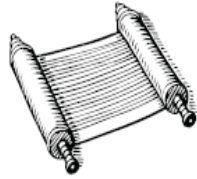


***Center for Modern Torah Leadership***



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## **END OF LIFE ISSUES Part Four**

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

**Rabbi Aryeh Klapper**

**August 8, 2017**

**Young Israel of Sharon**

<http://text.rcarabbis.org/the-rabbi-linzer-%e2%80%93-agudath-israel-debate-on-brain-death-methodological-considerations-by-aryeh-klapper/>

### **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?

### משנה אהלות א:ו

אדם - אינו מטמא עד שתצא נפשו,  
ואפי' מגוייד ואפי' גוסס - זוקק ליבום, ופוטר מן היבום, מאכיל בתרומה, ופוסל בתרומה  
וכן בהמה וחיה - אינן מטמאין עד שתצא נפשם;  
הותרו ראשיהם, אף על פי שמפרכסים – טמאין,  
כגון זנב של לטאה שהיא מפרכסת:

### 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*.

### פירוש המשניות אהלות א:ו

והתנועה שמתנועעין האברים אחר המות קוראים אותה פרכוס.  
ולטאה - הוא "אלסאם אבוץ", לפי שבעל חי זה מתנועע זנבו זמן מה אחר שנכרת.  
ויארע זה למקצת מיני בעלי החיים  
אם לא היה הכח המניע מתפשט בכל האברים מיסוד ומוצא אחד  
אלא יהיה מפולג בכל הגוף.

### 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.

### A. R. N. Rabinovich, "What is the Halakhah for Organ Transplants". Tradition 9:4 (1968),

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 Klapper**

אם הבנתי את דבריך כשורה, אתה טוען כי המשפט בפיהמ"ש שם: "יארע זה למקצת מיני בעלי החיים אם לא היה הכח המניע מתפשט בכל האברים מיסוד ומוצא אחד אלא יהיה מפולג בכל הגוף" הוא הסבר מדעי, כלומר הסבר לתופעה של פרכוס בבעלי חיים, ולא הגדרה משפטית של פרכוס.

אמנם זה נכון, אבל על כל פנים מתברר כי הפרכוס הוא תנועה של האיברים ללא פיקוד מרכזי. זאת בניגוד למצב אצל האדם כאשר הוא חי, שכל תנועותיו נובעות ממקור מרכזי. מכאן מוכח כי נטילת הפיקוד היא על כל פנים מוגדר כמוות.

כתבתי על הנושא הזה בספרי **עיונים במשנתו של הרמב"ם**, עמ' קס-קסא. יש לעיין שם בדקדוק.

בברכה,

נחום אליעזר רבינוביץ

(TRANSLATION by Aryeh Klapper)

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 Klapper**

לכבוד הרה"ג ר' נחום אליעזר רבינוביץ שליט"א,

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

- Human beings are not *metamei* until their nefesh departs - even if they are irreversibly and imminently dying.
- Beheimot and chayot are not *metamei* until their nefesh departs.
- However, if they are decapitated, they are *metamei*, even though they are *mefarkheis*.
- 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.

בכבוד,  
אריה קלאפפער

#### D. Reply from R. N. Rabinovich

רב [ask@ybm.org.il](mailto: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 פג., פה.

\משנה\

מי שנפלה עליו מפולת, ספק הוא שם ספק אינו שם, ספק חי ספק מת, ספק נכרי ספק ישראל - מפקחין עליו את הגל.

מצאוהו חי - מפקחין, ואם מת - יניחו

\גמרא\ . . .

תנו רבנן:

עד היכן הוא בודק?

עד חוטמו;

ויש אומרים: עד לבו.

## 2. משנה אהלות א:ו

אדם - אינו מטמא עד שתצא נפשו,

ואפי' מגוייד ואפי' גוסס - זוקק ליבום, ופוטר מן היבום, מאכיל בתרומה, ופוסל בתרומה

וכן בהמה וחיה - אינן מטמאין עד שתצא נפשם;

הותזו ראשיהם, אף על פי שמפרכסים - טמאין,

כגון זנב של לטאה שהיא מפרכסת:

## 3. פירוש המשניות אהלות א:ו

והתנועה שמתנועעין האברים אחר המות קוראים אותה פרכוס.

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ויארע זה למקצת מיני בעלי החיים אם לא היה הכח המניע מתפשט בכל האברים מיסוד ומוצא אחד אלא יהיה מפולג בכל הגוף.

## 4. תלמוד בבלי פסחים כה:

ושפיכות דמים גופיה מנלן?

סברא הוא;

כי ההוא דאתא לקמיה דרבא, אמר ליה: מרי דוראי אמר לי: 'זיל קטליה לפלניא, ואי לא - קטלינא לך'.

אמר ליה: ליקטלוך ולא תיקטול. מאי חזית דדמא דידך סומק טפי? דילמא דמא דההוא גברא סומק טפי!

## 5. תלמוד בבלי בבא מציעא סב.

מבעי ליה לכדתניא:

שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים -

אם שותין שניהם - מתים; ואם שותה אחד מהן - מגיע לישוב.

דרש בן פטורא: מוטב שישתו שניהם וימותו, ואל יראה אחד מהם במיתתו של חברו.

עד שבא רבי עקיבא ולימד: 'וחי אחיך עמך' - חיך קודמים לחיי חברך.

### 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.

## 6. שולחן ערוך יורה דעה של

מי שנשברה מפרקתו ורוב בשר עמה, וכן מי שנקרע מגבו כדג, אפילו עדיין הוא חי - חשיב כמת, ומטמא. אבל גוסס, ומי שנשחטו בו ב' סימנים או פצוע פצעים הרבה - אינם מטמאין, עד שתצא נפשם.

## 7. שאלות אמור קג

והיכא דאיכא איניש דנפל ונפרקה מפרקתו, ורוב בשר נחתך עמה, אע"ג דלא נפק נשמתיה - מת הוא, והרזוקי בעלמא הוא דמהרזקא ביה נשמתיה - אסיר לאטמוי ליה

דאמ' זעירי נשברה מפרקתו ורוב בשר נחתך עמה מטמא באהל, שנאמר ותשבר מפרקתו וימת

## 8. שו"ת ציץ אליעזר יג:פט

עומד הרופא בפני הבעיה של הפסקת הטפול. ומודגש שהשאלה היא כאשר לפי שקול רפואי מצבו של החולה הוא אנוש וללא כל סיכוי של הצלה וזאת בעיקר בכדי למנוע את המשך סבלו הקשה של החולה, ולאפשר לו למות מיתה יפה - מיתת כבוד ולא לבזותו על ידי הפיכתו, ללא תועלת, ליצור עם צנורות רבים המאבד את הצלם האלקי שבו. . .

ט) באופן שיוצא לנו לפי האמור שגם אליבא דהרמ"א מותר בנידוננו לעשות אפילו גם מעשה בקום ועשה כדי להסיר מכשיר - הנשימה בהיות שעי"כ מפסיקים רק תנועת - החיות הבאה לו מן החוץ ואין עושים מעשה כלל שיש בה בכדי להפסיק חיות עצמית, באשר שהתברר שכבר מופסקת היא

## 9. רב חיים דוד הלוי, "ניתוק חולה שאפסו סיכוייו לחיות ממכונת הנשמה מלאכותית", תחומין ב

אלא שעוד יותר נראה לענ"ד שאם גם ירצו הרופאים להמשיך ולהחיותם בעזרת מכונת הנשמה אינם רשאים לעשות כן. שהלא כבר נתבאר שאסור להאריך חייו של גוסס באמצעים מלאכותיים כגון לשים מלח על לשונו או לחטוב עצים כאשר אין יותר סיכויים לחייו. אמנם, בהלכה מדובר בגוסס החי בכחות עצמו ולכן גם יסוריו גדולים. משא"כ בנדון דידן שאין הוא מרגיש שום כאב וצער. אעפ"כ נראה לענ"ד שלא זו בלבד שמותר לנתקו ממכונת הנשמה, אלא שיש גם חובה לעשות כן. כי הלא נפשו של אדם שהיא קנינו של הקב"ה, כבר נטלה הקב"ה מאדם זה, שהרי מיד בסילוק המכונה ימות. ואדרבא על ידי ההנשמה המלאכותית אנו משאירים בו את נפשו וגורמים לה (לנפש ולא לגוסס) צער שאין היא יכולה ליפרד ולשוב למנוחתה.

ולכן נראה לענ"ד שמותר לכם כאשר באתם לכלל החלטה ברורה שאין עמה שום ספק ופקפוק שאין יותר סיכוי לאדם זה להתרפא, לנתק אותו ממכונת הנשמה, ותוכלו לעשות זאת ללא שום נקיפת מצפון.



## 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 *neshomah* has not departed – he is dead, and his soul merely imprisoned within 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”.

## 8. Rabbi Eliezer Waldenberg (Tzitz Eliezer 13:89):

The doctor faces the issue of ceasing care. I emphasize that the question is only when the medical evaluation is 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.

## 9. Rav Chaim Dovid HaLevi, “ניתוק חולה שאפסו סיכוייו לחיות ממכונת הנשמה מלאכותית”, *Tehumin* 2

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 it 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 21<sup>st</sup> annual  
Summer Beit Midrash  
of the Center for Modern Torah Leadership*