But the countervailing argument would be maybe all transplant surgeons should be retrained for other medical specialties, and no one should receive any organs, since we are unable to adjudicate between RMF vs. RSZA \acute{o} both on the dispute of whether the brain dead patient is alive, as well as on the dispute as to whether homicide in the Noahide Code is different than in Jewish Law."

I wonder if you personally know any people who are alive today with someone else's heart or kidney or lung or liver. Would you, could you say to their face that all transplant surgeons should be retrained? That the person who saved their life \acute{o} who, together with God, gave them more years to enjoy their spouse and children and grandchildren; more years to learn Torah and do mitzvot \acute{o} that such life givers should get out of the business, that all organs be stamped "one use only," so we could bury more people in their prime, so there could be more orphans and widows.

I would therefore suggest that perhaps you should think through some of your more broad comments before committing them to writing. Brain death and transplant are complex life and death (literally, which I use literally in this case) issues. Difficult decisions must be made; people of good faith struggle with balancing competing values. But your suggestion, as impractical, otherworldly and insensitive as it is, adds very little, if anything, to this discussion. I know your halachic knowledge is both broad and deep, and appreciate some of the material that you bring to our attention. But adding a dose of common sense into that sea of knowledge would make your submissions ones that could be taken more seriously. Advocating retraining transplant surgeons and stopping all organ donation would mean condemning to death thousands, if not tens of thousands, of people to death. Is that what you're suggesting? Should I pass it along to my good friend in whom someone else's heart has been beating for five years and, with the help of God (and her doctors) will keep beating for many years to come.

- Steve Brizel on October 5, 2011 at 6:10 pm

R Gil-my inquiry was simple-which came first-the Harvard criteria or serious discussion by recognized Poskim of BD. In other words-did the cart precede the horse or vice versa? MJ's recent response was helpful-but I think that a serious study of how halacha reacts to changes in halacha deserves an answer on what is a very important issue-namely, did changes in medicine dictate change in Halacha or did Poskim change their definitions either prior to or while the medical community was assessing the issue.

- MJ on October 5, 2011 at 6:30 pm

Since there is no objective way to know when the soul has left the body, all determinations of death, including circulation, are determination not of the time of death, but the first point in time where there is certainty that death has occurred.

That's essentially what I said.

The circulation definition of death also fails to account for when the soul has left the body, it is no better than neurological determinations in that regard.

Of course. The question is only if one can link the criteria in the Talmud to either of them. I think you can, but not on the basis of a concept of a functioning brain. Rather, a functioning brain stem is merely the underlying cause of lack of spontaneous respiration. It does not in itself now become part of a definition of human life.

How do you know that moshe is dead when his kidney is functioning inside reuven?

Because we buried him. Seriously, I'm not being cute. I don't think the question arises in any meaningful sense from a halakhic perspective because, once again, it deals not in definitions of living biological organisms, but criteria for determining that death has already occurred in a human being – as you yourself just said.

if moshe's heart liver, kidney lung and some intestine has been transplanted into reuven? how do you know that that hybrid isn't actually moshe, and the reuven is dead?

The question only arises if you artificially put yourself into a state of doubt. But he looks like reuven, talks like reuven, etc. I never had any reason to doubt that he was reuven. I therefore need no theory to tell my why he is reuven and not moshe.

in an era when we can move tissue around, and machines can provide circulation, it is a practical necessity to decide what tissue is necessary for a person to be present, and what isn't.

No you don't. After the transplant does reuven's wife rush in and say, Oh doctor, but is it *really* him?

Do you have a practical necessity to explain by which criteria you judge that you are the same person you were when you were three years old, despite the fact that the vast majority of the cells in 3 year old NS no longer exist or are very different from those in present day NS?

I also would disagree that neurological criteria lead automatically to higher brain criteria. that has not occurred in 40 plus years and there is plenty of basis for that not to happen.

I did not say that neurological criteria used today lead to higher brain criteria. I said that your "functioning brain" definition leads to higher brain criteria because a human body without a functioning brain is dead. That is, unless you limit "functioning brain" to brain stem. But then by that definition (a body with a functioning brain stem is a living person) then if I take shimon's brain stem and transplant it into reuven, then who is still alive? It must be shimon(the point is not whether its physically possible it's the significance that you attribute to the organ in question given your conceptual orientation).

- MJ on October 5, 2011 at 6:42 pm

Steve, as soon as the ventilator came into wide use the potential problem of having them all taken up by brain dead patients started generating discussion. If the halakhic question came up in response to this development, why is that having the cart before the horse. Is halakha supposed to generate speculative scenarios to pasken about? No, it responds to practical questions. When the practical question was can we take such a person off a ventilator, that is what the halakhists explored. When the question was can we cut out his liver and put it into someone else, that was discussed. The whole idea that halakha needed to provide a definition of death, which is not in itself a practical halakhic question, to my knowledge, only arose after doctors and ethicists began to formulate the question in those terms.

- IH on October 5, 2011 at 7:52 pm

õR. Elyashiv is 101 years old!õ

http://www.cleveland.com/healthfit/index.ssf/2011/06/headline_here.html

Given his piskei din, discussed previously, it was interesting to read of the need to import an American Catholic surgeon.

- IH on October 5, 2011 at 7:54 pm

On Israeli Trends:

“The National Transplant and Organ Donations Center in Israel said Sunday that the first half of 2011 recorded a 54% rise in organ donations, and set a new record of organ transplants. [...] “Despite the increase in organ donations, there are still over 1,000 patients on the NTC waiting lists.”

<http://www.ynetnews.com/articles/0,7340,L-4080956,00.html>

- noam stadlan on October 5, 2011 at 8:52 pm

If you say that death is the cessation of circulation, how can you say that Moshe is dead if his kidney still is receiving circulation? Because the kidney doesn't look like Moshe? how are you deciding that it is or isn't Moshe? some sort of thumb in the air estimate? visual cues? voice? form? DNA? The fact that it didn't occur to you that it wasn't Moshe? What if part/most of his body is burnt? he can't talk? Is that a halachically rigorous way to decide matters of life, death, aguna, yichud, marriage, inheritance etc?

As a practical matter, consider face transplants. The wife of Moshe, the face donor rushes in and says- it looks exactly like Moshe. The wife of Reuven says the rest of him looks like Reuven.

I think the reality is that you are making an assumption that you don't want to state- the identity goes with the brain. If you want proof, just think about removing parts and organs from a person, replacing them with machines when available. One day the arms go, then next the kidneys etc. at some point in time everything is gone and with absolutely no tissue, the person has to be dead. please tell me which organ or part removal triggered your declaration of death. was he alive when just his ear was attached to the pump? or did you decide he looked dead when his brain ceased to function?

a transplanted brainstem will not function- so your question is moot. There is a reasonable likelihood that it will never be technically achievable. Therefore I don't think it has any bearing on the discussion. If it does become possible, it is also likely that our understanding will have advanced sufficiently to be able to address the issue more cogently. I understand your point, but I don't think it has any bearing. all the examples I have brought are technically achievable and/or have been done.

Regarding what is or isn't in the Talmud. The science in the talmud is unaware of the function of the brain in the way that we know it. Therefore it is anachronistic to look for specific mention of brain death. In addition we actually don't act the way the talmud instructs us, even when there are specific instructions. If we come upon a body on Shabbat, we check for pulse and/or respiration (depending on your reading), and if we don't find any we are not mechallel shabbat for that person. Today we dig them out, do CPR, shock them with electricity, and do all sorts of other melacha d'Orieta. The lesson- we took the example given and had to look deeper for the underlying concept, rather than just the details. So, when we can restart circulation with CPR, the concept of cessation of circulation transformed into 'irreversible cessation of circulation'. However, now we can always provide circulation. even if the person has been without circulation for 5 minutes, 30 minutes, or two days, a machine can provide circulation. So now you can't actually depend on 'irreversible loss of circulation'. You have to go back and try to figure out as best as possible, the concepts that underly the fact pattern the gemara told you. That will lead you inexorably to cessation of neurological function.

- Noam stadlan on October 5, 2011 at 10:28 pm

One final thought on the topic. In the case of conjoined twins, there are two lives present halachically if there is independent neurological function in each brain. If you were just looking at them, and coming to some sort of gestalt conclusion, would it be the same conclusion? Or, would two heads without independent function satisfy the gestalt? The point I am trying to make is that the gestalt either winds up not according with Halacha, or is just a way of using neurological criteria without admitting it, besides being a pretty ahalachic and imprecise way of going about it

- Glatt some questions on October 5, 2011 at 11:25 pm

Once again Dr. Noam Stadlan brilliantly articulates why brain death must be considered death from a medical standpoint, and why rabbis should accept this as the definition of halachic death if looked at rationally and logically. In the many discussions that have appeared on brain death in this blog, no one has given an adequate response that addresses his assertion that the identity of a person is directly related to brain function.

- [Naftali Moses](#) on October 6, 2011 at 2:54 am

I do not think that there is an automatic equivalence between personal identity and being alive. If one collapses the difference, then I agree with MJ's implication that one is positioned to logically use higher brain function as the dividing line between life and death. Why this didn't in fact happen is an interesting question for medical historians to examine.

I'm not sure about some of Dr. Stadlan's points about the halakhah from the Talmud regarding pikuakh nefesh. RSZA's first tshuvah on the subject (a letter written to R. Avraham Avraham and found in Minhag Shlomo 86:5) is a fascinating exploration of understanding the mutability of talmudic understanding. (Again, if you read my book you'll be treated to all this and more!)

Dr. Stadlan's conjoined twins is an interesting case. Are there tshuvot about this? How much of two brains are needed to conclude that there are 2 people here? Would two brain-stems be enough? What if there was one brain-stem and two upper-brains? What would we be facing in the case say, of such twins who share a head, yet have an excess of limbs or two bodies. Is this one person with a big wart attached to him? Ploni ve'eyerakho (and not his mother's). Is there a clear way to decide (assuming bodily equivalence) which is him and which is not?

I think that his arguments with those who are looking for some other essentialist way of defining death point to the general problem of doing just that—using the halakhah in such an essentialist way. My own preference is to move in a different way—the mode of thought that R. Eliyahu (z"l) expressed in his explanation of the CR psaq. However, I believe that part of the problem faced by doctors using his approach is the move from treating the patient to treating his organs (for another's use). This was one of the first issues that early posqim discussed and has gotten swept away by the more essentialist focus on a moment of death.

- MJ on October 6, 2011 at 3:42 am

Dr, Stadlan,

Just as there are reasons why you have an area of specialization, and it would border on malpractice to do specialized work outside of your field, not everyone who is a doctor is also a philosopher or at least familiar with basic metaphysics and epistemology. The result is that you are making assumptions that as a doctor you have every right to make, but that outside of medicine, and in halakhic jurisprudence in particular, one is not required to make, as it does not factor in as a matter of everyday practical knowledge.

What is a person? Let's say that there is something, call it factor P, that makes a human body a person. Whatever it is, it is something that we can recognize in fellow humans very easily. I, and everyone else knows that you are a person just by observing or interacting with you, and I don't arrive at that knowledge through a series of inferential steps.

So let's take a simple person (SP) who knows little of the workings of internal organs and nothing about the brain. When SP meets moshe on the street it matters not that he doesn't know what a brain is, he knows that moshe is a living person, and for all SP knows, factor P is a general property not tied with any specific body part.

Now, as a doctor you have evidence that whatever factor P is, it requires a functioning brain. Great. So whenever you see moshe you also know (inferentially) that moshe has a functioning brain, and you make further inferences based on that knowledge, i.e. that if moshe's brain ceased to function, moshe would die. You also make some further speculative guesses: if it were possible to move moshe's brain into shimon, it would be moshe who survived. That is theoretical, not practical knowledge.

Now let's say that SP is a very competent posek. In what cases of currently possible transplants will his lack of knowledge of what the internal organs do vis a vis factor P cause him to get things wrong and think that moshe survived instead of reuven? None.

Even in the case of the facial transplant (which in any event will not cause the recipient to look like the donor, but for argument's sake let's say it would) if Rabbi SP witnessed the procedure, would he get it wrong? no.

Now how, in all those cases, does he decide that it is reuven? The answer is that it is basic, noninferential practical knowledge. The same knowledge we use thousands of times a day from the moment we wake up when, without examining our kid's brains, we know that they are the same people we put to bed last night.

These are things about which our knowledge is certain, and does not require justification for it is not something we are in doubt about. (If it was, we would run into all sorts of crazy problems—ōrabbi, can I touch my wife? how do I know it's the same woman I married?) Even organ transplants don't shift us into a position of doubt from which we must now infer our way back to certainty, because nothing has occurred that undermines the initial certainty we possessed.

I have two bodies, one is demonstrably moshe, one demonstrably reuven. I am certain that moshe is dead, I am certain that reuven is alive. I would need some theory about where factor P resided to raise questions that in moving moshe's kidney to reuven it is moshe that survived, but as Rabbi SP I don't have any such theory and therefore have no doubts.

So at what point does halakha need to decide that identity (or a mind, or factor P) goes with a certain body part? Thus far it has not had to because no practical cases have actually presented such a doubt— and even the positions that support BD have not done so on the basis of identity, but on the brain stem's functional role in respiration. Your critiques are loaded with assumptions which are scientifically founded,

but that no halakhist needs to make in the course of their practical reasoning. Granted, if halakhah ever does encounter this kind of doubt, a position that accords greater significance to the brain than the heart or circulation will work better, but halakha does not work based on thought experiments and can safely leave those determinations for a time when they are practical questions.

[And as I pointed out before- if you are really talking about identity or the mind, or factor P, then as a doctor you are dealing almost exclusively with the higher brain. As a philosopher I think that a higher brain definition makes sense - but as a matter of halakha it clearly does not, and no halakhist is going to declare an autonomously breathing body dead. So, there is *already* a basic rejection of identity defined as brain function as a halakhic criterion.]

The bottom line is that at present we have at least two coherent systems for thinking about when a person is dead. The medical mind-brain identity theory and the halakhic precedent method based on external criteria that, certainly at present, has no need to reference a theory of identity (I am agnostic to pessimistic on the coherence of the medical somatic integration theory). Problems arise when you combine them, but as I have argued, there is no reason to do so at present.

- Shachar Ha'amim on October 6, 2011 at 5:39 am

Dr. Moses ó You writeö I don't know what effect the new öline cuttingö law will indeed haveóbut I think that it is morally difficult on some levels and undoes what many medical experts have argued for for over a generation, ie that only true medical need should be considered in deciding who gets what.

I feel that statements like yours about willingness to donate/receive are detrimental to the entire debate (but often reflective of its unfortunate tenor) and I believe are especially not fitting days before Yom Kippur. Would you have IDF soldiers only guard homes of those willing to serve themselves or all of the country? The question of social solidarity is part of the equation in organ donation and, I think, should not be shunted aside.ö

By your standard we should do away with all health insurance, and the State should provide every drug available and include all drugs in the health basket ó even experimental and expensive drugs. All patients who need surgery abroad should be provided with it, even if they don't have supplemental or premium insurance policies. Why does the State even have a medical committee comprised of doctors, legislators and medical ethicists in order to determine which drugs and services are included in the health basket ó everything should be included and provided based on first need, first served medical needs? If there is a budget cap and the system runs out of money in say ó November ó well I guess then everyone on hypertension drugs will just need to take it slow like a bear in the winter! What gives them a moral right to prioritize? Or, everyone should be provided with free blood transfusions even if they haven't given blood and MDA's insurance scheme providing access to free transfusions to donors and their families is morally difficult as only true medical need should decide who should get transfusions ó not ability to pay. You see where I'm going with thisí .

Regarding your IDF comment ó there is a universal draft with certain exemptions. If we were to have a universal donor regime with possibility of exempting out then clearly we would have a much better system with more donations and wouldn't need a öline cuttingö donor card law. Naturally those who exempt out because they feel donating is akin to murder would not be able to receive b/c doing so would be mesayea ledvar aveira and assur. Where is the ösocial solidarityö in accepting as legitimate a regime which forbids organ donation as murder and but allows ó and even encourages!! ó receiving them?!?!

Which gets to Gil's point ó if you believe organ donations is murder then in encouraging a dying patient to take an organ donation you encouraging them to participate in the murder of someone else. this is certainly mesayea ledvar aveira. you can daven with all of us on YK ó if I recall the language of the chazzan's opening correctly. But it doesn't change the fact at hand.

I am sorry ó I think that davka before Yom Kippur is the time to point out the fact that it is wrong to encourage a regime that allows one to feel that it is wrong to donate b/c it is murder but it is OK to receive b/c that somehow is not murder. murder is murder ó and as Gil correctly pointed out in his last post, on YK we should be much more concerned about even a perceived willingness to commit sins.

- Shachar Ha'amim on October 6, 2011 at 8:26 am

ö agree with Gil, I think it is the height of evil to try to convince someone that they ought to die rather than accept an organ donation ó if you yourself think that it is permissible to accept an organ donation!ö

I can't think of a legitimate construct that suggests that it is forbidden to donate organs but acceptable to receive them. There are those who have suggested this may be permissible, but such a view should ó and MUST ó be rejected.

OTOH IIRC from previous discussions here on this topic there are indeed those who have ruled that if one is ömachmirö on not donating then one should be ömachmirö on not receiving.

The öwe must save lives argumentö doesn't really hold water b/c no one is suggesting that a BSD patient's organs be harvested for science. There is someone who will die if those organs aren't transplanted b/c the patient (or family) refuse to allow it. I too öthought we want to save livesí ö

- noam stadlan on October 6, 2011 at 8:32 am

Dr. Moses- I have ordered your book and look forward to reading it. Regarding personal identity and death:

To quote Green and Wikler:

To state that an ailing patient, Jones, is still alive, is in fact to make two claims; the second of which is usually taken for granted. One is that the patient is alive. The other is that the patient is (remains) Jones. If we do establish that the patient, even if alive, is not Jones, and if no one else is Jones, then we will have established that Jones does not exist. And this, of course, establishes that Jones is dead.

Rabbi Bleich has an article in Tradition on conjoined twins. For two people to be present requires two independent nervous systems. Which brings me to the refutation of MJ's point. Halacha demands two separate functioning nervous systems for two people to be present. If there are just two heads but a joined nervous system or just one, it is just one person. Therefore, if he is using a gestalt view that one knows if a person is a person, then that gestalt just happens to be a functioning nervous system. Otherwise, the gestalt system will not cohere with Halacha in this particular instance.

I am obviously not a philosopher (as one of my friends who is a philosopher has demonstrated to me in the past). However, philosophy of identity without regard to anatomy and physiology does not provide a systematic solution to the problems posed by modern medical achievements. If you removed someone's head and attached both the head and the body to circulation machines, which part would be the person?

Depending on neurological function does not lead to higher brain criteria. Absence of all neurological function (including the brainstem) is an indication that the person has died. Why absence of neurological function means the person has died is a long discussion with no easy answer, but it does not have to lead to higher brain criteria. In addition, at this point it is very difficult to establish absence of total higher brain function in the presence of a functioning brainstem.

Another reason MJ's approach fails is that there is no way of consistently establishing death. How do you know that a body that you recognize as Moshe is dead? lack of pulse? lack of breathing? During some surgeries there can be 45 minutes without pulse or breathing. They can be woken up and have normal neurological and other functions. If a body is pulseless on the floor for 45 minutes without special medications and hypothermia, there is no chance of return of neurological function, but other functions might return. If Moshe's body were in the morgue, and we attached a circulation machine and a respirator, it would look like Moshe had circulation and respiration. Does that make him alive again? how long does Moshe have to be in the morgue before adding the machines does not bring him back to life? You have to be able to define with precision what about Moshe makes him Moshe.

- [Naftali Moses](#) on October 6, 2011 at 8:43 am

I'm sorry, but I don't understand what the beginning of your rebuttal about the health care basket has to do with the rest of your argument. It seems to be moving in the opposite direction by arguing that yes, scarce resources are scarce and medical decisions about them are made. Your point regarding blood donation does make sense to me, but I would add my voice to the many that make a bright line distinction between the donation of renewable tissue and organs. Asking for a few minutes of time, some discomfort, etc. is arguably different than asking for people to undergo surgery, etc. To make a comparison from another ethical field, it is like the difference between allowing ball players to wear eye-glasses and allowing them to implant bionic limbs. Additionally, blood donation (at least in Israel) actually adds to social solidarity by allowing for the gifting of something to the general community. You can read an interesting account of how this works in Don Seeman's book (I believe based on his doctorate) *One People, One Blood* which focuses on the Ethiopian aliyah and suspicions about AIDS which led to the refusal to accept blood donations from them.

I do not believe (although I might be mistaken) that those who do not donate and lack insurance are less inclined to receive life-saving blood rather they are charged for it.

Now, regarding organ donations, some who argue against the commercialization of transplantation use the same type of social solidarity argument, i.e., that by commodifying them, we lose out on the chance for social solidarity. However, I think (as did Fox and Swazey two of the leading sociologists of transplant who abandoned studying the topic out of a degree of moral disgust) that organ donation has usually been socially fragmenting.

While there is, of course, always a health care differential based on economics, the general ethos of medical care has usually been in the democratic West pointed to a system of medical need in medical priority and not towards social worth as a prioritizing factor. The famous case of Seattle's 1962 Swedish Hospital god committee highlighted the extreme discomfort which many felt around using non-medical need as a prioritizing factor.

The general question of masayah needs to be closely examined to determine its borders. Is the old joke about outrunning your friend while being chased together by a bear an instance of this yet? If RSZA and RMF differentiated between the permission given by the Torah to gentiles and Jews regarding removal from life-support (influencing the possibility of donation), is a similar immorality at play? (Rav Kook

commented about restricting cadaver useage to gentiles that he felt the gentiles would understand the Jews higher standards of kedushat haguf and that those who didn't well it was just another excuse to hate). I'm not sure that the tension is between those who hold that donation is murder, but acceptance is fine. Rather the question is what measure/criteria is being used to mark donor death. The permissibility of dead donor donation is nearly universally accepted. So the argument is between shitot X holds by a, Y by b. This admits of a personal autonomy rather than only medical paternalism in determining death. Historically in Israel it seems that this has been one of the central issues at stake. A number of years ago, in fact, a think-tank for religious secular issues established in the wake of Rabin's murder (Yachad) suggested allowing people to chose which criteria of death they preferred and then to offer them organs in the case of need from that group. For better or worse, this never gained real traction.

So, I don't actually believe that you are on target by charging that organ donation is murder but receiving is fine. That is not the question here. Rather, I believe that we are looking at something more akin to where to place the dividing line T1 or T2. As to your argument that an opt-out system of organ donation would be more equitable especially in easily allowing for the removal of those who opt-out from receiving organs I am uneasy about such a system which essentially transfers bodily ownership from the individual to the state. (As I wrote earlier, I am hoping to write my next book on the question of bodily ownership in Israel). But the IDF example rather than help your point, seems to do the opposite. In the end, the IDF's goal is to protect the entire country's conscientious objectors as well.

Again, in overstating the case as you did, with what seems to be righteous anger at those who disagree with you, I sincerely believe that you only perpetuate the unfortunately volatile tenor of argument and perpetuate ill will, rather than problem solving.

gmar hatimah tovah,
NM

- [Naftali Moses](#) on October 6, 2011 at 8:57 am

Dr. S I am familiar with the G&W article but in the end, they argue against brain-death, don't they? If I recall, they claim that eventually an advanced ICU can replace much of brain-function but I'd look at it again. I'd look at the twin article, too, lekhsheyarkhiv, boh.

Again, I think that by using a non-essentialist argument donation will be simpler on many levels.

- Dan on October 6, 2011 at 9:26 am

Shachar Ha'amim -

You have totally missed my point. I find it OBSCENE that those who argue that brain death is halachic death should then tell people if you're not willing to donate you shouldn't accept organs and you must die, when those speaking think that it is permissible to accept and receive. IOW, they are sacrificing people in order to advance their agenda.

Do you realize that's what you're saying here?

- MJ on October 6, 2011 at 9:54 am

To paraphrase Green and Wickler: to claim that a person has died is to make a physical and metaphysical claim, the latter is typically taken for granted. But note that this is precisely why halakha can claim that the identity criteria tied to a functioning brain are irrelevant it can claim that the metaphysics of identity persist in the body via the soul, and not because one has a mind with a physical realizer. If that is the case then a metaphysical soul which has no causal connection to specific part of the body renders all metaphysical identity talk irrelevant.

I don't see how R. Bleich is relevant to refuting the views of many other poskim. Moreover, I think you mischaracterize this as a conclusion of his. I believe he wrote along the lines that separate CNS was good sign that there were two people, not that absence of two completely distinct CNS was determinative of the halakhah. If there are two heads capable of speech and each speaks independently, evincing the existence of two separate personalities, would we say, halakhically or otherwise, both lekula and lechumra, that they are one person if they shared most of their CNS?

However, philosophy of identity without regard to anatomy and physiology does not provide a systematic solution to the problems posed by modern medical achievements. If you removed someone's head and attached both the head and the body to circulation machines, which part would be the person?

You're right, except this is all in the realm of thought experiments, and has never come up as a practical question in a halakhic context. Until it does, halakhah can proceed without regard to how this question would theoretically need to be answered. (and if it did, the most obvious answer would be that the person is dead based on the talmud's decapitation criterion)

Why absence of neurological function means the person has died is a long discussion with no easy answer, but it does not have to lead to higher brain criteria.

The most intuitive and philosophically accepted answer is that the person is dead because lack of neurological function means that there is no mind. The only people who claim otherwise and support somatic integration and similar theories are those who worry specifically about the danger of higher brain criteria.

at this point it is very difficult to establish absence of total higher brain function in the presence of a functioning brainstem.

Which his one of the primary reasons few ethicists are in favor of adopting it in practice.

Another reason MJ's approach fails is that there is no way of consistently establishing death. How do you know that a body that you recognize as Moshe is dead?...

I'm not sure that I laid out my approach other than to say that in normal cases we have no trouble recognizing death. But if what you have identified is a serious problem, then it is a problem for the way that most hospital deaths are established. You can declare a patient with a DNR shortly after cardiac arrest. Indeed, in normal cases the kind of consistency you seek (based on an essentialist view of what it means to be a living person) is not needed. Those kinds of definitions may only be needed in marginal cases like brain death. But the existence of marginal cases does not mean that normal cases now require adherence to the same exact criteria.

I strongly favor the view of Halevy and Brody that what the marginal case tells us is that death can be a long process, and that the stages that we identify within it must answer to a series of practical questions. Different stages of death will be relevant depending on what we're asking (do we revive Moshe, do we remove his respirator, do we bury him? etc). The very desire to have one theoretical definition answer all these questions leads us vainly in search of a unified concept that must correspond neatly to a biological event.

- Shachar Ha'amim on October 6, 2011 at 10:06 am

Dr. Moses ó I appreciate your learned response. My point about the committee was that it is plainly obvious that medical need is not solely what drives decision making in the medical community. There are obviously other factors at play ó such as economics, social cohesion, ethical and moral considerations. So you can't simply dismiss a line cutting provision in the donor law as morally indefensible. The same committee ó or similar one ó is the one that establishes the basket of drugs and services and a whole host of other line cutting criteria that ALSO involve life and death decisions.

Just to make it clear ó I am not suggesting that it is wrong to take organs from someone who is dead and give it to someone who refuses to donate. Though here too I have no problem with a line cutting provision ó i.e. if you're willing to get a cornea, you can receive priority in getting one. However, it is simply wrong for someone to suggest that donating organs from BSD patients is akin to murder or forbidden and at the same time be willing to receive organs from BSD patients who were willing to donate.

regarding ownership of the body ó as you know according to halacha a person does not have ownership of their body ó otherwise suicide would not be forbidden. similarly under israeli law it is forbidden to assist or encourage one in committing suicide. If ownership of the body lay with the individual these laws would be stricken from the books and probably would be unconstitutional in light of the Basic Laws. So what ownership is there in having an opt out regime (rather than opt in) for organ donations? the State no more owns the dead body in the opt out regime than it does the child under the Legal Guardianship Law and other welfare of minor legislation which requires court approval for legal acts by a minor and permits the courts to forcibly remove children from their parents' home and offer them up for closed adoption. These are rather seen as social norms for the overall benefit of society.

- [Naftali Moses](#) on October 6, 2011 at 10:19 am

S H ó this is starting to take up way too much time, but I disagree with your claim about committees ó the ethos behind them is intended to be medical need.

I don't have the time now, but the ideas of bodily ownership are much much more complex than what you stated. the argument against suicide is not only dependent upon not owning a body and if you think that there is naught to worry about regarding things like legal guardianship ó talk to some of the people who have had children removed from their homes because, for instance, they protested against the Gaza withdrawal. But, I'm glad to see the need for a deeper, denser discussion of these issues ó although I'm only in the midst of researching only the first 1/3-1/4 of what I want to discuss.

- [Naftali Moses](#) on October 6, 2011 at 10:22 am

Oh, S. H. ó one other point that needs clarification ó what is the obligation of an individual to check the provenance of each object we acquire ó esp. if it is a life or death issue? How many people are alive today with body parts of dubious origin?

- IH on October 6, 2011 at 10:29 am

So, to cut to the quick: is this an anti-BSD Transplant advocacy book for the present, using 1967 ó 1986 Israeli historiography as the basis?

- [Naftali Moses](#) on October 6, 2011 at 10:35 am

IH-I think that it is a pro-life, pro-honesty book which actually points the way towards greater multilevel, multicultural cooperation. But, it is a critical history of many of the decisions that have lead us to the point of conflict where we are now.
Read it for yourself, why take my word (plug, plug!!)

- Joseph Kaplan on October 6, 2011 at 10:46 am

öYou have totally missed my point. I find it OBSCENE that those who argue that brain death is halachic death should then tell people öif you're not willing to donate you shouldn't accept organs and you must dieö, when those speaking think that it is permissible to accept and receive. IOW, they are sacrificing people in order to advance their agenda.
Do you realize that's what you're saying here?ö

I don't think that's what he's saying. Indeed, it's just the opposite. It's not B D+halachic death telling a dying patient who has an opportunity to get a transplant what to do. Rather, it's what the religious leadership on the other side is telling their follower. That is, a religious leader who believes BD is not death and therefore taking an organ from such a BD person is murder should tell his followers: öThis is my halachic decision. If you feel bound by my halachic determinations and/or if you agree with this halachic determination then you should not participate in transplants either as a donor or recipient because that would be participation in murder.ö And if he doesn't but he tells his followers they may not be donor but they may be recipients that raises serious moral problems. This isn't an issue of telling people to sacrifice their lives; it's telling a religious leadership to be consistent and act in a moral way.

- IH on October 6, 2011 at 11:07 am

öI think that it is a pro-life, pro-honesty bookí ö

And öan unfettered search for the truthö as well :-)

I'll wait for some reviews. Thx.

- Noam stadlan on October 6, 2011 at 11:28 am

I have to admit that the quote from g and w comes from an article by manninen and that I have not read the g and w article. I will have to go back and read it. That is a side issue. The point of the quote is that personal identity is an essential part of the determination of life and death regardless of whether the authors support brain death or not. You have to decide if the collection of human tissue is a person, and it is that particular person.

If you want a real life application, consider this common scenario. The heart of a person in the icu fails and his pulse and circulation disappears. When is he dead? If you perform CPR, his pulse and circulation will return. If you do the CPR right away, he may not lose any neurological function. If you wait ten minutes, you can still get circulation with CPR but there won't be return of neurological function. If you do CPR after sixty minutes, the CPR will provide circulation while you do it, but the organs probably will have been irreversibly damaged. So, given that you have an obligation to save an existing life, and an obligation to bury a dead body, how do you decide when to do CPR and when to order tachrichim? What guidelines can you give the doctor so that he will be able to know what to do in every situation?

- [Naftali Moses](#) on October 6, 2011 at 11:56 am

Dr. SöThis is just the point discussed by R. M. Eliyahu.

IHöAh, how nice to meet a fellow cynic.

- Shachar Ha'amim on October 6, 2011 at 12:33 pm

Dr. Moses ó I didn't say there is naught to worry about. There is PLENTY to worry about and the right is grossly abused by the attorney general in Israel. That being said, you can't just dismiss an opt-out regime by stating that the State has taken öownershipö of what it shouldn't when it has done so in other areas as well. It is not an öownershipö issue.

when you write öOh, S. H. ó one other point that needs clarificationówhat is the obligation of an individual to check the provenance of each object we acquireöesp. if it is a life or death issue? How many people are alive today with body parts of dubious origin?ö
for that I will just state the market overt takana of the geonim which is codified by the Rambam under ganav yadua and gazlan yadua. also,

the yerushalmi about chamas being included in the the issuerei yeharog veal yaavor and the tshuva of rav shlomo kluger which applies the same to chamas/gezel based on the bavli. so just like one can't benefit from known stolen drugs or break into a pharmaceutical company to steal drugs or in order to save a life, of course the buyer must check the provenance of suspicious body parts and I would not be the first one to suggest that it is assur to receive chinese organs for donation. many wiser and greater people than me have said as much.

you can get cynical about what I write or you can use it in your research to come to better conclusions.

gmar chatima tova

- Shalom Spira on October 6, 2011 at 12:35 pm

R Joseph Kaplan,

Thank you for your kind words and ye'asher kochakha for your important rejoinder. You are correct that I would condemn many people to passive death. Seemingly, though, the approach this student has suggested is identical to that of RSZA after he issued his 1991 ruling (available here <http://www.hods.org/pdf/Response%20to%20A%20Matter%20of%20LiÉ.pdf>), but before the sheep experiment. During that window of opportunity, RSZA held that it is forbidden for a Jew to either donate or receive organs. Thus, RSZA was himself condemning many patients to passive death. Indeed, it seems to this student that the entire reason RSZA requested the sheep experiment was to permit Diaspora Jews (but not Israeli Jews) to receive organs, by switching the diagnosis of a brain dead patient from vadai chai to safek chai. Once the diagnosis a safek chai, the Noahide Code becomes malleable, in RSZA's opinion (particularly since there is what he calls a 'safek hakarov levadai' that the patient is dead). [The problem - in my view - is that RMF was in doubt whether RSZA was correct on the malleability of the Noahide Code, and I think R. Dov Linzer agrees with my analysis, as evident by his recent statement on the topic, declaring it untenable for a person to receive organs if one should assume the donor is possibly alive.]

I would also argue that I am following in the footsteps of R. Bleich (though I feel compelled to decline R. Bleich's interpretation of RMF, thanks to the persuasive oral testimony on the HODS website). Namely, as he reports on p. 347 of Contemporary Halakhic Problems IV, he testified on July 17, 1980 before the President's Commission, urging the U.S. government to adopt the stance that brain dead patients are alive. Had R. Bleich succeeded in persuading the U.S. government, he would have effectively prevented cadaveric organ transplants. Thus, R. Bleich attempted to condemn many patients to passive death. It is true that in 1980 organ transplant recipients still faced the danger of rejection, but by that time bioethicists (like R. Tendler, who testified alongside R. Bleich at the President's Commission) already anticipated that the rejection problem could soon be overcome. Fortunately, the President's Commission adopted R. Tendler's approach, and so R. Bleich's efforts to condemn patients to death did not succeed. But I think now, some 31 years later, equipped with the experience of the two apparent disputes between RMF vs. RSZA, we are in a position to reactivate R. Bleich's approach of 'don't give, don't take'. [Of course, R. Bleich does not agree with me (Benetivot Hahalakhah III, p. 160). He believes one may receive organs because the organs are already harvested before the recipient receives them. With all due reverence manifest before R. Bleich, that does not seem to match the current medical reality. Stated otherwise, I only accept R. Bleich's stringency; not his leniency, since the leniency is based on a supposition that is contradicted by medical reality.]

- IH on October 6, 2011 at 12:38 pm

Naftali • On a more serious note, your use of 'pro-life' troubles me. BSD Transplantation is a complicated moral, ethical and halachic issue in which the debating sides are all 'pro-life'. They differ in which of the lives has precedence in the decision making, but reducing this to the political jingoism developed by anti-abortion activists in the US is bad for everyone and reduces your credibility.

- Noam stadlan on October 6, 2011 at 1:06 pm

MJ is fine to claim that the soul is diffusely with the body and not attached to a particular part. However, now you have to explain why moshe's soul isn't attached to his kidney when it is functioning inside reuven's body. Or, more fundamentally, when a body is divided into more than one part, which part the soul goes with, or if you now have two pieces of tissue with equal claim to the soul (or have created two people out of one). You have to be consistent.

Rabbi bleich reviewed the literature in his characteristically thorough fashion and wrote what his conclusions- conjoined twins are two people when there is independent function in each head. I don't think he realized this contradicts his position regarding defining death, and he is stating that this is the consensus opinion. If you think he is wrong on the conjoined twins you need to take that up with him

if you detached a person's head from the body, and attached pumps to both, you claim that the person is dead? So if christopher reeve had machines pumping blood to his head instead of his body doing the pumping, that would make him dead? (putting aside the fact that he died a few years ago). I submit the Gemara refers to the case where the head no longer is supported by the body Another case where you have to look at the underlying concepts of the Gemara rather than the straight facts

Please see the above discussion comment regarding determining death. Different parts of the body fail at different times. You have to decide what is crucial for life and what isn't. Anything else and you are relying on approximations that may approximately work most but not all of the time. That may be satisfying from a philosophy point of view, but not scientifically and certainly not from a halachic point of view

- [Naftali Moses](#) on October 6, 2011 at 1:36 pm

SHó I don't why you think I responded cynically to anything you said. In fact, I put a good deal of time into formulating rather in-depth answers. You should also examine the entire sugiyah of mastil et atsmo bmamon havoro and its implications for cases of saving life; you may very well be able to break into a drug company warehouse to save a life. I cannot go into more detail, but ownership is more complicated than you seem to think. Be the first to buy my next book and you'll be convinced or your money back! (That's humor, not cynicism).

IHóI agree with you that all sides are pro-life; hence my answer to your question. But I mean it in a serious way; I think that you'll agree with me if you read the book, but I thank you for the PR tip; I don't want to push anybody's button by improper language choice.

- [Shalom Spira](#) on October 6, 2011 at 1:37 pm

Dr. Stadlan,

You are right (and your analysis is confirmed by Shuöt Avnei Nezer, YD 399), and this may well explain the foundations for RMF's position on the definition of death. Moreover, I concede to you that RJDB has contradicted himself between his conjoined twins article and his surprising claim that "nowhere in rabbinic literature is there the slightest hint that consciousness is an indicator of life" (Contemporary Halakhic Problems IV, pp. 335-336).

Therefore, RJDB and RHS (in following the approach of RSZA), will presumably have to formulate their pesak halakhah as follows: a human being needs rosho verubbo to still be considered a human being. [Actually, RSZA personally did believe (based on the Eli Hakohen narrative) that some neurological function was necessary for a human being to live, which is why he held that if all brain cells had died, the patient is considered decapitated, but that is a controversial side-complication, as previously discussed.] Therefore, if Mr. Reeves' decapitated head was on a machine, it would be a golem rather than a living human being. Ditto if the body was on a machine (like in the sheep experiment).

- [Shalom Spira](#) on October 6, 2011 at 2:09 pm

Okay! I apologize for my error; only the decapitated head would be a golem (according to this opinion I am presumptuously attributing to RJDB and RHS), in the sense that it would display consciousness. The body (even if on a machine) would be just plain dead (not even a golem).

- [Shachar Ha'amim](#) on October 6, 2011 at 3:04 pm

ö You should also examine the entire sugiyah of mastil et atsmo bmamon havoro and its implications for cases of saving life; you may very well be able to break into a drug company warehouse to save a life.ö

I have learned the sugya. I think it's pretty clear you can't see the talmud bavli's discussion of raising goats in EöY in order to provide milk for a life saving need of goat's milk. Talmud says you can't. Poskim follow this.

Also, your comment that the medical expenditures committee being driven solely by medical needs is easily disproven by the amounts of non-medical and quasi-medical ó and certainly not life saving ó treatments and drugs that are covered in the health care basket (and which increase year over year) while expensive life saving procedures and drugs are excluded.

I apologize for thinking you were being cynical. I appreciate the responses and it is all milchamto shel torah lesheym shamayim

- [Shlomo](#) on October 6, 2011 at 3:12 pm

Therefore, if Mr. Reeves' decapitated head was on a machine, it would be a golem rather than a living human being.

Would you be willing to kill such a head? By your approach, it wouldn't be murder!

- [Noam stadlan](#) on October 6, 2011 at 3:12 pm

Rav Spira, I appreciate your analysis. Could you explain how you wind up labelling a part of a human being a golem? What are the criteria? Or, is it a default for something that you are unable to classify as dead or alive?

- [Rafael Araujo](#) on October 6, 2011 at 4:04 pm

öTherefore, if Mr. Reeves' decapitated head was on a machine, it would be a golem rather than a living human being.

Would you be willing to kill such a head? By your approach, it wouldn't be murder

He certainly wouldn't count for a minyan (being that he is a golem).

- Anonymous on October 6, 2011 at 4:20 pm

Jospeh Kaplan said "This isn't an issue of telling people to sacrifice their lives; it's telling a religious leadership to be consistent and act in a moral way"

Why would you do such a thing when, *leshitascha*, that will cause people to die needlessly? You're saying that you're willing to let people die for this demand on religious leadership! Is that not crazy?

- Shalom Spira on October 6, 2011 at 5:02 pm

Dr. Stadlan,

Thank you for your kind words and excellent question. Indeed, as you indicate, I use the golem classification when neither "alive" nor "dead" quite capture the situation. This is speculation on my part, and I have never seen anyone advance it before. I wouldn't swear on a Sefer Torah that my speculation is necessarily correct. But the reason I render this speculation is that RMF (who did rule that brain death=death) holds that a decapitated head is not alive, even if the head keeps on gesticulating (IM YD 2:174, sec. 1, penultimate paragraph). [Although not mentioned by RMF, that apparently emerges from the gemara in Sotah 45b which states that at the moment of decapitation the person is a *met mitzvah* and acquires the spot of land underneath him as a burial site, even if the head rolls away further.] Also, one can infer from the gemara in Sukkah 3a that if a person's head is in the sukkah but his body is outside the sukkah, he does not fulfill the *mitzvah* of dwelling in the sukkah (even according to Rabbi Yochanan in Chullin 103b that eating occurs just by swallowing). So, arguably, a freestanding head, even if fully functional, is not enough for life. But what, then, is the status of the gesticulating head, which is a display of consciousness. Can a conscious item ever not be alive? That's why I am speculating that it might be classified in accordance with an intermediate category of a golem: conscious, but not alive. [Nevertheless, I must concede that this is an important issue RJDB apparently overlooked, and he should be asked to address it.]

R Shlomo,

Thank you for the excellent question. As R Rafael Araujo has alluded, the status of the golem is discussed by RJDB in *Bioethical Dilemmas II*, pp. 15-28. His conclusion (-RJDB's, not necessarily the golem's) is "there are four distinct views with regard to the status of a golem: *Hesed le-Avraham*, *She'elat Ya'avez*, and possibly *Hakham Zvi* maintain that its status is that identical to that of a brute animal; R. Zadok ha-Kohen maintains that it is human in every sense; *Maharsha* and R. Gershon Leiner maintain that only an anthropoid endowed with speech is human; *Zofnat Pa'aneah* maintains that an anthropoid does not at all have the status of a living creature".

- MJ on October 6, 2011 at 5:14 pm

MJ is fine to claim that the soul is diffusely with the body and not attached to a particular part. However, now you have to explain why moshe's soul isn't attached to his kidney when it is functioning inside reuven's body. Or, more fundamentally, when a body is divided into more than one part, which part the soul goes with, or if you now have two pieces of tissue with equal claim to the soul(or have created two people out of one). You have to be consistent.

You must have missed what I said. In the halakhic analysis the soul is irrelevant. As far as these judgments go about identity, again, take a simple person with no sophisticated theories, scientific or metaphysical, and show them the procedure. Are they going to come to the wrong conclusion? No. Why not? Because the procedure has not created any doubt.

Rabbi bleich reviewed the literature in his characteristically thorough fashion and wrote what his conclusions- conjoined twins are two people when there is independent function in each head. I don't think he realized this contradicts his position regarding defining death, and he is stating that this is the consensus opinion. If you think he is wrong on the conjoined twins you need to take that up with him.

I think that he is right, but again, one does not need any sophisticated theory about the central nervous system to come to that conclusion. In fact, every precedent he cites going way back before modern physiology comes to that same basic conclusion. But consider the reverse, if you had a conflict between the neurological data that there was only one shared CNS, but you had two heads and they appeared to have two different personalities, would you think it was only one person? No, because this is not a conclusion you need a sophisticated theory to come to.

if you detached a person's head from the body, and attached pumps to both, you claim that the person is dead?

Remember, I'm going into this with not theoretical orientation: If the head is inanimate I would probably think that the person was dead. (Based on halakhic precedent it seems unavoidable). Now, if I could have a conversation with the head, then I would conclude that the head

is alive (meaning the person persists in the head). If I could have a conversation with the body, I would conclude that the body is alive. If I could have a conversation with both ó well then Iǽ be in a pickle.

Please see the above discussion comment regarding determining death. Different parts of the body fail at different times. You have to decide what is crucial for life and what isn't. Anything else and you are relying on approximations that may approximately work most but not all of the time. That may be satisfying from a philosophy point of view, but not scientifically and certainly not from a halachic point of view.

Iǽm not talking about approximations, Iǽm talking about the impossibility of a unified concept. Earlier you cited the idea that death is a metaphysical concept. So why do you think that there a scientific answer that could tell you what is necessary for personhood? Rather, you need a metaphysical conception of personhood and only then an idea of what supports the metaphysical conception.

So, if itǽs a functioning brain then what is the metaphysical conception? Either it is a functioning mind, or it is some other function of the organism supported by the brain (letǽs call it somatic integration for argumentǽs sake). Now, if itǽs a functioning mind then the person has died when some level of integrated higher brain function is gone. If itǽs somatic integration then it is when the brain stops supporting the overall function of the organism. Now, in a normal death you donǽt need to pick one or the other because they happen in very close succession. But in brain stem death you do. But if you pick one or the other you quickly run into problems-especially if you want to remain compatible with halakhah.

If you pick mind, then a person lacking sufficient higher brain function is also dead. But if you pick somatic integration, then a person who requires a vent due to damage to the brain stem should be dead even if he has a functioning mind. The answer I suggest based on Halevy and Brody is that you can actually use both in the case of BD, but you need to see death as a temporally extended process. Death can begin with the cessation of higher brain function, but the body survives as a functioning organism until the brain stem ceases to function. Yet, even here we canǽt say that the process of death is done, because we would never bury a brain dead person fresh off a ventilator, so there is still a later stage of necrosis that we give weight to. In all we see that there is no single moment of death that works to answer all practical questions.

Is this unsatisfying from a scientific point of view? I donǽt see why unless you subscribe to the idea that science alone is supposed to answer questions of human value. Is it unsatisfying from a halachic point of view? No, because it is perfectly reasonable for halakha, like secular law, as a practical necessity, to locate a moment of death at one particular juncture ó and both legal systems can do so without having to subscribe to any particular metaphysical conception of personhood.

- Shalom Spira on October 6, 2011 at 5:39 pm

Re: the important conjoined twins discussion between RǽMJ and Dr. Stadlan.

The key point in my understanding is that RJDB balked at the oral reports that RMF ruled brain death=death, because RJDB could not imagine that RMF would commit so elementary an error as to declare a polio patient dead. RJDB argued that it must be circulation that endows the polio patient with life, and the reports of RMF are mistaken. After all, claimed RJDB, consciousness itself is never mentioned in halachic literature as a sign of life.

Well, Dr. Stadlan (yeǽyasher kocho) has soundly refuted RJDB from RJDBǽs own analysis of conjoined twins. It emerges that there is indeed a source in rabbinic literature than consciousness is a sign of life. Thus, it is entirely plausible that RMF was undisturbed by the polio cases when he equated brain death with death, as testified by kosher witnesses.

Still, this does not refute RSZA. Consciousness may be a sign of life, but it is not the *sole* sign of life. Otherwise, even Dr. Barnardǽs original 1967 heart transplant would have been permissible (at least from the perspective of the donor), yet RMF held it was forbidden because the donor was still breathing. Why should breathing matter, though? After all, even though both conjoined twins breathe in Menachot 37a, that does not make them separate people, unless they both have separate consciousnesses. Evidently, the sugya of conjoined twins only informs us that consciousness is *one particular way* of being alive, but it is not the sole way of being alive. Breathing is another way of being alive (as per the gemara in Yoma 85a), which is why RMF held that Dr. Barnard was forbidden to take the heart from the donor. The donor was irreversibly unconscious, but could still breathe. [And according to RSZA (unlike RMF), breathing does not end for sure until circulation also ends.]

- Joseph Kaplan on October 6, 2011 at 5:47 pm

ǽJospeh Kaplan said ǽThis isnǽt an issue of telling people to sacrifice their lives; itǽs telling a religious leadership to be consistent and act in a moral wayǽ

Why would you do such a thing when, leshitascha, that will cause people to die needlessly? Youǽre saying that youǽre willing to let people die for this demand on religious leadership! Is that not crazy?ǽ

The failure of the religious leadership to make such a statement casts, in my mind, a very serious question as to the legitimacy of their position.

- Steve Brizel on October 6, 2011 at 6:32 pm

MJ wrote:

Steve, as soon as the ventilator came into wide use the potential problem of having them all taken up by brain dead patients started generating discussion. If the halakhic question came up in response to this development, why is that having the cart before the horse. Is halakha supposed to generate speculative scenarios to pasken about? No, it responds to practical questions. When the practical question was can we take such a person off a ventilator, that is what the halakhists explored. When the question was can we cut out his liver and put it into someone else, that was discussed. The whole idea that halakha needed to provide a definition of death, which is not in itself a practical halakhic question, to my knowledge, only arose after doctors and ethicists began to formulate the question in those terms.

Look at it this way-Poskim did not discuss whether turning on a light bulb or starting an internal combustion engine, constituted a Melacha on Shabbos prior to its being a technological fact of life. OTOH, just as there were obviously definitions of Melacha in the Talmud, Rishonim and Poskim, they analyzed technological developments in light of the same. Furthermore, one can argue that there was a working definition of the moment of death in the Talmud and Rishonim that in no way was dependent on brain death. The question thus remains-was the elevation of the BD thesis as a definition of death a reaction to technology and was it ever considered an accepted halachic definition prior thereto in the classical halachic literature, regardless of what may posit as to the scientific basis of the same and whether that can be reconciled with contemporary scientific principles. I trust that by reading the book in question that I may gain some enlightenment on this issue.

- noam stadlan on October 6, 2011 at 8:50 pm

MJ- so, when does the simple person think that a person is dead? when they have no circulation? no breathing? no neurological function? please answer the question posed in the previous comment.

We seem to be talking past each other, so let me get to the bottom line. What we are trying to establish is how to know when a person is alive or dead. You have yet to give me any criteria, besides to ask a simple person. With all due respect, that is an inadequate answer from a scientific, halachic, and even philosophical point of view.

From a scientific point of view (and not necessarily halachic, although some halachic viewpoints cohere) this is my approach:

Stuart Younger suggested a three tiered approach to death:

1. a conception of what life is
2. criteria to know that it has gone
3. practical steps that to assure that the criteria in part 2 are fulfilled.

I readily admit that the conception of life is elusive, whether it is self consciousness, having a soul, or something else. In addition, those things cannot be measured. Contrary to you however, my position is that the absence of neurological function (however it is going to be defined) is consistent with the loss of whatever it was that was the conception of life. There is something about enough neurons with enough connectivity so that the special something that is a human life can be present, and in the absence of that life cannot be present. So I have not filled in tier 1 completely, but tier two is the irreversible loss of neurological function.

Tier three basically consists of the Harvard criteria with some minor modifications (insistence on absence of EEG activity, need for a blood flow study to assure irreversibility).

There are many situations where our society has accepted a life and death determination regarding a collection of tissue. transplanted organs do not constitute life, a two headed twin with both heads functioning are two lives, etc.

For every single technically achievable medical situation with current medical technology, application of my definition will produce a result that is consistent with the accepted societal results.

If you now apply that definition to the situation where a person has no neurological function (brain death), you get the result that this person should be considered dead.

I invite you to populate Dr. Younger's scheme with your own definitions, especially tier three. If your tier three doesn't cohere with the accepted societal results, then, if you really believe in your definition, you are obliged to reject the societal results. If you believe that a person without circulation for 45 minutes is dead, then it is a pity for the person undergoing hypothermic cardiac arrest for surgery, because he will be labelled dead, even though his body probably will function normally after he is warmed. If you believe that a person is dead when

he has irreversibly lost circulation, then people actually aren't dead until weeks or months after their circulation stops, because it can always be restarted with mechanical pumps. etc.

I suggest that if you cannot come up with tier three definitions that cohere with accepted societal results, and you are not willing to reject those accepted results, then you are forced to acknowledge that I am actually correct given the present state of medical knowledge and technological prowess.

- [Naftali Moses](#) on October 7, 2011 at 2:51 am

I think that once Dr S. and MJ have read my book, they will be better able to see where both they and others disagree (although I think that MJ's last post points out the problem without naming it clearly enough).

SA-I think that you misunderstand "medical" need here. You are incorrect about the sugiya of matsil et atsmo'I believe that you can look it up Steinberg's Ency or find an online discussion. If you don't find it, I'll be happy to share a complete shiur with you at a later time.

gmar hatimah tova to all,
NM

shanah tovah

- MJ on October 7, 2011 at 4:56 am

Steve Writes *one can argue that there was a working definition of the moment of death in the Talmud and Rishonim that in no way was dependent on brain death.*

The whole question is misguided. The only *definition* of moment death in the talmud is when the soul leaves the body. As this cannot be known by direct observation, the criteria given in the Talmud are used to determine that death has already occurred. Therefore, the idea that there is a (non metaphysical) talmudic conception of human life or definition or moment of death, that forms the conceptual basis for those rulings is anachronistic. Notice that the central rulings in favor of BD are rooted in understanding the talmud as identifying a criteria known as "lack of spontaneous respiration" which is then identified with BD, which also causes a lack of spontaneous respiration.

Your comparison with melacha is instructive because that is a prime example where the talmud begins with categories and then enumerates their application. No such discussion is present regarding death.

- MJ on October 7, 2011 at 6:59 am

Dr. Stadlan,

I think you are misunderstanding my purpose. I did not begin trying to lay out my conception of death, so let's set that aside for now. My point was to explain why your critique of the halakhic positions that reject brain death. Your basic idea is that a circulatory definition of life is problematic because virtually any human tissue can be kept alive outside the body, so that should also constitute a person. Therefore, you need a definition of person that includes neurological function or you end up with these absurd conclusions.

So far as your critique goes:

1) The halakhic line of reasoning does not make use of the idea of a definition of biological life. The talmud only has a metaphysical conception of life. This metaphysical conception plays no direct role in the chain of halakhic reasoning which makes use of a common sense empiricism to determine when a person has already died. As such, halakhah as it stands is immune from critique based on the definition of life that you extrapolate from it. It simply plays no role in its line of reasoning.

2) The fact that the halakhic perspective does not attempt to define a person in order to determine when a person is dead does not mean that it should be puzzled by the status of an organ outside the body or transplanted to another body. To the contrary, the common sense empiricism (we know what a living person is because we experience things that look and act in certain ways as living persons) at its heart, means that an organ outside the body is just that - an organ - and will never be confused with a person.

Contrary to what you think, there is nothing inherent to these halakhic positions (and again, I exclude R. Bleich, R. Schachter, and others who, led by brisker conceptualism do attempt such a definition) that should lead to some kind of puzzlement over what an organ outside the body is.

3) Similarly, I tried to show that if you take any simple person, similarly devoid of higher order theories of what constitutes a person or knowledge of human physiology (in other words, an idealization of common sense empiricism) you would find no doubt about whether an organ outside a person is a living person, or confusion over the identity of an organ recipient.

I tried to anchor this by use of another idealization, factor P which can be used as a stand in for any metaphysical criteria for what makes a person a person. Common sense empiricism is compatible with any metaphysical concept or definition one substitutes for factor P so long as there is no theory about the causal relationship between factor p and the common sense empirical approach. Given that simple person has no such theory, he is immune from a critique based on a theory (such as mind-brain dependence) that you make use of.

So far as my own position goes, you can reread the end of my last response to you in which I lay out a concept of death as a series of biological events, which are roughly: loss of higher brain function, loss of brain stem function, the bodies loss of its resemblance to a living human via a series of changes throughout the rest of the body which we typically associate with the appearance of a corpse.

I stressed that in my conception there is no single moment of death, and that because death is most importantly a practical concept, these stages are only salient as distinct stages due to their practical import for discontinuation of treatment, determination of legal/halakhic death and organ procurement, and when to begin preparing a body for burial.

(BTW, it's often confused but his last name is YoungNer.)

- Noam stadlan on October 7, 2011 at 11:38 am

MJ- the Talmud tries to establish how to know when life is gone. That is the same as I am doing. The fact that life is a metaphysical concept doesn't mean we can't have parameters for knowing whether it is there or not. You yourself are establishing parameters with your common sense empiricism. However, your common sense empiricism is based on assumptions of body integrity and concepts of irreversibility that are no longer true.

If the gemara was only interested in common sense, and one was supposed to use what the common person knows, there wouldn't be a debate about whether to dig up to the belly or heart or elsewhere. It would have said if he is dead you stop digging. The Gemara is establishing parameters. Similarly, if the animal looks dead, it confers tumah. We wouldn't need a discussion of headless bodies or twitching tails. Your concept also does not lead to uniform results. What is obvious to one person may not be obvious to another. Finally, the approach fails to delineate when a body is actually dead. If you are going to use multiple definitions of death, you have to also explain why one definition is used in one situation and another is used in a different situation.

I understand your philosophical approach and appreciate it. But until you can come up with a practical application that explains all the accepted results(or you are willing to reject accepted results) it is just interesting philosophy

I would also note that practical empiricism is not always correct. For example, based on practical empiricism, one might define daytime as the finding that the sun is shining, or that it is cloudy but bright outside. This would be correct the vast majority of the time. However if there was an eclipse, there would be no sun and no clouds. I suggest that your practical approach is based on similar assumptions that are no longer true(please see one of my earlier posts for details). They are useful approximations that work for the vast majority of cases, but are fundamentally unsound.

If your approach truly has merit, it should be able to produce specific guidelines for determining whether a person is alive or dead. Please state them. Gmar tov

- noam stadlan on October 7, 2011 at 3:41 pm

One final thought before the chag. The idea of the common sense empiricism is just a way of saying neurological function without actually saying it. For example, when we discussed the head isolated from the body, you opined that the head would be a person if you could have a conversation with it. Obviously it is necessary to define exactly what is meant by "having a conversation" but I having a conversation does involve neurological function. If the head didn't have neurological function, there is no way to have a conversation, and therefore you opined it would be dead. I assume that the idea of having a conversation is one way of explicating the "common sense empiricism"

Put another way, I claim that the reason a foot is not considered a person is that it has no neurological function. You claim that it is a common sense issue. However, if the foot was attached to the talking head, the combination would be considered a person, by your own admission. If it was attached to a kidney, by your own admission it would not be a person. So the "common sense" approach only works if "common sense" is defined as presence of neurological function. You may not want to admit it, but that is the way your outcomes line up. If you could have a conversation with the foot, by your algorithm it would be a person.

If neurological function is not intimately connected to the concept of human life, you should be able to identify a collection of human tissue that you are willing to label human life that does not have neurological function(and be able to identify what characteristic it does contain that gives it the label of human life). In the same fashion, you should be able to identify a collection of human tissue that has consciousness that you are willing to label as not human life(dead). If you are unable to do so, then the only tenable conclusion is that human life is intimately connected to neurological function, and the dividing line is somewhere between consciousness and absence of function.

I am not sure if the reading public is interested in our further discussions. If they are, I am happy to continue here, if not please feel free to email me. noam.stadlan@gmail.com.

shana tova

- J. on October 8, 2011 at 4:23 pm

How does R. Bleich define death for someone with a mechanical heart?

- MJ on October 8, 2011 at 4:52 pm

I think you are still conflating *my* approach with my explanation of why your critique of the anti BD halakhic positions rests on a series of premises that these halakhic position does not have to subscribe to.

Personally, I'm perfectly happy with using neurological criteria when necessary. But I'm also willing to accept that as a consequence that we are at least partly appealing to higher brain criteria, for the reasons I described earlier. I also don't think that in applying neurological criteria in marginal cases we need to pretend that in normal cases when we apply the same criteria that were used before the advent of the ventilator and BD we are now ipso facto also using neurological criteria. When you declare a person with a DNR shortly after arrest, is that using neurological criteria? The approach that I laid out is a perfectly coherent view of death that has the philosophical advantage of avoiding a definition of a person (as opposed to human being) of a philosophically suspect pursuit, and attempting to subsume all parts of the process we identify as death under one concept.

Returning to your halakhic critique:

You misunderstand what I mean by common sense empiricism. I'm not talking about common sense inferential reasoning like "it is dark out, so it must be night." I'm talking about a much more basic, noninferential access that we have to certain practical information, like the fact that you are a living human, which not merely correct, but immune from doubt.

[There is a basic orientation in philosophy (though not universally subscribed to) that holds that genuine doubt only arises in situations where it would, push comes to shove, influence practical reasoning. Otherwise it reflects a kind of pseudo skepticism. The best response to doubts about whether I am the same person at 70 as I am at 30, whether other people have minds and the like, is "would you really be able to convince yourself otherwise to the point of acting differently?"

The upshot is that practical reason endorses that I take care of my body for the benefit of my future self, and that I treat other people like people, not like automatons, and I don't need any fancy theories of mind or personal identity to explain myself. What that means in this case is that unless I would actually have a serious *hava amina* of thinking that *reuven* becomes *moshe* after receiving his liver, or of according human status to an organ outside a body (and not simply a *shitascha* argument constructed on the basis of otherwise coherent positions, I don't need a theory to explain why these questions are unfounded.

Now, the talmud, I argue, does not have a non-metaphysical theory of what a human being is. And from the perspective of practical knowledge I know one when I see one is not just adequate it is demanded. To think otherwise would require providing proof in every case that someone is a person.

To claim that a legal system needs a theory of what a human being is to guide it, one needs to show that it has encountered cases where absent such a theory it actually gets things wrong. But why, for example, in US law is a kidney not a person? Because it doesn't have neurological function? You will search in vain in law for a definition of person, but you will find definitions of death, entities not considered persons (like fetuses with plenty of neurological function), and non-human entities considered persons under the law (like corporations). The bottom line is that if there is one basic thing that human beings are oriented to be able to do, it is to recognize fellow persons, we don't need theories to do so, and legal systems are likewise able to function fine without such a definition.

The talmud does argue about what empirical criteria are to be used in determining that a person has already died. But this does not by negation yield an empirical definition of human life. To think so commits a common mistake in logic in equating opposites with logically contradicting terms. Dead and alive are opposites, but "not alive" and "dead" are not logically equivalent. So if I claim that a human body that has not respired for 30 minutes is dead, I am not logically committed to a definition of a living person as a human body that has respired in the past 30 minutes. A further fallacy is confusing the epistemological question "how do you know that a person has died" with the ontological "what is a person." In many cases I can answer an epistemological question and remain uncommitted to its ontological referent, or as I argue here have the ontological referent (ensouled human being) be essentially irrelevant because it is wholly metaphysical. So the talmud, and subsequent halakhic discussions, can have various opinions as to when one knows that a person has died, without discussing what constitutes human life.

Anyway, the point is that when you make a claim:

The cardiac criteria for death are incoherent because they presuppose that human life is defined as X, and by X an amputated are with artificial circulation is a person ó the answer is that they presuppose no such definition whatsoever.

When you claim that they must have a definition of life because it is essential for deciding legal cases ó the answer is that neither halakhah nor US law requires that kind of definition.

When you claim that new cases demand such a definition, even though one was perhaps not needed before, otherwise we won't know who is whom after a transplant etc. ó the answer is that no case of genuine doubt has arisen that requires formulating such a definition.

As to your second post: you are making the mistake of thinking that in pointing to a practical interpersonal experience by which I would identify something as a person, I presuppose the causal structure that makes this experience possible. But I could be ignorant of causal structure or have a different theory of causal structure, and come to the same conclusion. (Isn't that the point of a Turing test?).

Our inborn practical orientation is to relate to talking things (even when they don't really have the appearance of human beings) as having minds like our own. That's why my kids can watch a cartoon with talking donkey and be no more puzzled than Bilam. Surely anything that both appears human and functions like a human would be treated like one without me first checking to see whether it has a functioning brain.

As a contingent fact it happens to be that all things that actually exist that display forms of consciousness we detect as minds like our own share the same neurological structure, but that's a relationship of physical, not logical necessity. Substitute anything for brain that could have the same functional role (say homunculus) or nothing at all, and you haven't changed anything about how you relate to a fellow person.

So, to answer your demands: If I met a human being with whom I could carry on a conversation (the surest sign of consciousness), but his brain showed no neurological function, I would call that collection of tissues a person, and would be very hesitant to take his liver and bury him. That answers your second demand: If I met a collection of human tissues displaying consciousness I most certainly would NOT label it as dead.

In every case where a human body displays consciousness that is prima facie incontrovertible evidence that it is a person. It's only in cases where we have a human body that is alive, but is not conscious, that we reason from our understanding of the causal structure behind consciousness as to whether any consciousness is present (a comatose patient) or absent (a BD patient). But in normal cases there is no need to make inferences from manifestations of consciousness to the presence of a causal structure. As far as law and ethics are concerned the former is more than enough.

I'll try to pull some articles together that point in this direction and e-mail them to you when I have a chance.

Chag Sameach.

- noam stadlan on October 8, 2011 at 11:10 pm

J. rabbi Bleich as far as I can recall, accepts a mechanical heart as a substitute for the biological heart. He certainly accepts a transplanted heart as a replacement for a biological heart. He has a number of articles in english- one on heart transplants, one on time of death.

MJ- As noted previously, I am not a philosopher. However, your approach just doesn't work as a matter of practicality.

(I reject the claim that using neurological criteria leads to a -higher brain definitionø however, the discussion is wide ranging enough without bringing another topic in, and this is incidental to the main issue. I will be happy to discuss it in another time and/or venue)

As a matter of Halacha, if you start with an alive human being, then that person is alive until you decide he is dead(or he meets criteria for being declared dead). Therefore, under the circumstance where you start with an alive human being, dead is the same as not alive. There is no intermediate category(gosses is a special category of living). It may be different in philosophy, but not as a matter of practical Halacha.

The Talmud gives details of when human life is present, and some criteria for when it is or isn't present. You may argue that this is different than a definition of human life. Fine. The bottom line is that when declaring death, as we both agreed, it is the moment when there is certainty that the life is gone. So it really doesn't matter, from a practical point of view, if the gemara is giving us a definition of life, or just parameters for when it is gone. It winds up being a matter of semantics. I freely admit to not being able to define life. Where we differ is that I claim that we have identifiable paramters as part of a logical system for knowing when it is present or not.

We both know that it is impossible, given current technology and medical understanding, for you to have a conversation with a person who has no neurological function. Therefore you have not satisfied any of the demands I laid out, and the challenge remains unanswered.

In answer to your question regarding DNR, I refer you to a case from the web site of the Alcor corporation. They freeze bodies after death(hoping that technology in the future will allow treatment of the cause of death). They take their job seriously, and immediately after the

declaration of death they start CPR with machines, intubate and ventilate, and after a while, inject chemicals (fluorocarbons I think) into the blood stream that help protect the body from the effects of freezing.

To make a long story short, a woman with cancer decided to stop eating, and at some point in time there was no documented pulse, blood pressure or respiration. After some time, she was declared dead by the nurse at the scene. They started using the machines (which restored circulation and oxygenation) and after a few minutes they noted that she was breathing on her own.

Per your approach, she was obviously dead when declared by the nurse. She subsequently started to breathe on her own (the quickly injected some chemicals so it isn't known if she would have recovered any other neurological function). So either you now have to recognize the first documented case of extra biblical *techiyat hameitim*, or make the claim that a person who breathes on their own is not alive.

Of course, you could use my explanation. Which is that when we declare a person dead after only a few minutes of lack of circulation, we are using an approximation that the neurological function has been lost. That the loss of neurological function covariates with loss of circulation in the vast majority of cases, and so, unless there are unusual circumstances, loss of circulation for a period of time is an adequate approximation for loss of neurological function. Or, we allow a declaration of death after only a few minutes, knowing that in reality the real moment of death is going to be in 5-10 minutes or so, when neurological function is irreversibly lost, but that we are certain that the neurological loss is inevitable (in reality I think waiting the full amount of time is the proper thing to do). However, if for some reason the circulation is restarted and neurological function returns, the person is still alive, and the approximation doesn't work, and it is necessary to declare death by the only true criteria, irreversible loss of neurological function.

Your empiricism is based on the false assumptions that 1. the entire body fails at one time- so that every organ system has failed in a body that looks dead and 2. once the body looks dead it can't regain function. Both of those are false, and that is the reason that your claim that you don't need any proof or any sort of system fails completely from a practical point of view.

You have admitted that all conscious humans are alive. I think we can agree that as far as we know, being conscious requires a brain. The brain is made of human tissue. Let us take the case of Moshe. Moshe's brain is functioning, providing him with consciousness. We all agree that he is alive as long as this one key provision is kept. Can you identify any other piece of Moshe's tissue that is necessary for him to be identified as alive? (circulation and oxygenation can be provided by machines) If you can't, doesn't that mean that Moshe's brain is the only part of the body that counts when you are deciding if he is alive or not? Which also means that when his brain fails (however we are going to decide on what that means), the part of Moshe necessary for his being alive (and Moshe) is gone, and he is dead.

- [Naftali Moses](#) on October 9, 2011 at 5:02 am

Shavuah tov.

Dr. Sol I think that you are still missing the non-essentialist point that MJ is making. I don't think that you are correct regarding the empiricism of MJ. He already mentioned that death is a process. And although my undergrad logic is rusty, it seems that in your last paragraph you are making a mistake as follows: consciousness (C) requires a working brain (B). C means that you are alive (A). Therefore, B means A. This, of course isn't logically necessary. (Anybody who has taken logic 101 less than 30 years ago is welcome to correct me if I'm wrong).

I believe that you are stuck by insisting on an equivalence between the halakhah and a scientifically observable state. This is a far reaching understanding legal realism which is contradicted by many examples of Torah/measurable reality. Again, I address this in great detail in the latter part of my book and I think that the fascinating back-and-forth here will be able to move up a notch if you understand the ways in which you and MJ parse halakhah and science.

The argument here is a reflection of why the Orthodox Jewish world is stuck where we are re transplants.

Unfortunately, I can't make a PDF of just the part of my book that deals with this philosophical debate, or I would ask Gil to put it up here. I would be very interested in hearing from you, though, after you read the relevant section.

- Noam stadlan on October 9, 2011 at 8:30 am

Thanks. I have bought the book and look forward to reading it. With all due respect, the logical flaw you are pointing out is in the claim that not all working brains have to be alive. That is not my claim here. All I am saying is that unless you identify some other piece of tissue that is essential to Moshe's life, his life and death status resides solely with his brain and its function.

It is necessary to have criteria to distinguish between life and death. I think we can agree that a corpse with circulation is possible. In other words, consider a person who has lost circulation for a period of time and was declared dead (I would note that we still have no firm number or criteria for how long that needs to be- another problem for declaring death by loss of circulation). Neurological function is irreversibly lost. Assume that the body is attached to a bypass pump or had an artificial heart implanted, is intubated and put in the ICU with other patients. One of the other patients also has a mechanical heart but is talking. Another is on a ventilator but had horrible head trauma and lost all observable neurological function. He has a flat EEG and no cerebral blood flow on testing. I challenge you or MJ, or anyone else for that matter, without recourse to the history, to distinguish between the person previously declared dead, and the person who is brain dead in

addition, to distinguish establish, without recourse to neurological function, why the person sustained on machines who is talking is alive and the body on machines is dead.

• noam stadlan on October 9, 2011 at 10:29 am

I understand the non-essentialist point, I was trying to ignore it because I fail to see the relevance. I have taken a practical approach, and identified a person with the presence of neurological function. For that I have been labelled an essentialist- believing that every person has an essential part which is identifiable to some extent. When that part is present, the person is alive, when it is not, the person is dead and/or not a person.

The non-essentialist claims that this is not true, that there isn't a common factor to be found. My response is this:

1. It is easy to disprove an essentialist. All you have to do is identify a collection of tissue with no neurological function as an alive human being. Or, identify someone who has intact neurological function that you want to claim is not alive. You have been able to do neither. So as a matter of practical facts, the essentialist point of view is viable.
2. Even though you claim to be a non-essentialist, it happens that what you think is an alive human being and what you think is a dead human being comes out to be EXACTLY the same as if you were an essentialist. So, although you claim that there isn't a common theme in all alive human beings, in the practical universe as we know it, there actually is.
3. It was a lot easier to support a non-essentialist posture in the premodern era when the assumptions of irreversibility and total body interdependence were thought to be accurate. In the present era, there are many more instances where there may not be clarity if a person is alive or dead, or if a collection of tissue actually is that person at all.
4. The non-essentialist still needs to address, or have a system to address, the cases where there isn't clarity. If it is just a claim that it should be self evident, then the non-essentialist really has nothing to contribute to the conversation.
5. I have pointed out (trying to establish time of death in situations where organ systems fail at different times) where the non-essentialist needs to state how conclusions are being made. I have yet to see any basis put forth as to how to address those situations.
6. If alive human beings can be characterized by more than one characteristic, it is necessary to delineate in a logical fashion (and an applicable fashion) when one characteristic is supposed to be used in determining life/death, and when a different one is used. (keeping in mind that if a definition of death has two criteria, it means that if only one is fulfilled, the person is still alive, something that many who propose definitions of death fail to realize or take into account)

So I am not denying anyone the right to claim a non-essential approach. What I am saying is that the essentialist approach explains all the known conditions, and provides a rational basis for categorizing difficult cases. The non-essential approach being proposed produces identical results in the known cases, and provides absolutely no way to categorize difficult cases. I think under the circumstances the case for the essentialist approach is far more compelling.

Regarding death being a process. Obviously organs fail at different times, and cells die at different rates. There is a process of dying. That doesn't mean that death itself is a process. Running a race is a process. But there is a specific finish line. It may be arbitrary, but it is a set point. From a metaphysical point of view death is when the soul has left. We don't know what the exact correlate of that is in the physical universe. But that doesn't mean that there has to be a range of time (or range of physiological findings) over which that metaphysical event happens. The time of death is the earliest time when we have certainty that the event has occurred. We can define it with particular criteria.

• [Naftali Moses](#) on October 9, 2011 at 12:12 pm

Dr. S-

I would like to continue this discussion and I have several comments on your latest posting, but would like to wait until you've had a chance to read Really Dead?. I think that it will be possible to have a more informed discussion then. all the best,
NM

• noam stadlan on October 9, 2011 at 3:12 pm

I will be happy to discuss further. I think amazon is delivering the book this week. In return, I would ask that you read what I have written: the post at the RCA blog (<http://text.rcarabbis.org/problems-with-defining-death-as-the-irreversible-cessation-of-circulation-what-would-we-measure-and-why-by-noam-stadlan-md/>), my Meorot article, and the critique of the RCA paper, both available at the HODS website (<http://www.hods.org/English/h-issues/ArticlesE.asp?Sort=2>). If you are interested, I have submitted a paper on the topic to a secular medicine and ethics journal, and am awaiting to hear if it is going to be published.

It would be helpful, if you are going to stake out a non-essentialist position, to elucidate how you are deciding when a person is dead or not dead. Up to now neither you nor MJ have been willing to put down any specifics. Please put some answers to the quandries I have posed for you. Just saying that they don't have to be answered because they don't fit into your philosophical system seems to be just a sophisticated way of avoiding the questions.

I appreciate philosophy and the contributions it has made to this issue. However, unless your philosophical conceptions lead you to practical criteria, I don't see how they have any influence on the topic. If your non-essentialism leads you to answers to my questions, please provide those answers. I suspect that non-essentialism does not provide answers, and, as I discussed above, it therefore is irrelevant to the practical question of: "confronted with a collection of human tissue that started off as an alive human being, how do I know if it is dead or alive?"

In response to the question of whether legal systems require definitions? They may not require strict definitions, but they require criteria to know how to categorize objects when the categories are treated differently under law. If there is a different tax for cars versus trucks, there have to be criteria to know if a vehicle is a car or a truck. There may not be an absolute definition of exactly what is a car or a truck, but there certainly are rules that allow a person to categorize a given vehicle as a car or a truck. The irreversible absence of neurological function allows you to categorize a human being as dead. If you have alternate criteria to categorize, please state it.

- Shalom Spira on October 9, 2011 at 8:09 pm

Ye'asher kochakha, Dr. Stadlan.

I would note regarding your analysis on Oct. 8 at 11:10 p.m.

Let us take the case of Moshe. Moshe's brain is functioning, providing him with consciousness. We all agree that he is alive as long as this one key provision is kept. Can you identify any other piece of Moshe's tissue that is necessary for him to be identified as alive? (circulation and oxygenation can be provided by machines) If you can't, doesn't that mean that Moshe's brain is the only part of the body that counts when you are deciding if he is alive or not?

Indeed, this was RMF's position. At the same time, RSZA felt that cardiac activity is a doubtful manifestation of the last breath taken, even if the brain has failed. Interestingly, this debate became unusually confused because (a) RMF issued misleading cues in his written response on the topic; and (b) RSZA vicariously (and erroneously) attributed his own opinion to his opponent RMF, and moreover RSZA created further confusion by innovating a distinction between Eretz Yisrael and Diaspora without explaining himself sufficiently. Happily, Torah Musings (including your valuable contribution) has set the record straight, thus giving nachat ruach to the souls of those two tzaddikim in Gan Eden.

- [Naftali Moses](#) on October 10, 2011 at 7:16 am

Thanks for the sources. I will make time to look at everything closely in the coming few weeks.

Quickly, though, the point you make about cars and trucks is an example of just what is being argued here. Is a car a car (or truck a truck) ontologically or because we have labeled it as such? Do the categories of each type of vehicle reveal something ontological about the world or something about the DMV's own classification system?

I haven't come close to stating my own opinion about what or when death is or occurs. I personally believe that the way the discussion has developed over the past 50 some odd years has taken things off course, and I think that essentialist definitions of death have had something to do with that. (All this is in the book).

Personally, if I was the nasi/av beit din of the Sanhedrin, I would lobby for changing the way the question has been framed regarding death and organ donation. I would look at the situation as part of the continuum of questions regarding vehashovoto lo or self-endangerment in order to save the life of another. When looked at from this angle, defining an exact moment of death (if this is what has been going on) becomes less important. This approach is not without its own difficulties, but, I believe, can open the way for a more honest and forthcoming appraisal of communal/personal responsibility even unto death.

hag samah to all (and to those in galutóenjoy your 2X3 day yontifs),
NM

- Noam stadlan on October 10, 2011 at 5:25 pm

As rabbi Michael Broyde pointed out, death is a legal determination that a collection of living cells is no longer entitled to the right granted to human beings. We have categories of life and death both in Halacha and the legal system. There are not intermediate categories. Therefore, no matter how you want to think about it, dividing lines are necessary.

The same with the cars. No matter how you want to approach it philosophically, it is necessary to separate the cars from the trucks from a legal point of view.

- [Naftali Moses](#) on October 11, 2011 at 1:45 am

Broyde's way of thinking of this is one direction taken most familiarly with respect to a fetus. Likewise, I think that there are intermediate categories (like lacunae in all legal systems) which require rethinking or reasserting our categorizations. These become obvious as the system develops. Why isn't a gosses such a case? Or a traifa? Rights and obligations are changed in each of these categories. And, until someone wants to charge different toll rates, there is no need to separate cars from trucks.

- Noam Stadlan on October 11, 2011 at 12:14 pm

As far as I know Halacha treats gosses and traifa as alive human beings. There are additional restrictions but they can be married, own property, no one sits shiva for them when they enter that state, so as a matter of practical Halacha they are alive.

As far as the second assertion- since we are mandated by Halacha to treat dead people differently from those that are alive, it is necessary to be able to distinguish between the two states.

- [Naftali Moses](#) on October 12, 2011 at 6:01 am

Perhaps I wasn't clear enough - the fact that the Sh. Aruh codifies that a gosses hu k'vai l'kol devaravö just reinforces my point if you follow Brodey. Also the constellation of rights and obligations surrounding each does (at least acc. to RSZA wrt gosses) change.

You'll find a discussion of using the notion of rights to describe life vs death in *why yes, my book!*

hag samach,
NM

- [Organ Donor Cards | Hirhurim ó Torah Musings](#) on October 18, 2011 at 9:10 am

[...] adopt the criteria, he subsequently wrote a strong article defending the decision (see this post: link). However, he also wrote another responsum on organ donation that took a surprisingly different, [...]