



**ALL
TAKE**

JEWS AND ORGAN DONATIONS

**NO
GIVE?**

ADENA K. BERKOWITZ

Dr. Joel Rosh, a pediatric gastroenterologist and Orthodox Jew who for six years co-directed the liver transplant program at New York's Mt. Sinai Hospital, tells a story of an Israeli girl who flew with her family to the U.S. for a liver transplant.

On the plane, the young girl, while on life support, was declared brain dead. The team that had been assembled to try to save her life now turned to her family and asked if they would donate her remaining healthy organs. They said no.

"The Israeli family explained, 'We feel for the other families and we want to help, but we have asked our rabbi and he has said that it is not permitted under Jewish Law.'"

That's one story about Jews and organ donations. Here's another:

Alisa Flatow, 20, a Brandeis University junior, took the year off to study in a Jerusalem yeshiva, deciding before Passover this year to travel by bus with a few friends to a hotel at Gush Katif, a Jewish settlement in the Gaza Strip. She never made it: A Hamas suicide bomber drove his van into the bus, mortally wounding her and many Israeli soldiers, seven of whom were killed instantly.

Arriving from his home in West Orange, New Jersey, at Sorokin Hospital in Beersheva, Steven Flatow confirmed that the brain-dead young woman on life support was his daughter. The staff asked him a question: Would he be willing to donate his daughter's organs? After consulting with his wife, and making a conference call with their rabbi, Alvin Marcus, and Rabbi Moshe D. Tendler of Yeshiva University, an authority on Jewish medical ethics, Alisa's parents decided to donate her organs to six people on a waiting list who were clinging to life.*

"People have called it a brave decision, a righteous decision, a courageous decision. To us it was simply the right thing to do at the time," says Flatow. "I didn't know what all the media attention was about. As I was leaving Israel, at the airport, I mentioned this to a journalist who said to me, 'You really don't understand, do you?'"

* Of the six, two are known to have died following the operation: Serena Shmuelewitz, 40 (kidney and pancreas) and Shabtai Rehamim, 23 (liver). The known survivors include Malka Nir, 48 (lung), and Jacob Salinas, 56 (heart). Alisa's corneas were saved for later transplantation.

What Flatow didn't understand was the emotional impact his family's gesture had on a grieving Israel—an impact captured by Prime Minister Yitzhak Rabin in May when he told American Jews that "Alisa Flatow's heart beats in Jerusalem." But the Flatow's decision also drew attention to a painful issue—a perception that Jews, Israeli and American, religious and secular, are more reluctant than most to donate their organs after death. Citing "religious objections," some Jews have allowed organ donation to become an exception to their well-deserved reputation for generosity.

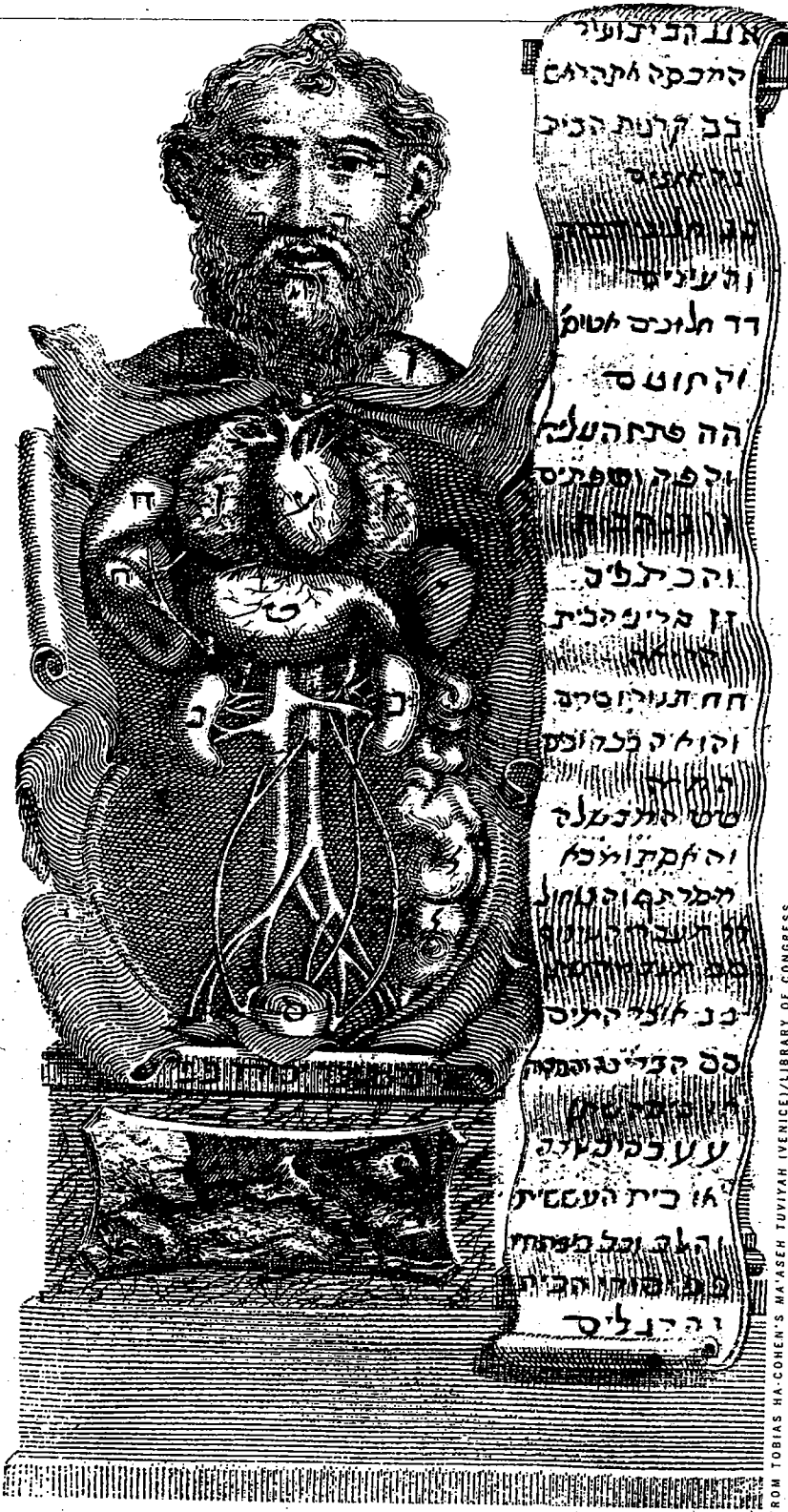
For close to 30 years, transplants have been performed in the United States and Europe with ever-increasing success for kidneys, livers, hearts, pancreases and lungs, as well as bone marrow (see page 26). But not enough people donate organs. To date, over 40,000 people remain on waiting lists in the United States, desperate for organs. According to the United Network for Organ Sharing (UNOS), 40,233 people were registered for organs in 1994, but only 18,251 transplants were performed; 3,098 people on the waiting list died. Every month, 2,000 people are added to the UNOS register.

With few exceptions, the only viable organ donations are from brain-dead donors whose breathing and circulation are being maintained artificially. While polls show most Americans are willing to become



Above: "Alisa Flatow's heart beats in Jerusalem," said a grateful Yitzhak Rabin, capturing the feelings of Israelis after the parents of the 20-year-old terrorist victim agreed to donate her organs.

Left: A surgeon removes a kidney from its shipping container before preparing it for transplant. Are Jews allowing little-understood "religious objections" to tarnish their well-deserved reputation for generosity?



A 1707 Hebrew medical textbook engraving compares the internal organs of the human body with parts of a house: the stomach is the kitchen, a lung the furnace, the urinary tract a courtyard fountain. By the 18th century, some rabbis allowed autopsies on Jews, if the medical knowledge gained would save a life.

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donors, too few families actually give their consent when a tragedy occurs; only 5,000 donors are available each year, out of a potential pool of 10,000 to 15,000 donors. Such shortages fuel frustration and suspicion, as when doctors for the ailing Mickey Mantle were erroneously criticized for giving the former Yankee star special treatment in his successful search for a new liver.

In the general community, families voice a number of familiar objections to donation: According to Jeffrey Prottas of Brandeis University, the former chairman of the Organ Donor and Procurement Committee of the National Task Force on Organ Transplantation, they include misconceptions that the donating process will mutilate a loved one's body and an erroneous but persistent belief that the donor's family will be charged for the procedure. Others simply are unaware of their loved one's desires to become a donor.

For many Jews, particularly the Orthodox, this reluctance is compounded by several factors: concern about violating *halachic*, or Jewish legal, strictures against desecrating the dead or benefitting from a dead body (see Responsa, MOMENT, June 1995); the traditional view that the deceased be buried whole; and disagreement over whether to accept brain death as a halachic definition of the end of life (see box, opposite).

Organ banks do not keep track of donors based on religious identity, but my discussions with medical ethicists, experts, rabbis and doctors across the country support the view that too many Jews are reluctant to become organ donors. Isaac Newman, an Orthodox Jew and coordinator of the New York metropolitan area's organ procurement program, says that only about five percent of Orthodox Jews asked to be donors consent; as a group, Jews are only slowly beginning to match the general population's 60 percent consent rate. Many non-Orthodox and nonobservant Jews, who often tend to demur to Jewish tradition on end-of-life issues, are also reluctant to give. At Conservative and Reform congregations where I have spoken, I have often been told by members of the audience that Jewish law absolutely forbids being an organ donor.

In 1987, Dr. Thomas Starzl, an American pioneer in transplant surgery, warned at a transplant conference in Israel that if Jews do not start giving, they will not get organs (of course any attempt to bar an ethnic group from receiving organs would be challenged legally). Sure enough, in 1992, French health authorities barred all their hospitals from performing organ trans-

plants on Israelis, mostly because of Israel's "organ deficit" in Eurotransplant, the European transplant coordinating body (Israel and members of the European Community previously had joint agreements on health care; most Israelis seeking liver transplants travelled to France). And while France and Israel signed a two-year agreement last December to allow

A 2nd-century B.C.E. Etruscan statue, with its organs visible through a "window."



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When Is Death?

The trend in Jewish legal tradition favors actions that lead to *pikuach nefesh*, saving a life, over prohibitions protecting the sanctity of the body. Nevertheless, the rabbinic acceptance of organ donation was slowed by disagreements over whether to accept "brain death," a concept that emerged only in the late 1960s.

In all but brain death, earlier rabbinic authorities had paved the way for organ donation. Rabbi Ezekiel Landau, the famed 18th-century halachic authority known as the Node B'Yehudah, was asked whether an autopsy could be performed on a patient who had died of a kidney stone, in hope of finding a way to prevent such cases in the future. Landau weighed the Talmud's prohibitions against mutilating the dead (*Hullin* 11b, *Bava Batra* 154a) against the possibility that information gleaned from an autopsy could save another's life. Landau held that if there is a *choleh lefaneinu*, an ill patient before us, then the usual ban on autopsies could be overridden for the sake of *pikuach nefesh*.

The "patient before us" principle could be interpreted narrowly, but countless rabbis have since cited this requirement as justification for a more universal perspective on human suffering. In 1965, for example, the Israeli rabbinate and Hadassah Hospital entered into an agreement which allowed autopsies not only for immediate lifesaving but also to aid in detecting hereditary illnesses and gathering criminal evidence. Similarly, potential organ donors are assured that their organs will be used immediately, and not stored in a "bank."

In the late 1960s, *pikuach nefesh* was applied to allow transplants of the cornea. Then-Ashkenazi Chief Rabbi I.Y. Unterman held that, given all the dangers that blind people might face, such an operation could literally save their lives. But would the ruling apply if the transplant recipient

was blind in only one eye? Would this then violate the prohibition of "benefitting" from the dead or allowing the deceased donor to be buried without all body parts? Unterman responded that a cornea ceases to be "dead" once it is transplanted and revived. Desecration, meanwhile, applies only to a visible incision or removal of a visible, external organ: The eye can be removed and the eyelids of the deceased closed.

Transplant technology requires that organs be "harvested" from bodies whose cardiac and respiratory functions may be maintained only by mechanical means. Traditionally, death was defined as the cessation of the heartbeat. In 1968, an ad hoc committee at Harvard Medical School urged that death be defined as the irreversible cessation of all functions of the brain, including the brain stem. The Harvard criteria have been adopted by the medical establishment (a President's Commission on medical ethics endorsed the criteria in 1981).

The cessation of breathing was considered absolute evidence of death in the Talmud (*Yoma* 85a), a view later adopted by the 12th-century sage and physician, Maimonides and in the *Shulchan Aruch*, the Code of Jewish Law. Later rabbinic authorities, such as the Hatam Sofer (1762-1839), added cessation of cardiac activity to cessation of respiration as conclusive evidence of death.

Brain death defied both of these criteria. Initially, the late Rabbi Moshe Feinstein (1895-1986), the preeminent American Orthodox rabbinic authority of his time, resisted the concept of brain death.* In a responsum written in 1968 he called the person who removed the heart of a brain

* At one point Rabbi Feinstein reasoned that a heart transplant was a "double murder"—its victims the "patient" whose organs were removed, and, because early success rates were low, the recipient.

dead patient a murderer. But in a later responsum, written in 1976, he appeared to accept the brain death definition (*Ig'rot Moshe, Yoreh De'ah*, Vol 111, No. 132). As Feinstein wrote that year to the chairman of the New York State Assembly's Committee on Health, "the sole criterion of death is total cessation of spontaneous respiration. In a patient representing the clinical picture of death, i.e., no signs of life such as movements or response to stimuli, the total cessation of independent respiration is an absolute proof that death has occurred." [Emphasis added.]

Rabbi Tendler of Yeshiva University, Feinstein's son-in-law and a professor of Talmud and biology, expanded on Feinstein's thinking to become the chief proponent of the halachic acceptability of brain death. He invokes Rabbi Feinstein's later responsum on heart transplantation, which begins with a discussion of decapitation. Feinstein, quoting Maimonides, argues that an animal is to be considered dead even if its limbs continue to move after it is decapitated. Tendler compares brain-stem death, or what he calls physiological decapitation, to this physical decapitation, and regards it as a halachically acceptable definition of death. In 1986, the Israeli Chief Rabbinate accepted the halachic validity of brain death to permit heart transplants in Israel, but the rabbis required certain tests to determine that there is no brain activity.

A leading critic of the acceptance of brain death in Jewish law has been Rabbi J. David Bleich, professor of Talmud and Jewish Law at Yeshiva University and Cardozo Law School. Bleich also cites Feinstein in his responsa, and questions the validity of tests performed to determine total cessation of brain stem activity and sticks to the traditional definition of death: cessation of all respiratory and cardiac activity.

—AKB

Organ Donation

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Israelis to receive liver transplants under certain conditions, most other European countries still do not accept Israelis for transplants.

In 1994, 50 Israeli patients needed heart transplants, and only 12 hearts became available; 700 people were on lists for kidneys, but only 12 received transplants from people who had died. While 700,000 Israelis have signed donor cards this seems to have little impact on their surviving relatives. "I can only remember one or two cases in which donors actually had signed a donor card," says Nurit Shimron, national coordinator of the Israel Transplant Association.

This reluctance comes despite statements by rabbinic organizations representing the major denominations endorsing the concept of brain death and encouraging donations. In 1990, the Rabbinical Assembly passed a resolution urging all Conservative Jews to become donors. The Union of American Hebrew Congregation's

1991 health care proxy—a medical living will—likewise encourages Reform Jews to become organ donors.

The Orthodox Rabbinical Council of America's "Health Care Proxy" gives physicians permission to remove the signee's corneas, kidneys, lungs, heart, liver and pancreas "for the sole purpose of transplantation." The directive also stipulates that physicians obtain the "concurrence" of an Orthodox rabbi or a member of the RCA's Bioethics Commission.

"People come up all the time and say, 'I thought Judaism opposed this because of resurrection of the dead and the need to be buried complete,'" says Judith Abrams, a Reform rabbi in Missouri, Texas, who has written widely on medical ethics (see Responsa, MOMENT, December 1994). "I reassure them that most Orthodox authorities permit organ donations if the [standard] brain-death criteria are met. What's more, if you do this incredible mitzvah, God will somehow make it up to you in the world to come."

Rabbinic authorities are not, however, unanimous on the brain death standard. Agudath Israel, the ultra-Orthodox organization, does not recognize brain death and does not endorse organ donations. In Israel, prior to the Flatow tragedy, the *haredi*, or right-wing Orthodox rabbinate opposed donations by Jews (a ruling by the late, revered Rabbi Shlomo Zalman Auerbach on brain death was considered ambiguous).

However, those who oppose donations do not prohibit Jews from receiving organs, a distinction that drives many ethicists and rabbis to distraction. "If a person is not dead by our halachic definition when he is brain dead, then to go and take an organ from a non-Jew means you are killing a non-Jew to save a Jew!" fumes Tendler. "I cannot imagine a more horrendous ruling." In 1992, Rabbi Marc Angel, then president of the RCA, called the all-take no-give policy "morally repugnant."

Those who reject the brain death definition to permit donating but sanction receiving transplanted organs, including Rabbi Aaron Soloveitchik of Yeshiva University's Rabbi Isaac Elchanan Theological Seminary, see it differently. In their view the gentile donating the organ would do so anyway; the recipient is not responsible for this decision or

the organ's removal, and thus is in no way prohibited from benefiting from it.

The Alisa Flatow case may have broken the logjam on this issue. Within a few weeks of her death, a statement was issued by Rabbi Yehoshua Scheinberger, the "minister of health" for the Eidah Haharedit, an umbrella body for Israel's ultra-Orthodox. It allowed ultra-Orthodox Jews to accept the brain-death definition and donate organs but with several conditions: It is forbidden, he declared, to transplant Jewish organs into the bodies of "non-believers," gentiles or Arabs who hate Israel. (Most secular Israelis, he said, would not fall under the category of non-believers.) In addition, he insisted that an Orthodox rabbi sit on the committee that approves the transplants. Both conditions were rejected by the Israel Transplant Association, but negotiations are underway.

Scheinberger's conditions were widely criticized. Rabbi David Feldman of the (Conservative) Jewish Center of Teaneck, New Jersey; and an expert on Jewish medical ethics, said Scheinberger was not speaking as an authority, and even if he was "he was wrong. There is no basis in halacha or in Jewish morality to support limiting a donation to a Jewish or an observant Jewish recipient, and it is important that people be disabused of the idea." Tendler regards Scheinberger's statement as an error "halachically, emotionally and sociologically" and a "hillul ha'Shem"—a desecration of God's name. Nevertheless, he calls Scheinberger's positive ruling on brain death "a great thing."

Israeli transplant experts like Nurit Shimron, however, say it is too early to tell what practical impact Scheinberger's views will have on donations. Dr. Mordechai Kramer, an Orthodox Jew and coordinator of the lung transplant program at Hadassah Hospital, believes that donations continue to lag because of misconceptions about brain death. "If you ask people on the street, will they give, the majority say yes. But when it comes to their family members, most are not ready to do it. With a brain-dead patient, people think he will get better. And that isn't only the haredim but non-Orthodox as well."

In the United States, a number of rabbis report an increased awareness of donations since Alisa Flatow's death.



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"People have been talking about it a lot and it has brought another level of consciousness to the debate," says Rabbi Zahara Davidowitz-Farkas, coordinator of Jewish chaplaincy at New York-Cornell Medical Center.

"I was able to convince people who previously had said 'Isn't this forbidden?' to realize what Jewish tradition says about donating organs," says Rabbi Brian Zimmerman of Temple Beth Ami in Rockville, Maryland.

Those who continue to reject brain death are also being urged to remember another halachic concept, *mishum aivah*, "because of enmity," which holds that certain Torah laws can be suspended to prevent hatred between Jews and non-Jews. I don't believe that in our own age we have to worry about anti-Semitic outbreaks because of low organ donations from Jews. But we do have to reexamine our commitment to the larger community.

Jewish organizations should seize the momentum of the Flatow example and redouble their efforts to encourage donation. At the same time, they should help transplant

teams make sure that Jewish law is followed, that *kevod ha'met*, respect for the deceased, is upheld, that the body of the donor is draped properly and that all blood and tissue is buried with the body in accordance with Jewish law.

The public has to be reassured that donating an organ doesn't mean death will be hastened in any way (for example, doctors involved in removing a patient's organs for transplantation are prohibited by law from cer-

tifying the patient's death).

Most of all, families need to talk to one another. For even if an individual signs a donor card, it is the family that makes the ultimate decision to participate in a lifesaving venture.

Says Rabbi Tendler: "Alisa Flatow will not only get credit in heaven above for the four people alive, walking around with her organs, but the many hundreds who will be saved because other people will be inspired to follow her example." ❧

RESOURCES FOR DONORS

To receive an Advance Directive (living will) and other information on organ donations, contact the following:

Rabbinical Council of America (Orthodox)
Commission on Medical Ethics
275 Seventh Avenue
New York, New York 10001
(212) 367-7888

Rabbinical Assembly (Conservative)
Contact your local rabbi

Union of American Hebrew Congregations (Reform)
Committee on Bio-Ethics
117 South 4th St. Suite 217A
Philadelphia, PA 19108
Contact Rabbi Richard Adress
(215) 563-3183

Reconstructionist Rabbinical Association
Bio-Ethics Committee
Church Road and Greenwood Avenue
Wyncote, PA 19095
Contact Yael Shuman (215) 576-5210

National Institute for Jewish Hospice
8723 Alden Dr.
Los Angeles, CA 90048
(800) 446-4448

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