

What Does Halachah Say About ORGAN DONATION?

By Yitzchok A. Breitowitz

Transplant surgery is one of the wonders of modern medicine. Persons who, in the past, would have died because of the failure of their hearts, livers or kidneys can now have years added to their lives. Persons who would have been condemned to blindness can now have the gift of sight. Horribly disfigured burn victims can begin the return to a normal and productive life with the aid of skin grafts. The tragic death of one person can give life and hope to as many as eight people. At one time, heart transplant surgery had such a low probability of success that Rav Moshe Feinstein ruled that removal of the diseased heart constituted murder of the *recipient*;¹ it was more likely that the recipient would live longer with the bad heart than with its replacement! Today, with the development of improved surgical techniques and anti-rejection drugs, the prospects of at least some degree of success are quite high.²

In spite of the tremendous good that organ donation can accomplish, relatively few people—Jews or non-Jews—sign up to be potential donors.³ A variety of reasons are given for their reluctance. Some do not want to contemplate their mortality. Others are

Rabbi Breitowitz is the rabbi of the Woodside Synagogue in Silver Spring, Maryland, and an associate professor of law at the University of Maryland.

afraid their organs will be harvested prior to their deaths. There is also a fear that organ donors who have not yet died will not receive full medical treatment since there may be a greater benefit in their passing away. Still others find the disfigurement and mutilation of their bodies or those of their loved ones repugnant. Whatever the reason, there is an acute shortage of organs; the demand far outstrips the supply.⁴ Around fifteen people die each day waiting for a donated organ.

Because of the great value Judaism places on the saving of a life—“He who saves a single [Jewish] life is as if he saved an entire world”⁵—it would appear that organ donation ought to be encouraged, provided the procedure does not otherwise entail violations of *halachah*. To the extent such donation is *halachically* permissible, the unease and discomfort the family might feel at the dissection of their loved one’s body should be overridden by the value of *pikuach nefesh* (saving a life) and by contemplating the great spiritual merit that would accrue to the *niftar* (the deceased) whose generosity has enabled others to live.⁶ Conversely, to the extent *halachah* prohibits the choice, our feelings of sympathy for those in need of a transplant would simply be immaterial. The commands of God cannot be set aside because others or we perceive them as inhumane or politically incorrect.

Organs and tissues can be removed at any one of four points—and each point has its own problems: 1. Removal of organs from persons clinically diagnosed as being brain dead but whose hearts are still beating; 2. Removal of organs from donors whose hearts have stopped beating; 3. Removal of organs and tissues from cadavers; 4. Removal of organs or organ parts from live donors.

This article is designed solely to familiarize the reader with the general concepts that are relevant to the problem. In determining what to do in any of these situations one should consult his *posek* for halachic guidance.

I. Donations from Brain-Dead Donors

The traditional legal definition of “death” was irreversible cessation of respiratory and circulatory functions, i.e., a person could not be declared dead until there was both cessation of breathing and circulation of blood as evidenced by the absence of a heartbeat and pulse.⁷ This definition would make transplants extremely difficult since organs deteriorate rapidly once they are cut off from a blood supply (warm ischemia). Accordingly, American law in all fifty states now recognizes the concept of “brain death” (called “brain-stem death” or “whole-brain death”), which means a person

can be declared dead if neurological tests confirm total cessation of brain function (including a brain-stem function such as respiration) even if, as a result of mechanically supplied oxygen, the heart continues to beat and blood continues to circulate. (It must, of course, be emphasized that even under the brain-death criteria, persons who lack higher mental functioning, such as those in a coma or in a persistent vegetative state, are unequivocally alive and therefore, their organs cannot be used.)

Whether *halachah* allows a determination of death to be made based on clinical brain-death criteria is a matter of sharp debate among *posekim*. Some analogize brain death to anatomical decapitation, which is unequivocally deemed “death”; others assert that while true destruction of the brain would be equivalent to death, clinical tests do not unequivocally establish such destruction; still others rule that as long as the heart is beating, the person is alive irrespective of the brain, and a final group asserts that a brain-dead patient may have the status of a *safek met*—*safek goses* (possibly dead but possibly alive, though death is deemed certain and relatively imminent). Although there may be no *mitzvah* to prolong the life of a *goses*, such a life cannot be terminated by affirmative action such as the removal of a vital organ.⁸ Moreover, the brain-death standard itself has recently been questioned by some neurologists.⁹

Both the Israeli Chief Rabbinate and the Rabbinical Council of America have accepted brain-death criteria in allowing organ donation.¹⁰ Rabbi Dr. Moshe D. Tendler, in particular, has argued that this is also the position of his revered father-in-law, Rav Moshe.¹¹ Many *posekim*, however, differ.¹²

Jewish Action is not the forum to fully explore the intricacies of this halachic debate. The issues are compli-

Fifteen people die each day waiting for a donated organ.

cated and the stakes are high. If brain death is not halachic death, removal of the organs is murder. If brain death is halachic death, failure to remove the organs could indirectly condemn people who could otherwise be saved to die. This is the single most difficult problem in the organ donation process, and it is essential that one consult with his *posek* before making a decision to donate one’s organs.

Fortunately, in the long term this may be a diminishing problem. As superior methods of preserving organs are developed, removal could be deferred until cardiac death as well as cessation of brain function is established. Moreover, the increased utilization of artificial organs, possibilities of transgenic transplants (i.e., from animals) as well as stem cell research and therapeutic cloning may eliminate the need to rely on human donors and would not only resolve the brain-death quandary but would also greatly enhance the organ supply.

II. Donation from Non-Heart Beating Donors

From a medical standpoint, brain-dead donors whose hearts are beating due to mechanically supplied oxygen are optimal sources of organs because the organs are supplied with oxygenated blood, and thus they do not deteriorate even after the patient is declared “dead.” The vast majority of heart, liver and lung transplants are taken from clinically brain-dead donors. However, in order to partially alleviate the severe shortage of donors, some hospitals have developed protocols enabling organ removal from persons whose hearts have stopped beating. To date, NHBDs (non-heart beating donors) have been utilized for liver,

lung and kidney transplants (although not for heart transplants).

At first glance, the use of NHBDs seems to avoid all the halachic issues associated with brain death. After all, if there is no heartbeat or circulation, there will be no respiratory activity (neither the brain nor the lungs can function unless they are supplied with blood). And, in the absence of both heartbeat and respiration, the donor would be deemed dead even under the strictest of halachic criteria.

In reality, however, the use of NHBDs raises ethical and halachic issues of the first magnitude and essentially involves a prearranged death. Donors who are not brain dead (although they may be in a coma or a vegetative state) are disconnected from life-support (pursuant to the terms of a living will or the family’s consent or both). In some cases, the physicians wait no more than two minutes, determine there is no spontaneous heartbeat or respiration, declare the patient dead and proceed to remove organs. Because of warm ischemia, typically no more than two to five minutes can elapse from the time life-support is discontinued until the organs are harvested.

There are two distinct halachic problems with this procedure. First, the withdrawal of life-support from a non-brain-dead patient may in itself be an act of murder or at least a violation of the commandment, “*Lo ta’amod al dam rayecha*,” “Do not stand idly by while your neighbor’s blood is shed” (Lev. 19:16), and therefore neither a living will nor family consent could authorize such discontinuation.¹³ Second, even if one concedes that withdrawal or discontinuation of life-support may be *halachically* sanctioned as an “omission” rather than an affirmative act of murder, the removal of organs within two minutes of disconnection would in itself be an act of murder.¹⁴ Cessation

One is not obligated to put oneself but to do so is

in potential sakkanah to save another laudable and meritorious.

of respiration and heartbeat constitutes “death” only when that cessation is irreversible. If the patient is capable of having breathing and heartbeat restored, the patient is not dead even during the period of time he is not breathing. Since within two to three minutes there is still the possibility, albeit remote, of auto resuscitation (and certainly reconnection to life-support¹⁵), and within that time the brain stem has not yet been destroyed, removal of the organs might actually be an overt act of homicide even according to those who regard brain-stem death as death. On the other hand, waiting until brain-stem destruction is irreversible would render the organs useless.

It thus appears to this writer that organ donation pursuant to the existing NHBD protocols is *halachically* prohibited.¹⁶ (Note, however, that only three percent of transplants involve NHBDs.)

III. Donations from the Dead

Certain organs or body parts are retrievable from persons who are clearly dead under all halachic criteria, and there is no issue of *retzichah* (murder). These organs include skin and corneas.

Generally, Jewish law prohibits dissection of corpses, autopsies or the removal of body parts.¹⁷ This is considered a desecration of the dead (*nivul hamet*), a violation of the positive mitzvah of burial and a source of anguish and humiliation to the soul of the departed, which will be unable to find repose.¹⁸ Nevertheless, like virtually all of the other restrictions of the Torah, these prohibitions yield when their violation can save a life (*pikuach nefesh*).¹⁹

General anatomical experimentation or “leaving one’s body to science” does not qualify as *pikuach nefesh* even though information that could save a

life in the long run might be obtained.²⁰ At a minimum, there has to be a direct recipient. Although the *Noda B’Yehudah* implies that removal of organs would never be permitted unless there is a designated beneficiary at the time of the removal rather than someone who materializes at a later date, it has been convincingly argued that as long as the probability is strong that a *choleh* will receive the organ, it is immaterial whether he was specifically identified at the time of the removal or not.²¹ The key factor is that the organ be used for the *choleh* rather than for general experimentation or educational purposes.²²

Assuming that *pikuach nefesh* will furnish the appropriate halachic justification for organ removal, three issues remain to be considered: 1. Is there an obligation on a donor to authorize the removal of his organs after his death? After all, once a person is dead he is exempt from *mitzvot*. Does the family have an obligation to use organs without the decedent’s consent? What about over his objection?²³

2. Can organs be donated to non-Jews?²⁴

3. What is *pikuach nefesh*? Cornea transplants can prevent blindness but a person can live without sight. Similarly, skin grafts are not always essential for survival. In cases where the recipient can survive without the organ, would there not be a prohibition of *nivul hamet*? *Posekim* have generally been lenient in this regard, but each proposed use must be considered on its merits.²⁵

IV. Live Donors

Organ donations are not only from the dead or the near dead. Live donors can contribute as well. Since human beings can live with one kidney, one can donate his second kidney while alive.

Moreover, because a liver can regenerate with as little as twenty percent of its original tissue, a live donor can contribute parts of his liver as well.²⁶ While donations from live donors do not involve issues of *nivul hamet* or potential *retzichah*, they too pose halachic issues.

• **Self-Endangerment:** Even partial removal of an organ poses potentially serious risks and constitutes placing oneself into *safek sakkanah* (potential danger to life). This is true both because of the potential strain on the reduced capacity that is left and because of the risks associated with general anesthesia and surgery. As a general rule, the Torah does not permit a person to place himself into a situation of *sakkanah*. On the other hand, the person who needs the organ is also in *sakkanah*, and there is a mitzvah of *lo ta’amod al dam rayecha*. Indeed the risk to the patient if he doesn’t get an organ is likely to be much greater than that to the donor who provides one.

Am I permitted, or even obligated, to put myself at mortal risk in order to potentially save the life of another?

There is a *machloket* (controversy) among the *posekim* regarding the matter. The *Talmud Yerushalmi* states that one is obligated to place himself in potential *sakkanah* in order to save someone who is presently in definite *sakkanah*, but such a ruling is not explicitly cited in the more authoritative *Talmud Bavli*. The *posekim* debate whether the *Talmud Bavli* would agree with the *Talmud Yerushalmi*’s premise.²⁷ The consensus appears to be that one is not obligated to put oneself in potential *sakkanah* to save another, but to do so is laudable and meritorious, particularly if the danger to the rescuer is relatively slight and commensurate to other risks that he commonly assumes (e.g., driving, flying, et cetera).²⁸ Thus, live organ

donations can never be compelled or demanded but only requested as an act of *gemilut chassadim* (loving kindness) and *midat chassidut* (piety).²⁹

• **Informed Consent:** Since one is not obligated to donate organs, they can be removed only with the person’s consent. Obviously live organ removal cannot be sanctioned by someone who is mentally incompetent, comatose or in a persistent vegetative state. (Whether organs can be removed once there is a diagnosis of clinical brain death depends on whether *halachah* accepts “brain death” as “death.”) But this would also mean that even a consenting minor could not authorize removal of his organs. Consider the case of an adolescent who needs a kidney transplant and the only suitable donor is a younger sibling who has not yet reached his Bar Mitzvah. Both the younger sibling and his parents want the removal of the extra kidney for transplantation. Nevertheless, given the reality that this would pose a *sakkanah* to the younger child and that he could not be obligated to place himself in danger, some *posekim* would not allow the donation even if the minor consents.³⁰ Nor could the parents consent on his behalf. The parents’ right to make medical decisions for their child is limited to decisions that benefit the child. A parent is not authorized to endanger one child in order to save another.

This should not be confused with the well-known Ayala case. Ten years ago, a young woman needed a bone marrow transplant. There was no suitable donor in the registry nor were her parents compatible donors. The parents decided to try to conceive a child (even though this necessitated the reversal of a vasectomy) on the chance that the child might be the proper genetic match. Happily, that was the case; marrow was withdrawn from the baby shortly after birth and, over a decade later, both sisters are doing fine. While ethicists

debated the propriety of conceiving a child for the purpose of providing marrow to another child, Jewish law has no problem with the fact that there was an ulterior motive in conceiving the child. After all, baby Marissa was loved and cherished in her own right, and “using” her for a mitzvah only enhanced the family’s joy. Nor is there any problem with the baby’s inability to give consent. Consent is required only when the procedure in question carries risks of endangerment or severe pain; removal of organs carries both risks, removal of bone marrow does not.³¹

V. Receiving Organs

If a Jew, God forbid, needs a vital organ, is he allowed to place himself on a recipient list and thereby be eligible to receive the necessary organ if a compatible donor is found? There are essentially two halachic issues: 1. deriving benefit from a cadaver; 2. being an accessory to, or the facilitator of, the illicit termination of life.

• **Benefit from a Cadaver:** It is forbidden to derive benefit (*hana’ah*) from a *met*.³² Nevertheless, it would appear that this rarely, if ever, would pose a significant halachic impediment. First, to the extent a transplant is necessary for *pikuach nefesh*, it is amply clear that the prohibition against *hana’ah* would be superseded. Even corneal transplants have been validated because of the potential life-threatening dangers of blindness *even in one eye*.³³ Second, the late Rabbi Isser Yehuda Unterman, a former chief rabbi of Israel, ruled that since the derived benefit from the organ occurs when it is attached to a living body and begins to function, “benefit,” as such, is not derived from that which is dead but from tissue that is alive. Third, there are some views that per-

mit even direct benefit from a corpse that is of non-Jewish origin³⁴ and, in the absence of evidence to the contrary, at least in the United States, one can assume that the organs received are from non-Jews.³⁵

• **Facilitating Murder:** The second issue is more troubling. To the extent that one takes the position that clinical brain death is not halachic death and the removal of organs from a brain-dead donor is murder, is a patient allowed to receive the product of an illicit, immoral act? Once again, while there are dissenting voices, the majority of *posekim* have permitted such receipt.³⁶ It is true that just as it is prohibited to kill, it is prohibited to indirectly cause the death of another.³⁷ However, there is no causal link between putting one’s name on an organ list and a donor’s death. Given the realities that the demand for organs outstrips the supply, and even if a given individual takes his name off the list, the organ will be removed anyway, a decision to participate does not cause or facilitate a death that would otherwise not occur.³⁸ If the death will occur with or without a given recipient’s participation, there is no exclusionary principle that would prohibit benefiting from the transgression after the fact.³⁹

Although God is the ultimate source of all healing, we are commanded to do what we can to alleviate illness, misery and suffering.⁴⁰ The concept that human intervention via new technologies somehow constitutes an impermissible usurpation of Divine prerogatives is foreign to the spirit of the Torah, which sees mankind as God’s collaborator in *tikkun olam*.⁴¹ Nevertheless, the license granted to man must be exercised pursuant to the limitations and conditions imposed by its Grantor. These limitations can be ascertained only through

*Although God is the ultimate
we are commanded to do what we can to*

*source of all healing,
alleviate illness, misery and suffering.*

the wisdom and guidance of our great *posekim*. May we have the wisdom to seek and follow their directives. **IA**

Notes

1. *Iggerot Moshe YD* II, no. 174.
2. While survival rates for organ transplants have risen dramatically, they vary from organ to organ. See <http://www.transweb.org> and <http://www.unos.org>.
3. According to a Gallup Poll, while eighty-five percent of Americans support organ donation, less than fifty percent would actually consent to donating a loved one's organs when given the opportunity. Among Jews—of all affiliations—the percentage is even lower.
4. As of February 2002, there was a need for 79,523 major organs with approximately 23,000 organs available for transplantation.
5. *Sanhedrin* 37a. Our standard texts limit this to “Yisrael”—a Jewish soul—but see *Shinui Nuschaot* printed in the *Vilna Mishnayot*, which cites manuscripts in which the limitation to Yisrael does not appear.
6. Nor should *techiyat hameitim* be a concern. Certainly, if *halachah* permits the removal of organs, such removal cannot affect the donor's ability to experience physical resurrection. Even if the body was buried intact, by the time of resurrection it will have decomposed. Moreover, the *kedoshim* who perished in the crematoria will undoubtedly experience the merit of resurrection. *Techiyat hametim* is a supernatural phenomenon that does not depend on the physical body being preserved intact. But cf. *Tzitz Eliezer XIII*, no. 91 who suggests otherwise.
7. See my article, “The Brain Death Controversy in Jewish Law,” *Jewish Action* (spring 1982): 61 and an addendum in the summer 1992 issue: 78.
8. See *Shulchan Aruch YD* 339:1 and the Rema. Whether there is a mitzvah to prolong the life of a *goses* is a matter of dispute. All agree, however, that a *goses* cannot be affirmatively killed even to save the life of another. See *Iggerot Moshe YD* II, no. 174; *Tzitz Eliezer X*, no. 25 (25)

and *Minchat Yitzchok* V, no. 7.

9. See K.G. Karakatsanis and J.N. Tsanakas, “A Critique on the Concept of Brain Death,” *Issues of Law and Medicine*, 18 (fall 2002): 127.
10. See Yoel Jakobovits, “Brain Death and Heart Transplant: The Israeli Chief Rabbinate's Directives,” *Tradition* 24 (summer 1989): 1-14. The RCA's position can be found in Marc Angel, “The RCA Healthcare Proxy,” *Jewish Action* (spring 1992): 62, and in a document on the RCA web site. Many *rabbanim* who are members of the RCA, however, do not follow this position.
11. See <http://www.hods.org>. Rav Moshe's responsa on the brain death issue are: *Iggerot Moshe YD* II, nos. 164, 174; *YD* III, no. 132 and *Choshen Mishpat* II, nos. 72-73.
12. See *Jewish Action* (spring 1982): 126-131; *Nishmat Avraham YD* 339; (app. vol.), *YD* 339; J. David Bleich, *Time of Death in Jewish Law* (1991) and *Journal of Halacha and Contemporary Society* 17 (spring 1989) (symposium including Rabbi Tendler's view).
13. It is never halachically permitted to terminate life regardless of the patient's wishes, his suffering or the quality of his existence. There are, however, some situations where there may be no religious obligation to prolong life. While *retzichah* is never allowed, there may be some leniency in not providing certain forms of medical intervention. This is a complicated and fact-sensitive area not susceptible to easy generalization. See, for example, *Nishmat Avraham*, app.; *YD* 339, pp. 151-157 as well as *Iggerot Moshe YD* II, no. 174. To the extent *halachah* recognizes a distinction in limited circumstances between active *retzichah* and nonintervention, there is a further difficulty in ascertaining whether the withdrawal of life-support that a patient is already receiving qualifies as active *retzichah* or nonintervention. Rav Shlomo Zalman Auerbach's *pesak* cited in note 16 suggests the former but the matter is far from settled.
14. Yet a third problem is that coolants and anticoagulants are injected into the patient's body while he is still on life-support

- in order to keep his organs “fresh.” Such non-therapeutic invasion of a patient who is not even brain dead may hasten death.
15. In some cases of terminal illness, there may be no obligation to reconnect life-support once it is discontinued. But this is immaterial to the discussion in the text. The cessation of vital functions cannot be regarded as irreversible as long as the functions could be restored by life-support even if there is no obligation to do so. If potential reversibility means the donor is alive, removal of organs would be overt homicide.
 16. Rav Auerbach originally ruled that one may take a brain-dead patient off a respirator, determine there is cessation of the heartbeat and wait as little as thirty seconds, after which the patient may be declared dead. See *Assia* 14 (Tevet 5755): n. 1-2, pp. 13-15. Subsequently, he retracted this ruling and required a waiting period of five or six minutes following the cessation of cardiac activity before organs could be removed. Letter of Av 5753, cited in J. David Bleich, *Contemporary Halakhic Problems* 2, (New York, 1983), 348, n. 56.
- Note that even the first ruling permitted a short waiting period only because there was a clinical diagnosis of brain-stem death, which in and of itself would be a strong indicator of the permanent destruction of respiratory capacity. Where the disconnected patient is not brain dead, it is obvious that death could not occur until enough time elapsed that loss of function could never be restored.
17. *Shulchan Aruch YD* 349:1 and commentaries. There is an argument whether these prohibitions apply to a non-Jewish cadaver. Compare *Teshuvot Chatam Sofer YD*, no. 336 with Rabbi Avraham Yitzchok Kook, *Daat Kohan* no. 199. See also *Tzitz Eliezer X*, chap. 9, no. 25; Ramban, Deut. 21:22 and discussion at note 34.
 18. See discussion of these reasons in *Nishmat Avraham YD* 349:1 (1-2).
 19. See *Noda B'Yehudah* II, *YD* no. 210; *Chatam Sofer YD*, no. 336; Chazon Ish, *Oholot* 22:32; *Iggerot Moshe*, *YD* II, no. 174 and *Yabia Omer* III, *YD*, no. 23. Some, however, maintain that corpse desecration is prohibited *even* to save a life

- since a dead person does not have an obligation to rescue another. See *Binyan Tzion* nos. 170-171. (Rabbi Yaakov Ettlinger would permit such removal if the donor gave his consent before death.) In any case, Rav Auerbach has indicated that the view of *Binyan Tzion* is not to be followed. See *Nishmat Avraham YD* 349, p. 264.
20. This is the famous ruling of the *Noda B'Yehudah* II, *YD* no. 210, who requires *choleh l'faneinu*—that the recipient be “in front of us.”
 21. See Chazon Ish, *Oholot* 22:32; also Rav Auerbach cited in *Nishmat Avraham YD* 349:1 (2), p. 257.
 22. For simplicity, I am assuming in the text that the operative justification for removal of organs is *pikuach nefesh*, and in the absence of *pikuach nefesh*, there might be prohibitions of desecration and violation of the duty of burial. The existence of these prohibitions, even in the absence of *pikuach nefesh*, is not always clear-cut, particularly with respect to donating skin and corneas where, for a variety of reasons, *choleh l'faneinu* may not be required. See the discussion in Avraham Steinberg, *Entsiklopedyah Hilchatit Refiut* 2, (5751): 191-243.
 23. It is conceptually difficult to say that a person is obligated to donate organs to save a life since at the time the organ will be used, the donor is dead and therefore exempt from *mitzvot*, although *Iggerot Moshe YD* II, no. 174 and *Yabia Omer* III *YD*, no. 23 apparently so rule. However, the family could have such an obligation. Such an obligation could exist even where the decedent did not give consent or even over his objection. Taken to an extreme, anyone would *halachically* have the right, and indeed the duty, to appropriate a corpse in order to obtain life-saving materials. Nevertheless, the *Binyan Tzion*, nos. 170-171, rules that because the laws governing *kavod hamet* are designed to protect the honor of the deceased, who does not have the obligation of *pikuach nefesh*, even *pikuach nefesh* cannot justify *nivul* unless the *met* consents. (But cf., *Nishmat Avraham YD* 349, p. 264, who quotes Rav Auerbach to the effect that we don't follow the ruling of *Binyan Tzion*.)

- In any event, under the Uniform Anatomical Gift Act enacted by all fifty states, next-of-kin cannot authorize organ donation where the deceased objected.
24. Rabbi Tendler asserts that one is obligated to donate organs to save lives even if the probable recipient will be a non-Jew, since all mankind is created in the image of God. However, given the fact that *nivul hamet* is an *issur deOraita* that can only be set aside for *pikuach nefesh* and that *pikuach nefesh* of a non-Jew does not authorize violations of Torah law, how could saving a non-Jew justify corpse desecration? A number of points might be suggested, none of which are conclusive: 1. If Jews don't give to non-Jews, there is a possibility that non-Jews won't give to Jews and future Jewish lives will thereby be endangered. See Steinberg, *Entsiklopedyah*, 31: 2. There is a possibility that the recipient will be Jewish and even if that possibility is unlikely, the laws of *pikuach nefesh* are not limited by the principles of *rov* (assuming majority status). See, e.g., *Shulchan Aruch OH* 329:2:3. Removal of internal organs may not constitute *nivul hamet* on a Torah level because, at least in some cases, the external appearance of the body remains intact; 4. From the perspective of the donor and his family, the actual desecration of the corpse is being done by the transplant surgeon and his team. The donor has no way of knowing who the transplant surgeon is and under Jewish law, could presume that he will be non-Jewish, at least in the United States. A non-Jew does not have a prohibition of *nivul hamet* even towards a Jewish corpse. Accordingly, the only sin the family is committing is authorizing desecration, which may be a rabbinic prohibition (*amira l'akum*) that can yield for the *pikuach nefesh* of even a non-Jew.
- All of these rationales are questionable and need further analysis. It should be noted that under the Uniform Anatomical Gift Act a donor can limit his donation to a specific individual or even to an ethnic or religious group though the latter is frowned upon in the organ donation community.

25. See *Seridei Aish* II, no. 120 (original edition); II, no. 93 (new edition) (blindness is a life-threatening condition that qualifies as *pikuach nefesh*) and *Shevet MiYehudah*, 313-323 (even blindness in one eye constitutes *pikuach nefesh*).
26. To a lesser degree, this is also true for lungs.
27. The *Beit Yosef*, *Choshen Mishpat* 426, quotes the *Talmud Yerushalmi's* ruling that one is obligated to expose oneself to possible danger in order to extricate another from certain danger. But this rule is not quoted by either the *Shulchan Aruch* or Rema. According to *Sema* and *Pitchai Teshuvah*, the *Talmud Bavli* disputes the *Yerushalmi's* premise and the *halachah* follows the *Bavli*. See also *Teshuvot Radvaz*, no. 627. Others permit (but don't require) self-endangerment if the person to be rescued is a superior *talmid chacham* but prohibit such endangerment if the rescuer is greater. *Pitchai Teshuvah YD* 252:1 in the name of *Teshuvot Yad Eliyahu*, no. 43. *Lehalachah*, we permit altruistic volunteering regardless of the rescuer's status but don't compel it. See *Iggerot Moshe YD* II, no. 174 and *Aruch Hashulchan CM* 421:4.
28. See *Iggerot Moshe YD* II, no. 174 and *Yechava Daat* III, no. 84.
29. One must differentiate, however, between organ donation and donation of blood or bone marrow. In the latter examples, there are no significant risks. As such the imperatives of *lo ta'amod* would seem to make such contribution mandatory, at least where the potential recipient is Jewish. Nevertheless, even here, there are a number of limiting factors: 1. One is not obligated to submit to general testing to have one's name entered into a registry because there is no designated *choleh l'faneinu*; 2. Even if there is a *choleh l'faneinu*, one need not assume that one's marrow or blood is suitable since the probability is that it is not; 3. Even if there is a *choleh l'faneinu*, one is not obligated to forego significant financial loss (loss of employment) or more than twenty percent of one's net worth to save another. Nevertheless, even with all these exclusions, donation of blood and marrow may sometimes be *halachically* required while donation of

A parent is not authorized to endanger one child in order to save another.

organs would never be. See *Shevet Levi* V, no. 219; Bleich, *Contemporary Halakhic Problems* 4, (New York, 1995), 285-287. But cf. *Tzitz Eliezer* XVI, no. 23.

30. See Rabbi Yitzchok Zilbershtein, *Halachah U'Refuah* 4, (5745): 156-157. But see Rav Moshe Hirschler, *Halachah U'Refuah* 2, (5746): 126 who writes that an exception might exist where the recipient is someone who provides care and sustenance to the minor or incompetent, e.g., a parent.

31. See Bleich, *Contemporary* 4, pp. 301-309. But cf. *Nishmat Avraham* (app. vol.), *CM* 243:1.

32. *Shulchan Aruch YD* 349:1.

33. *Shevet Miyehudah*, 313-323.

34. *Shulchan Aruch YD* 349:1 rules that the prohibition against benefit does apply to non-Jewish cadavers but *Pitchai Teshuvah YD* 349:1 suggests that the prohibition is only rabbinic and, as such, can be waived even in cases of non-life threatening illness. See *Iggerot Moshe YD* I, no. 229 (6). The Gra in his commentary to *YD* 349:1 cites the view of Rashba that *hana'ah* from a non-Jewish corpse is permitted. See also *Mishnah L'Melech, Hilchot Avel* 14:21.

35. There are two other reasons why at least in some cases there may not be a problem of deriving benefit. First, the use of cadaver organs for transplantation might be considered "not in the ordinary manner of benefit" (*shelo kederch hana'ah*) and, therefore may be permissible. See *Teshuvot Radvaz* II, no. 548 and Rabbi Tzvi Pesach Frank, *Har Tzvi YD*, no. 277. But see comments of Rabbi Akiva Eiger, *YD* 349:1 and *Iggerot Moshe YD* I, no. 229 (3). See also *Tzitz Eliezer* XIV, no. 84. Second, in the case of skin grafts, some *posekim* rule that there is no *issur hana'ah* at all. See *Tosafot, Niddah* 55a, s.v. *Shema* and *Yabia Omer YD* III, no. 23. Most, however, rule that deriving benefit from skin is prohibited. *Ibid.*

36. See *Nishmat Avraham* (app. vol.) *YD* 339, pp. 134-150.

37. See, e.g., Rambam, *Hilchot Rotzeach* 2:2.

38. Rav Auerbach rules, however, that one is permitted to be placed on a recipient list only in countries where a majority of the population is not Jewish. See *Nishmat Avraham* (app. vol.) *YD* 339, p. 134.

39. An analogy would be the permissibility of utilizing the scientific data derived from Nazi experimentation. Although the experimentation itself was barbarous, once the evil act is done one is permitted to derive benefit from whatever useful good it might provide. Bleich, *Contemporary* 4, p. 231.

40. *Baba Kama* 85a.

41. See Rabbi Joseph B. Soloveitchik, "The Lonely Man of Faith," *Tradition* 7, no. 2 (1965): 5-67.

*Readers interested in obtaining more comprehensive endnotes should contact the *Jewish Action* office.