החידון המדע הירושלמי
Jerusalem Science Contest

WALDER SCIENCE CENTER

Part 1, Slides 1 thru 7
Definition and societal acceptance

Halacha defining death

Jewish Medical Ethics: The Brain Death Controversy in Jewish Law

by Rabbi Yitzchok A. Breitowitz,

1996

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Jewish values:When is organ harvesting for transplant the mitzvah of saving life or the mitzvah against murder?

Saving Life:

שמות כא

יט וְרַפֹּא יְרַפֵּא.

Shmot 21

19 and shall cause him to be thoroughly healed.

ויקרא חי

ה וּשְׁמַרְתֶּם אֶת-חֻקֹּתַי וְאֶת-מִשְׁפָּטַי, אֲשֶׁר יַעֲשֶׂה אֹתָם הָאָדָם **וָחַי** **בָּהֶם**: אֲנִי, ה'.

Vayikra 18

5 Ye shall therefore keep My statutes, and Mine ordinances, which if a man do, **he shall live by them**: I am the LORD.

דברים ד

טו וְנִשְׁמַרְתֶּם מְאֹד, לְנַפְשֹׁתֵיכֶם:

Devarim 4

15 Take ye therefore good heed unto yourselves

Murder is wrong

בראשית ט

ה וְאַךְ אֶת-דִּמְכֶם לְנַפְשֹׁתֵיכֶם אֶדְרֹשׁ, מִיַּד כָּל-חַיָּה אֶדְרְשֶׁנּוּ; וּמִיַּד הָאָדָם, מִיַּד אִישׁ אָחִיו--אֶדְרֹשׁ, אֶת-נֶפֶשׁ הָאָדָם.

Beresheet 9

5 And surely your blood of your lives will I require; at the hand of every beast will I require it; and at the hand of man, even at the hand of every man's brother, will I require the life of man.

ו שֹׁפֵךְ דַּם הָאָדָם, בָּאָדָם דָּמוֹ יִשָּׁפֵךְ: כִּי בְּצֶלֶם אֱלֹהִים, עָשָׂה אֶת-הָאָדָם.

6 Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made He man.

שמות כ

יג לֹא תִרְצָח

Shmot 20

12 Thou shalt not murder.

The Law of "Gosses" – גוסס.

קיצור שולחן ערוך קצד

Kitzur Shulchan Aruch 194

הַגּוֹסֵס (פֵּרוּשׁ, הַמַּעֲלֶה לֵחָה בִּגְרוֹנוֹ מִפְּנֵי צָרוּת הֶחֳזֶה, וְזֶה יִקָּרֵה סָמוּךְ לַמִּיתָה, וּלְשׁוֹן גּוֹסֵס הוּא מִלְּשׁוֹן מֵגִיס בְּקְדֵרָה, שֶׁהַלֵּחָה מִתְהַפֶּכֶת בִּגְרוֹנוֹ, כְּמוֹ הַמֵּגִיס בְּקְדֵרָה תוספת יום טוב, פרק א דערכין) הֲרֵי הוּא כְּחַי לְכָל דְּבָרָיו. וְלָכֵן אָסוּר לִגַּע בּוֹ, שֶׁכָּל הַנּוֹגֵעַ בּוֹ, הֲרֵי זֶה שׁוֹפֵךְ דָּמִים.

A person who is very near death is considered as a living being in every respect.[1] It is, therefore, forbidden to touch him, for anyone who touches him is considered like one who sheds blood. To what can this be compared? To a dripping [flickering] candle, which becomes extinguished as soon as someone touches it.

INTRODUCTION – WHAT NEED PROMPTED THE RE-DEFINITION OF DEATH?

1. **Historically, death was not particularly difficult to define from either a legal or halachic standpoint. Generally, all vital systems supporting a person's life would fail at the same time and none of these functions could be prolonged without the maintenance of the others.**

    a. Respiratory
    b. Neurological
    c. Circulatory

2. **It has become necessary to define with greater precision and specificity which physiological systems are indicators of life and which (if any) are not, especially in light of the scarcity of medical resources and the pressing need for organs for transplantation purposes.**

3. **Over the past 20 or so years, the concept of "neurological death" commonly called:**
    a. "brain death,"
    b. "whole brain death" or
    c. "brain-stem death"
    d. (and, sometimes, **inaccurately-termed** "cerebral death") has gained increasing acceptance within the medical profession and among the vast majority of state legislatures and courts in the United States.

4. **The current definition of "death" is now a composite one: death is deemed to occur when there is either**
    a. irreversible cessation of circulatory and respiratory functions (**the "old" definition**) or
    b. irreversible cessation of all functions of the entire brain including the brain stem (**the "new or second" standard**).

5. **The principal utility of this second standard permits declaring as dead:**
    a. a comatose, ventilator-dependent patient incapable of spontaneous respiration
    b. whose heart is still beating due to the provision of oxygen
    c. via an artificial breathing apparatus.

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<u>This article will attempt to explain to the general reader:</u>

(1) **what is "brain death"** and how is it clinically determined.

(2) some (not all) of the **major sources** on whether it is an acceptable criterion of death from the standpoint of halacha.

(3) a **"scorecard"** on how contemporary halachik authorities line up.

(4) the halachic and legal **ramifications** of one view or the other.

What Brain Death is not!: - <u>Removal of organs such a donor would indisputably be homicide.</u>

Comatose - more accurately described as being in persistent vegetative state [PVS] and are very much alive under both secular and Jewish law.

Locked in - the patient is fully conscious but unable to respond.

WHAT IS THE HISTORY OF "BRAIN DEATH" ACCEPTANCE AS POINT OF DEATH?

- First introduced in a 1968 report authored by a special committee of **the Harvard Medical School**
  - Adopted, with some modifications, by **the President's Commission for the Study of Ethical Problems in Medicine and Biomedical Research,** as a recommendation for state legislatures and courts.
    - Employed in the model legislation known as **the Uniform Determination of Death Act** which has been enacted by a large number of jurisdictions.
      - The standard has been endorsed by the influential **American Bar Association**.
        - While New York is one of the few jurisdictions that does not have a "brain death" statute, it has adopted the identical rule through the binding decisions of its highest court.

HARVARD
MEDICAL SCHOOL

AMERICANBARASSOCIATION

Presidential Commission
for the Study of Bioethical Issues

UNIFORM DETERMINATION OF DEATH ACT

JULY 26 - AUGUST 1, 1980

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

Approved by the American Medical Association

October 19, 1980

Approved by the American Bar Association

February 10, 1981

UNIFORM DETERMINATION OF DEATH ACT

PREFATORY NOTE

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa. L. Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in lifesaving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiorespiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions." There is, then, a potential disparity between current and accepted biomedical practice and the common law.

WHAT EXPLAINS THE RAPID and NEAR UNIVERSAL ACCEPTANCE OF"BRAIN DEATH" AS THE DEFINITION?

1. Moving the time of death to an earlier point **facilitates organ transplants**
    a. when blood is still circulating (hearts and livers)
    b. increasing success of transplant operations
    c. acceptance of "brain death" coincided with the development of cyclosporine and other anti-rejection drugs.
2. **Extraordinarily expensive** to maintain patients on respirators and other life support
    a. in terms of equipment and labor
    b. deployment for those who stand a better chance of recovery.
3. Desire to **spare families the agony** and anguish of watching a loved one experience a protracted death.