

So One May Live

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Early in September 1977, a drama began that added much *kavod*, much dignity, to the wisdom of Torah and to those who spend their lives applying Torah knowledge to the complex problems encountered daily in the modern world. In Lakewood, New Jersey, Siamese twins were born to a prestigious family of Torah educators. The twins were taken by helicopter, on September 15, to the Children's Hospital in Philadelphia, where Dr. C. Everett Koop, who subsequently became the surgeon general of the United States, was then the hospital's chief of surgery. Immediately after the initial evaluation, it was obvious to all the physicians called in to evaluate the twins that both would die unless they were separated. However, the only way one child would be viable was if the other child was killed during surgery. The question was referred to Rav Moshe Feinstein for his evaluation and decision.

The children, designated Baby A and Baby B, were fused in the ventral area all the way from the shoulder down to the pelvic region. The twins shared one six-chambered heart. The wall separating the essentially normal four chambers from the other two, most likely the stunted heart of Baby A, was too thin to be divided. It was not possible to give the two-chambered heart to Baby A, so that she would survive for as long as a two-chambered heart could carry her physiological needs. There was only one solution. The entire six-chambered heart had to be given to Baby B, and the life of Baby A would have to be sacrificed.

It was clear to all concerned that this was a major ethical issue that had ramifications for the abortion debate, and for the ethics of neonate salvage. The Chief Surgeon, a deeply religious man, was fully aware of the ethical import of any decision in this case. Dr. Koop referred the case to the courts so as not to have any accusation of premeditated murder leveled against him. In addition, nurses and doctors at Children's Hospital consulted with their religious guides, and many reported back that they would not be able to participate in the surgery.

On September 20, I met with Dr. Koop and his staff to deter-

mine the medical facts. The first halachic concern was to establish that we were, in fact, dealing with two separate human beings. Although they were joined at the chest and their livers were co-joined, as were the hearts, the girls were separate human beings with their own brains and nervous systems. Dr. Koop recommended that the twins should be separated as soon as possible, because there were signs that the heart was failing and could not maintain the load of supplying blood to two infants. It was emphasized that even with surgery the chance was slim that one could be saved. Never before had Siamese twins been successfully separated from a ventral connection, and certainly not when they had a joined liver and a single heart between them.

On September 30, twenty doctors and nurses assembled in the meeting room to be brought up to date. Many were already disturbed by the lapse of time. They were all leaders in their fields and had gathered to be able to participate in the separation. Practically every surgical and medical specialty was represented, since no one really knew, despite the X-rays and the many tests that had been done, what they would encounter during actual surgery. Dr. Koop had prepared a team that would be able to handle any emergency that might arise. In brainstorming sessions, all possible problems were discussed. The simple problem of fitting a six-chambered heart into the small chest of Baby B proved to be unexpectedly difficult and could be resolved only by building the chest larger by using part of the chest of Baby A. On October 3, the intensive care unit nurse assigned to the twins noticed significant changes in the heart rate and respiration and in the electrocardiographic tracings. This was reported to Rav Feinstein, who then posed, once again, the key question: Was Dr. Koop sure that the six-chambered heart could only be given to Baby B? Could it not also be given to Baby A and Baby B be allowed to die?

Dr. Koop responded that there was no doubt that the only infant who could be helped by surgery was Baby B, because in addition to the shared liver and heart, Baby A also had a circulatory defect that would not permit her to survive any length of time, even if she were given the six-chambered heart.

Discussion involved many members of the Feinstein-Tandler family, each contributing his own insight. The surgical team had essentially completed its work and had a plan which allowed for the separation of the twins despite the unknown consequences of the

separation. If Baby A was to be sacrificed, it was important that the separation be done immediately after Baby A was no longer alive, so that the toxins that immediately pour out when tissue is devitalized would not begin to affect the survival of Baby B. Yet there was little knowledge as to what impact the sudden removal of a large volume of blood (the blood that was circulating in Baby A) would have on the functioning of the six-chambered heart now in Baby B's chest.

On October 6, Rav Feinstein asked me to call Dr. Koop and instruct him to go ahead with the surgery. On Tuesday, October 11, the surgery was completed. Baby B successfully survived the surgery. Baby A had to be sacrificed. The following is a summation of Rav Moshe's reasoning for approving the surgery. A second approach that leads to the same conclusion, but based upon a different halachic principle, is also recorded here since it was presented in great detail during the discussions that led to the final permissive ruling.

One of the fundamental rules of halacha is that one life is not to be sacrificed for another. An exception to this rule is the sacrifice of a fetus in order to save the life of the mother during delivery. The Mishna in *Ohaloth* (7:6) records: "If a woman is in difficulty during childbirth, it is permissible to destroy the fetus surgically because her life comes first. If, however, the head of the fetus has already been delivered, then it is forbidden to intercede even though it may cost the life of the mother. The fetus is now an infant with the ability for an independent life. Therefore, we do not sacrifice one life to save another."

The Talmud in *Sanhedrin* (72b) elaborates on this Mishna by posing the question: "Why should you not sacrifice the infant even though the head has already presented, since this infant is endangering the life of the mother? Is not the infant, then, a *rodef* (pursuer)? The law of the pursuer should apply, which is to kill the pursuer in order to save the life of the victim." The Talmud answers: "No, Heaven is the pursuer." In other words, this is an act of Hashem, and therefore it is not correct to assume that the fetus is the attacker. We cannot decide to favor either the child or the mother in this terrible dilemma. While the child is in the uterine environment, totally dependent on the mother's life yet threatening it, we classify the fetus as a pursuer. The logic is, as Maimonides says, "simple." While in the uterine environment, the child is totally

dependent on the mother's life forces. Thus, either the mother's death or the fetus's death would result in a fetus that was not viable. This complete dependency on the mother, so that if the mother dies the fetus will also die, is the reason for giving the mother priority over the fetus, because she is the source of fetal life.

Once the head appears, however, and the child is able to breathe independently, he is treated as an entity separate from the mother. He is now independent of the mother's circulatory and respiratory systems. We grant him the full rights and privileges of an adult. The most important of these privileges is the right to life.

This is surely the Rambam's reasoning in *Laws of Murder* (1:9). The Rambam states as follows: "When the head has appeared we no longer intervene because we cannot destroy one life for the sake of another." He adds the explanation: "For this is natural law." Why is this case less a matter of natural law than when the fetus is still in utero? Why do we not say that "Heaven is the pursuer," and not intervene, even in early pregnancy? It is, after all, an "act of Heaven"? Surely it is the fetal status of dependency on the mother that justifies the sacrifice of fetal life to save maternal life.

Rav Feinstein compared the case of the Siamese twins to this classic case of the conflict for survival between a mother in childbirth and the fetus. Baby A had no independent ability to survive. Her entire survival was completely dependent on her sister, who had the circulatory system to back up the functioning of the heart and liver.

To Rav Feinstein's critical question, "Can the heart be given to Baby A and she would live?" Dr. Koop had responded, "No, there is no way to save Baby A. The issue is only should both die or should Baby B be saved." Without the attempted separation, both would surely die, and therefore in halachic terminology we classify the baby that had no independent survival, Baby A, as the pursuer, as if she were pursuing her sister and threatening her life.

Further, sophisticated testing had determined that the halachic concept of dependency was, indeed, the relationship between the twins. The two-chambered heart, which was the heart of Baby A, was receiving its blood through two apertures leaking from the four-chambered heart. Except for that contribution of blood to the two chambers Baby A would have died in utero. This was the analysis that allowed the surgery to proceed.

I recall how impressed I was with a statement Dr. Koop made, a statement that in my opinion revealed the man's personality and

also incurred a special merit. When the team of twenty or so professionals were awaiting Rav Feinstein's decision, and, indeed, were expressing impatience at the lapse of time, which interfered with their private, professional lives significantly, Dr. Koop quieted the group with the following statement: "The ethics and morals involved in this decision are too complex for me. I believe they are too complex for you as well. Therefore I referred it to an old rabbi on the Lower East Side of New York. He is a great scholar, a saintly individual. He knows how to answer such questions. When he tells me, I too will know."

During the almost two weeks of intensive discussions held under the guidance of Rav Moshe, an objection was raised to the analogy to a mother in difficult childbirth. The Rambam uses the expression: "For this is *tiv'o shel 'olam*, or the law of nature, or more accurately, the natural course of our world."

It is easy to see how such an expression applies to a woman in childbirth, since childbirth, a normal natural event, sometimes involves dangers that result in a serious conflict between the mother and the child about to be brought into the world. It is difficult to see how this concept can be applied to so rare an occurrence as the birth of Siamese twins, especially one with a six-chambered heart and a shared liver, as was our case. Therefore, a second approach was suggested which received the careful attention of Rav Moshe. It did not receive his concurrence, only his appreciation for the analysis suggested.

The Talmud in *Sanhedrin* (72b) and the commentary of Rashi on the case of Sheva ben Bikhri recorded in Samuel II 20:

There was an evil man named Sheva ben Bikhri...and he said, "I have no allegiance to David ha-Melekh" [i.e., he led a rebellion against King David]. Yoav's men chased after him and they came to a town and laid siege to it. Yoav announced to the townspeople, "Sheva ben Bikhri has raised his hand against David ha-Melekh. Send him out of your town, for he alone is the one that is guilty, and I will then withdraw my forces from the siege." A woman responded to Yoav, "Behold, here is his head which I am throwing to you next to the walls of the city."

The whole story is cited in great detail in the *Talmud Yerushalmi, Terumot* (8:4). From this story is derived a halachic ruling concerning

a caravan of Jews surrounded by gentiles. The gentiles had the military power to destroy the Jews but instead offered a deal: “If you will give us one of you so that we may do as we will with him and kill him, then you can all go free. If not, we will kill you all.”

The Talmud rules that it is forbidden to hand over one Jewish life to them even though all must forfeit their lives. If, however, the gentiles had singled out one individual against whom they had some complaint, as specified: “Give us *this* man,” just as in the case of *Sheva ben Bikhri*, the halacha states that he should be turned over to them and the entire caravan be saved.

Resh Lakish qualifies this ruling by saying that it applies only if he is guilty of a death penalty, as was *Sheva ben Bikhri*, who rebelled against the king and incurred such a penalty. Rav Yohanan states that is not a prerequisite. Even if he was not guilty, as long as they specified “this man and this man alone,” it is permitted to turn him over in order to save the rest. *Rashi*, in his commentary on *Sanhedrin*, analyzes the case further and points out that whereas it was permissible to turn over *Sheva ben Bikhri*, it is not permissible to kill a fetus which has already presented its head so that there is independent life, because sacrificing one life for another is forbidden. In the case of *Sheva ben Bikhri*, even if they had not handed him over, they would not have been able to protect him against the siege laid by *Yoav*. They could only have died with him. If, however, there had been a possibility that defending him would have given him an opportunity to escape, so that there was no certainty that he would die, then they would have been required to raise a defense, and not save themselves by causing the death of *Sheva ben Bikhri*.

The Rambam, in *Laws of the Foundations of Torah* 5:5, concludes that *Resh Lakish's* opinion, and not Rav Yohanan's, is the correct one: “If he is liable to the penalty of death, as was *Sheva ben Bikhri*, they are permitted to turn him over in order to save themselves. If, however, he is not guilty of any death penalty, then it is forbidden to turn him over, but they must defend themselves and him even if it means forfeiting all their lives.”

It is clear, according to *Rashi's* analysis in his commentary on *Sanhedrin*, that in our case, where both would have died, it was permissible to sacrifice one in order to save the other. But according to Maimonides' ruling, unless one of them had incurred the penalty of death, it was forbidden to do so. The *Rama*, in *Yoreh De'ah* 157, records the *Rambam's* ruling as the correct halacha that it is

forbidden to save one life at the cost of another unless that individual was guilty of a death penalty, as was the case of *Sheva ben Bikhri*.

The analysis of the case of the Siamese twins, however, seems to satisfy even the requirement of Maimonides, so that in this case all would have concurred with the opinion of Rav Moshe. Baby A could not live, no matter what surgical plan was followed. Although there was no ruling of a *beit din* that she was guilty of any sin and therefore would be subjected to capital punishment, *Hashem* Himself issued such a ruling. There was an edict from Heaven that the child could not live. Nobody could help this child. Even if all the organs were placed in her body, she could not survive. Therefore, Baby A should be classified as if she were *Sheva ben Bikhri*, for whom there was no hope, and the destiny was already inscribed by *Hashem* Himself, that this soul would enter the world only for a limited period of time so as to “help empty the storehouse of souls and hasten the coming of *Mashiah*” (*Yevamot* 62a).

The decision to sacrifice her is one that would have had the approval of both Rashi and the Rambam. The logic of equating inevitable death from physiological causes, because of the anatomical deficiencies of Baby A, and a case in which an individual is guilty of a capital crime, is based on an analysis by the Rama in *Sanhedrin* 72b, and I quote: “The case of the woman in labor requires deep analysis. The fetus was not guilty of any crime. It is like the case of a caravan surrounded by enemies in which the gentiles demand one life in order to let the other go, where the ruling is that we may not sacrifice one life even to save many lives.”

The Rama concludes (that the rule that “we do not sacrifice one life even to save many lives” applies) only because the fetus has a chance to live. If the fetus did not have a chance to live, there would be no problem about killing it to save the mother, because the absence of any hope that the fetus could survive, and not the mother, makes it as if this individual were designated for death. According to Rama’s analysis, then, in an early pregnancy, where the child still does not have viability, it is tantamount to being designated for death. Thus, in our case, Baby A, because of the defects in her body structure, had been designated for death, and therefore it is permissible to hasten that death in order to save the life of the sister.

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