

Siamese Twins: Rav Feinstein's Ruling and the Subsequent Controversy

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The Facts

Baby A and Baby B were joined from the shoulder to the pelvic area, sharing one liver and one six-chambered heart. The wall between the four essentially normal chambers belonging to Baby B and the stunted two-chamber heart belonging to Baby A was too thin to be divided; the twins, therefore, could not each be given a heart. Even if it were possible, a two-chambered heart could not have supported Baby A for long.

In addition, Baby A had a circulatory defect that would eventually kill her. The doctors could only help Baby B, by giving her the entire six-chambered heart. This procedure would end the life of Baby A.

On October 6, 1977, Rav Moshe Feinstein asked his son-in-law Rabbi Moshe D. Tendler to call the surgeon in charge of the case, Dr. C. Everett Koop, and instruct him to proceed with the surgery – in other words, to end the life of Baby A in a procedure that might save the life of Baby B.

Before discussing the halachic concepts underlying Rav Feinstein's decision, it must be stated that preservation of life overrides all Torah prohibitions except for idolatry, incest, and murder.¹ Therefore, when faced with a choice between murdering one person or allowing someone else to die of natural causes, murder is absolutely forbidden.

1. *Pesahim* 25a-b, *Yoma* 82b, *Sanhedrin* 74a.

Two Analogies

The *Philadelphia Inquirer* cited two analogies used by Rav Feinstein in reaching his decision to permit the surgery.² The first is a case where two men jump from a burning airplane. The second man's parachute does not open and as he falls past the first man, he grabs his legs. If the first man's parachute cannot support both men, can he kick off the second man in order to save his own life? The answer is yes, because the second man is considered a pursuer (*rodef*) whose actions will result in killing the first man.³ According to halacha, a pursuer can be killed in order to save the life of the pursued.

Rabbi J. David Bleich writes that the concept of the pursuer here is not entirely analogous to the case of the conjoined twins.⁴ In the case of the parachutes, he writes, it is clear who is the pursuer and who is the pursued, but in the case of the twins, then-current medical experience showed that the twins were mutual pursuers, each one threatening the other. The law of the pursuer does not apply when two people pursue each other, and third-party intervention in such cases is not halachically justified.⁵ Unless it could be proven that the heart belonged exclusively to one of the twins and the other was clearly a parasite (and therefore a pursuer), the dilemma could not be easily resolved.

Nevertheless, Rabbi Bleich accepts Rav Feinstein's ruling on the basis of the concept of "specification."⁶ He explains that according to Rav Feinstein, when one person's pursuit is qualitatively greater than the other's, intervention is correct. Because of Baby A's congenital anomalies she could not have survived for more than twelve months. Such an individual must be regarded as a *treifa*, Rabbi Bleich writes, and killing a *treifa* is not a capital offense.⁷ Therefore, although both are pursuers, Baby A's pursuit is qualitatively greater than Baby B's and she must be killed in order

2. See Donald C. Drake, "The Surgery: An Agonizing Choice" pp. 399-414 of this book.

3. And not because the second man was designated for death by his parachute not opening, as R. Bleich points out was erroneously stated in the *Philadelphia Inquirer*. See Bleich, "Conjoined Twins," *Tradition* 31, no. 1 (1996): 92-125.

4. Bleich, op cit.

5. Rabbi Akiva Eiger, Novellae on *Ketubbot* 33b.

6. Bleich, op. cit, p. 106.

7. *Makkot* 7a; Rambam, *Hilchot Rotseah* 2:8.

to save Baby B.⁸

Rabbi Shabtai A. Rappoport writes that we do not need to classify Baby A as a *treifa* to understand Rav Feinstein's ruling.⁹ Such pursuit occurs if the lives of the two involved are "unequal." If someone who is clearly soon going to die threatens a healthy person, the threat is the loss of a normal life span. However, if the healthy person threatens the person who is soon going to die, the threat is the loss of only a short life span. Thus, if Baby A's life is clearly going to be brief (if the doctors have determined that in any event she will die within a few weeks) and Baby B's life is potentially healthy and normal, then Baby A poses a greater danger to Baby B than Baby B poses to Baby A. Baby A is therefore considered a pursuer and we may and must separate the twins, thereby killing Baby A, in order to save Baby B.

The second analogy is to a *baraita* quoted in the Palestinian Talmud where heathens come upon a group of travelers and demand that they hand over one of their group to be killed or else they will all be killed.¹⁰ The rule in this case is, "Even if they will all be killed, not one Jewish soul is handed over." However, if the heathens specify one of the travelers, for example Shev'a ben Bikhri,¹¹ the travelers may hand him over so that they will not be killed. Rabbi Shim'on ben Laqish rules that this only applies when like Shev'a ben Bikhri, the designated person deserves the death penalty (*hayyav mita*).¹² Rabbi Yohanan rules that he can be handed over as long as he has been designated by the heathens – regardless of whether or not he deserves the death penalty. Rambam follows Rabbi Shim'on ben Laqish.¹³

Applying this analogy to the case of the conjoined twins assumes that one of the twins has been "designated" for death and any attempt to save her life will fail. Under such circumstances, the designated twin may be sacrificed to save the other's life.

Rabbi Bleich argues that while the twin who cannot survive under any circumstances can be considered designated for death,

8. A careful analysis of the medical-halachic status of the Siamese twins leads to the conclusion that Baby B most probably should also be considered a *treifa*, therefore such distinction between the twins is not valid.

9. "Comments on an Article concerning Siamese Twins" (unpublished).

10. Palestinian Talmud, *Terumot* 8:10.

11. Samuel II 20.

12. Palestinian Talmud, op. cit., on Samuel II 20:21.

13. *Hilchot Yesodei ha-Torah* 5:5.

she does not satisfy Rabbi Shim'on ben Laqish's condition because she has not committed any sin and cannot be deserving of the death penalty. She cannot be "handed over" based on this argument.

Rabbi Tendler, on the other hand, argues that although no *beit din* ruled that Baby A deserves the death penalty, "Ha-Shem Himself issued such a ruling."¹⁴ No matter what was done for her medically, Baby A could not have survived. She should therefore be considered like Shev'a ben Bikhri and we can end her life in order to save her sister.

Rabbi Rappoport's Synthesis

Rabbi Rappoport unites the two analogies. He explains that Rabbi Shim'on ben Laqish's condition that the designated person can only be handed over if he deserves the death penalty is based on the principle of the pursuer seen in the parachute analogy. Although the law of pursuit does not usually apply in cases of mutual pursuit and third-party intervention is therefore generally unjustified, when one person's act of pursuit is qualitatively greater, the law of pursuit does apply and intervention is justified.

According to Rabbi Yohanan, designation by the heathens is enough to consider the designated person's life shorter than the lives of his fellow travelers. He therefore endangers them (with the loss of full lives) more than they endanger him (with the loss of a shortened life), and they are permitted to hand him over to be killed. According to Rabbi Shim'on ben Laqish, only if the designated person deserves the death penalty should his life be considered of short duration.

The question, therefore, is not whether or not Baby A has been "designated" for death in that no matter what she is doomed. The question is, when is the case in the *baraita* similar to the case of the Siamese twins? According to Rabbi Yohanan, designation by the heathens is enough to consider that person's life shorter than those of his fellow travelers, and the status of the designated person is similar to that of Baby A. According to Rabbi Shim'on ben Laqish, only if the designated man deserves the death penalty is his life considered of short duration, and only then is his status similar to that of Baby A.

14. See Rabbi Moshe Tendler "So One May Live" pp. 415-421 of this book.

In the case of the Siamese twins, one twin's life is clearly going to be brief, and the other twin's life is potentially full and healthy. Baby A endangers her sister with the loss of a full life, which is greater than the danger posed to her in turn. Therefore she is unquestionably considered a pursuer and in order to save Baby B we may and must separate the twins.

In summary, Baby A is unequivocally considered a pursuer. Therefore her life should be ended in an effort to save the life of Baby B.

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