

# Emes Ve-Emunah

*A Forum for Orthodox Jewish thought on Halacha, Hashkafa, and sociological issues of our time.*

## About Me

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Much of who I am is based on the philosophy of my primary mentor, Rabbi Aaron Soloveichik from whom I received my rabbinic ordination. It is also based on a search for spiritual truth from various sources that I have studied. Primarily it is a reflection of my understanding of two great philosophic works, "Halakhic Man" and "Lonely Man of Faith" by the pre-eminent Jewish philosopher and theologian, Rabbi Dr. Joseph B. Soloveitchik. Of great significance to me is Dr. Norman Lamm's conceptualization and models of Torah U'Mada. Another individual who helped shape my thinking was Dr. Eliezer Berkovits who introduced me to the world of philosophic thought. My early religious education was most influenced by two pioneers of American Elementary Torah Chinuch, Rabbis Shmuel Kaufman and Yaakov Levi. The Yeshivos I attended were Yeshivas Telshe for early high school and more significantly, the Hebrew Theological College where for a period of ten years my Rebbeim included such great Rabbinic figures as Rabbi Yaakov Perlow, Rabbi Mordechai Rogov, and of course Rabbi Aaron Soloveichik.

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SUNDAY, JANUARY 16, 2011

## Brain Death and Chazal

Guest Post by Rabbi Yosef Gavriel Bechhofer



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Although approximately 20 years my junior, I consider Rabbi Yosef Gavriel Bechhofer to be my Rebbe. For about eleven years he gave what is arguably the most popular Daf Yomi Shiur in Chicago history. Attendance at his shiur given every day at 6:30 AM often numbered between 20 to 30 people. Included among his 'students' at this shiur were some of the most prominent Jews in Chicago. Names that anyone who is aware of who's who in philanthropy would easily recognize.

The regular attendees included prominent members of the right, left, and everything in-between. From Agudah to Mizrachi to Lubavitch. Rabbi Yechiel Eckstein, the president and CEO of the Fellowship of Christians and Jews was a regular member. After being shunned by some of the more right wing Shiurim in the city, he found a friend and mentor in Rabbi Bechoffer.

Rabbi Bechhofer is not only a huge Talmid Chacham who has written Seforim in both Hebrew and English - he is an intellectual with an advanced university degree. He brings to the table a wealth of knowledge - both secular and religious - on many subjects. If one has any doubt about the breadth and depth of that knowledge one need only access one of his Shiurim given in Chicago given over 20 years ago. They are available at his [website](#). He is an independent thinker and does not follow anyone in lockstep fashion. He exemplifies the title of my blog: Emes Ve-Emunah.

It is with all that in mind that I asked Rabbi Bechoffer to respond to a post written by Rabbi Natan Slifkin.

The issue is how to define the moment of death. The Gemarah tells us that it is defined in specific ways such as when the heart stops beating or when there is no longer any breathing. Until the modern era, that was the way it was universally defined. But in the modern era technologies have been developed that have found additional ways to determine death - even while a patients heart continues to beat and he continues to breath (usually via the aid of medical machinery).

We can now measure brainwaves. When brainwaves cease - a person is considered medically dead. This means there is no activity going on in the brain. This is called brain stem death. By keeping the patient breathing and his heart beating it enables us to use his organs for



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transplant purposes which can save many lives. Once those two functions stop - the organs become necrotic and can no longer be used.

The problem is that the Gemarah does not discuss brain death, so may Poskim do not accept it. This would make organ transplants impossible.

Rabbi Dr. Moshe Tendler has taken the controversial position that brain death is indeed death and that Chazal would have been OK with that if they had the technology. Rabbi Tendler has been the target of some pretty heavy criticism for that. Rabbi Natan Slifkin (RNS) has made note of that and defended Dr. Tendler in a recent post. He made some interesting points. But is he right? Rabbi Bechoffer addresses that issue in what follows.

This past Thursday, my friend Rabbi Natan Slifkin posted on his blog a [Summary of the Life/Death Issue](#).

Rabbi Slifkin's post is an important one, as it goes to the heart of what many of us find unacceptable with our colleague's approach.

I will try to be as brief as is possible without sacrificing clarity. I therefore will limit myself for now to the opening section of Reb Natan's posting. If there is need for further clarification, I will address the rest of his statements.

RNS writes:

The overall point of this discussion is to show that Chazal's views and rulings on life and death were fundamentally related both to the mistaken beliefs of the era about physiology as well as the limited medical possibilities. Thus, any halachic analysis of this topic must take this into account in order to be valid. Furthermore, our own understanding of physiology, together with the medical possibilities available to us, mean that brain death should be defined as halachic death.

This paragraph really cuts to the heart (no pun intended) of the matter.

When Rabbi Moshe D. Tendler proposed that "brain stem death" be the criterion by which halachic death be established, he staked out a controversial position (see the details of the current re-opening of the controversy at [Hirhurim](#)).

Nevertheless, his position was at no time and under no circumstances predicated on an assumption that Chazal's views and rulings on life and death were fundamentally related both to the mistaken beliefs of the era about physiology as well as the limited medical possibilities. Rabbi Tendler based his argument on a Mishnah in Ohalos and other sources (see my "[The Determination of Death: Halachic Considerations](#)" p.251). His position took for granted the inviolability of the Halachic system and of Chazal's unquestioned and unquestionable authority in the determination and definition of that system and its parameters. Rabbi Tendler's arguments were within the system – they inhered in its sources and rulings, and were completely internal and intrinsic.

Rabbi Slifkin, on the other hand, reveals his cards right at the outset. He is here setting out to demonstrate the "flaws" in the system, and on that basis to suggest that it is outmoded and only partially relevant to contemporary issues. His arguments are from without the system, and extrinsic thereto.

This point of view underlies much of my friend and colleague's writings and is the basis of the uneasiness with which many of us regard his perspective. We are accustomed to assume that Chazal are the final arbiters of Halachah regardless of whatever thought process undergirded their rulings. We assume that those thought processes are those of human beings far greater than ourselves – of rishonim k'malachim – and are very reticent to second-guess them, ever.

RNS writes:

1. Chazal believed that the heart and kidneys are the seat of the mind and free will.

At least some of Chazal - probably most or all - believed that the heart and kidneys are used as the mind and for making decisions (free will). Prooftexts are as follows:

The Rabbis taught: The kidneys advise, the heart considers, the tongue articulates, the mouth finishes, the esophagus brings in all kinds of food, the windpipe gives sound, the lungs absorb all kinds of fluids, the liver causes anger, the gallbladder secretes a drop into it and calms it, the spleen laughs, the gizzard grinds, the stomach [causes] sleep, the nose [causes] wakefulness. (Berachos 61a; similarly in Midrash Vayikra Rabbah 4:4)

This is not an aggadic legend intended to be understood metaphorically. The descriptions of the functions of the tongue, mouth, esophagus, windpipe, lungs, stomach and nose are all clearly scientific descriptions intended to be interpreted literally. The account of the liver causing anger is also consistent with standard belief in the ancient world. Thus, the account of the function of the kidneys and heart are thus also clearly intended to be literal descriptions - and there is no important role ascribed to the brain. This, too, is consistent with standard Aristotelian belief in the ancient world. The Rishonim and Acharonim agree that Chazal were speaking literally, as discussed in my monograph, *The Question of the Kidneys' Counsel*. Elsewhere, the Gemara relates halachos pertaining to the kidneys of animal offerings to the kidneys' function in man of providing counsel. Other Midrashim likewise echo this understanding of the role of the various organs:

" 'And God said to Moshe: Pharaoh's heart has become heavy (kaveid)' - He was angry. Just as the liver is angry, so too the heart of this one became a liver (kaveid), without understanding, as a fool. (Midrash Shemos Rabbah)

"That is to say, the heart of Pharaoh was turned into a liver (kaveid) -- just as a liver has no understanding to understand and comprehend, so too there was no understanding in his heart to understand and comprehend. Therefore, his heart was hardened and was stubborn for him." (Midrash Lekach Tov)

Like everyone else in the ancient world, Chazal thus likewise interpreted all Scriptural references to the heart (which most people today take as referring to the mind and thus the brain) literally. Scriptural references to the heart having various emotional states, to it housing wisdom and cognition, and to God judging a person based on examining his heart and kidneys, were all taken literally by Chazal.

Rabbi Slifkin is quite bold in his assertions. He purports to know – and to tell us – when an aggadic legend intended to be understood metaphorically. And he informs us categorically that these prooftexts are (notwithstanding their Midrashic sourcing!) not metaphorical.

But who designated my friend the arbiter of these matters? One of my favorite obscure seforim is [HaTalmud U'Mada'ei HaTeivel](#) by Rabbi Yekusiel Aryeh Kamelhar (Lvov, 1928). Rabbi Slifkin is familiar with this work as well, as he quotes it in "[Messianic Wonders and Skeptical Rationalists](#)" in the *Hakirah Torah* journal, p. 203).

It is therefore curious that Rabbi Slifkin neglects to inform us of Rabbi Kamelhar's detailed explanation (loc. Cit. .p. 30ff.) of the metaphorical meaning of the Gemara in Berachos, including the references to the "counseling kidneys," etc. This omission is even more remarkable considering Rabbi Kamelhar's explanation of the metaphors based on modern medical knowledge!

Reb Natan's "rush to judgment" continues to be manifest in his citation of the Midrashim concerning the metamorphosis of Pharaoh's heart into a liver. A simple computer search would have revealed to him, as it did to me, the august Chasam Sofer's metaphorical understanding of the Midrash (Chasam Sofer Al HaTorah – Shemos 7:14; Sefer Chasam Sofer Al Meseches Pesachim 7b;...or Sefer Agra DKalla 184b)

These are results that I came to in a very quick search. At the very least, it is intellectually dishonest to not disclose that one's position is by no means definitive. To respond that one has not done the research is even more inexcusable.

Thus, it is untenable to assert – unilaterally and unequivocally! – on the basis of such questionable sources that Chazal believed in a certain medical system and that their positions are hence faulty.

RNS writes:

## 2. Chazal were mistaken in this regard.

That should be self-evident. We now know that it is the brain that is used for all cognitive processes and for making decisions. The heart and kidneys have no such role. In fact, the heart can be replaced by an artificial pump, and the kidneys can be replaced by a dialysis machine. Doing this does not impair a person's mind in any detectable, significant way.

## 3. There is a fundamental connection between the mind/ free will, the soul, and the presence of a live person - and thus the mistaken belief that the heart and kidneys house the mind has fundamental ramifications on the question of determining death.

As we have demonstrated, Rabbi Slifkin's foundation is far from firm. There is no definite evidence that Chazal believed that the heart and kidneys house the mind. My colleague has built a house of cards upon which he then continues to be dan dinei nefashos. Were I not to know that he is a soft-spoken and humble person, my mind (the one in my brain...) would be boggled by the the flippant regard towards Chazal implicit in his approach. I therefore am dan l'kaf zechus that erroneous per-conceived notions, traumatic experiences and harsh treatment have boxed Reb Natan into a weltanschauung and an approach from which it is hard for him to budge, regardless of its flaws.

**Update:** Rabbi Slifkin has responded to this post - and added another post to further clarify his position.

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posted by Harry Maryles | 9:48 AM [Comments \(184\)](#) 