

## MAN AND HIS END

by

Rabbi Shlomo Goren\*

(Taken from the Chief Rabbi's message at the Annual Conference on Internal Medicine)

What is the definition of death from the standpoint of halakhah? Is death a process, extended or brief? Or is it a sharp and instantaneous transition, in which case would death be determined by the cessation of the brain's activities, rendering it inanimate and without reflexes, or by the cessation of heartbeats? And here arises the problem of the obligation or non-obligation from the standpoint of halakhah.

In the physio-biological system of the heart, the brain and the remainder of organs, a distinction must be made between their independent life as organs and their functional existence within the organism as a whole. For example, the heart in and of itself, even as it beats, does not constitute a heart if it fulfils no other function in the body, the general organism. For the heart is not only an organic part of man's body, but must also fulfil its designated tasks in the body as a whole.

Thus, the instant the brain ceases to function and no longer produces reflexes, although the heart is still beating but has ceased to pump blood to the brain, then the heartbeat cannot be considered a sign of life.

This is the law regarding the other organs in the body: it is necessary to distinguish between their functional existence within the body as a whole, and the individual life of each and every organ. And this is the law regarding the brain: when is it considered a brain? – when it performs all of its functions in the body. But when it does not perform its task, although it has independent existence, it lives as an anatomic item and not as a brain. We have available a great deal of evidence from the Talmud and halakhah for this important distinction.

From the standpoint of halakhah, it is necessary to consider whether death constitutes any sort of process at all – extended or brief – which would permit the possibility of an intermediate state between life and death. Or is death a sharp transition in which there can be no intermediate state, as the first halakhah in Tractate *Semachot* (dealing with the complex of problems concerning death and mourning) appears to establish: "A person in the agony of death is regarded in every respect as fully alive", and it is

forbidden to do anything to bring his death closer (as Shabetai Cohen wrote in his commentary in the *Shulchan 'Arukh*, (*Yoreh De'ah*, section 339, paragraph A). And the fact that the dying person is regarded in every respect as fully alive permits a *Cohen* to enter a house in which there is a dying man, as Rabbenu Nissim ruled. However, in this matter there is a difference of opinion in the Talmud, between Rabbi and the Sages, as well as among the *Poseqim* – there are those who forbid and those who permit.

But this difference of opinion regards only the question of defilement of the *Cohanim* in the presence of a dying person, and has no direct bearing upon the problem of death itself. Thus, one cannot derive from this that halakhah recognizes the possibility of an intermediate state of neither life nor death, since in the entire Torah the dying man is in every respect, including the proscription "Thou shall not kill," regarded as fully alive.

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A precise and unequivocal definition of death is found in the halakhah: the breath as discerned in the nostrils determines the life, and its cessation determines the death of the man. This halakhah is based on Genesis 7:22 (Flood story): "Everything died in whose nostrils was the breath of the spirit of life." As it is stated in the Talmud: "Life manifests itself through the nose especially" (*Yoma* 85a), which is to say, the spirit of life is through man's nostrils. The halakhah is that if a landslide falls on a man during the Sabbath, since the duty of saving life overrides the Sabbath laws, we are bound to remove the rocks in order to save him. This applies when there is a chance that he may still be alive; but man must not profane the Sabbath for a dead man, and it is then forbidden to remove the rocks of the landslide on the Sabbath. When the problem arises as to whether the man is still alive or has already died – and, therefore, as to whether the rocks should or should not be removed – even though there is only a chance that he is alive, the Sabbath laws are to be broken. But the Sabbath is not to be profaned for one who is definitely dead. Here the halakhah determines that if the rocks are removed and the head of the man trapped beneath it exposed, he is to be examined; if there is no breath in his nostrils, he is considered dead, and one must not continue to profane the Sabbath, nor treat him further.

From this we learn that death is not determined by the cessation of brain's activity, but rather by the cessation of breathing, and the test is in the nostrils.

One of the central rabbinic authorities on halakhic questions from the last century, Rabbi Moses Sofer (Chatam Sofer), in his response (*Chatam Sofer, Yoreh De'ah*, section 338) extensively discusses the determination of the definition of death according to halakhah: he stands opposed to the fact "that our contemporary doctors have said that there is no known divid-

ing line which sets off life from death". He determines that all depends on the breath in the nostrils and that "when the Torah said, 'If a man has committed a sin worthy of death and is put to death . . . his body shall not remain overnight on the tree' etc., we were clearly given a delimitation of death. Perhaps there was then a tradition from the forerunners of the natural sciences, but it has been forgotten by our contemporary doctors; or Moses himself received this delimitation (the cessation of breathing) – at Sinai; or the Sages relied on the verse 'everything in whose nostrils was the breath of the spirit of life'".

There were those who wanted to disregard the evidence relating to the problem of the landslide on the Sabbath, and to set up a halakhic distinction between a natural demise, in which death is gradual and the breath in the nostrils is not the determinant, and a sudden demise, such as one caused by a landslide, since only in the latter case does the Talmud say that the nostrils are to be examined. The result of making this distinction is that in a natural demise we have no halakhic definition of death. However, Chatam Sofer rejects this distinction.

Nevertheless, the result of Maimonides's view in his *Guide for the Perplexed* (part I, chapter 42) is that breathing may cease without this constituting a man's death. In his own opinion, the term *death* can be applied to the state of the heart alone, that is, when it ceases its function, even though the man is still living. Maimonides proves this from the case of Nabal of Carmel in I Samuel 25:37: "and his heart died within him and he became as a stone", and Nabal did not die until ten days later. Maimonides therefore wrote that the term *death* might apply also to a severe illness, and in order to prevent this "Scripture makes it clear with regard to the son of the 'woman of Zarephath' – that 'his sickness was so sore, that there was no breath left in him' (I Kings 17:17) . . . Some of the men of Andalusia interpret the verse as meaning that his breath was suspended so that no breath at all could be perceived in him – as happens to people struck with apoplexy or asphyxia deriving from the womb, so that it is not known if the one in question is dead or alive, and the doubt remains a day or two.

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As a result of this problem which Maimonides raised in his *Guide for the Perplexed* – that the cessation of breathing is possible without immediate death – and in order to prevent a contradiction between the *Guide for the Perplexed* and the clear halakhic definition previously mentioned – that death is determined by the cessation of breathing (with which Maimonides was well acquainted) – Chatam Sofer introduced the cessation of the pulse as a factor in the definition of death, even though the pulse as a factor in the definition of death is not mentioned in halakhah and does not appear as a halakhic function of life. Chatam Sofer accordingly establishes

a final definition determining death: if anything be inert (lying as an inanimate stone) and without pulse, and breathing later ceases, we have no choice but to take the words of the Torah that he is dead.

This definition of Chatam Sofer constitutes a turning point in relation to the clear definition of the *Shulchan 'Arukh*. Here it would seem that two new demands are added: a) that he be inert (lying as an inanimate stone), and b) that he have no pulse. But the pulse does not constitute a distinct halakhic life function, neither in Maimonides, nor in the *Shulchan 'Arukh*.

In the light of this definition of halakhah, we must ask ourselves what will be the halakhic approach today in the face of daily instances of men being returned to life after the cessation of breathing, by means of artificial respiration or mouth to mouth resuscitation. There have been many cases, both in Israel and abroad, in which men have been returned to life after clinical death of the heart and brain. Is there not enough in this great medical development to establish the need for our taking into consideration, from the standpoint of halakhah as well, the fact that the cessation of breathing is not sufficient to determine the death of a man; for one cannot reasonably assume that, in a case such as this of clinical death, it should be forbidden to treat a man on the Sabbath in order to return him to life, as the halakhah establishes in the matter of the landslide on the Sabbath. In addition to this, we find in the *Shulchan 'Arukh (Orah Chayim*, section 330, article 5) that Rabbi Moshe Isserles questions our ability to ascertain the death of the mother in order to save the fetus. From this we can learn how cautious we must be, when removing organs for transplants, not to rely on clinical death.

Perhaps we can find a solution to this problem in the method of the *Tosafot* in *Baba Metzia* 114b, which establish that also in order to return a man to life after his death, it is permitted to transgress the laws of the Torah, since this is also considered saving a life. This contrasts with others who are of the opinion that the *mitzvah* of saving a life applies only to a living person that he may not die, and not to a dead person that he may live.

Consequently, in the case of clinical death, although the person is considered dead according to halakhah, as long as there is any chance whatsoever of reviving him, we are commanded to do so because of the requirement of saving a life. Since the reviving of the dead is also considered saving a life, the proscriptions of the Torah are overridden and all *mitzvot* of rescuing apply, such as, "Do not stand idly by the blood of your neighbour" and "that your brother may live with you," etc. And this is the opinion of the *Tosafot*.

In the light of what has been said, we have to investigate the problem of continuing the treatment of a man who is certain to die, but whose life we can lengthen through artificial means, such as external breathing apparatus. Is it our duty to continue his treatment despite the suffering it causes him? Or perhaps it is not our duty to prolong his life by artificial means, and it is preferable to allow him to finish his days naturally in order to prevent additional suffering on his part. For I have come to see that this is a most severe problem that arouses controversy among physicians.

The halakhic view regarding this subject is expressed, it would seem, in the writings of Rabbi Moshe Isserles in the *Shulchan 'Arukh (Yoreh De'ah*, section 339, paragraph A) where it is stated: "And thus it is forbidden to hasten the death of a dying man, such as one whose death agony is drawn out and who cannot depart; it is forbidden to take the pillow and featherbed from under him, and he is also not to be moved from his place", etc. However, if there is something which hinders the departure of the soul, such as a pounding noise near the house – for instance, the chopping of wood – or if there is salt on his tongue, and these hinder his soul's departure, then it is permitted to remove these things from there, because this is not an action at all but only the removal of a hindrance. This is the opinion of Rabbi Moshe Isserles. But the question arises: if the dying man is regarded in every respect as fully alive, then why is it permitted to remove the hindrance and thereby to hasten his death, since this entails in a sense the causing of death and it involves the prohibition, "Do not stand idly by the blood of your neighbour" (Lev. 19:16).

It is necessary to introduce a new idea and to state that whenever one does this for the sake of the dying man and does not directly hasten his death, but rather removes that factor that prevents him from dying, this is permitted, since the proscription, "Do not stand idly by the blood of your neighbour" applies only when death is to the detriment of the individual. However, if death is to his benefit, it is permitted to remove that which prevents his dying, providing that the action is indirect, as stated by Rabbenu Nissim in Tractate *Nedarim* 40a: "At times one must ask Divine mercy upon the patient that he may die, for example, when the patient suffers greatly in his illness and is bound to die, as we learn in a section dealing with the subject in *Ketuvot* 104a: 'When, however, she saw how often he resorted to the privy, taking off his *tefillin* and putting them on again, she prayed: May it be Thy will that the immortals may overpower the mortals, that is, that Rabbi may die'. Further, we can bring evidence from *Baba Metzia* 84a regarding Rabbi Yochanan, who lost his mind, and the Sages sought Divine mercy that he might die. This has no relation to the concept of "euthanasia" (mercy killing) as it is commonly used, since

what is referred to here is metaphysical means (prayer) or indirect physical means to prevent hindrance to death.

It is clear from the fact that it is permitted to beseech the dying man's death through metaphysical means such as prayer we cannot conclude that it is permitted to stop the operation of artificial breathing by cutting off oxygen. But from Rabbi Moshe Isserles's rule that it is permissible to remove the salt from the tongue in order to hasten the departure of the soul, it would appear that in the case of a difficult death agony, where death would be to the benefit of the patient, it would be permissible to take the oxygen from him or deprive him of the treatment which can prolong his breathing, since this is but a removal of the hindrance, as Rabbi Moshe Isserles ruled. And this also appears to be the opinion to be derived from Rabbi Shmuel Eidels's marginal comments in the aforementioned section of *Yoreh De'ah*, who states that it is not only permissible, but that there are those who declare that in this case the departure of the soul should not be delayed by therapeutic or medicinal means.

Obviously, this problem has great implications regarding several basic problems in the matter of organ transplants, and regarding the timing of their transfer from the dead to the living, in the light of the clear limits assigned to the realm of "life" according to halakhah, as we have come to see thus far.

And we must continue to deal with this serious human problem that affects us daily, both theoretically and practically. But we shall have to postpone this for another occasion.

Translated by Donald Rossing

*Rabbi Goren was for many years Chief Chaplain of the Israel Defence Forces, and at the end of 1972 he was elected Ashkenazi Chief Rabbi of the State of Israel.*