

Medical Responsa

Rav Moshe Feinstein

Contents

- A. Withholding Treatment from Terminal Patients
- B. Precedence in Medical Treatment
- C. Treatment of a *Treif*
 - 1. Definition
 - 2. Animal Treifot are Unchanging
 - 3. Human Treifa Depends on Contemporary Conditions
 - 4. Medical Care of a Treifa and a *Gos*
- D. Compelling a Patient to Accept Treatment
- E. Abortion on a Non-Jew
- F. The Obligation to Rend One's Clothing on Witnessing Death

A. Withholding Treatment from Terminal Patients

Q. Is it permissible to withhold treatment from a terminal patient, thereby allowing him to die, if the doctors have given up hope of effecting a cure, and his life consists only of torment and pain?

A. The *Gemara* (Ket. 104a) relates that when Rebbi (Rav Yehuda HaNasi) was sick, his colleagues prayed for him. Their prayer prevented his death, but could not effect a cure. Rebbi's maidservant, seeing that he was suffering, prayed that "the celestial beings should overcome the earth-dwellers (i.e., the sages)". Seeing that they continued to pray, she broke a vase, causing a momentary pause in the prayers, and Rebbi was able to die. It is well-known that Rebbi's maidservant was learned and treated as an authority on several occasions. On the basis of this story, we may conclude that when there is no medical hope for a patient and prayer is not helping, it is permissible to pray that he die and so be spared further suffering.

The *Ran* (Ned. 40a), commenting on the statement of Rav Dimi that "one who does not visit the sick cannot plead for him, neither that he may live nor that he may die", writes,

"There are times when it is necessary to plead for a patient's death, e.g. if the patient is suffering greatly from his illness and recovery is impossible, as in the case of Rebbi's maidservant, who, when she saw that he was suffering, prayed, 'May it be (thy) will that

the celestial beings overcome the earth-dwellers', i.e. that Rebbi should die. Therefore (Rav Dimi) said that one who visits the sick causes him to live, i.e. his prayer will be effective that he may live. This holds in the majority of cases. This is what the visitor must pray for in the overwhelming majority of cases. But one who does not visit, not only does he not help him live, but even in those cases where (the patient) would benefit from death, he does not grant him even that small benefit."

We see that the Ran draws a halachic conclusion from the story of Rebbi's maidservant; namely, that where there is no possibility of a cure and the patient is suffering, one should pray for his death.

In a case where the doctor has concluded that treatment will not effect a cure, but will only perpetuate the present state of suffering, one should leave the patient alone and not give any treatment. The administration of a drug to bring about his death is equivalent to murder, even if it only hastens death by a single second. Therefore, one must apply the principle of "sit and do nothing" (*shev ve'al ta'aseh*). However, if there are drugs which will alleviate his suffering without shortening his life even by a single second, they should be administered as long as the patient is not moribund (*gosses*).¹

If the patient cannot breathe, he must be given oxygen, even if there is no possibility of a cure, as not being able to breathe is itself a cause of acute suffering which oxygen will alleviate. Once the patient is attached to the respirator, there will be no way to know if he has died. Therefore, the machine should be connected in such a way that it will operate for only an hour or two at a time. The patient should be examined during each intermission. If he is alive, the machine should be reactivated for another period. In this way there will be no chance of contributing to his death or being negligent in his cure for even the slightest period of temporary life.²

B. Precedence in Medical Treatment

Q. Two patients are brought to the hospital. In the doctor's opinion, medical treatment for the first will result only in the easing of his pains or the

temporary extension of his life. The second patient can be cured, if he receives immediate emergency treatment. At the moment, only one bed is available in the emergency room. If they arrived simultaneously, which patient has precedence? If one has been admitted, but treatment has not begun, can the second be given his place?

A. In my opinion, if they arrive simultaneously, the patient with a chance of complete recovery should receive priority, provided that he requires the treatment immediately. However, if the patient who has no chance of recovery has already been admitted, he should not be removed, whether he was originally admitted properly (i.e. he arrived alone) or was mistakenly given precedence over the other patient. The reason is simple. Certainly the life of one who has the potential to live out his natural term has precedence over the life of one who is about to die of an incurable condition. This applies from the perspective of an outside observer. The patient himself, however, is not obligated to save another at the expense of his own life — even if his life is only "temporary". Once he has been admitted for treatment, he acquires a right to the treatment. This is not because he is paying for the time in the hospital. Even if treatment is free or he is accepted on a charity basis, he acquires a right to the time and services of the hospital and the attending doctors by virtue of having been admitted. He is not obligated to waive his right to life, even if temporary, for the sake of another patient, even one who has a chance to recover and live a full term. In fact, he may even be forbidden to do so. This is true even if the second patient requires immediate emergency care.

Only if the first patient has not yet been admitted to the emergency room should the second patient be given precedence, even though he arrived at the hospital after the first one. However, this is only permissible if the first patient will not realize that his treatment is being postponed because the doctors do not believe that there is any hope for him to survive. If our actions bring him to the realization that he is going to die, the ensuing despair and depression can have the effect of hastening his death. Since in most cases he is not aware of the hopelessness of his condition, as it is not customary to inform a terminal patient of his impending death, it will generally not be possible to admit another patient before him. Even in a case where he is aware of the prognosis, it is possible that neglecting him will have an adverse psychological effect. He is liable to feel that he is regarded as already dead and worthless. Therefore, it is unlikely that admitting the second patient will not have an adverse effect on the first. Hence, whoever arrives first should be admitted first. Naturally, every

1. But if he is *gosses*, according to the halachic definition of that state, it is forbidden to "touch" him or administer any other treatment not meant to cure him. See below, sec. C., for the halachic definition of the *gosses*. — trans.
2. Temporary life (*chaye sha'a*) is considered to be life in all respects. See below, sec. B., for a discussion of the relative value of temporary life and permanent life. — trans.

effort should be made to provide treatment for the second as well, even if in another hospital.

C. Treatment of a *Treifa*

1. Definition

A *treifa* is one who has a critical defect in an internal organ, such as a perforation of the heart, lungs, or intestines, or if the tissues of those organs are tubercular. Some organs are considered *treifa* only if there is an additional part or a missing one, others only by the presence of a defect. These *halachot* are described for animals in the *Shulchan Aruch* (YD, sec. 30-60). In most cases, the definition is identical for humans. There are certain exceptions, however (cf. Tosafot, Hul. 42a, s.v. "*Ve'amar*").

2. Animal *Treifot* are Unchanging

However, there is a basic distinction between *treifa* in an animal, which entails a food prohibition, and human *treifa*, which concerns the laws of capital punishment, as will be explained below. Matters of health, diseases and their cures are not immutable and unchanging throughout history. The principle given in the Talmud, that the *treifot* listed in *Hullin* are cases where the animal will not survive twelve months, does not necessarily apply at all times. The Torah prohibits for all time those *treifot* which fulfill the conditions of the principle at the time of the *Tannaim*, the sages of the Mishna. (This is a *halacha l'Moshe miSinai*). The *Gemara* (Hul. 43a) states that God informed Moshe of all the details of the laws of *treifot* at the time of the giving of the Torah, and did not rely on the transmission of the principle. Had the sages been told to prohibit any animal suffering from a condition that will result in death within twelve months, the list would be revised continually. Animals forbidden in the time of the Mishna would be permitted today and vice versa. The *Halacha* declares that this is not to be the case. Those conditions listed in the Talmud are forbidden by divine decree for all times, and other conditions permitted by the sages remain so even if today the condition is fatal. The rule that *treifot* cannot live twelve months applied only in the time of the giving of the Torah and the time of the Talmud.

The Rambam is referring to this point when he writes (*Hilchot Shechitta* 5, 12-13);

"We may not add to these *treifot*, even if we know medically that

(in some case the animal) cannot live... Those conditions listed as being *treifa* (are forbidden), even though our medical knowledge indicates that some of them may not be fatal, (as) we rely only on what our sages listed."

The Rambam does not mean that we do not accept contemporary medical opinion as being accurate when it contradicts the Talmud. He clearly implies that the information supplied by the medical authorities is correct. Otherwise, he would have written "the doctors say" and not "we know medically" and "our medical knowledge". He is saying that even though it is correct, the *halacha* in this case is not dependent on contemporary conditions, but on the situation as it existed in the time of the Talmud and the giving of the Torah. The Rambam earlier refers to another possibility in the case of conditions that are fatal today. A cure may exist which is not known today, and therefore the condition is not actually fatal. This is aside from the possibility that the condition is indeed fatal today, but nonetheless we are interested only in the situation at the time of the Talmud.

3. Human *Treifa* Depends on Contemporary Conditions

The situation of human *treifot*, with regard to capital punishment in cases of murder, is different. Here, the definition of *treifa* is totally dependent on the present prognosis of life expectancy. If the doctors declare that the victim could have lived a normal term of life, the murderer is executed according to Torah law. If the doctors declare that he could not have recovered from his disease and would have died, he is considered a *treifa*, and the murderer is not executed.

This is explicit in the ruling of the Rambam (*Hilchot Rotzeach* 2,8). "He who murders a *treifa*... is not punished by man (the court). Every man is presumed healthy and his murderer is executed, unless it be definitely known that he was a *treifa* and the doctors say that his defect had no cure and would have been fatal had he not been killed by something else." The Rambam does not mention here the classic indications of *treifa* listed for animal *treifot*, because the list is irrelevant. The list would not be permanent. While it is true that the Rambam does not suggest that we elicit a medical opinion for this particular patient, but only for the condition in general, the decision nonetheless depends on contemporary situations and can change from time to time.

However, the distinction between a *treifa* and a healthy person is relevant only to capital punishment, which is not carried out today in the absence of the *Sanhedrin*. The reinstatement of capital punishment is contingent upon the rebuilding of the Temple, where the *Sanhedrin* is required to meet in capital cases. For all other purposes, there is no difference between the murder of a *treifa* and that of a healthy person.

Medical Care of a *Treifa* and a *Gosses*

The *gosses* is one whose organs are intact and therefore has the structural possibility of living, but is in the process of dying as a result of some disease or other condition, for all men are doomed to die because of the sin of the tree of knowledge. He is considered to be fully alive until the actual moment of death. In the time of the *Sanhedrin*, there was no distinction between one who murdered a *gosses* and one who murdered a healthy person. Therefore, since he is extremely weak, and even touching him can have a negative effect and lead to his death, it is forbidden to touch him without medical justification (Rambam, *Hilchot Avel* 4,5).

This restriction does not exist for a *treifa*, who is not in danger of imminent death. As long as he is alive, he is presumed to be the same as any other man. Even when sick, he is treated as other patients and one may touch him or shake his hand when visiting him. Furthermore, the doctors are obligated to treat him in order to alleviate his suffering or to lengthen his life as much as possible.

D. Compelling a Patient to Accept Treatment

Q. Should a patient be compelled to accept treatment against his will?

A. If a patient refuses to accept treatment, the response depends on his reason. If it is due to despondency or because he is afraid of the accompanying discomfort or pain, although he believes the doctors when they tell him that it is for his eventual benefit, he should be forced to undergo the treatment if that is possible. His attitude is foolish and childish, and should not be taken seriously. However, if his refusal stems from distrust of this doctor, a different doctor in whom he will have faith should be found. If no such doctor can be found, and it is not possible to reason with him and convince him of the necessity of the treatment, the doctors are obligated to treat him against his will, provided that all doctors in that hospital agree that the treatment is the correct one.

However, this must be done in a manner which does not frighten or alarm

him, even in the first case mentioned above, as fear and shock can injure and even kill him. Therefore, practically, it is better not to attempt to treat him against his will, even if his family agrees. The doctors must consider the case very carefully before treating a patient forcibly. If the treatment itself has a measure of risk, although the danger is less than that of the disease and therefore it is customary to apply the treatment, it should not be done against the patient's will.

In general, a potentially dangerous drug should not be given on the basis of tests conducted on healthy or slightly ill people, as the danger may be much greater in the case of a deathly ill patient. It is only permitted to take this risk — with the patient's consent — if the doctors know that only a small percentage of weak and sick patients, like the one who is to receive the treatment, were endangered by the drug, and the disease itself is incurable in the majority of cases. A final decision should be reached only after consultation with many doctors and specialists, as the evaluation is a difficult one for even the greatest authorities.

E. Abortion on a Non-Jew

Abortion is forbidden and is considered murder, both for a Jewish and non-Jewish woman, as non-Jews are also forbidden to kill the fetus. In fact, the prohibition is more severe for non-Jews, as they are liable for the death penalty (according to Torah law) for abortion. Therefore, it is forbidden to assist in any way in an abortion. One should not even inform the woman of doctors who will perform the abortion, even if the information can be obtained elsewhere. The doctor should explain to the woman that as a matter of conscience he does not wish to be involved in any way, since the procedure is not medically required for the health of the mother.

F. The Obligation to Rend One's Clothing on Witnessing Death

Q. A doctor, like anyone else, is obligated to tear his clothing (*k'ria*)³ if he is present when a patient dies. If he is subsequently present at another death in the hospital, what should he do?

3. *k'ria*, the rending of one's clothing, is performed upon hearing of the death of a relative, or at the funeral. There is also an obligation for anyone present at the death of a Jew to perform *k'ria*. This is done by making a 10 cm. tear in the upper garment, usually a jacket or a shirt, or, in the case of a doctor, a medical coat. — trans.

A. He is obligated to perform *k'ria* again. However, it is sufficient if he merely extends the previous tear by any amount. This obligation is not greater than the *k'ria* performed for relatives, where the *Halacha* states that if a second relative, God forbid, dies after the seven-day period of mourning, it is sufficient to add a minimal amount to the previous tear. In our case, even the same day has the equivalent status to "after seven days" in the case of a relative, as the doctor is not obligated to mourn for the deceased. Therefore, as soon as he has performed *k'ria* the first time, he is the same as one who has completed the period of mourning for a relative.

Rav Y.M. Tekuchinsky (*Gesher HaChaim*, 4,9), quoting the *Shulchan Gavoha*, writes that it is not customary to perform *k'ria* at the demise, for otherwise it would be impossible to find people who would agree to be present at the time of the soul's departure. This is too weak a reason to abolish an obligation deriving from an explicit passage in the Talmud (MK 25); "R. Shimon b. Gamliel says, He who is present when the soul departs is obligated to rend". It is only a sufficient reason not to protest against those who do not perform *k'ria*, but not a reason for more scrupulous people not to do so. Without doubt, one should perform *k'ria* as required by the *Halacha*.

Skin Transplants For Burn Victims

Rav Shaul Yisraeli

Contents

The Problem

1. Skin Donation
2. Benefiting From Skin in a Nonordinary Manner
3. The Obligation To Bury Skin

Is it permissible for a hospital to establish a skin bank, made up of skin taken from bodies after death, for use in emergencies? Experience has shown that during emergencies, when there are multiple cases of burn victims whose treatment requires human skin tissue, it is impossible to obtain the necessary amount from bodies available at the time. The accepted solution is to maintain a reserve in a sort of bank, similar to a blood bank.

Although in most cases one is dealing with danger to life, which suspends all prohibitions, there nonetheless remains a problem. The *Noda B' Yehuda* (v.2, Y.D. 210) rules that mortal danger (*pikuach nefesh*) does not suspend a prohibition except in a case where the patient is "before us". Here we are speaking of maintaining a supply of tissue for *future* use in emergencies, when there would not be otherwise a sufficient supply. Furthermore, at times the purpose of the skin is to correct facial scars, and hence, being essentially cosmetic, it would not be considered a case of *pikuach nefesh* at all.

1. Skin Donation

The Tosafot maintain that there is no Torah prohibition in benefiting from the skin of a corpse (Nid. 55a). Their reasoning is that the prohibition of benefiting from a corpse is derived from that of the broken-necked heifer (*egla arufa*) (AZ 29b). The prohibition of *egla arufa* is derived from its status as a sacrifice. Skin of a sacrifice, however, is permitted after the completion of the

sacrificial ritual. Hence, it follows that the skin of both *egla arufa* and of a corpse is permitted.

The Rambam rules (*Hilchot Avoda Zara* 7;3) that the skin of an idolatrous sacrifice is not forbidden. Rav Shlomo Eiger (*Gilyon Maharsha* AZ 29b) explains the Rambam's ruling by pointing out that the prohibition of benefiting from an idolatrous sacrifice is derived from *egla arufa*, and hence the skin is permitted, following the reasoning of the Tosafot quoted above. From this it follows that the Rambam would agree that human skin is also permitted, by the same argument.

On the other hand, Rabbenu Tam (San. 48a) contends that human skin is prohibited by the Torah. He argues that the status of skin is clearly not inferior to the shrouds of the deceased, which the *Gemara* prohibits (AZ 29b) by derivation from idolatry. Similarly, the Ritva (Nid. 55a) argues that the status of skin is not inferior to that of human hair, which is prohibited in *Arachin* (ch. 1). The Rambam, it is true, permits the use of human hair, but that is for the reason mentioned in the *Gemara* (op.cit.), "Death is what prohibits", which is explained by Rashi to mean that hair does not die with the body. By that reasoning, skin, which presumably is considered to be an organic part of the body and shares in its death, is prohibited according to all opinions. Furthermore, were skin to be permitted, there would seem to be no reason to question the status of hair, which is ancillary to the skin. It remains to be seen how the Tosafot can deal with these arguments.

The Tosafot (San. 48a), which quotes the opinion of Rabbenu Tam, explains that even though the shrouds of the dead are prohibited by derivation from idolatry, the prohibition of the body itself is derived from *egla arufa*. Similarly, the Tosafot (AZ 29b) explains that the derivation from idolatry is sufficient only for shrouds, which are considered accessories to the body itself, similar to the case of idolatry, in which the verse "You shall utterly destroy ..." is taken to refer to "utensils which were used for idolatry", and not to idols. This implies that one cannot derive the prohibition of the body itself from that of its own accessories, despite the obvious logical dependence of the second on the first. Therefore a separate derivation from *egla arufa* was necessary for the body. But according to this line of reasoning, Rabbenu Tam's argument, which infers the prohibition of skin because "it is not worse than shrouds", is invalid. For just as one cannot derive the body from accessories, so one cannot derive skin from shrouds, as the skin may be regarded, relative to the shrouds, as part of the body proper.

The answer must be that Rabbenu Tam believes that it is indeed possible to derive the prohibition of the body directly from idolatry, in the same way that we derive the prohibition of the shrouds. It would be illogical were an accessory to the dead to be forbidden, while the body itself were not. The *Gemara* nonetheless offers an additional source for the prohibition of the body. The reason is that the prohibition of the accessories would appear to be based on the *honor* due the dead. It seems clear that a prohibition based on honoring the deceased can be waived by the deceased himself (while he is still alive, of course). The *Gemara* states that if the *mitzva* of eulogy is in order to honor the deceased (as opposed to honoring his family), then he can waive the honor and the obligation is suspended. Our case is similar. For this reason, the *Gemara* finds it necessary to derive the prohibition of the body from *egla arufa*, which is considered as being in the category of a sacrifice, thereby indicating that this prohibition is not one of honor but is essential to the object involved, and hence cannot be waived by the deceased. Hence, even though it is theoretically possible to derive the body from accessories of idolatry, it is necessary to utilize an independent source in order to remove the possibility of voluntary waiving on the part of the deceased. The conclusion is that the deceased can remove the prohibition from the shrouds, but not from the body, of which he is not the owner.

We now understand the opinion of the Tosafot. They maintain that one cannot derive the body proper from the accessories. The only source for the prohibition of the body, of which the skin is part, is *egla arufa*, and hence the skin, which is permitted in sacrifices and in *egla arufa*, is permitted in the dead as well. Similarly, the Tosafot can answer the Ritva's question based on the comparison to hair mentioned above. Hair, the Tosafot will claim, is not an integral part of the body and hence is to be considered an accessory, like the shrouds, which are indeed forbidden. Skin, precisely because it is a more integral part of the body, can only be prohibited by derivation from *egla arufa*, which fails in this case. One cannot, according to the Tosafot, derive an integral part of the body from an accessory, and it is precisely on this point that Rabbenu Tam disagrees.

The conclusion is that skin donations are permitted by the Torah, not only according to the Tosafot, but according to the opinion of Rabbenu Tam as well. We have seen that the basis of Rabbenu Tam's prohibition is the comparison to accessories, which are based on the honor due the deceased, and can therefore be waived by the deceased himself. Furthermore, this

permissibility is based not on *pikuach nefesh* but on the fact that when the deceased waives the honor due him, there is no Torah prohibition at all.

2. Benefiting From Skin in a Nonordinary Manner

There is a further matter which requires clarification. We need to determine if the prohibition of benefiting from a dead body includes benefit in a nonordinary manner (*shelo kederech hana'ata*), as medical treatment is considered halachically to be a nonordinary use.

According to the *Gemara* (Pes. 24b), any prohibition derived from a verse phrased in terms of eating, such as 'You shall not eat ...' etc., includes only the ordinary benefit from that object. The Tosafot in a number of places state that nonordinary use is not prohibited even by rabbinic decree (Kid. 56b; cf. *Mishne LeMelech, Yesodei HaTorah* 5,5 and *Sha'ar HaMelech, Hilchot Ishut* ch.5. The Tosafot A.Z. 12b however states that there "is some prohibition", although not from the Torah.) The Tosafot in *Pesachim* (26a) state that Temple property (*hekdesch*) is prohibited only in the ordinary manner, as *hekdesch* is derived from tithes, where the prohibition is phrased as one of 'eating'. Hence, as *egla arufa* is derived from sacrifices (*hekdesch*) and the dead from *egla arufa*, it follows that in both cases nonordinary uses are permitted. This explains why the Rambam, in his list of those prohibitions forbidden even for nonordinary uses, does not mention *egla arufa*.

The Tosafot (A.Z. 12b) raise the possibility that idolatrous sacrifices are forbidden in nonordinary uses, since the term 'eating' used in connection with them appears only in the Prophets and not in the Torah. R. Akiva Eiger asks why the Tosafot needed to raise such a possibility. They should simply have said that idolatrous sacrifices are derived from the dead (ibid.) and the *dead are forbidden even for nonordinary uses*. The answer would seem to be that the Tosafot contend that the dead are not forbidden in nonordinary uses, as we stated above.

The basis for the assertion of R. Akiva Eiger that the dead are forbidden even in nonordinary uses would appear to be the *Gemara* in *Pesachim* (25a). Abaye states that a milk-meat combination is prohibited for use even in a nonordinary manner despite the fact that all the suggested sources for the derivation of the prohibition of milk and meat, such as *chametz* or *orla*, are themselves forbidden only in the ordinary manner. The reason given is that "for this very reason (a term of) 'eating' is not written by it — to indicate that it

is prohibited even in the nonordinary manner". In other words, any prohibition derived from another will automatically include nonordinary uses irrespective of the nature of the source of the prohibition. By this logic, both *egla arufa* and the dead will be prohibited even in nonordinary uses. Similarly, the statement of the Tosafot mentioned earlier that *hekdesch* is not prohibited for nonordinary uses as the prohibition is derived from tithes is contradicted by this passage. (cf. *Sha'ar HaMelech, Hilchot Yesodei HaTorah* ch.5; *Sha'agat Aryeh*,76; *Ahiezer* III,83,4). Abaye's ruling concerning milk-meat combinations is quoted by the Rambam (*Hilchot Yesodei HaTorah*, 5,8). Why do the Tosafot appear to ignore it?

The Tosafot apparently find Abaye's logic impossible to accept at face value. How can an effect be greater than its cause? A derived prohibition cannot be more inclusive than its source. While it is true that the term "eating" does not appear in the formulation of the prohibition, that is because there is in fact no formulation whatsoever of the prohibition — it is completely derived from another source. It follows logically that the nature of the prohibition should be completely dependent on the source and cannot exceed it in scope. The Tosafot therefore conclude that Abaye was speaking only in the case in question. The reason is that milk-meat combinations could have been derived from the prohibition of mixed species in the vineyard (*klai hakerem*) which is forbidden in nonordinary uses (Tosafot Pes. 25a d.h. "*Klai Hakerem*"), but this derivation is not conclusive (Tos. ibid. d.h. "*Ma Liklai Hakerem*"). Only in such a case does Abaye claim that the lack of an explicit term of "eating" indicates that one should prefer the derivation from the source which includes nonordinary uses (*klai hakerem*) to the other possible derivations which do not. However, in a case where the derivation is solely from a source which includes only ordinary uses, Abaye's rule does not apply. Therefore, there is no problem concerning the opinion of the Tosafot about *hekdesch* or about the dead. In both cases, it is logical to conclude that nonordinary uses are permitted.

The *Ahiezer* (III,83,4) points out the contradiction between the Tosafot in *Pesachim* quoted above (which states that *hekdesch* is not forbidden in nonordinary uses), and the Tosafot in *Sanhedrin* (80a, d.h. "*Shor*") which forbids the use of the fat of a sacrifice for medicinal purposes, which is the classic nonordinary use. His solution is to distinguish between benefit which consumes the object, as is the case in *Sanhedrin*, and an external benefit, such as

sitting in the shade of a sacred object, which does not actually deplete the object, which is the case of the Tosafot in *Pesachim*.

The logic of the distinction would appear to be as follows. There are two different types of prohibitions involved in *hekdesh*. One, based on the divine ownership of *hekdesh*, is a monetary one, similar to stealing in the case of interhuman relations. The other, based on the sacred status of the *hekdesh* object, is a formal use-prohibition, similar to milk-meat, forbidden wine etc. That there is, aside from the usual sort of prohibition, a monetary aspect to *hekdesh* is explicitly mentioned by the Tosafot (Ket. 30b d.h. "Zar").

In the case of benefiting from the shade of *hekdesh*, where no consumption of the object is involved, there appears to be no monetary violation at all, just as in the corresponding case between two people, if one sat in the shade of the other's wall, it would not be a case of stealing. In such a case, the violation of *hekdesh* is only the formal one, which, as it is derived from tithes, shares the latter's characteristic of being limited to ordinary uses. However, in a case where the benefit is consumptuary, the Tosafot claim there is no distinction to be made as to the manner of the benefit, whether ordinary or not, just as in a case of stealing, there would be no difference as to the manner of the taking.

In the case of *egla arufa*, the derivation from sacrifices is from the formal aspect of the prohibition, since there is no relevance in *egla arufa* to the monetary aspect of *hekdesh*. This is indicated by the phrasing of the comparison to sacrifices mentioned by the *Gemara*, "Atonement is mentioned in (*egla arufa*) as in the sacrifices". It is the formal sacred status, rather than the monetary one, which is common to both of them. Hence, the prohibition in *egla arufa* and ultimately in the dead is limited to ordinary uses, just as the formal aspect of the *hekdesh* prohibition is so limited.

This applies in the case of the body proper. In the case of the skin, which according to Rabbenu Tam is forbidden by derivation from idolatry, which includes in its prohibition nonordinary uses (Rambam, *Hilchot Yesodei HaTorah*, 5,7), the case would seem to be different. However, we have already seen that the prohibition of skin according to Rabbenu Tam is based on the honor of the dead and can therefore be waived.

We may therefore draw the following conclusions.

1. If consent has not been obtained from the deceased prior to his death, the opinion of Rabbenu Tam is that there is a Torah prohibition in using the skin, even though the use is considered to be a nonordinary one. It would therefore only be permissible if there were a case of mortal danger present before us.

2. If consent has been obtained, then Rabbenu Tam agrees that the derivation from idolatry no longer applies. Even were one to argue that Rabbenu Tam would then apply a derivation from *egla arufa*, in contradistinction to our argument in the first section, it would still be permissible to benefit from the skin in a nonordinary manner, such as skin transplants. There would remain the question of whether a rabbinic prohibition exists in such a case, but for a medicinal use that question is irrelevant, as the rabbinic prohibition is definitely suspended for treatment of even a nonmortal medical condition. This is mentioned explicitly in the *Gemara* (Pes.25b), "Ravina applied a salve of *orla*" origin to his daughter". Hence, a skin transplant under such conditions would be permissible not only in a case of *pikuach nefesh* but for any patient, and it would be permissible to maintain a prior supply of skin for this purpose.

3. The Obligation to Bury Skin

We must still consider the question of the obligation to bury limbs of the body with regard to skin, as well as the prohibition of delaying burial, as the transplant prevents the fulfillment of these obligations.

From the discussion of the commentators (Nid. 55a), who raise the prohibition of benefiting from the dead as the only problem, it would appear that there is no other applicable Torah prohibition. The question is, why does the Torah obligation of burial not constitute a problem as well?

The answer seems to be based on the assertion of the *Mishne LeMelech* (*Hilchot Avel* ch. 14) that the obligation of burial applies only to an intact majority of a body (*roshe verubo* — "his head and the majority of him"). He quotes the opinion of the *Tosafot YomTov*, who explains that the volume equivalent of an olive is the the minimum amount necessary for liability in a case of transporting the dead on Shabbat because that amount of human body would have been put aside for the purpose of burial, implying that there exists a Torah obligation to bury even a part of a dead body. However the *Mishne LeMelech* quotes an explicit proof from the *Yerushalmi* to prove his point.

It would appear that the *Tosafot YomTov* agrees that the obligation of burial applies only to a majority of the body, as proven by the *Yerushalmi*. However, aside from the obligation of burial, there exists an obligation to prevent dishonor to the dead. For this it is sufficient that the body be put aside

honorably. This distinction derives from the *Gemara* (San. 46b) which states that burial is for the purpose of atonement, as the purpose of preventing dishonor would be served if the deceased were “lying on his bed in honor”. Undoubtedly, this refers to a private and sealed-away place. The *Tosafot YomTov* intends to include in *this* obligation even the amount of an “olive”, and this is the meaning of the term “put away” (*lehatzniyo*) that he mentions. The obligation of burial proper is not included.

The Ran (Hul. 122a) questions why the *Gemara* needs a rabbinic injunction in the case of human skin, to prevent a case where one might “use his father’s skin to make a blanket for his mule”, when there is a Torah prohibition of benefiting from the dead. In reply, he quotes the Ramban as explaining that the *Gemara* never considered the possibility that someone would deliberately utilize human skin in this manner. Rather, “because it is dear to him, a person would save his parent’s skin to mourn over it before him, and in so doing, he transgresses (the prohibition of) delaying burial, as well as dishonor (to the dead)”. It appears from this that the Ran’s opinion is that there is an obligation to bury skin.

But this conclusion is untenable. The Ran’s purpose was to avoid the Torah prohibition of benefit from the dead, but in so doing he has only managed to substitute another prohibition. The question still remains why the *Gemara* spoke only of a rabbinic injunction. It must be that his intention is not that a person might delay burial of the skin alone, but that in order to accomplish his purpose with regard to the skin, a person might inadvertently come to delay burial of the body itself. The rabbinic injunction is the prohibition of saving the skin in order to prevent an unintended delay in the burial of the body. This is borne out by the continuation of the quote from the Ramban. “...This is the meaning of the *Gemara*: We fear lest he strip the skin of relatives to mourn over them, and after a time come to make of them a blanket, either he or someone else who would not recognize that they were of human origin”. The possibility that he might forget the origin of the skin is surely a very farfetched one, while the problem of burial of the skin, if indeed there is such an obligation, is implicit in the very act of saving the skin. Why then should it be necessary for the *Gemara* to refer to such a rare possibility when there is always the problem of the burial of the skin? This proves that there is no problem in the nonburial of the skin itself, but only a fear that it might lead to nonburial of the body proper. Since this is a mere possibility, the *Gemara* adds another one — that the skin might be used for making a blanket.

It is clear that there is no obligation to bury the skin. In the case of a medical transplant, to save a life or to treat pain, the problem of dishonor to the dead does not obtain. Since the prohibition of benefit from the dead does not apply in the case of a donation made before death, at least for nonordinary uses, there is no impediment to utilizing the skin even in cases that do not involve danger to life. It will also be permissible to establish a bank to maintain a ready supply, as before the use there is no benefit and hence no prohibition, and, at the time of use, the benefit is permitted, as explained above.

Disconnecting a Terminal Patient From an Artificial Respirator*

Rav C.D. HaLevi

Contents

1. Hastening the Death of a *Gosses*
2. The Sanctity of Life
3. Desecrating Shabbat for Temporary Life
4. The Prohibition of Indirectly Causing Death
5. The Permissibility to Remove an Impediment
6. The Artificial Respirator

Today's lecture deals with a very serious topic, not from the halachic aspect (as we shall see), but from the human aspect. Is it permissible to disconnect an artificial respirator from a human being whose life is totally dependent on it? My feeling is that you are seeking a moral dispensation and a peaceful conscience, rather than a halachic answer. This I will attempt to do. Firstly, it is necessary to preface an exposition on the value of life in Torah philosophy, including temporary life. Only after that can we approach the particular question under discussion.

1. Hastening the Death of a "*Gosses*"

"The *gosses*¹ is like the living in all aspects; he creates an obligation for *yibum*² and exempts for *yibum*...." (*Smachot* 1,1).

1. The halachic definition of one who is dying, *gosses*, is one who is close to death, and the death rattle is heard in his throat. (Rambam, Comm. Mishna, Arach. 1,3). The Rama writes: *gosses* — one who is close to death brings up mucus in his throat due to constriction in his chest". (EH 121,7, and ChM 211,2).
2. If a man dies childless, and his brother is alive at the time of death, there exists an obligation for the brother to marry the widow, in order to perpetuate the name of the deceased. This is called *yibum*. — trans.

* This article is the text of a lecture delivered several years ago to a regional medical conference in the Beilinson hospital in Petach Tikva (after an English court permitted the disconnection of an artificial respirator in the case of a girl who had become a "vegetable").

“One may not tie his jaws, nor close his orifices, nor place a metal utensil or something cooling on his navel, until he dies.... One may not move him, nor place him on the sand or on salt, until he dies”. (ibid. 1,3)³

“One may not close the eyes of a *gosses*. Touching him or moving him is like committing murder. As R. Meir would say, it is like a candle that is wavering; the touch of a man extinguishes it. So too, closing the eyes of a *gosses* is the same as killing him”. (ibid. 1,4)

From the above quotations, it is clear that it is forbidden to hasten the death of a terminally ill patient, even if his death is imminent and inevitable. His status is equal to that of a healthy person. The example cited by R. Meir of a wavering candle is the basis for the law with which we will deal.

The ruling of *Masechet Smachot* is quoted in the *Shulchan Aruch* as follows:

“A *gosses* is like the living in all respects. One may not tie his jaws... nor remove the pillow from under his head, nor place him on the sand....” The Rama adds, “It is furthermore forbidden to cause him to die more quickly. For instance, if the death process is protracted and he cannot depart, it is forbidden to remove the pillow from under him, in order to remove the feathers which people say cause this. He should not be moved from his place. It is forbidden to place the keys of the synagogue under his head in order that he may depart. However, if there is something which is preventing the departure of the soul, e.g. there is nearby a knocking noise such as a wood chopper, or there is salt on his tongue, and this is preventing the departure of the soul, it is permitted to remove it, for this is not a (positive) action at all, but only the removal of a preventive.” (YD 339)

From this ruling of the Rama we may derive that it is forbidden to hasten the death of a terminally ill patient even in order to relieve him of the agony of the extended throes of death.

2. The Sanctity of Life

The *Aruch HaShulchan* (339, 1) offers the following explanation for this law. “Even though we see that he is suffering a great deal in his death throes

3. All of these measures are normally taken after death to prevent deterioration of the body and to prepare it for burial.

and it is better for him to die, it is nonetheless forbidden to do anything to hasten his death. The world and all therein is God's, and this is His will”.

There is a great deal of meaning compacted into these few words. The suffering of man is the will of God. The taking of life is a rebellion against the will of God, who created that life, and is punishing him with that suffering.

The same explanation is offered for the law that a man may not be executed on the basis of his own confession. (Rambam, *Hilchot Sanhedrin* 18,6) The Radbaz explains that “a man's life is not his possession but that of God, as is written (Ez. 18) ‘The souls are Mine’”.

The Rambam utilizes this point in explanation of yet another *halacha*. “The court is commanded not to accept ransom from the murderer, even if he gives all the money in the world, even if the blood-relative wishes to excuse him, for the life of this murderer is not the possession of the blood-relative but of God....” (*Hilchot Rotzeach* ch.1).

On the one hand, it is a decree of heaven. Human life is the possession of God who grants it. Man is forbidden to assault the divine soul. Even if the soul is found in his own body, he is not its master.

On the other hand, there is a rational basis for this position as well. As the *Aruch HaShulchan* concludes, “This is His will”. Why does God grant an easy death to one, while another suffers a lingering agony-filled illness? It is not arbitrary, but the dictate of the wisdom of God, that each should receive as he deserves, according to divine justice.

Furthermore, our criteria are completely materialistic. If we perceive the soul as a pre-existing entity which will continue to exist after leaving the body, and if we take into consideration that we have no idea why the soul was brought into this world, what its purpose is here, for what it is destined in the next world, and what the value is of each second and hour of life, it is then easier to understand why it is forbidden to hasten by even one second the departure of the soul from this world.

3. Desecrating Shabbat for Temporary Life

The Rambam states: “One is executed for killing anyone, whether healthy, sick, or even a *gosses* (*Hilchot Rotzeach* 2,7). From this we see that the valuation of the life of a *gosses* is not merely a pious stringency. The taking of his life is legally murder, making the murderer liable for the death penalty.

In this context, it is worthwhile citing the statement of the Tosafot (Nid. 44a), “We violate Shabbat for the saving of human life, (even for a *gosses*)...

even though... most terminally ill persons will die..., because in matters of mortal danger we do not follow the principle of probability (*rove*).” Similarly, in the *Shulchan Aruch* we find, “Even if he is found crushed, without a chance to live more than a little while, nonetheless we extricate (him from the rubble — a forbidden act on Shabbat)...” (OH 321,4). Even a temporary life has supreme value and suspends the Shabbat prohibitions.

There is a problem here. The basis for the suspension of Shabbat prohibitions in cases of mortal danger is the verse “and he shall live by them”, from which the sages derive “and not that he shall die by them”, or the reasoning “violate one Shabbat so that he may observe many *Shabbatot*” (cf. Yom. 85b). In the case of one destined to die shortly, neither of these sources is applicable. In any event he will not “live by them”, nor will he observe many *Shabbatot*. The Meiri appears to be considering this problem when he writes; “We complete the extrication even though it is clear that he cannot live even one hour, for in that hour he can repent in his heart and confess (his sins).” (Yom., loc. cit.)

This reason is appropriate in our case as well. One should not hasten the death of a patient, even though he is in agony, for perhaps he has not confessed mentally and repented before departing this world, and he could do so in the remaining minutes.

The *Pri Megadim* further extends this principle. He states (YD op. cit., *Eshel Avraham*, 4) that we remove the rubble on Shabbat even from one legally condemned to die, since the sentence cannot be carried out on Shabbat and temporary life suspends the prohibitions of Shabbat. The *Mishna Brura* (*Be'ur Halacha*, ibid.) disagrees. “The value placed by the Torah on temporary life applies to one who values his own life; this excludes one who through his own wickedness has forfeited his life.” Nonetheless, the opinion of the *Pri Megadim* is well-founded in light of the reasoning presented above. Furthermore, it is possible that new evidence will be discovered or new arguments offered before the execution the next day. The Mishna requires that even on the way to the execution there be a continuous proclamation calling on anyone who can offer a vindictory argument to step forward (San. 6,1). Finally, one is required to confess before execution; hence, by saving him on Shabbat, we are enabling him to confess and repent before his death.

With these principles of the value of human life in mind, we can now turn to the specific question under discussion.

4. The Prohibition of Indirectly Causing Death

We previously quoted the ruling of the *Shulchan Aruch* and the Rama concerning the prohibition of hastening death.

“A *gosses* is like the living in all respects. One may not tie his jaws... nor remove the pillow from beneath his head, nor place him on the sand...” Rama — “It is furthermore forbidden to cause him to die more quickly. For instance, if the death process is protracted and he cannot depart, it is forbidden to remove the pillow from beneath him, in order to remove the feathers which people say cause this. He should not be moved from his place. It is forbidden to place the keys of the synagogue beneath his head in order that he may depart. However, if there is something which is preventing the departure of the soul, e.g. there is nearby a knocking noise such as a wood chopper, or there is salt on his tongue, and these things are preventing the departure of the soul, it is permitted to remove it, for this is not a (positive) action at all, but only the removal of a preventive.” (YD 339)

The intent of the Rama's comment is unclear. The *Shulchan Aruch* prohibits performing for the dying any of the activities normally done for the dead, including to “remove the pillow from beneath his head”, since this might hasten the moment of death. What does the Rama add to this?

A careful reading of his comment suggests that he wishes to add indirect hastening of death to the prohibition of the *Shulchan Aruch*, which included only direct action. This is borne out by the language “... to *cause* him to die more quickly”, as well as by the examples, which include activities whose effectiveness is of a more or less mystical, non-physical nature, such as removing feathers or placing the synagogue keys under his head.

It is true that the classical commentaries on the Rama understood that the prohibition in all of the cases he mentions derives from the incidental movement of the body and not from the action itself, i.e. were it possible to remove the feathers or insert the keys without disturbing the patient, it would be permissible to do so, even though these actions have the effect of hastening death. But this interpretation makes the entire comment superfluous. The *Shulchan Aruch* prohibited moving the body; what difference does it make if the movement is the result of the removal of feathers or some other intent on the part of the agent? Furthermore, the Rama explicitly mentions that he

“should not be moved from his place”. This is exactly the content of the ruling of the *Shulchan Aruch*. What is the Rama adding in these words? Furthermore, the *Taz* (n. 2), according to his understanding of the Rama’s ruling, disputes the permissibility of removing the salt from his tongue, as this will surely also involve some disturbance of the body, even if it is of the most infinitesimal sort. The Rama appears to be contradicting himself. Finally, the term “to cause death” argues against the accepted interpretation. Movement of the body does not “cause” death, in the halachic sense of the word (*grama*), but directly brings it on.

Therefore, the correct interpretation, in my opinion, is the one offered above. The Rama intends to expand the prohibition to include indirect hastening of death. In order to understand the remaining difficulties in the passage, we must examine the source of the ruling.

The Rif (MK ch.3) quotes the *Braita* from *Masechet Smachot*, without the words “nor remove the pillow from beneath him”, which are, however, found in the quote of the *Braita* found in the *Torat HaAdam* of the Ramban and in the *Tur*. The *Shiltei HaGiborim* comments on the Rif:

“From here it appears that it is prohibited to remove the pillow from beneath the head of a dying man whose soul cannot depart, as some people do. They say that there are feathers which do not permit the soul to depart. Many times have I protested vehemently against this, without avail. My masters disagreed with me, and R. Natan Ish Igra wrote permitting it.”

Clearly, R. Natan Ish Igra and the masters of the *Shiltei HaGiborim* did not have the reading in the *Braita* which explicitly prohibits the removal of the pillow from beneath the head of the dying. They apparently consider the removal of the pillow not to be a significant physical disturbance of the patient. The incidental movement does not hasten death. The *Shiltei HaGiborim* wishes to prohibit it, not by virtue of the movement involved, but because he understands the *Braita* as prohibiting the hastening of death by any means and not only disturbing the body. That is precisely the point of contention between him and the others.

The *Shiltei HaGiborim* adds; “After many years I found support in the *Sefer HaHasidim*. It says there (723) ‘If he is a *gosses* but cannot die unless they place him in another location, he should not be moved’.” The proof is from a case where the cause of death is not the movement but the new location in a different room, i.e. an indirect effect.

5. The Permissibility to Remove an Impediment

The *Shiltei HaGiborim* continues:

“In truth, the position of the *Sefer HaHasidim* is unclear. Previously he wrote that if someone is a *gosses* and a woodchopper is near the house and the soul cannot depart, we remove the woodchopper from there. This appears to be the opposite of what he wrote afterwards (referring to the prohibition of moving the patient, quoted above). But the answer is that undoubtedly it is forbidden to do something to delay the death of the patient, such as chopping wood there in order to prevent the departure of the soul, or placing salt on his tongue in order to delay death. All these things are forbidden, as is clear from his language. In such a case, it is permitted to remove the preventive agent. But it is forbidden to do anything which will hasten his death. Therefore it is prohibited to move the patient and place him in another location so that his soul may depart, or to place the keys of the synagogue beneath his head in order to hasten his death (this also has the effect of hastening death). Accordingly, if something is preventing the departure of the soul, it is permissible to remove it without compunction, for he is not ‘touching the candle’, and not directly performing an action. But it is prohibited to place anything on the patient or to move him in order to hasten the departure of the soul, for then he is ‘touching the candle’.”

The *Shiltei HaGiborim* prefaces his resolution of the apparent contradiction in the *Sefer HaHasidim* by stating that just as it is forbidden to hasten death, so too it is forbidden to prolong artificially the life of a terminally ill patient. From this he proceeds to deduce that the removal of the artificial means of prolonging life is permitted. The reason is that since the time of natural death has arrived, and it is only the wood-chopping and the grain of salt which is preventing the natural process from being fulfilled, it is permissible to remove the impediment.

“But it is forbidden to do anything which will hasten his death.” Here, he is referring to one whose time of death has not yet arrived, but is in the agony of his death throes, and therefore we wish to hasten his death prematurely. This is forbidden. He cites two examples — moving the body and placing the

synagogue keys beneath his head. These two cases are mutually instructive. Just as placing the keys beneath his head is not forbidden because of any incidental movement associated with it, which would be direct hastening of his death, but only by virtue of an indirect mystical effect, so too the efficacy of the movement that he is speaking of is mystical, based on the assumption that in another corner of the room it will be easier for the soul to depart. Undoubtedly, the movement is accomplished with all possible caution in order to avoid any disturbance which might physically hasten death. Even so, it is forbidden, since the patient dies sooner as a result of the action.

Finally, he concludes that the removal of an impediment to death is permitted, not only where the impediment was physically placed there by someone, such as in the case of the grain of salt, but also in any case where the impediment is artificially impeding the natural process. "According to this, if something is preventing the departure of the soul, it is permissible to remove it without compunction."

The ruling of the Rama, based on this passage from the *Shiltei HaGiborim*, is now clear. He intends to add cases of indirect causation of death to the ruling of the *Shulchan Aruch*. He therefore cites three examples — the feathers, the synagogue keys, and movement — all of which are effective in the same mystical manner. On the other hand, he permits the removal of an impediment, such as the wood-chopping or the grain of salt, as explained above.

The distinction between removing the pillow and removing a grain of salt is still unclear, as in both cases the object is an impediment to death. (cf. *Taz*, *Shach*, and others, loc. cit.) Hence, many opinions permit the removal of the pillow, including those cited by the *Shiltei HaGiborim* himself. Although the Rama prohibits it, later opinion permits it (cf. *She'arei Kneset Hagdola*, YD 339, on the *Tur*).

6. The Artificial Respirator

The case of the salt which may be removed from the tongue of the patient is the closest parallel in the sources to the case of the artificial respirator. The permissibility of removing the salt is uncontested in the sources. The reason, as was explained above, is that it is a case of removing an impediment to death rather than a case of actually hastening death. The salt was apparently placed under his tongue in an attempt to save or prolong his life, but now, when all efforts have failed, and it is only adding to the patient's agony, it is permissible to remove it. The artificial respirator is an exact parallel to this. When the

patient was brought to the hospital in a critical state, he was immediately attached to the machine in an attempt to save his life. Now, when the doctors have determined that nothing can be done for him, and the respirator is artificially prolonging his life, it follows that it is permissible to detach the patient from the machine.

In fact, the permissibility in this case is clearer than in the classic ones. In those cases the patient was breathing on his own; even so, after we determine that the salt is preventing the natural death, it is permitted to remove it. It is clearly permitted to do so when the patient is unable to breathe on his own, and the machine alone is keeping him alive.⁴

Furthermore, the reason advanced by the Meiri for protecting temporary life does not apply in cases of an irreversible coma, where the patient is incapable of repenting.

In my opinion, doctors are not permitted to continue to prolong life by use of the respirator in such a case. We have already explained that it is prohibited to prolong life artificially when there is no longer any hope for the patient. While it is true that the halacha is referring to a patient who is suffering from his continued life, which is not the case where the patient is in a coma and is insensible, nonetheless, in my opinion, not only is it permissible to disconnect the machine, but it is mandatory to do so. The soul of man is the possession of God, who has already called it to him. By the operation of the machine we are causing the soul (rather than the body) to suffer by preventing it from departing and going to its rest and peace.

Therefore, after concluding unequivocally that there is no possibility for the patient to recover, it is permissible to disconnect the artificial respirator, and this may be done without any pangs of conscience.

May God, who cures all flesh, aid you to bring cure and healing to all who need it.

4. The ability to breathe is the halachic sign of life and therefore special significance is given to the inability to breathe independent of the respirator. — trans.