END OF LIFE ISSUES Part Four

Brain Death and Organ Donation,
or
Medicine, Morality and Zombies

Rabbi Aryeh Klapper
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Young Israel of Sharon
Rabbi Dov Linzer
To adopt a restrictive position regarding donating organs and a permissive position regarding receiving organs is morally untenable. Such an approach is also highly damaging to the State of Israel, both internally and in regards to its relationship with the larger world, and to the Jewish People as a whole. This approach must thus be unequivocally rejected by Jews at the individual and the communal level.

Unsigned Statement from Agudath Israel
Compounding the statement’s offensive embrace of a halachic position based on an extra-halachic rationale is its derision of those who take “a restrictive position regarding donating organs and a permissive position regarding receiving organs.” That halachic position, held by a majority of major poskim today, is derided by the statement as “morally untenable,” and “must thus be unequivocally rejected by Jews at the individual and the communal level.”

No. What must be unequivocally rejected by Jews, at least those who care for the honor of Torah, are attempts to manufacture “halacha” to personal specifications and the disparagement of true halachic authorities.

Rabbi Aryeh Klapper
A. We live in a time when, ba’avonoteinu harabim it is not difficult to produce examples of talmidei chakhamim with significant moral blind spots, with those blind spots affecting not just their personal behavior but the content of their Torah. One can in theory deny this by arguing tautologically –
   a) since they are great scholars, it follows that their actions cannot be immoral, and thus our evaluations must be incorrect, or else
   b) since our evaluations of their actions are correct, they must in fact not be great scholars.
But I at least cannot make this argument with integrity. I furthermore contend that to completely delegate moral judgment – to say naaseh venishma unconditionally to another human being – is to betray the core responsibility of being tzelem Elokim and ben berit. This is true with regard to all issues, and independent of whether one sees the central moral issue regarding brain death as focused on euthanasia, lifesaving, particularism, or reciprocity.

B. It is worth considering whether the morality or immorality of a given halakhic decision rests exclusively on its outcomes, on its reasoning, or on a combination of the two. For example – one might reach the take-but-don’t-donate position on the ground that most organs will be taken from non-Jews by non-Jews, and
   a) Jews have no obligation to sacrifice a chance at survival so as to avoid entanglement in intra-Gentile violence, or rather
   b) Gentiles have the autonomous halakhic right to define death as they please, regardless of how halakhah defines it for Jews, and therefore Jews have no right to impose the halakhic definition on Gentile transplant surgeons removing organs from Gentiles.
Should our moral judgment of the same practical decisions change, depending on whether the actor offers the first or second rationale?

Mishnah Ohalot 1:6
Human beings are not *metamei* until their nefesh departs – even if their arteries are severed, or if they are irreversibly and imminently dying – they (are legally alive for all legal matters, including those that affect the status of others, such as marriage).

So too, beheimot and chayot are not *metamei* until their nefesh departs.

However, if they are decapitated, even though they are *mefarkheis* (=tremoring?) they are *metamei*.

Rambam Commentary to Ohalot 1:6
The movement which the limbs move after death is called *pirkus*.

The (=Arabic translation of /lizard/) because this animal – its tail moves for some time after it is severed.

This happens to some species of animal if the motive force was not spread to all the limbs from one foundation and source, but rather is divided throughout the body.


It is also clear from the case mentioned of the woman who was decapitated that the absence of any possibility of revival confirms the status of death even though there may still be muscular spasms.

Maimonides (Commentary to Mishnah Ohalot 1:6) explains that the organism is no longer considered to be alive "when the power of locomotion that is spread throughout the limbs does not originate in one centre, but is independently spread throughout the body."

It follows that if the restoration of central control is feasible, the commandment to save life applies. Obviously then the definition of death depends upon the availability of more sophisticated techniques of resuscitation.

Here again, the applicability of such methods and the consequent decision as to the onset of death is determined according to the judgment of the physicians.
B. R. N. Rabinovich, reply to internet query from Aryeh Klappe

If I have properly understood your words, you argue that the sentence in the Peirush HaMishnayot there:

“This happens to some species of animals when the power of locomotion that is spread throughout the limbs does not originate in one centre, but is independently spread throughout the body”

is a scientific explanation, i.e. an explanation of the phenomenon of pirkhus in animals, and not a legal categorization of pirkhus.

Granted that this is correct, nonetheless it becomes clear that pirkhus is a movement of the limbs without central control. This is in contrast to the situation regarding a human being while alive, that all his movements stem from a central source. From here it is demonstrated that removal of the control is categorized as death.

I have written about this in my book Iyyunim b’Mishnato shel HoRambam, p. 160-161. See there with precision.

With blessing,

Nachum Eliezer Rabinovich

C. Aryeh Klappe

Thank you very much for your reply. I have read the discussion in עיונים במשנתו, but am still not convinced. For greater clarity, I'll write in English this time, and eagerly await the Rav's reply.

Mishnah Ohalot writes that
a. Human beings are not metamei until their nefesh departs - even if they are irreversibly and imminently dying.

b. Beheimot and chayot are not metamei until their nefesh departs.

c. However, if they are decapitated, they are metamei, even though they are mefarkheis.

d. This like the tail of the leta’ah, which is mefarkheis.

What does this mean?

The first ambiguity is whether the line about decapitation applies to humans as well as animals. I’m willing to assume that it does, at least for this conversation.

Therefore:

Humans, beheimot, and chayot can be mefarkheis even though their nefesh has departed. Their pirkhus is just like the pirkhus of the tail of the leta’ah.

Rambam explains that we are discussing the tail of the leta’ah after it has been severed from the leta’ah.

The second ambiguity is whether the tale of the leta’ah is an example of pirkhus in a chayah after the departure of the nefesh, or rather an analogy brought to demonstrate that pirkhus can happen without a nefesh.
I suggest that it is the latter. When the tail of the *leta’ah* is severed, the *leta’ah* itself does not die, and so no nefesh has departed.

So the intention of the mishnah is: Just as the tail of the *leta’ah* moves, although the tail is not alive, so too the *pirkhus* of a decapitated chayah’s body does not prove that it is alive.

So - why does the mishnah cite the *leta’ah*, if the *leta’ah* itself is not dead, and therefore not *metamei*, just because its tail has been severed?

Because everyone knows that the motion of a severed tail does not prove the presence of a nefesh in either the tail or the *leta’ah* from which it was severed.

So too, the *pirkhus* of a decapitated corpse does not prove that it contains a nefesh.

This ends the halakhic conversation.

Now Rambam raises a scientific question: Why in fact does the severed tail of a *leta’ah* move *more* than the severed limbs of beheimot and chayot and humans (granting that those limbs also move a little bit sometimes)?

He answers: Because in the *leta’ah*, and similar animals, the motive force is not centralized.

I contend that this answer:

A. Does not explain why there is *pirkhus* in beheimot, chayot, and human beings.

B. Does not provide any definition of yetziat neshamah.

All it says is that the severed tail of the *leta’ah* demonstrates that motion is not proof of life. Therefore, one may apply whatever other criteria of death one has even in the presence of motion.

Again, I await the Rav’s reply eagerly.

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**D.  Reply from R. N. Rabinovich**

*שאלה רב <ask@ybm.org.il> 12/27/16*

In the Mishna, "pirkus" is the term for movement after the death of a human or an animal.

The Rambam defines pirkus as movement with no central force controlling those movements, and he explains that certain types of random movements occur in the limbs of lizards even while they are living.

This example typifies movement with a lack of a central force.

In humans, as opposed to lizards, this lack of central force is indicative of death.

*Chanuka Sameach,*

N.L. Rabinovitch
1. תלמוד בבלי, מסכת יומא דף פגadol.

מי סיפדהו עלי ומפלת, ספקל או ספקל אינו שמן, ספקל ח, ספקל מת, ספקל נור, ספקל ישראל - מפקחים
על יコンテンツ. מתבנהו י- מפקחים, ונס מת - ינעו
ונמרארה... לתנך רבך?
עד יnicos או בודק?
עד חומת;
ויש אומרים: עד לב.

2. משנה אהלות א:וד.

אדם - אין מנעא דר Responsive נפש, אופי ומגזר או, שון חלב, וופר מ hoe, ומאיל מתוחה, ופוסל בתרומת
ונכבה והיה - יאני ונעא דר Responsive נפש; מתוחה ארצו, 찾아 דף שמק即时发生 - טמאיי',
וכן Zub נוע של נאות שאי Fịrcos:
כנוץ בד.Decimal שיתפור שים Fịrcos.

3. פירוש המשניות אהלות א:טר.

והנה לאントנע פאבר נביא האברים אחר המות קורים יאווה פרכס.
ולאשה - איה "לאסאמ איבי" לפי סבלתחייה היא מתנuestra זוגי, ודנה מתוחה שכרת.
וייאור זה קמקז מתני ביצי החים אמא לא היא הכח התחת ממקסס בכל האברים מצוז אד אל
ייחה מפולול בכל הגנה.

4. תלמוד בבלי פסחים כ:ף.

ושיפכון דים פניה מפל? סברא איה.
וכי הווה דאתא לקמיה דרבא, אמר ליה: מרי דוראי אמר לי: 'זיל קטליה לפלניא, ואי לא
קטלינא לך'.
אמר ליה: ליקטלך ולא תיקטול. מי מיי דמא דידך סומק טפי? דילמא דמא דההוא גברא סומק טפי!'.

5. תלמוד בבלי בבא מציעא סב.

ענה ליהckettנה:
שאני שטי מהליכן בדרכ,ODY יבד מתוח קיטון של מים -
אמ שטיין מעסioneer - מתני; ואמה שניה, מתוח - מבגי ישים.
דרש בפטרה: מעובי שיקשים שיקשים ימות, אלא יראה ידמע מתוח בימייה של חינה.
עד שבא רב עקיבא שלימד: 'וזא א CHK מaeper - חייר קודמים להי תיבור.'
1. Talmud Yoma 83a, 85a
/Mishnah/
One who had a ruin collapse on him – if there is doubt whether he is there, or whether he is alive, or whether he is Jewish – we dig out the ruins.
If they find him alive – they dig; dead – they leave him.
/Gemara/…
A beraita:
How far do they check (the body for signs of life)?
Until his nose;
But some say: Until his heart.

2. Mishnah Ohalot 1:6
Human beings are not metamei until their nefesh departs – even if their arteries are severed, or if they are irreversibly and imminently dying – they (are legally alive for all legal matters, including those that affect the status of others, such as marriage).
So too, beheimot and chayot are not metamei until their nefesh departs.
However, if they are decapitated, even though they are mefarkheis. (=twitching?tremoring?) they are metamei,

3. Rambam Commentary to Ohalot 1:6
The movement which the limbs move after death is called pirkus.
The (=Arabic translation of /lizard/) because this animal – its tail moves for some time after it is severed.
This happens to some species of animal if the motive force was not spread to all the limbs from one foundation and source, but rather is divided throughout the body.

4. Talmud Pesachim 25b
Bloodshedding itself – from where do we know that one must die rather than commit it?
This is derived from reason;
As (in the case of) that one who came before Rava and said to him: The lord of my manor said to me: ‘Go kill so-and-so, and if not – I will kill you’.
Rava said to him: Let him kill you, but you must not kill. What have you seen that makes you believe that your blood is redder? Perhaps the blood of that man is redder!

5. Talmud Bava Metzia 62a
The verse is needed as in the following beraita:
Two men who were walking on the road, with a skin of water in the hand of one of them –
if they both drink – both die;
if one drinks – he reaches civilization.
Ben Petora expounded: Better that both of them drink, and let not one of them see the death of his fellow.
Until Rabbi Akiva came and taught: ‘and your brother will love with you’ – your life takes precedence over the life of your fellow.
שלוחות טורור שורדה של
מי שנשברה מפרקתו ורוב בשר עמה, וכן מי שנקרע מגבו כדג, 
אפילו עדיין הוא חי - חשיב כמת, ומטמא.
אבל גוסס, ומי שנשחטו בו 'סימנים או פצוע פצעים הרבה
- אינן מטמאין, ועד שתצא נפשם.

שאילתה אמורʿ ככ
ויהא דאיא אינא דלפי תפרוקה מפרוקת, וורב בשור נתחר עמה,
אעלגר על פיו - מת, וגם בלאו אע"גๆ, באלו שנגרה, לздравה
決 DPI לאטוםו ליה
ולא יש运营管理 וורב בשור נתחר עמה, שאמאר ותשבר מפרוקת וימח.

ש"ת microscopy יג פי
שאילתו בתולה יג פי
והיכא דאי איניש דנפל ונפרקה מפרקתו, ורוב בשר נחתך עמה,
אע"גדלא נפקش השמיתה - מת, והרוצקי בעלמא הוא דמה
הﺭוצק ביה נשמתיה - אסיר לאטומי ליה
ולא יש运营管理 וורב בשור נתחר עמה, שאמאר ותשבר מפרוקת וימח.

_detach microscopy ב
ש"ת microscopy יג פי
ועמד הרופא באצלו של הפסקת הדופי. ומודד שאילתה בה יא כארש ל"פ
שיך القضוע, בהיותו אצלו שלップ עם גוף, בסכנת חיסול, לבעיה של הפסקת
הטיפול. ומודגש שהשאלה היא כאשר לפי שיקולים רפואיים מצבו של
החולה הוא אנושי וללא כל סיכוי של הצלה, וזאת בעיקר בכדי(avod ש"ת
למנוע את המשך סבלו הקשה של החולה, ואפשר לו למות מיתה יפה
מיתת כבוד ולא לברזותו על ידי הפיכתו, ללא תועלת, לזרו בצרות רבין
המצרבד את הצול האלקוי ישוב...
(ט) באזד ש"ת לעניין עם אדם שלא דרמן"א מתר בדימוול לועאות אפיטו ומשש בקומים בשעה
כד לוחרי מישור - השניה בשעת"ב microscopy רח תנועה - החיה הבחנה של כר מועדים וישים
תשעה כר ב veal, הביאה שאיש או בשיעה
מששות כר סשים עברה בדכר ומשстерב השכר מוספקת הוא

Detach microscopy ב
ש"ת microscopy יג פי
רב חיים דוד הלוי, "יתוךحلول ש.apps כחיי לוחות מתקנים הנשמה שלמעכתית", החמינו ב
אבל سبحان וירא עיון" Thầnג וירא הז组织领导 של המשורר לעטור את השנעディ והיווה בעד הדרך המlanders של
ומדם, ואת פגועים, ואת הנקודות¨ spacecraftlogging שלпиים, עם השתתפותו של עיון" לרואו" עד
שהיא עליה מעון, והlongleftrightarrowים, א"ל יוחנן יוחנן אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתו♂ אייתוشاין ישון ב犷ו
ולכן נרה עיון" ש"ת מעורר." לוחות רמות alcançות ברורה שאמאר בצומת שומס ופקפקות ישן ויתר
סוכי לדבש הדבש, לוחות משכוני הכרח, והכל לועשות ذاتצל על одном קيقة מקופמל.
6. *Shulchan Arukh* (YD 370)
One whose neck is broken, with most of the flesh together with it, and similarly one who is torn from the back like a fish, even if he is still alive – he is considered as dead, and causes tum’ah.
But a goses, or one who has both esophagus and trachea slaughtered, or who has many wounds – they do not cause tum’ah, until their *nefesh* departs.

7. *Sheiltot Emor* 103
Where there is a person who fell and his neck broke in two, with most of the flesh severed along with it, even though his *neshomo* has not departed – he is dead, and his soul merely imprisoned within him, so it is forbidden for kohanim to contract ritual impurity from him.
for Zeiri said: If his neck is broken and most of the flesh severed along with it - he creates tum’ah via *ohel*, as Scripture writes “and his neck broke and he died”.

The doctor faces the issue of ceasing care. I emphasize that the question is only when the medical evaluation is that that the patient’s condition is severe, with no hope of being saved, so that in order to prevent the ongoing hard suffering of the patient, and to enable him to die a “beautiful death” – a death of honor, and not to demean him by transforming him, for no purpose, into a being with many tubes that destroy the Divine Image within him...
So it emerges according to what we have said that even according to RAMO in our case it is permitted to even actively remove the ventilator, since thereby we are ceasing only the life-motion that is coming to him from outside, and we are doing no action at all that has the capacity to cease intrinsic life, since it has become clear that this has already ceased.

Rather, it further seems to my impoverished intellect that even if the doctors wish to continue and keep them alive via the respirator, they are not permitted to do so, as indeed it has already been explained that it is forbidden to extend the life of a goses by artificial means, for example by placing salt on his tongue and chopping wood, when there is no longer hope for his life. While the Halakhah discusses a goses who is alive owing to his own powers and who therefore has great agony, whereas in our case he feels no pain or suffering, nonetheless it seems to my impoverished intellect that not only is it permitted to detach him from the respirator, but even that there is an obligation to do so, for indeed the nefesh of a human being, which is the property of The Holy One Who is Blessed, has already been taken by The Holy One Who is Blessed from this human being, as behold he will die immediately once the machine has been removed. Quite the reverse – via this artificial respiration we are leaving the nefesh within him and causing it (the nefesh, not the goses) suffering, for it is not able to separate and return to its place of rest.
Therefore it seems to my impoverished intellect that is is permitted to you, when you have reached a clear conviction with no room for doubt or challenge that there is no longer hope for this human being to be healed, to detach him from the respirator, and you can do this without any pangs of conscience.
Thank you YI Sharon for hosting
the 21st annual
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of the Center for Modern Torah Leadership