

Modern Perspectives on Halachah and Medicine

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Halachah (Jewish law) encompasses the entire range of human activity. The thousands of *halachot* (legal rulings) assembled in the four parts of the Code of Jewish Law known as *Shulchan Aruch* and in the vast sea of rabbinic literature deal with subjects which touch upon all aspects of man's life, from the moment of his conception to his last breath in this world. Medicine, on the other hand, is traditionally limited in its scope to certain aspects of life. Only recently have technological developments expanded the impact of modern medicine upon more areas of man's life. These developments naturally lead to many new points of contact between the world of *halachah* and the world of medicine.

The purpose of this essay is to survey some of those points of contact. The first two sections deal with fundamental matters, the remaining ones with medical *halachic* problems in the chronological order of man's life, beginning with the inception of life and ending with difficult moral issues relating to death.

I. Contradiction or Prejudice?

From time to time the question arises whether it is possible to bridge the gap between modern medicine and *halachah*. In this question there lurks a tacit assumption of a contradiction between medicine and *halachah*. This prejudicial assumption is based on a misunderstanding of the basic characteristics of medical theory and the essence of *halachah*. *Halachah* is a system composed of law, ethics and a way of life. Jewish law, the operative element of *halachah*, requires the fulfillment of positive precepts, such as paying debts on time and the donning of phylacteries (*tefillin*), as well as negative precepts, such as the prohibitions of theft and eating pork. Science, on the other hand, is not a moral or legal system. Scientific research (including medical research) is merely a powerful *tool* to investigate the laws of nature, and medical technology is a wonderful tool for saving life and improving its quality. As tools, however, medicine and technology can be put to improper use. The guillotine, for example, was developed by a French physician in December

1789 for scientific purposes. Nuclear devices, as well as biological and chemical warfare materials, are further examples of potential improper use of technological or scientific developments. Nonetheless, it is clear that science and technology do *not* contradict human morals, despite the possibility of their misuse. The principle is simple: a tool cannot contradict a system of laws and values, but the *use* of a tool can contradict such a system. A word processor does not contradict Jewish ethical or *halachic* values, although it can be used to write pornography. Similarly, technology and medical science do not contradict the values of *halachah*, although there are examples of medical practice which stand in opposition to morality and *halachah*. Friction between medicine and *halachah* can occur when medical technology is used in opposition to *halachah*. Occasionally, a specific social or professional norm may stand in opposition to Jewish law. Such oppositions are *not* new. In olden times, for example, the concept of absolute slavery represented an acceptable social norm which was rejected by Jewish law.

II. Human Intervention in the Affairs of G-d

Medicine poses a fundamental question. In the Torah it appears that health is the divine reward for proper conduct. Suffering and disease are the punishment for sin and transgression:

If thou wilt diligently hearken to the voice of the Lord thy G-d, and wilt do that which is right in His sight, and wilt give ear to His commandments and keep all His statutes, I will put none of these diseases upon thee which I have brought upon Egypt: for I am the Lord that heals thee.¹

But if thou wilt not hearken to me and will not do all these commands ... I will even appoint over you

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terror, consumption and fever, that shall consume the eyes and cause sorrow of heart.²

And also every sickness, and every plague, which is not written in the book of this Torah, them will the Lord bring upon thee, until thou art destroyed.³

These verses seem to imply that medical treatment evidently represents a gross interference in the divine scheme of reward and punishment. Even today, members of certain religions refuse all medical treatment so as not to interfere with "the will of G-d."

Halachah, however, approves of medical treatment and sometimes considers it mandatory. The basis of the *halachic* imperative to heal derives from the verse: "... cause him to be thoroughly healed."⁴ Our sages taught: "Hence do we have permission to heal,"⁵ from which it is derived that it is *incumbent* upon us to heal and save life, and withholding treatment is equivalent to shedding blood.⁶

interference in the divine scheme

This unambiguous attitude of the *halachah* regarding the obligation to heal calls for an explanation. If healing appears to represent an act of opposition to divine will, why should such intervention be permitted?

The homiletical work known as *Midrash* discusses this matter as follows:⁷

Rabbi Ishmael and Rabbi Akiva were walking in Jerusalem together with another man. A sick person met them and said: "Gentlemen, tell me how I may be healed." They responded: "Take such and such, and you will be healed". After the sick person departed, the man who was accompanying the Rabbis asked: "Who caused his disease?" They answered: "The Holy One, blessed be He." He asked: "Why do you interfere in a matter which is not yours? The Lord did smite him; why then do you heal him?"

The Rabbis asked him: "What is your occupation?" "I work the land. Here you can see my scythe," he answered. Then the Rabbis asked: "Who created the land upon which you work?"

"The Holy One, blessed be He." "Then you are interfering in a matter which is not yours. The Lord created the vineyard; why then do you reap its fruits?"

The farmer responded: "Do you not see the scythe in my hand? If I did not plow and weed and put down fertilizer, nothing would grow on the land."

"Fool," the Rabbis said, "a tree cannot grow if the land is not prepared. And if the tree grows, it will die unless fertilized and watered. Similarly the body of man must be tended by the physician with proper medication."

The idea expressed in this *Midrash* is clear. The world was created with a system of natural law. Man is permitted to use the laws of nature to earn his livelihood and maintain health. We may engage in farming for our livelihood, and it is appropriate to engage in medical therapy for our health. Deeds of man do not detract from divine providence. Similarly it is not an offense to divine providence to give alms

to the poor,⁸ for the Lord has many ways to provide for His creatures.

Rabbi Abraham Ibn Ezra had a seemingly maverick opinion on these matters. He distinguished between external injury done by man, which one is permitted to treat, and internal disease caused by G-d, which one may not treat.⁹ Although this opinion is not accepted by most authorities, it is important to understand Ibn Ezra's distinction between different kinds of injury. Did he have a philosophical objection to man's interference with internal disease caused by G-d, or was his opinion based on experience which led him to the conclusion that internal injury is best left untreated so as not to endanger the patient with improper therapy, as was quite common in his day? Rabbi Eliyahu, the Gaon of Vilna, who was familiar with the standards of medical practice two hundred years ago, accepted the second explanation.¹⁰

III. In-Vitro Fertilization and Parthenogenesis

The number of married couples unable to conceive has increased from 15% to 18% in the last decade.^{11,12} Various therapies are successful in treating less than half of these couples. Thus about 10% of married couples remain childless.¹² One of the common causes of female infertility is obstruction of the fallopian tubes, which prevents natural fertilization and progression of the fertilized ovum towards the womb. There are a number of causes for such an obstruction, but it generally results from inflammation of the pelvic region (sometimes a complication of induced abortion or pelvic surgery). Techniques for in-vitro fertilization, developed during the last ten years, provide means for fertilization *outside the woman's body* and subsequent implantation of the embryo within the woman's womb. In-vitro fertilization requires hormonal induction of ovulation and extraction of ova either by means of a minor surgical procedure (laparoscopy) or by the insertion of a syringe under ultrasound monitoring. Semen must be collected and prepared for fertilization (capacitation). The actual fertilization takes place in a laboratory. If successful, a number of embryos can be implanted in the mother's womb.¹³ This procedure is also effective in certain cases of male infertility, since the in-vitro fertilization technique requires fewer sperm-cells than natural fertilization.¹⁴ The success rate of in-vitro fertilization is approximately 20%; depending on the exact cause of infertility and other criteria for selecting candidates for the procedure.¹⁵

Leading rabbinical authorities dealt with the *halachic* aspects of in-vitro fertilization shortly after the procedure was developed. A definite ruling as to whether the procedure is permitted by Jewish law is by no means simple to establish. First, one must determine the *halachic* status of the offspring. Does Jewish law in this case acknowledge a legal relationship between the offspring and its genetic parents? Is the offspring considered legitimate? Does it suffer any *halachic* disabilities? Does the genetic father fulfill the positive precept "Be fruitful and multiply?"¹⁶

Answers to these questions are complicated by the fact that in *halachah* the relationship between parent and child does not always mirror their *genetic* relationship. For example, the Talmud characterizes converts to Judaism to be "like newborn children."¹⁷ This means that at the moment of conversion severs his legal relationship with his genetic relatives.^{18,19} This is one example of a genetic relationship which is not acknowledged in Jewish law.

There are also examples where a *halachic* relationship exists despite the absence of any genetic relationship. One such case is parthenogenesis, where a woman bears a child without a male genetic contribution. Parthenogenesis is well-documented in the animal world.²⁰ Is human parthenogenesis possible? Are there female progeny²¹ who were born without paternal genetic contribution? There is no definite answer to these questions, despite laboratory success in inducing cleavage divisions of a non-fertilized human ovum.²² The question is still academic, but one would have to clarify the position of Jewish law with respect to the parthenogenetic daughter, if such a person is ever proven to exist. Is the mother's husband considered to be the girl's *halachic* father, despite the fact that he contributed no genetic matter? This question, too, does not have a definite answer, but there are indications that the girl would be recognized as the *halachic* daughter of the mother's husband.²³ If so, this is an example of *halachic* paternity without genetic relationship.

the partheno-genetic daughter

In the light of these examples it is clear that we must seriously consider the *halachic* status of "test-tube babies." Leading rabbis are divided on the issue. Rabbi Eliezer Yehudah Waldenberg²⁴ is of the opinion that a "test-tube baby" has no *halachic* relationship with its genetic parents. He therefore concluded that the precept "Be fruitful and multiply" is not fulfilled by the birth of such a child. Moreover, the entire process is *halachically* forbidden. Rabbi Ovadiah Yosef (the former Sephardic Chief Rabbi of Israel) disagrees and permits in-vitro fertilization with the husband's sperm when there is no other available method of bearing children.²⁵

Rabbi Avigdor Nebenzahl²⁶ wrote comments on the opinion of Rabbi Waldenberg and stated that harmony within the family unit has such great value within the framework of Jewish law²⁷ that -

It is proper to remember that if we prohibit in-vitro fertilization, we will cause at least one of two things: either the husband will be unable to fulfill the precept "Be fruitful and multiply," leading to ongoing tension and bitterness within the household, or the couple will separate, thereby destroying the household. Perhaps this consideration is insufficient to decide the issue, but in my opinion it seems right to at least mention it.²⁸

The point made by Rabbi Nebenzahl has indeed decided the issue for other rabbis.²⁹

It is not the purpose of this essay to decide matters of *halachah*. The interested reader could pursue the matter further through examining the sources and by consulting competent rabbinic authorities.

It is important to note that microscopic surgery has made significant advances in recent years. These advances allow the opening of obstructed fallopian tubes, particularly if the obstruction is related to pelvic inflammation. There are even cases where the prognosis of surgical treatment exceeds that of in-vitro fertilization,^{30,31} and this might influence both medical and *halachic* decisions.

In contemporary *halachic* literature there are interesting discussions of *embryo freezing*,³² *reduction of embryos in*

multiple pregnancies (viz. thinning in the case of sextuplets),³³ *surrogate mothers*,³⁴ the *halachic* status of the offspring of surrogate mothers³⁵ and other new techniques for increasing fertility, such as the GIFT procedure.³⁶

IV. Induced Abortion and Tay-Sachs Disease

A fetus is biologically alive. Its heart beats from the beginning of the fourth week after conception.³⁷ Organogenesis, the formation of the body organs, is complete by the end of the sixth week.³⁸ Thus, there is no sharply defined point at which the embryo can be said to acquire biological life. The only point in embryonic life which we can identify with any certainty is the moment of fertilization, at which time the embryo becomes a living being from the point of view of the life sciences.³⁹ It is therefore clear that induced abortion is the ending of a human life. The total dependence of the embryo upon its mother does not constitute any philosophical justification for taking its life, just as the total dependence of a newborn baby on its mother does not constitute such justification.⁴⁰ The mother's convenience plays no role here. Among the Noachide laws we find the severe prohibition of abortion⁴¹ in the verse *He who spills the blood of a person within a person, his blood shall surely be spilled.*⁴² The sages taught: "What is a person within a person? It is a fetus. He who destroys a fetus is worthy of the death penalty."⁴³ Nevertheless, the sages taught that in Jewish law there is no death penalty for abortion.⁴⁴ Therefore, within the system of Jewish law one must distinguish between destruction of the fetus, for which there is no death penalty, and destruction of the newborn.⁴⁵

In the light of this, there is a controversy among contemporary rabbis regarding the severity of abortion in Jewish law. Some hold that abortion is equivalent to murder, and divine punishment is imposed by G-d.^{46,47} Other authorities are of the opinion that there is no Torah prohibition to induce abortion, but only a prohibition of rabbinical origin.⁴⁸ These rabbis hold that the prohibition to induce abortion does not apply in the face of severe maternal suffering, in which case one may abort the fetus.

This controversy touches upon Tay-Sachs disease. In this genetic disease the newborn has an enzyme deficiency (hexosaminidase), leading to the storage of the lipid called Gm² ganglioside, mostly in the central nervous system. At birth, the baby appears entirely normal, but within several months, as the lipid material begins to accumulate, the baby's development regresses. Cerebral degeneration, psychomotor retardation and further decline in the baby's condition inevitably lead to death within a few years. There is a great degree of suffering felt by members of the family when the inevitable result is death of the baby. The disease is relatively common among Ashkenazi Jews, occurring in the offspring of one out of every 625 couples.⁴⁹

By amniocentesis, a test of the amniotic fluid during pregnancy, one can ascertain whether or not the fetus is affected by Tay-Sachs disease. There is no doubt that abortion in the case of a positive diagnosis of Tay-Sachs disease would alleviate much suffering by the family. The *halachic* question is: is it permitted to take the life of a living fetus in order to alleviate severe suffering by the family, primarily by the mother. Rabbi Moshe Feinstein prohibits abortion in such cases. In his opinion, abortion is equivalent to murder, is therefore prohibited by the Torah and is not justified even in cases of severe suffering, except when the mother's life is at

the offspring of surrogate mothers

the ending of human life



stake.⁵⁰ Rabbi Waldenberg, on the other hand, permits abortion of fetuses suffering from Tay-Sachs disease. In his opinion we may rely upon the opinion of those who hold that the prohibition of abortion is of rabbinic origin and does not apply in cases of severe suffering.⁵¹

There are other considerations. In the case of Tay-Sachs disease we are dealing with a fetus which in any event is doomed to death. Although the newborn Tay-Sachs baby has a life expectancy of more than 30 days, we must still attempt to determine whether that baby has the *halachic* status of a *nefel* (i.e., a nonviable newborn which is not considered to be completely alive).⁵²

The consideration of nonviability does not apply to cases of Down's syndrome (21-trisomy syndrome). Nevertheless, Rabbi Waldenberg found reason to permit abortion of fetuses diagnosed as suffering from Down's syndrome. Rather than deciding the issue with a general ruling, Rabbi Waldenberg leaves the ultimate decision to a competent rabbi who knows the family and can properly evaluate their situation.⁵³ The character of the parents and their ability to deal with the pressures and problems of raising a child affected by Down's syndrome will weigh heavily in deciding whether or not to abort. There are families who are able to devote themselves to raising such a child. Such families may even strengthen their mutual relationships through the experience of dealing with a Down's syndrome. Others may not be able to deal with the pressures. The *halachic* decision must therefore take both the medical situation as well as the spiritual strength of the parents into account. The rabbi most familiar with the family in question must take the final responsibility for the decision.

In a situation where the mother's life is in danger, there is no controversy. If the only way to save the mother's life is abortion, her life comes first. However, the baby may not be destroyed once its head has been delivered. At that point, the guiding principle is: one life may not be set aside in order to save that of another.⁵⁴ This principle is discussed in the Talmud⁵⁵ and in later rabbinic literature.⁵⁶

Halachic differences between various methods of abortion, and the different periods in relation to termination of pregnancy, are beyond the scope of this survey.

V. Preserving Life vs. Family Values

They were the happy parents of a healthy baby. The baby developed and grew into a young man. He chose to study medicine. After years of medical school, internship and residency, during which he had little time for his wife and children, he was enjoying an opportunity to celebrate the Passover Seder with his family. It had been years since he had heard his children ask the "Four Questions." The family had been looking forward to this night for a long time. The father was ready to relate the story of the Exodus from Egypt and to fulfill the precept And thou shalt tell thy son.

This was a true family celebration. The house was clean and bright. The special Passover dishes were on the table. Everyone had put on their holiday clothing. All was ready for the start of the Seder. As his wife was putting the finishing touches on the arrangements, she thought of the traditional question: "How is this night different from all the

other nights?" She could not help but think: "On all other nights Abba is on call, but on this night Abba is at home!"

The Seder begins. The telephone rings. The physician, accustomed to receive emergency calls at all hours, picks up the receiver. He hears the voice of an old man, somewhat frightened:

"Doctor, I am sorry to bother you, but my wife insists. It's really not so serious. For three hours I have been feeling a pressure in my chest, and I am sweating a little, despite the cool temperature. Do I have to do anything or can I wait until tomorrow?"

The significance of this conversation is clear. The man was describing what might very well be a heart attack. He should go directly to a hospital emergency room. An ambulance equipped for cardiac intensive care should be ordered at once. The physician would of course advise the patient without unduly worrying him, knowing full well that some 50% of all heart attack patients die before medical help reaches them. Perhaps an ambulance will not arrive quickly enough. The physician considers going directly to the patient's home to examine him and treat him on the spot, before the ambulance arrives.

If he decides to go to the patient, he will lose the Seder night with his family. The children, his wife will be disappointed. If he drives to the patient's home, he knows that he will have to return by foot, for returning home is not a lifesaving procedure, and therefore he may not drive on Yom Tov. He will not reach home until the early hours of the morning.

In the above case, is the physician morally obligated to forgo the Seder night with his family? May he rely on the ambulance service to save the patient?

Since there might be a delay with the ambulance, perhaps he is *halachically* obligated to give up his night with the family.

**saving life
takes
precedence**

In terms of *Halachah* the answer is simple: saving life takes precedence over *Shabbat* (the Sabbath) and *Yom Tov* (Jewish holiday): "The zealous in lifesaving are praiseworthy; those who delay treatment to ask whether it is permitted are spillers of blood."⁵⁷ Despite all his family's preparations and expectations, despite their frustration and disappointment, the physician father must leave his family and tend to the patient.

A real "life saving" procedure takes precedence over *Shabbat* and *Yom Tov*, but is a routine journey of a resident physician to the hospital included in this category? Does the resident have to avoid desecrating the Sabbath and stay in the hospital during the entire Sabbath and every Sabbath of his hospital residency?

Details of the conclusions of Israel's leading rabbinic authorities on this question were published in the Hebrew Journal ASSIA.⁵⁸

VI. Euthanasia

In 1962 the following case was brought before a Belgian court: a woman took the drug Thalidomide during pregnancy. This medication led to the birth of a baby girl with major defects of the arms, legs and other parts. In desperation, the mother gave her eight-day-old baby sleeping tablets dissolved in milk. These were fatal, and the baby died. The mother claimed in her defense that she had committed an act of euthanasia.⁵⁹

In another case, an 88-year-old man suffered from an incurable disease. In the final stage of his illness he became comatose, in which state he could have continued to live for months. Should his life be ended by euthanasia?

"Human vegetables" – terminal comatose patients⁶⁰ – are not rare in the world of medicine. May we practice euthanasia on such patients?

Professor Yeshayahu Leibowitz made some incisive remarks on this subject:

If one speaks of mercy killing, one must ask: "Mercy for whom?" A human being has turned into a "vegetable" and has thus become a burden to all around him. It makes no sense to say that we want to be merciful to *the comatose patient* by permitting ourselves to do away with his life, since he is unconscious.

However, there is no doubt that we are merciful to ourselves when we free ourselves of the physical and the emotional burden entailed by the continued care of the comatose patient. Here lies the danger in our decision. If we do away with our fundamental assumption that it is wrong to take human life, if we find cause to justify the taking of human life under certain circumstances, the we know what results are to be expected. It will rapidly become clear to many people that the world is rife with human creatures whose elimination would be an act of mercy. The deception of dealing mercifully with those miserable creatures coincides with the impetus to act mercifully towards oneself. They will eliminate those whose existence they find disturbing. Therefore I say that even if our sincere, emotional response in certain situations of unfortunate human suffering leads us to feel that "death is better than life," we dare not listen to our emotions. The very possibility of our human existence depends upon our insistence on the

terminal comatose patients

prohibition of taking human life. Heaven forbid that we adopt the concept of *Lebensunwert* [valueless life]. Hitler determined that certain life was "valueless," and he therefore executed 70,000 mental patients and other incurables because their lives were "valueless" and they contributed nothing to society. Hitler thought that whoever freed those miserable creatures from life, and freed society from caring for them, did a favor both to the victim and to society as a whole.⁶¹

Leibowitz's distinction between mercy for the victim of serious diseases and mercy for the others related to the patient explains an interesting feature in a legislative bill proposed by Israeli Parliament Member M. Cohen-Avidov. In the preamble to his bill, which would obligate physicians to withhold treatment in certain circumstances, he wrote:

Any visitor to an old-age home will be shaken by the sight of those who have lost all function ... They are suffering and their relatives suffer emotionally because of the condition of their loved ones.⁶²

Avidov thus reveals some of the factors which sincerely motivated him to propose this legislation. Mercy for the visitors and relatives play a significant role in his thinking when he calls for discontinuance of vital treatment in order to hasten death.

Euthanasia is absolutely prohibited

Leibowitz's remarks are philosophical, not *halachic*. Benefit to society and the value of societal existence require absolute rejection of murder for any reason. Mercy killing is no less than murder.

Jewish law deals with this painful subject on the basis of *halachic* considerations and develops clear guidelines. Murder, the shedding of blood, is one of the severest prohibitions of the Torah. Unlike most other laws of the Torah which are suspended in life-threatening situations, the prohibition of murder is absolute. One may not take another's life, even to save one's own.⁶³ There is only one exception to this law: in the case of *rodef*. That is where one individual pursues another with the intent to kill him, it is proper to save the victim. If no other means are available, one saves the victim by killing the pursuer.⁶⁴

The value of man's life is infinite.⁶⁵ Therefore, no consideration, no matter how reasonable, can lessen the value of life to the extent that killing becomes acceptable. This is so even with respect to mercy killing.

The position of *halachah* is unambiguous. Euthanasia is absolutely prohibited.⁶⁶ Any action which actively leads to the ending of a human life is defined as murder. On the other hand, a passive influence – the withholding of an artificial device or procedure which is merely continuing the period of suffering of the ill person – is not defined as murder and is permitted under certain circumstances.⁶⁷ The main problem is the precise dividing line between permitted passivity and "passivity" which is an immediate cause of death. Is withholding food or oxygen considered a passive procedure or does it cause death? What is the status of an artificial respirator? If one stops an artificial apparatus which is supporting the life of a terminal patient, has one passively "removed an impediment" to death, or has one actively killed the patient?

These are hard questions, and they are discussed in detail in *halachic* literature.^{68,69} The leading rabbis of our time are actively involved in elucidating these matters in practice.

VII. Sedation of Terminally Ill Patients

Some patients suffering from cancer experience great pain. To alleviate that pain, it is sometimes necessary to use increasingly large doses of narcotic substances. These medications may suppress the respiratory center in the brain and might thereby inadvertently shorten the lives of some patients.

In cases such as these the physician encounters a moral dilemma. On the one hand, he may not shorten the life of his patient; on the other hand, his patient is suffering, and the only way to alleviate that suffering is by the use of high doses of medication which may shorten his life.

The *halachah* in such situations is unambiguous. It is permissible to alleviate the patient's pain.⁷⁰ The decision is easily formulated, but difficult to understand. In Jewish law,

shortening of life is defined as murder.⁷¹ Euthanasia is also forbidden. Why, then, is a physician permitted to shorten the life of a patient when his intent is to alleviate pain? In the framework of *halachic* discussions of these principles, some rabbis stress the physician's *intent*. Unlike euthanasia, where the intent is to kill, administering high doses of narcotic medication for pain is intended to *help* the patient. The shortening of his life is merely an undesired side effect.

Rabbi Avigdor Nebenzahl rejects this line of reasoning. He points out that in the law of torts (damages) and in the *prohibition* of murder it is irrelevant whether or not the damage is done by intention. Absence of the intent to kill does not permit any procedure that might end with killing. In the conclusion of his discussion he writes:

I cannot explain Rabbi S.Z. Auerbach's opinion in this matter, unless one were to permit even active killing as a means of alleviating pain. Later I heard him explain that each individual injection does not necessarily shorten life. It is only the cumulative effect of many injections which shortens life.⁷²

Other explanations have been proposed for this *halachah*.⁷³ Despite the difficulty in understanding the *halachah*, it is definitive and is applied in actual cases everywhere.

VIII. Organ Transplants

The human body has many vital organs. In the Talmud these are called "organs upon which life depends."⁷⁴ These include the brain, the heart, the lungs, the kidneys,⁷⁵ the liver, the pancreas and the epidermis. Until recently, functional failure of any one of these organs meant death. However, substitutes have recently been found for some of these organs, and the grave prognosis associated with their loss has largely changed for the better. There are two basic medical solutions for the actual or functional loss failure of these organs: artificial replacement or organ transplants.

Examples of artificial replacement include the use of insulin to replace the natural secretion of the pancreas in diabetes patients; dialysis in place of the natural functioning of the kidneys in patients suffering from terminal kidney failure; use of a heart-lung machine during open-heart surgery while the patients natural heart and lungs do not function; and the implantation of an artificial heart.

Examples of organ transplants include transplants of kidneys, liver, heart, lung and pancreas.

From the point of view of Jewish law, medical and technological solutions of the first type approach (i.e. artificial replacements) are legitimate, permissible, and advisable as long as they indeed increase the life expectancy of the patient. In those cases where only improvement of the quality of life is possible, it is necessary to evaluate the situation very carefully before permitting any surgical procedure which endangers the patient's life. Despite differences of opinion among contemporary rabbis⁷⁶ the patient is entitled to endanger his life by a therapeutic procedure which is likely to improve his quality of life significantly.

On the other hand, organ transplants raise difficult *halachic* questions. In some cases Jewish law limits the use of human organs. There are fundamental differences between the taking of organs from animal donors, which is permissible with almost no restrictions, and the taking of organs from

living human donors, which is permissible with certain restrictions intended to protect the life and health of the donor.⁷⁷ In addition, it is prohibited to remove an organ from a patient on the verge of death.⁷⁸ This prohibition calls for a clear definition of the moment of death, since organs may be removed from the donor only after he is deceased. The definition of the moment of death has direct bearing on the permissibility of heart, liver and other organ transplants, as well as on the requisite duration of treatment for comatose patients connected to life support systems.⁷⁹

Developments in medical technology, together with increased research in medical *halachah* in recent years, are leading to practical solutions which were not dreamt of in earlier years. Current *halachic* discussions regarding the definition of the moment of death rely on medical technologies which have existed for only a few years. An outstanding rabbi ruled only twenty years ago that heart transplants were *double murder*, killing both the donor and the recipient.⁸⁰ The medical situation today is vastly improved. In those days, the transplant procedure may have shortened the life expectancy of the recipient. It is therefore not surprising that the initial enthusiasm for the procedure in the United States abated, and it was abandoned for a fairly long period. In addition, the methods available in those days for establishing the death of the donor were not very sophisticated. Some doctors held that reliance on a flat electroencephalogram (EEG) was sufficient to establish the death of the donor. Today, every physician knows that a flat EEG is insufficient to establish death, since it only reflects the absence of electrical activity in the *cerebral cortex*. This fact does not necessarily indicate death of the total brain. Therefore, a flat EEG cannot be relied upon as a sign of death of the donor. Many patients who have had flat EEG patterns have subsequently recovered and are alive today.

Contemporary medical technology represents a great improvement over what was available years ago. Today's surgical techniques of transplantation are much better. Powerful new medications are in use for controlling organ rejection.⁸¹ The life expectancy of the recipient of a transplanted heart has risen and is now significantly higher than that of patients who do not receive heart transplants.⁸² Methods for establishing death have also been improved by the addition of objective laboratory tests.⁸³

These developments called for a reevaluation of the *halachah* for heart transplants. Shortly before his death, Rabbi Moshe Feinstein counselled one of his neighbors to undergo a heart transplant.⁸⁴ It is therefore clear that heart transplants no longer constitute a case of "double murder", at least in the opinion of Rabbi Feinstein.

In 1986 the Commission on Transplants, appointed by the Chief Rabbinate of Israel, presented its recommendations. The committee included rabbis and rabbinical scholars from different sectors of the population, together with two physicians competent in medical *halachah*. After protracted discussions the committee wrote in its recommendations:

Since this question touches upon matters of life and death, we feel obligated to establish the position of *halachah* in a clear and definitive way. Relying on the principles of the Talmud [Yoma 85] and the decision of the Chatam Sofer [Yoreh De'ah 338] death is *halachically* established by the cessation of

definition of the moment of death



respiration [see Iggrat Moshe, Yoreh De'ah III, Sect.].

Therefore, one must establish that respiration has completely and irreversibly stopped. This can be established by proving that the brain, including the brain stem which controls autonomic respiration, is totally destroyed.⁸⁵

The committee recommended accepting, under certain conditions, the recommendations of the medical committee for defining brain death of the Hadassah Medical Center. But they also stipulated a requirement for an additional, objective laboratory test of the brain stem (BAER). This latter test is non-invasive. It involves stimulating the auditory system by sound. A computer then deciphers the brain waves which originate from the auditory system. If only the "first wave," which originates from the inner ear, can be detected, while others waves which originate from the brain stem cannot be detected, then the ear is functional, but the brain stem is dead.⁸⁶ In this case, the patient is incapable of autonomic breathing and is therefore *halachically* dead since *halachah* stresses spontaneous breathing as a sign of life. This is the opinion of the Committee on Transplants.

Several leading rabbis declined to participate in the discussions on this issue. Their main reason for refusal was their lack of trust in the physicians and their lack of faith in the ability of the medical establishment to impose obligatory norms.

deriving benefit from a cadaver

More than forty years ago, the two then Chief Rabbis of Israel, Rabbi Isaac Halevi Herzog and Rabbi Ben-Zion Uziel permitted autopsies if the results would immediately save lives. The conditions they established for permitting autopsies have not always been followed, and the law which was subsequently passed has not always been obeyed. There were alleged cases of blank signatures added to blank autopsy request forms.⁸⁷

Notes and References

- Exodus 15:26.
- Leviticus 26:14-16.
- Deuteronomy 28:61.
- Exodus 21:19.
- Baba Kama 85a; Berachot 60a.
- R. Y. Karo, *Shulchan Aruch, Yoreh De'ah* 336:1.
- Midrash Shm'uel* 4; *Midrash Temurah* 2, quoted in *Sefer ha-Pardes*; cf. Ch. Kahn's introduction to *Sefer Assia*, Vol. 2, Rubin Mass Pub. Jerusalem 1981 (ed. A. Steinberg) p.5.
- Maimonides' commentary on the *Mishna Pesachim*, at the end of ch.4.
- Ibn Ezra's commentary on Exodus 21:19.
- Weinberger R. M., "Call for Medical Help According to *Halachah*," *Emek Halachah - Assia*, Schlesinger Instit. Pub. Jerusalem 1985 (ed. M Halperin), pp.11-34, note 10.
- Behrman S.J., Evaluation of Fertility in the 1980's, in: *Progress in Fertility*, 3rd edition, Behrman et al. editors. Little, Brown & Co. 1988, p.1.
- Lunenfeld E. and B., "The Struggle against Infertility," *Madda* (Jerusalem) #25:2, pp. 72-75. The statistics on p. 75 relate to couples married in 1966. Of these 12.2% remained childless after ten years of marriage.
- Dandekar P.V. & Quigley M.M., "Laboratory Setup for Human In-Vitro Fertilization," *Fertil. Steril.* 42(1):1984, pp.1-11.
- Matston P.L. et al., "Oligospermic Infertility Treated by In-Vitro Fertilization," *Aust. NZ J. Obstet. Gyn.* 26(1):1986, pp.84-87; and Martin D. & Pan R.C., "Drug Treatment of Oligospermia of Idiopathic Origin - Critical Review," *Ann. Urol. (Paris)* 20(1):1986, pp. 9-14.
- Lancaster P.A., "Obstetric Outcome," *Clin. Obstet. Gyn.* 12(4):1985 pp. 847-864.
- Genesis 1:28; Isaac of Corbeil, *Sefer Mitzvot Katan*, known as *Semak*, Positive Commandment # 49; Maimonides, *Sefer ha-Mitzvot*, Positive Commandment # 212.
- Yevamot* 22a.
- Maimonides, *Mishne Torah, Hilchot Issurei Bi'ah* 14:11-15.
- See R. E. Mizrahi's commentary on Leviticus 20:17 and R. Y. Rozanes, *Parshat Derachim, Derech ha-Atarim* I.
- Mittwoch U., "Parthenogenesis (Review)," *J. Med. Genetics* 15 (1978), pp.165-181.
- In the absence of genetic material from a father, the offspring of parthenogenesis cannot have a Y chromosome, and therefore such offspring must be female. See Mittwoch (note 20), p.20
- Mittwoch, pp. 176-178. For laboratory experience with parthenogenesis see Mittwoch, pp.177-178.
- Halperin M., "Parthenogenesis in Ashdod?" in: *Sefer Assia* Vol., Rubin Mass Pub. Jerusalem 1986 (eds. M. Halperin and

- Y. Schlesinger), pp.179-184.
24. Waldenberg R. E.Y., Responsa *Tsitz Eliezer*, cited in *Sefer Assia*, Vol. 5 (1986), pp. 89-92.
 25. Abraham A.S., *Lev Avraham* Vol.1, 3rd. ed. (Jerusalem 1977), 30:3; Abraham A.S., *Nishmat Avraham, Even ha-Ezer* (1987) 1:5 (3).
 26. Nebenzahl R. A., in: *Sefer Assia* Vol.5 (1986), pp.922-93.
 27. Chullin 141a (cf. Numbers 5:23).
 28. *Sefer Assia* Vol. 5 (1986), *ibid*.
 29. Yosef R. O., Responsa *Yabbi'a Omer* Vol.2, # 1:12.
 30. Bremond A. et al., "Sterility of Tubal Origin: Microsurgery and Fertilization In-Vitro," *Rev. Fr. Gynecol. Obstet.* 81(4):1886, pp. 227-242.
 31. Lubet K. et al., "Result of Microsurgical Treatment of Tubal Infertility: Implications for In-Vitro Fertilization," *Am. J. Obstet. Gynecol.* 154(6), pp. 1264-1270.
 32. Halperin M., "Applying the Principles of Halakha to Modern Medicine: In-Vitro Fertilization, Frozen Embryos," *Proceedings of the AOJS*, Vol.9 (1987), pp.197-212; "In-Vitro Fertilization, Embryo Transfer and Embryo Freezing," *Assia - Journal of Jewish Medical Ethics* 1:1 (1988), pp.25-30.
 33. Silberstein R. I., "Dillul Ubbarim," *Assia* # 45-46 (Vol.12, # 1-2), 1989; and *Nishmat Avraham, Choshen Mishpat* (1987) 425:1a, cited in the name of Rabbi Shlomo Zalman Auerbach.
 34. Rosner F., "In-Vitro Fertilization and Surrogate Motherhood: The Jewish View," *Journal of Religion and Health* 22(2):1983; Ben Meir I.M., "In-Vitro Fertilization: The legal relationships of The Embryo and the Surrogate Mother," *Assia* # 41 (Vol.11 # , 1), 1986, pp.25-40.
 35. Schenkar J.G. & Halperin M., "Jewish Law (Halakha) and IVF/ET," in: *Foundation of In-Vitro Fertilization* (C.M. Fredrics et al. eds.), Washington, Hemisphere Publishing Co., 1987, pp.357-365.
 36. Corcon S.L. et al., "Early Experience with the GIFT Procedure," *J. Reprod. Med.* 31(4):1986, pp. 219-223.
 37. Gray H., *Anatomy of the Human Body*, Lea & Febiger, Philadelphia, (35th ed. 1973), p. 151.
 38. *Mishnah Niddah* 3:7; cf. Gray's *Anatomy, ibid*.
 39. Leibowitz Y., "Medicine and Life Values," *Divre ha-Katedra le Toledot ha-Refu'ah* (Univ. of Tel Aviv 1977), p.9.
 40. Leibowitz, p.9-10.
 41. *Sanhedrin* 47b.
 42. Genesis 9:6.
 43. *Sanhedrin ibid*.
 44. *Mishnah Niddah* 5:3 (cf. Exodus 21:22-23).
 45. *Mishnah Niddah ibid*; Maimonides, *Mishne Torah, Hilchot Rotseach*, 2:6.
 46. Rabbi Meir Simchah ha-Kohen of Dvinsk's commentary *Meshech Chochmah* on Exodus 35:2.
 47. Additional sources: *Nishmat Avraham, Choshen Mishpat* 425:1a; Steinberg A., *Sefer Assia* Vol.1, Schlesinger Instit. Pub. Jerusalem 1976, (ed. A. Steinberg) pp.107-124.
 48. R. Nisim and others referred to in note 47.
 49. Nelson W.E., *Textbook of Pediatrics* (12th ed., 1983), pp.478-479).
 50. Feinstein R. M., Responsa *Iggrot Moshe, Choshen Mishpat*, Part 2, # 69.
 51. Responsa *Tsitz Eliezer*, Vol. 13, #102, and Vol. 14, #100.
 52. Kelig R. D.A., Responsa *Lev Aryeh* 2:32, quoted in *Nishmat Avraham, Choshen Mishpat* 425:1(15); Halperin M., "Heart Transplants," *Assia* # 41 (Vol. 11, 1), 1986, pp. 5-29, note 40.
 53. Responsa *Tsitz Eliezer* Vol. 14, # 101.
 54. *Ohalot* 7:6.
 55. *Sanhedrin* 72b, Palestinian Talmud *Shabbat*, end of ch. 14.
 56. *Sanhedrin* 59a, *Tosafot s.v. Lekka Midi*; Maimonides, *Mishne Torah, Hilchot Rotseach* 1:9; Additional sources: *Sefer ha-Mafteach*, in: Shabse Fraenkel's edition of *Mishne Torah, ibid*.
 57. *Yoma* Ch. 8 (in Babylonian and Palestinian Talmuds); *Shulchan Aruch Orach Chayyim* 328:2.
 58. Halperin M., "Driving in Order to Bring a Resident on Shabbat to Hospital Duty from without *T'chum Shabbat*," *Assia* # 42-43 (Vol. 11, 2-3), 1987, pp.46-51.
 59. Weinberg R. I., "Euthanasia in Judaism," *Dine Israel*, Vol.7, (1976), pp.99-127, and especially p.100.
 60. Aside from death there is no concept of "absolute finality" in medical practice. Although rare, there are well-known cases of "vegetating human beings" in deep coma, who have regained consciousness, despite fatal prognosis. The *Sunday Times* (London, 21 December 1986) reported the case of a patient believed to have been "brain dead" who showed signs of life after both his kidneys had been removed. See Meiri, *Magen Avot* 19 regarding fatal prognoses.
 61. Leibowitz Y., "Euthanasia," *Korot* Vol. 9 (1986), Jerusalem, pp.3-4 and 42-49 (quoted by permission of the author).
 62. Bill 352, submitted to the Knesset on 7 July 1986.
 63. *Pesachim* 25b.
 64. *Mishna Sanhedrin* 8:7.
 65. Atlas S., quoted in: Weinberg R. Y., Responsa *S'ride Esh* 2:78 (cf. p. 199, sect. 4); Tukatsinski R. Y., *Gesher ha-Chayyim* 1:2(2), note 3; Jakobovits R. I., *Jewish Medical Ethics*, Bloch, New York 1978, p.124.
 66. *Nishmat Avraham, Yoreh De'ah* 339:4, s.v. *lachen*.
 67. *Nishmat Avraham, ibid*. (note 66).
 68. For a general survey see: Steinberg A., "Euthanasia," *Sefer Assia* Vol. 3, Rubin Mass Pub. Jerusalem 1982 (ed. A. Steinberg), pp.424-457.
 69. *Nishmat Avraham, ibid*; Feinstein, M. in: *Moriah*, Vol. 13:7-9, pp.52-53.
 70. *Nishmat Avraham, ibid*.
 71. Nebenzahl R. A., "The Prohibition against Shortening Human Life," *Sefer Assia* Vol. 5 (1986), pp. 259-260.
 72. Nebenzahl R. A., "Narcotic Drugs and Critical Patients," *Sefer Assia*, Vol. 4, Rubin Mass Pub. Jerusalem 1983 (ed. A. Steinberg), pp.260-262; Halperin M., "Smoking - a Halachic Review," *Emek Halachah - Assia* (1985), pp. 302-311, note 64.
 73. *Sefer Assia*, Vol. 4 (1983), pp. 263-264; Riesel R. Y.M., "Operations with Doubtful Chances of Success," *Emek Halachah - Assia* (1985), pp.1; Weinberger R. M., "Intense Suffering with Relation to Medical Decisions," *ibid*., pp.53-63.
 74. *T'murah* 10b-11a. Cf. *Rashi* and R. Bezalel Ashkenazi's *Shittah M'kubbetset*.
 75. See: *Mishna Chullin* 3:2; Steinberg A., *Chapters in the Pathology of the Talmud*, p.64; Watts C. & Cambell J.R., "Further Studies on the Effect of Total Nephrectomy in Bovine ..." *Res. Vet. Sci.* 12 (1971), pp. 234-245.
 76. Braun R. S., *She'arim ha-Metsuyanim be-Halachah* 190:4; Emdin R. J., *Mor u-K'tsiah Orach Chayyim* 328; *Nishmat Avraham, Yoreh De'ah* 155:2 (2).
 77. *Nishmat Avraham, Yoreh De'ah* 349:3.
 78. *Ibid.* 252:2.
 79. See: Steinberg A., *Establishing the Moment of Death for Heart Transplants*, Special Report to the Chief Rabbinate Committee on Heart Transplants (1986).
 80. Responsa *Iggrot Moshe, Yoreh De'ah* II:174.
 81. Cohen D.J. et al., "Cyclosporine A: A New Immunosuppressive Agent for Organ Transplantation," *Ann. Intern. Med.* Vol. 101 (1984), pp. 667-682.
 82. Today about 80% of all heart transplant patients live over one year after their surgery, and 70-75% live over two years. Cf. Cohen, pp. 673-674.
 83. I am referring to the BAER procedure. See Halperin M., "Does Halachah Permit Heart Transplants?" *Sefer Assia* Vol. 5, pp. 55-69, note 55.
 84. Rabbi M.D. Tendler in a letter, dated 5 July 1986, to the Director of Hadassah Medical Center in Jerusalem.
 85. See "The Decision of the Chief Rabbinate Council," pp. xx in this issue of *JME*.



86. See H. Sohmer's Protocol for the BAER Procedure, pp. xx in this issue of *JME*.
87. Report of the State Comptroller, 1969: see also: S. Glick, Health policy-making in Israel - religion, politics and cultural diversity, in: Health Policy Ethics and Human Values - Proceedings of the 18th CIOMS Round Table Conference, Athens, Greece 29 October - November 1984, (Eds: Z. Bankowski and J.H. Bryant) Geneva 1985, pp. 72-74.
88. Silberstein W. in: Wishlitsky L. (ed.), Medical Guide based on Jewish Tradition, pp. 96-99; *Assia* # 39 (Vol. 10, 3), 1985, p.82; *Assia* # 41 (Vol. 11, 1), 1986, pp. 22-24.
89. See "The Decision" (note 85), Sect. 7-9.
90. *Nishmat Avraham, Yoreh De'ah* 349:3 (2b), cited in the name of Rabbi Shlomo Zalman Auerbach.
91. Israeli R. S., "Skin Transplants from a Cadaver for the Treatment of Burns," *Techumin* Vol. 1, Zomet Pub. Jerusalem 1980 (ed. I. Warhaftig), pp. 237-247.
92. Maimonides, *Sefer Hamitsvot*, Positive Commandment # 231; cf. *Responsa Yabbia Omer* Vol.3, *Yoreh De'ah* # 22.
93. *Shulchan Aruch, Yoreh De'ah* 349:1.
94. *Nishmat Avraham, Yoreh De'ah* 349:2 (2-3).
95. See Halperin M. et al., "Establishing Paternity by Tissue Typing (MHC)," *Techumin* Vol.4 (1983), pp. 431-450.
96. Steinberg A., "The Jewish Approach to Birth Control," *Sefer Assia*, Vol.4, pp. 139-160; and Aviner S., "Family Planning and Birth Control," *ibid.* pp.167-182.
97. See the articles by Glick, Shafran and Avraham in *Assia* # 42-43 (Vol. 11, 2-3), 1987.
98. "The Concept of Old Age in Jewish Thought," *Assia* # 36 (1984).
99. *Sefer Assia*, Vol. 3, pp. 343-344 and 472-473.