

Brain Death and Heart Transplants

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Recently I read a number of discussions pertaining to the definition of death and the advisability of organ (heart) transplants. Apart from the technical definitions of an Halachic death and the resolution of this issue, I believe there are other concerns, not mentioned, that may impact the Halachic decision of removing the heart from one designated as brain dead.

The Talmud relates that “when Ulla went up to the land of Israel, he was joined by two inhabitants of Hozai, one of whom arose and slew the other. (He simply murdered him.) The murderer asked of Ulla: ‘Did I do well?’ ‘Yes”, he replied. “Moreover cut his throat clean across...” (See Rosh and Ran who note that such action would hasten the death of the dying person.) When he (Ulla) came before Rabbi Yochanan, he asked him, ‘Maybe, G-d forbid, I have strengthened the hand of transgressors?’ He (Rav Yochanan) replied ‘You have saved your life.’ (Nedarim 22a).

Of major concern is the rabbinic approval granted Ulla by Rav Yochanan. How was Ulla permitted to save his life by killing another person’s life. Ulla had no right to protect himself from a potential or probable life threatening danger by sacrificing the life of the victim who was close to death. The fact that one is close to death does not grant permission to hasten his death. The Gemora in Yuma explicitly rules that one may violate the Shabbat to save a person with even a short span of expected life (Yuma 85a). So why was Ulla permitted to hasten the death of the man slain to save himself from a Sakana?

This question was posed by the Tiferet Yisrael. His response generates a unique Halachic perspective. He contends that the fact that one is mandated to violate Shabbat to save a person who may only live for a few hours does not mean that such a person’s life is equal to one who has a long life expectancy. When the choice is between saving the life of a person who has but a short expected life span versus violating Shabbat, the life of the person takes precedence over the sanctity of Shabbat. When, however, the choice is between someone who will die imminently and one who has a number of years expected to live, then it is proper to sacrifice the person with “Chayai Sh’ah to enable the other to have a normal life. This is why Rav Yochanan approved what Ulla did. (See Tiferet Yisrael, Peah , Mishna 1, also Yuma 8:4)

Based upon the above consideration one may find additional Halachic support for taking the heart for a transplant from someone classified as Brain Dead. Once a person is deemed Brain Dead they are definitely in a status of Chayai Sh’ah. According to the Tiferet Yisrael, the long potential life of another takes precedence over such a life. Indeed, even if a Brain Dead person is not classified as dead according to Halacha, his status as Chai Sh’ah would, L’daat the Tiferet Yisrael, permit taking the heart for a transplant.

The difficulty with this position is that somehow the Acharonim and those who discuss the Halachic definition of death simply do not cite the position of the Tiferet Yisrael. But that does not mean that he is wrong. Research is yet needed to analyse the ramifications of his position. Simply put, based on the Tiferet Yisrael it matters not on the definition of death according to Halacha. (L’hagdil Torah).