

A Guide to the Complex
Contemporary Halakhic
Debates
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Chapter 11

Time of Death and Organ Donation

Does halakha permit the signing of an organ donor card?

From the outset, it is important to distinguish between different ethical dilemmas that are sometimes grouped together. For example, some mistakenly compare this question to donating one's body to science, though that dispute stems from very different issues. Everyone agrees that one may use a dead body to save a person's life (see chapter 14). In the case of willing a body to science, the decisors debate whether the potential long-term scientific benefit of dissecting the body qualifies as a lifesaving action. In the case of organ donation, however, the dispute surrounds whether the allegedly deceased donor is actually dead! Thus at stake in this case is the very definition of death.

While defining death might seem like a purely scientific issue, it involves a complex set of moral, religious, and legal factors. Scientists delineate the *process* of death by quantifying the increasing dysfunction of an organism. They can describe how the cerebellum, which controls muscle functions, ceases to operate; when a damaged cerebrum causes memory loss; how respiration desists when the nerves in the brain stem cease functioning; or when the heart irreversibly stops beating. Science, however, cannot decide which form of dysfunction defines an organism

as “dead.” This is ultimately a cultural decision that demands a legal criterion with an ethical justification.

Historically, how to define death was not a major issue, since the different signs of dysfunction – including cessation of respiratory and cardiac activity – largely coincided. Modern medical advances, however, prevent the domino effect that causes an entire body to shut down. In particular, respirators can provide oxygen to the heart even if the lungs have stopped functioning independently.

In 1968, a Harvard Medical School committee declared a person dead when the lungs no longer function spontaneously because of irreversible neurological damage, even if the heart continues beating through artificial respiration. Physiologically, this “brain-stem death” differs greatly from a coma or a persistent vegetative state, and there are no documented cases of a brain-dead patient recuperating. The Harvard criterion made way for transplants, since doctors could remove body parts from a brain-dead patient whose organs continued to receive blood from an artificially supported heart.

While this definition has received almost universal endorsement, Jewish legalists continue to debate whether halakha recognizes this criterion. The sages state that to determine if a person is living or dead, we must examine their nostrils for signs of breathing (*Yoma* 85a). Respiration is a sign of life, since God created Adam by “breathing into his nostrils the breath of life” (Gen. 2:7). Accordingly, the nineteenth-century Hungarian decisor Rabbi Moshe Sofer ruled that cessation of breathing constitutes death (*Hatam Sofer* YD 2:338). European doctors at that time were concerned that scientists could not accurately determine death, and many governments demanded the delay of burial for two to three days to ensure that the “corpse” was really deceased. Rabbi Sofer, however, saw no need for such precautions, since cessation of respiration clearly indicated death.

Based on this ruling, Rabbi Moshe Feinstein declared in 1976 that brain-stem death fulfills the halakhic criterion of death, even if the heart continues beating due to artificial respiration (IM YD 3:132). Rabbi Feinstein drew on a mishna that deems a decapitated animal dead though it continues to spasm (*Oholot* 1:6). Brain-stem death, he reasoned, equals physiological decapitation. While some have deemed this responsum

ambiguous, Rabbi Feinstein’s family has affirmed that such was indeed his opinion (*Assia* 7). In 1987, the Chief Rabbinate of Israel endorsed this position, pronouncing conventional, non-experimental organ transplants a great mitzva.

However, numerous decisors, including Rabbis Shmuel HaLevi Wosner (*Shevet HaLevi* 8:86) and Eliezer Waldenburg (*Tzitz Eliezer* 10:25), oppose brain-stem death. They contend that the Talmud used respiration as the criterion for death only when there were no other signs of life; if the heart continues beating, the person is halakhically alive, and removing his organs constitutes nothing less than murder. These scholars further cited a responsum of Rabbi Shalom Schwadron (Poland, 1835–1911), who asserted that any signs of life override the cessation of respiration (*Maharsham* 6:124).

One should settle matters regarding life and death decisions, including signing an organ donor card, in careful consultation with family members and competent rabbinic authorities. While I strongly advocate brain-stem death and organ donation, I encourage everyone to find out more about this sensitive and important topic. One good resource is the Halakhic Organ Donor Society, www.hods.org.