

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## 173 - CONJOINED TWINS OU ISRAEL CENTER - SUMMER 2020

- In the last shiur we looked at the issue of fetal reduction and saw the main sources dealing with the status of the fetus in halacha.
- It is clear that the fetus may (perhaps must<sup>1</sup>) be killed to save the life of the mother. The main explanation for this position is that the fetus, whilst alive to some degree, and certainly a potential life, is not fully categorized as a 'nefesh'. Additionally, the fetus is a quasi-rodef<sup>2</sup>, in that it is actively endangering the life of the mother.
- In this shiur, we will take these same issues to the next stage - that of conjoined twins.<sup>3</sup>
- Conjoined twins are a natural, but very rare phenomenon<sup>4</sup> which has been recorded from antiquity.<sup>5</sup> Approximately half are stillborn, and an additional one-third die within 24 hours. Most live births (3:1) are female. As such, the likelihood of an adult pair of conjoined twins is vanishingly small.<sup>6</sup>
- As we will see below, they figure in the writings of Chazal<sup>7</sup>.

### A] MEDICAL BACKGROUND<sup>8</sup>

- There are two theories about the development of conjoined twins. The main theory is that a single fertilized egg does not fully split during the process of forming identical twins<sup>9</sup>. The second theory is that a fusion of two fertilized eggs occurs earlier in development.
- Conjoined twins are typically classified by the point at which their bodies are joined. The most common types of conjoined twins are:
  - Thoraco-omphalopagus (28% of cases): Two bodies fused from the upper chest to the lower chest. These twins usually share a heart, and may also share the liver or part of the digestive system.
  - Thoracopagus (18.5%): Two bodies fused from the upper thorax to lower belly. The heart is always involved in these cases.
  - Omphalopagus (10%): Two bodies fused at the lower abdomen. Unlike thoracopagus, the heart is never involved in these cases; however, the twins often share a liver, digestive system, diaphragm and other organs.
  - Parasitic twins (10%): Twins that are asymmetrically conjoined, resulting in one twin that is small, less formed, and dependent on the larger twin for survival.
  - Craniopagus (6%): Fused skulls, but separate bodies. These twins can be conjoined at the back of the head, the front of the head, or the side of the head, but not on the face or the base of the skull.



1. The issue of whether the mother could chose to die in order to save the fetus is itself a major halachic debate, but beyond the scope of this shiur.
2. We saw that the Gemara appears to reject this argument and states that the baby is NOT a rodef, but rather the mother is being 'pursued' by Heaven in this instance. Nevertheless, the Rambam states that a fetus in this situation is 'KErodef' - like a rodef. See that shiur, and my earlier shiurim on abortion for further analysis on this.
3. This phenomenon used to be called 'Siamese Twins' after the famous 19th Century case of Chang and Eng Bunker (1811-1874). Originally from Thailand (then called Siam) they lived most of their lives in the US. They were only slightly conjoined - at the sternum by a flexible band of cartilage, and they shared a liver - and otherwise functioned independently. They were never separated and lived their entire life together. They married identical (but not conjoined) twin British sisters - Sallie and Adelaide Yates - and between them had 11 surviving children (Sallie and Eng had 5, Adelaide and Chang had 6). Opposition to their marriage from the Yates family and local community was not due to their conjoined nature, but because they were Asian! There are over 1,500 living descendants of the Bunkers today, mostly in North Carolina.
4. The incidence depends on location, with a higher incidence in Southwest Asia and Africa. The likelihood ranges from 1 in 49,000 to 1 in 189,000.
5. Writing around 415 CE, Augustine of Hippo, in his book, City of God (Book XVI), refers to a man "double in his upper, but single in his lower half - having two heads, two chests, four hands, but one body and two feet like an ordinary man." Even earlier, clay sculptures of conjoined twins have been found in excavations of Mexican villages, possibly from 3000 years ago. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1071535/>
6. For a fascinating video made by Abby and Brittany Hensel - 30 year old conjoined twins from Minnesota - see <https://www.youtube.com/watch?v=1RiFbEA3aOw>.
7. The Gemara in Menachot (below) is one the most detailed accounts from antiquity. There are also references to conjoined twins in Rabbinic literature. The Rambam (12C N. Africa), R. Isaiah of Trani (13C Italy), R. Gershon ben Shlomo of Catalonia (13C Spain) and others record cases. A famous case is recorded by the Arab philosopher Ibn Sina in the 11C and quoted later by Jewish sources. A woman gave birth to conjoined twin girls who had separate heads, hands, and feet, but were joined at the hip. Somebody proposed marriage to Girl A but Girl B refused on the grounds of modesty - that the man would see her naked. The two sisters went to court, where the judge called B and asked her to stand on her feet, but she was unable to do so. He then called on A to stand up, which she did, and forcibly dragged B along, so both sisters stood before the judge. From this, the judge deduced that A was the 'main' person who controlled the body and B was akin to a parasite who fed from A's body. Therefore, the judge ruled that A was allowed to get married. Not long after A got married, B died from embarrassment and distress, and, a short while later, A also died due to her sister's dead remains attached to her body.
8. [https://en.wikipedia.org/wiki/Conjoined\\_twins](https://en.wikipedia.org/wiki/Conjoined_twins)
9. As such, conjoined twins must always be the same sex. Although there are historical reports of male-female conjoined twins, these are unreliable. This would also negate the possible explanation of the Midrashic twin creation of Adam and Chava as conjoined, although see below. In truth, such an explanation would fail to see the deeper philosophical purpose of this midrash as a discussion of human gender. Midrashim must always be taken seriously, which means that they must almost never be taken literally!

- Separation of conjoined twins is extremely difficult and will depend entirely on the nature of the conjoining. It has been successfully performed in a number of cases<sup>10</sup>, but often results in the death of the twins.

## **B] HALACHIC ISSUES ARISING**

- The famous issue, which we will look at below, relates to the permissibility of killing a parasitic twin to save the life of the other.
- The other practical<sup>11</sup> issue relates to the permissibility<sup>12</sup> of marriage for a conjoined twin. This raises many questions, including:
  - Is such a marriage invalid since it includes 3 people?
  - In the case of conjoined twin sisters:
    - May they marry, and if so 1 man or 2? Is there a difference if the twin has one body and two heads, or two bodies?
    - Do both sisters need to accept separate kiddushin, or can one accept on behalf of both?
    - Is the relationship adulterous?
    - Is there an incestuous prohibition of a man marrying two sisters<sup>13</sup>? Even if not, does the man have two wives?
    - Do both sisters have to consent to the marriage? If not, is this rape?
  - In the case of conjoined twin brothers:
    - Is the other brother violating the incestuous prohibition of sleeping with his brother's wife?
    - Is there a concern of *erva* and *shemirat negia* for the other brother, when the husband touches his wife.
- In all cases, would the twins and their spouses be allowed an intimate married life<sup>14</sup>, given the constant presence of a third party<sup>15</sup>.
- We will also see below other halachic issues raised by Chazal.<sup>16</sup>

## **C] THE 1977 CASE OF BABY A & BABY B IN LAKEWOOD**

- On September 15, 1977, a pair of conjoined twin girls was born to a Jewish family in Lakewood, New Jersey. Shortly after their birth the twins were flown by helicopter to the Children's Hospital in Philadelphia, where Dr. C. Everett Koop, who subsequently became Surgeon General of the United States, was the Chief of Surgery.
- The twins shared internal organs, including a unique six-chambered heart. The wall separating the essentially normal four chambers from the other two (possibly 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 could survive for as long as a two-chambered heart could carry her physiological needs. The only solution was to give the entire six-chambered heart to Baby B, and the life of Baby A would have to be sacrificed. It was clear that the twins would both die in a relatively short time unless they were separated.
- Dr. Koop (a deeply religious Presbyterian) informed the family of the almost impossible ethical dilemma that they faced<sup>17</sup>, and the family, prominent Torah teachers, referred the question to Rav Moshe Feinstein. Rav Moshe consulted with the team of medical experts and other poskim and, after great deliberation, he approved the surgery on October 6, with the operation scheduled for October 11.
- While awaiting the decision, Dr. Koop had to calm his medical team, who were anxious over the lapse of time – the babies' six-chambered heart was showing signs of failure due to the load of supplying blood to the two infants. Dr. Koop told his team the following (as quoted by Rabbi Moshe Tendler, Assia, Vol. IV, No 1, February 2001): *"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."*
- This decision of Rav Moshe Feinstein was not included in the Igrot Moshe, but was later written up later by R. J David Bleich<sup>18</sup> and R. Moshe Tendler<sup>19</sup>. As we will see, these two great poskim differ as to Rav Moshe's halachic reasoning.

10. Including a famous case in 1987 where the lead surgeon was Ben Carson, currently United States Secretary of Housing and Urban Development.

11. There are many recorded cases of conjoined twins - male or female - marrying. Many of the male twins have born children. There is also a case of female twins who bore a child.

12. Some of these issues (eg adultery) relate both to Jews and non-Jews. However, the prohibition of marrying two sisters applies only to Jews (see Rambam Hil. Melachim 9:5).

13. Even if the twin girl has two bodies and we argue that the husband is only sleeping with one of them, some poskim raise the concern that he may (consciously or not) sleep with the other. Also, if one of the sisters is parasitic and could not live independently, would she be considered sufficiently 'alive' for the purpose of the prohibition - a question raised by R. Yosef Shaul Nathanson in his commentary on Shu't Shevut Yaakov.

14. See Nidda 17a.

15. In the case of the Bunker twins, where conjoined males married 2 sisters, they initially established a joint home with a bed for all four of them. But then the sisters fell out with each other and they established two separate households, with the twins spending alternating weeks with each wife (and the large family that each had!)

16. The potential for halachic innovation in this area is immense. Consider the following halachic questions, which are debated by the poskim:

(i) If a conjoined twin is obligated in yibum or chalitzah (after another married brother dies without children), which twin performs this - the left or the right (it is not known why the left twin is usually far stronger).

(ii) If a person give mishloach manot on Purim to a conjoined twin, does this count as gifts to two people?

(iii) Do conjoined twin males receive two portions on inheritance or one?

(iv) Do conjoined twin males count for two in minyan or one? Does it make a difference if they have two bodies or just two heads.

17. Dr Koop was himself a deeply religious man, and was fully aware of the ethical import of any decision in this case. He referred the case to the courts so as not to be accused of murder. In addition, nurses and doctors at Children's Hospital consulted with their religious guides, and many reported back that they would not participate in the surgery.

18. *Conjoined Twins* - Tradition 31:1 (1996) p. 92, and *The Case of the British Conjoined Twins* - Tradition 34:4 (2000).

19. [http://www.daat.ac.il/daat/kitveyet/assia\\_english/tendler-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/tendler-1.htm)

**D] ARE CONJOINED TWINS ONE PERSON OR TWO?**

- Clearly, if conjoined twins are classified in halacha as ONE person, there will be no problem amputating a part to save the whole.

1. בעא מיניה פלימו מרבי: מי שיש לו שני ראשים - באיזה מהן מניח תפילין? א"ל: או קום גלי או קבל עלך שמתא! (רש"י - או עמוד ולא בגלות או קבל עלך שמתא דאחוכי חייבת צי). אדהכי אתא ההוא גברא. א"ל: איתיליד לי ינוקא דאית ליה תרי רישין, כמה בעינן למיתב לכהן? אתא ההוא סבא תנא ליה: חייב ליתן לו י' סלעים .... דבגולגולת תלא רחמנא

מנחות לו.

*Pelimo asks R. Yehuda HaNasi about a conjoined twin with two heads. Which head does he put tefillin on<sup>20</sup>? Rabbi rejects the questions as ridiculous and tells him to go into exile<sup>21</sup>! But then a real-time question come to his beit midrash concerning pidyon haben for a conjoined twin<sup>22</sup>. Does the father have to pay double? The Gemara concludes that the father must pay double since the Torah defines pidyon haben according to the number of heads - and this child has two!*

2. או קום גלי כו' - בעולם הזה ליכא. אבל יש במדרש אשמדאי הוליא מתחת קרקע דחם אי' שיש לו שני ראשים לפני שלמה המלך. ונשא אשה והוליד צנים כיוולא צו בשני ראשים, וכיוולא צאשתו צראש אחד. וכשצאו לחלוק בנכסי צדיקים מי שיש לו שני ראשים שאל שני חלקים, וצאו לדין לפני שלמה. מ"ר.

תוספות מנחות לו. ד"ה או קום גלי

*Tosafot understand that the phenomenon of two-headed people originates only in the world of the spirits. They cite a Midrash concerning a two-headed demon who came to this world, married a one-headed woman and they had children - some with two heads and some with one. The two-headed sons came to Shlomo HaMelech to demand a double portion of the inheritance<sup>23</sup> (of their demon father)! But Tosafot do not record the result of the case!*

3.

לפני שלמה הצ"ה עכ"ל. וכתב הבונה במאמר עין יספק שמעתי שגזר שלמה להסליך מים רותחין על אחד מהשני ראשים ואם לא ירגיש ראש השני יסול שני חלקים עכ"ל הבונה שם. וגראה כי התוספות כוונו על זה המדרש

אשר העתקתי לעיל ומה שמע הבונה הוא חמה אך לא שמע דבר שלם כי הנסיון היה במים רותחין ויין יסן ובגד פשתן דרק צאלה עלה הנסיון והוא ענין סגולתי כאשר כתבתי ולא מצעו דהא חמין לבד לא הועילו :

בן יהוידע ראש השנה כא:

*The Ben Yehoyada fills in the end of the Midrash. First he brings the commentary HaBoneh of R. Yehuda Aryeh Modena who writes that Shlomo poured boiling water over one head to see if the other felt the pain. If so, they were one. R. Yosef Chaim Azulai understands that the test was actually mystical and involved placing a linen cloth on one head and pouring wine and hot water. Again, since both heads felt the pain, Shlomo ruled that they were one person.*

- Do these sources indicate that a conjoined twin is one person or two people<sup>24</sup>? They could certainly be read to justify the position that they are ONE person: (i) In the case of the tefillin, if they were two people, BOTH heads would need tefillin<sup>25</sup>. Only if they are one person does one ask 'which head'; (ii) in the case of the pidyon haben, if they were two people, one of them would not be the firstborn. Only if they are ONE person is there a questions of whether the double the payment; (iii) in the Midrash<sup>26</sup>, Shlomo concludes<sup>27</sup> that they are one person<sup>28</sup>. On the other hand, the pidyon haben case could be read as concluding that there are two people - Rashi seems to indicated that there are two firstborns here which presented their heads at birth simultaneously<sup>29</sup>.

- R. Yaakov Reischer<sup>30</sup> understands from the Midrash that Adam and Chava were created as conjoined beings, that conjoined twins must be TWO independent people, since the Torah refers to them in the plural upon their creation.

20. The concern of *bal tosif* could prevent us from simply putting tefillin on BOTH heads due to doubt, although the mefarshim point out that this problem would be avoided if one head wore Rashi tefillin and the other wore Rabbeinu Tam!

21. Note that there is an opinion in the Zohar that Cain was sent to exile to a place where the people had two heads, and this may be alluded to in Rabbi's response.

22. R. David Ganz (1541-1613) writes (Tzemach David, Unit II, Year 3904) in the name of the Roman historian Cassius Dio (155-235) that in the time of the Roman Emperor Antonius Pius (86-161), a woman gave birth to a boy that had two heads. R. Matisyahu Strashun (1817-1885) writes that this person could be the child mentioned in the Talmud who was born in the time of Rabbi (who was of course a contemporary and friend of Antonius). Other mefarshim understand that the case was theoretical.

23. There was a similar case in the early 20th Century German courts, where parents of dicephalous twins petitioned the government for double the financial child benefit since they had two mouths to feed. They lost the case!

24. The cases brought are all of conjoined twins with one body and two heads. The situation could be different if they were basically two fully-formed bodies fused in the abdomen.

25. Rabbi Bleich (1996) footnote 32 suggests that the doubt of the Gemara was only where there was one boy with two heads. If there were two bodies down to the waist, and certainly if there were two independent bodies fused at the torso, he considers it to be clear that there are definitely TWO people.

26. It is unlikely that the Midrash will impact significantly on the halachic debate, since Midrashic sources are far less relevant in halachic determination - *ein lemedin min ha'agadot*. See <https://rabbimanning.com/wp-content/uploads/2019/01/Learning-Halacha-From-Midrash.pdf>

27. It is not clear though whether the Midrash concludes that conjoined twins will ALWAYS feel joint pain because they are one, or whether they may or may not feel such pain. If they do, they are one, but if not, they are two.

28. It is also not clear that the Midrash is dealing with humans since it deals with the child of a demon father and a human mother. There is a halachic discussion relating to the status of such a child - is it human or demon and, if human, Jewish or non-Jewish? Rabbi Klein deals with this in his article (cited below). There is actually a legend of a Jewish family in the Hungarian Unterland who are reputed to be descendent of a Jewish woman who was raped by a demon returning from the mikveh. Her descendants became a family of brazen troublemakers who fought the local Rabbis!

29. Rabbi Abraham Abraham (Nishmat Avraham YD 5 n4) points out that this is moot today since conjoined twins are delivered by caesarian, removing any possibility of a pidyon haben.

30. Shu't Shvut Yaakov, early 18C.

- Clearly, the answer to this question will provide solutions to many of the halachic concerns listed above, particular regarding marriage. If the twins are considered one person, there can be no concern of *erva*.
- If the test of one/two people is whether they sense each other's pain, how does this relate to cases of conjoined twins who share part of their brain and can think independently, but feel through each other and even see through each other's eyes.<sup>31</sup>
- What different does the type of conjoining make to the halachic psak. Consider the difference between:
  - two separate healthy bodies and heads which are joined slightly at the torso.
  - two bodies where one is dominant and healthy and the other is parasitic.
  - one body with two separate heads/brains.
  - one body with two fused heads/brains.



4. זכרני שראיתי במדינות איטליא גוי א' כבן כ"ה שנים שנולד דבוק עם תאומו עד הטבור, חזה כנגד חזה, ושם נדבקו. והוא היה הולך ושם כשאר בני אדם וראש הקטן מוטה לצד א' ורגליו תלויות ומגיעות עד ארכובותיו של גדול. ולא היה בו הרגשה כלל אלא כאבר שנתבטל חושו. ונתקיים כך כמה שנים עם תאומו. נסתפקו ההורגו מאי? ... צ"ל שטבורו דבוק עם של תאומו והכבד של אחיו שולח דם דרך שריון לכבד שלו, ומשם ניזון כמו במעי אמו. ואפשר לדנו כדין גוסס ... ועל הקטן אומר 'דיין האמת' כי רוב גוססים למיתה ....

שו"ת הלכות קטנות חלק א סימן רמה

R. Yisrael Chagiz (17C Italy and Eretz Yisrael) writes in his teshuvot of a conjoined twin that he saw in Italy.<sup>32</sup> In this case, one of the twins was clearly parasitic. He rules that this twin had the status of a goses - someone likely die - but nevertheless an separate person whom it would be prohibited to kill.

## E] RAV MOSHE FEINSTEIN'S 1977 PSAK

On October 6 1977, Rav Moshe asked Rabbi Tendler 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 and Baby A had to be sacrificed.

### E1] ONE CHILD OR TWO?

• In the case of Baby A and Baby B in 1977, the girls were joined at the chest and their livers were co-joined, as were their hearts. However, the girls had fully independent brains and nervous systems and were considered to be two people from the start of the halachic analysis<sup>33</sup>. At the very most, the Baby A could have been classified as a *treifa*, whom it is still prohibited to kill.

### E2] WAS THERE A DOMINANT TWIN?

• In this case, Baby B was clearly the healthier of the two. Rav Moshe asked Dr. Koop if he was 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<sup>34</sup> that there was no doubt that the only infant who could be helped by surgery was Baby B. 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.

### E3] THE RODEF FACTOR - THE BASIS OF RAV MOSHE'S PSAK ACCORDING TO R. TENDLER

5. האשה שהיא מקשה לילד - מחתכין את הולד במעיה ומוציאין אותו אברים אברים, מפני שחיייה קודמין לחייו. יצא רובו - אין נוגעין בו שאין דוחין נפש מפני נפש

משנה מסכת אהלות פרק ז משנה ו

As we saw in the previous shiur, a fetus may be killed in order to save the life of the mother. However, once the baby is considered to be halachically 'born' (ie the majority of its head or body has emerged from the mother at birth), it may no longer be killed to save the mother since 'one life cannot be taken to save another'.

31. This is the case with Krista and Tatiana Hogan - 13 year old conjoined craniopagus twins living in Canada. They are joined at the top, back, and sides of their heads and have highly interconnected nervous systems. See [https://en.wikipedia.org/wiki/Krista\\_and\\_Tatiana\\_Hogan](https://en.wikipedia.org/wiki/Krista_and_Tatiana_Hogan)

32. From the description, it seems that these were the Colloredo twins - Lazarus and Baptista - who lived in Italy in the mid 17C. Lazarus struck and killed a man and was sentenced to death, but his parasitic twin Baptista successfully petitioned for a reprieve since he was innocent!

33. See *So One May Live*, Rabbi Moshe Dovid Tendler, ASSIA - Vol IV, No 1 February 2001 - at [http://www.daat.ac.il/daat/kitveyet/assia\\_english/tendler-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/tendler-1.htm)

34. Rabbi Bleich asserts that this conclusion by Dr. Koop was conclusory, with little clear halachically relevant evidence. He writes (Bleich 1996 p 102) - "Mere relative proximity to one head rather than to the other does not serve to resolve the issue either scientifically or halachically. Development and configuration of blood vessels leading to the heart, and from it the other organs, may be extremely significant in determining which of the two twins is potentially viable but does not necessarily determine or reflect 'ownership' of the heart. DNA evidence cannot resolve the question of 'ownership' of the heart since the twins develop from a single ovum and possess an identical chromosomal structure. Quite to the contrary, since a single heart is the embryological result of failure of certain cells to develop, the single organ, or the portion of the organ that failed to divide, should be presumed to be held in common by both twns. ... In the case under discussion this assessment is bolstered by the fact that blood passed through a hole between the ventricles where the two fused hearts touched and by the fact that the single six-chamber heart was supplying blood to both infants."

6. ורוצח גופיה מנא לן? סברא היא. דהווא דאתא לקמיה דרבה, אמר ליה: אמר לי מרי דוראי: קטליה לפלניא, ואי לא קטילנא לך. אמר ליה: נקטלך ולא תקטול. מאי חזית דדמא דידך סומק טפי? דילמא דמא דהווא גברא סומק טפי.

יומא פב:

*Why may we not take one set life to save another? Chazal explain that we are not in a position to say which life is more valuable than the other.*

7. כי הענין של "חיים" אין לנו שום קנה-מדה כמה למדוד את יוקרם וחשיבותם אפילו לא בתורה ומצוות. שהרי מחללין את השבת גם על זקן חולה מכה שחיו אף על פי שהוא חרש ושוטה גמור, ואינו יכול לעשות שום מצוה וחיו הם רק למשא וסבל גדול על משפחתו וגורם להם בטול תורה ומצוות, ונוסף לצערם הגדול .... אפילו הכי מצוה בגדולי ישראל להשתדל ולעסוק בהצלתו ולחלל עליו את השב

מנחת שלמה א-צא-כד

*R. Shlomo Zalman Auerbach stresses that no life is worth less than another<sup>35</sup>. This applies equally to the life of an elderly and very sick person who is unable to carry out even one mitzva, and whose continued care is a terrible strain on their family and prevents them from carrying out other mitzvot. We break Shabbat to save such a life without hesitation.*

- Yet we saw above that, in the case of the fetus, we MAY kill the fetus to save the mother. Why is it permitted to set aside that life?

8. ... דכל זמן שלא ינא לאויר העולם לאו נפש הוא וניתן להורגו ולהזיל את אמו. אבל ינא ראשו – אין נוגעים בו להורגו, דכזה ליה כילוד. ואין דוחין נפש מפני נפש

רש"י סנהדרין עב: דה ינא

*Rashi understands that the permission to kill a fetus where the life of the mother is threatened, is based on the fact that, before birth, the fetus is not defined as a 'nefesh' - a fully living being - and so can be killed to save a fully living person (the mother). Once the baby has emerged, however, it IS considered to be a fully living being and thus cannot be killed to save another person.*

- There is another case in which we may take life to save life - that of the *rodef*. We must stop someone who is pursuing another to kill them, even if we have to kill<sup>36</sup> the *rodef*. One could explain<sup>37</sup> in this case too, that the life of the *rodef* is somehow 'lesser' since they are in pursuit, and as such the normal rules of not setting life against life do not apply.
- In the late night deliberations of Rav Feinstein in October 1977 with other rabbinic colleagues<sup>38</sup>, the following analogy was discussed. Two men jump from a burning airplane. The parachute of the second man does not open and, as he falls past the first man, the second seizes the first man's legs. If the parachute cannot support both men, is the first man justified in kicking the second man away in order to save himself? The answer is yes. The reason is because the second is a *rodef* who, through his actions, will bring about the death of the first.<sup>39</sup>

9. אמר רב הונא: קטן הרודף ניתן להצילו בנפשו. .... איתביה רב חסדא לרב הונא: יצא ראשו אין נוגעין בו, לפי שאין דוחין נפש מפני נפש. ואמאי? רודף הוא! - שאני התם, דמשמיה קא רדפי לה

סנהדרין עב.

*The Gemara appears to rule that even an innocent rodef is still considered to be liable and may be killed to save another. On that basis, the Gemara asks why one is not allowed to kill a newborn even AFTER it begins to emerge from the mother, since the child is threatening the life of the mother! Surely it too is a rodef!? The Gemara answers that this is not a true case of a rodef. Since the baby is a natural cause of danger, it is as if the mother were being pursued 'by Heaven' and we may not intervene by killing the baby.*

- According to many poskim<sup>40</sup>, the halachic conclusion is indeed that an innocent pursuer would still be a halachic *rodef*.

35. In a British case of conjoined twins in 2000, the Court of Appeal also ruled that a parasitic twin could be killed to save the other. However, the reasoning of the judges was fundamentally different. Judge Robert Johnson said that for Mary - the parasitic twin without heart and lungs - her harsh life would only worsen as low levels of oxygen in her blood further destroyed her brain. So killing Mary, by stopping delivery of Jodie's blood, would be an act of euthanasia, like withdrawing food and water from a terminally ill patient. If they stayed together, the few months of Mary's life would be hurtful and mean nothing to her, he said.

36. The halacha requires one to try other means to stop the rodef, and only kill them if necessary.

37. This is the approach of Rashi, although the Rambam uses a different logic. For the Rambam, there is an absolute Torah prohibition of murder in all cases. The situation of *rodef* is simply a biblical exception to this rule. There are a number of practical implications to this different analysis.

38. Rav Feinstein moved into the home of his daughter and son-in-law, R. Moshe Tendler for the Chagim (his ruling was made immediately after Simchat Torah) to continue his discussions on the case.

39. A variant version of this analogy depicts a mountain climber who has fallen and is dangling from a rope attached to a friend. The friend cannot hold the weight of the fallen mountain climber and hence both climbers will imminently fall to their death. The person to whom the rope is attached may cut the rope even though it will lead to his partner's death. Here, too, the person dangling from the rope is clearly a *rodef* whose act is causing the death of the person to whom the rope is attached. See [https://www.youtube.com/watch?v=Q0gx\\_D-iDw](https://www.youtube.com/watch?v=Q0gx_D-iDw) for a powerful trigger movie on this.

40. This is the position of the Chazon Ish (Sanhedrin 25) and R. Moshe Feinstein (Igrot Moshe CM 2:71). The position of the Minchat Chinuch (Mitzva 296) is however that the halachic status of *rodef* only applies to an intentional pursuer. He understands this gemara to mean that the baby is not classified as a *rodef* since it is unaware of its actions.

• Can we apply this to case of Baby A and Baby B? The problem with the parachute analogy is that, in that case there is a clear pursuer whose presence is (albeit innocently or understandably) having the effect of killing the other. In the case of the conjoined twins, who is killing whom? In the case of mutual pursuers, the halacha<sup>41</sup> is that the onlooker third party may NOT intervene to kill either.<sup>42</sup>

10. רב חסדא בעי - מהו להציל נפשו של גדול בנפשו של קטן? התיב רבי ירמיה - ולא מתניתא היא! יצא רובו אין נוגעין בו שאין דוחין נפש מפני נפש. .... שנייא היא תמן שאין את יודע מי הורג את מי

תלמוד ירושלמי (ונציה) מסכת שבת פרק יד דף יד טור ד /ה"ד

Indeed, this is the conclusion of the Yerushalmi on the issue of the partially emerged baby. We may not kill it since this is a case of mutual pursuers.

- Furthermore, why would the case of the twins not be equivalent to the case in Sanhedrin 72b, where we say that 'Heaven' - ie a natural process - was the pursuer? Surely Baby B is being 'pursued' by an innocent AND natural Baby A!
- Nevertheless, Rabbi Moshe's Tendler's understanding of the case was that Rav Moshe Feinstein concluded that Baby A in this case was fully dependant on Baby B, and effectively a parasite. On that basis Baby A was the *rodef* and could be killed.

11. 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. .... 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 halakhic 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 halakhic 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.

Rabbi Moshe Dovid Tendler - So One May Live - [http://www.daat.ac.il/daat/kitveyet/assia\\_english/tendler-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/tendler-1.htm)

#### E4] THE 'SHEVA B. BICHRI' FACTOR - THE BASIS OF RAV MOSHE'S PSAK ACCORDING TO R. BLEICH

- As we saw above, Rabbi Bleich was doubtful as to whether Baby B could truly be considered the 'owner' of the heart, and Baby A a 'parasite'. He understands that another critical factor was present for Rav Moshe to issue his psak.

12. סיעה של בני אדם שאמרו להם גוים תנו לנו אחד מכם ונהרגוהו ואם לאו הרי אנו הורגין את כולכם - יהרגו כולן ואל ימסרו להן נפש אחת מישראל. אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי יתנו להן ואל יהרגו כולן. אמר ר' יהודה במי דברים אמורים? בזמן שהוא מבפנים והן מבחוץ. אבל בזמן שהוא מבפנים והן מבפנים הואיל והוא נהרג והן נהרגין יתנוהו להן ואל יהרגו כולן. .... ר' שמעון אומר - כך אמרה להם כל המורד במלכות בית דוד חייב מיתה

תוספתא תרומות פרק ז הלכה כ

We saw in the previous shiur that the Tosefta deals with the dilemma of taking one life to save many. The case is where terrorists demand that a group hand over one person for death, failing which they will kill the group.

- The Tana Kama rules that a random individual may not be handed over to die, even to save many lives. However, if an individual is specified, as with Sheva ben Bichri, that person may be given over to save the life of others.
- Rabbi Yehuda rules that the individual may be handed over if they are going to die anyway.
- Rabbi Shimon rules that the individual may be handed over ONLY if they are also independently liable to the death penalty, as with Sheva ben Bichri.

41. This is discussed at length by R. Akiva Eiger on Ketubot 33b.

42. Rav Moshe Feinstein understands the Gemara in Sanhedrin in this way. A baby who has now mostly emerged from the mother and is halachically 'born' is not a classic *rodef* since Heaven put the baby there so that both would live, and now circumstances have determined that both baby and mother are threatening each other. As such it is impossible to say which is pursuing which (see also Yerushalmi Shabbat 14:4) and it is impossible to know which one to kill.

13. תני - סיעות בני אדם שהיו מהלכין בדרך פגעו להן גוים, ואמרו תנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגים את כולכם, אפי' כולן נהרגים לא ימסרו נפש אחת מישראל. ייחדו להן אחד כגון שבע בן בכרי ימסרו אותו ואל ייהרגו. א"ר שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי. ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי

תלמוד ירושלמי (וילנא) מסכת תרומות פרק ח

*The Talmud Yerushalmi discusses whom the halacha follows on this issue. R. Yochanan requires that the individual being handed over is 'designated specifically' for death, not picked randomly. Reish Lakish further requires that the person must ALSO be guilty, like Sheva ben Bichri.*

- In the discussion in the Rishonim, there is no clear psak between these opinions.
- Rashi (Sanhedrin 72b)<sup>43</sup> brings both views.
- The Meiri (Ibis), the Ran (Yoma 82b) and other Rishonim rule like R. Yochanan<sup>44</sup>.
- However, the Rambam (Yesodei HaTorah 5:5), somewhat surprisingly<sup>45</sup>, rules like Reish Lakish.

14. תנו לנו אחד מכם ונהרגנו – לא יתנו לכם אחד מכם אלא א"כ יחדוכו ואמרו: תנו לנו פלוני. ויש אומרים דאפילו זכא"ג אין למסרו אלא"כ חייב מיתה כשבע בן בכרי.

רמ"א שולחן ערוך יורה דעה סימן קנז

*The Rema in Shulchan Aruch brings both opinions.*<sup>46</sup>

- It is not clear if any of this is helpful to the case of the conjoined twins. Even if we argue that Baby A is in some way 'designated'<sup>47</sup> for death' since she has no chance of long-term survival, it is not clear that we can rely in life and death matters on the view of R. Yochanan. The halacha may be like Reish Lakish that we also required guilt, and in no way could Baby A be classified as guilty.

15. In light of the unresolved controversy between early-day authorities with regard to this matter, a rabbinic decisor would find grave difficulty in sanctioning an overt act designed to extinguish the life of one twin on the basis of this consideration alone.<sup>48</sup>

Rabbi J David Bleich, Conjoined Twins, Tradition 31:1 (1996) p 101

- However, Rabbi Bleich understands that Rav Moshe<sup>49</sup> understood the two concepts of Sheva Ben Bichri and Rodef as working in tandem. In the case of the designated person (DP) to be handed over to save the group, both threaten the lives of each other - and are halachically rodefim against each other. However, we are permitted to hand over the DP since he is a GREATER rodef, since he threatens the long-term survival of the group, but they threaten only his short-term survival (*chayei sha'ah*), until he is actually seized by the terrorists.<sup>50</sup> Rav Moshe asserts that Reish Lakish agrees with this basic thesis of relative degrees of *rodef*, but simply requires an even shorter-term life for the rodef - liable to be killed by the terrorists AND, even if he survives that, liable to be killed by the courts!

- Rabbi Bleich understands that Rav Moshe used the same reasoning of relative degrees of *rodef* in the case of the twins. The sisters were pursuers against each other, but unequal pursuers. Baby A - a *treifa* - had no chance of survival for more than a year (*chayei sha'ah*), even if Baby B were to be sacrificed. Baby B, however, had a very reasonable chance of long-term survival if Baby A were to be sacrificed.

## F] CHAYECHA KODMIN

16. 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 שבה רבי עקיבא ולימד (ויקרא כה"ל) הני אַחִיד עַמְּךָ - חֵיד קוּדְמִים לְחַי חֲבִירְךָ

בבא מציעא סב.

*In the famous case of the two people lost in the desert, if there is only enough water to save one of them, Ben Petura rules that they should share the water and both die. R. Akiva rules that person who owns the water may drink all of the water and live, even though the other will certainly die quickly. The halacha follows R. Akiva.*

43. This relates to the halacha that a fetus may be killed to save the life of the mother. However, as we saw above, where the majority of the baby has emerged during birth, it may NOT be killed, even to save the life of the mother.

44. This is normal in a machloket between R. Yochanan and Reish Lakish (according to the Meiri, especially in the Yerushalmi, which was edited and compiled by R. Yochanan).

45. The Beit Yosef (YD 157) questions why the Rambam would rule like Reish Lakish over R. Yochanan.

46. The Acharonim differ as to which side the Rema leans towards. The Bach and the Taz understand that he inclines to the Rambam/Reish Lakish but the Vilna Gaon (YD 157:16), the Chochmat Adam (88:15) and Chazon Ish present R. Yochanan as the dominant opinion. Additionally, the Rambam ends his halacha with 'lechatchila ein morin kein'.

47. Many commentators rule that the designated person is only a 'rodef' if they have the ability to turn themselves in and avoid the deaths of those in the group. Where the situation is driven by natural causes, this would not apply.

48. Indeed, Rabbi Bleich reports (footnote 57) that the argument that one twin should be regarded as 'designated' for death since they would certainly die in any event, and that 'designation' is sufficient grounds to sacrifice one person in order to save another, was apparently suggested to Rabbi Feinstein and rejected by him.

49. Based on his previous psak, such as a 1935 teshuvot (Igrot Moshe Y.D. 2:60) where he permitted the sacrifice of one shul in order to save the rest of the city's shuls from the hands of the Soviet communist government.

50. In the case of the mother in labor and the partially emerged baby, both are EQUAL rodefim against each other since each threatens the long-term survival of the other.

- Some want to suggest that this may be a precedent for our case. If Baby B 'owns' the heart, then based on R. Akiva's position she should be permitted to keep that heart and live, even though this will result in the death of Baby A.
- However, this approach is flawed for a number of reasons: (i) We are not sure that Baby B 'owns' the heart; (ii) This case is fundamentally different since Baby B is not making the choice, but a third party<sup>51</sup> (ie the doctor) is making the decision. In the desert scenario, if the two men were dying and a third party held water, would he be entitled to decide to give the water to only one of the people<sup>52</sup>? (iii) In our case we are not saving one person and passively killing the other, but **ACTIVELY** killing one to save the other!

## **G] OPPOSING VOICES**

- Rav Moshe's psak was opposed at the time by R. Yaakov Kaminetzky who ruled that Baby A could not be killed.<sup>53</sup>
- Rabbi Dov Povarsky took the view that Baby A **COULD** be sacrificed on the grounds that she was effectively a *nefel* - still born.<sup>54</sup>

## **H] POST-SCRIPT**

• Rav Moshe's ruling was implemented by Dr. Koop and Baby A was sacrificed on October 11 1977 in order to save the life of Baby B. The operation was successful and Baby B assimilated the 6 chambered heart without many of the medical complications that had been anticipated. Tragically, Baby B also died a few weeks later, not due to complications from the surgery but due to contracting Hepatitis B from a blood transfusion.

• The loss of both of those children over 40 years ago was an enormous tragedy to the family (and a great loss to many of the medical team, who had become attached to the two girls, who already exhibited very different personalities). However, there was a tremendous kiddush Hashem and kavod HaTorah generated by the great respect Dr. Koop accorded to Rav Moshe Feinstein and his ruling. ly'H our continued learning of the case should be an aliyah for the neshamot of Baby A and Baby B.

• Further reading and sources can be found at:

- Rabbi J. David Bleich, Conjoined Twins - Tradition 31:1 (1996) p 92<sup>55</sup>
- Rabbi J. David Bleich, The Case of the British Conjoined Twins - Tradition 34:4 (2000) p 61<sup>56</sup>
- 3 articles by Rabbi Chaim Jachter in Kol Torah<sup>57</sup>
- The Conjoined Twins Dilemma, Olami Resources<sup>58</sup>
- So One May Live, Rabbi Moshe Dovid Tendler, Ph.D. ASSIA - Vol IV, No 1 February 2001<sup>59</sup>
- Siamese Twins, Donald C. Drake, ASSIA - Vol IV, No 1 February 2001<sup>60</sup>
- Separating Conjoined Twins, Rabbi Chaim Steinmetz<sup>61</sup>
- Siamese Twins, Rabbi Shraga Simmons<sup>62</sup>
- 'Till Death Do Us Part: The Halachic Prospects of Marriage for Conjoined (Siamese) Twins, Rabbi Reuven Klein<sup>63</sup>
- Conjoined Twins: A Halachic Analysis, Rabbi Azarya Berzon<sup>64</sup>
- Are Two Heads Really Better Than One? Halakhic Issues Relating to Conjoined Twins and a Two-Headed Person, Rabbi Dr. Edward Reichman<sup>65</sup>
- Separating Conjoined Twins in Halacha, Rabbi Daniel Z. Feldman<sup>66</sup>
- Whose Blood is Redder? A Halakhic Analysis of Issues Related to Separation of Conjoined Twins, Elana Perlow<sup>67</sup>

51. The Chazon Ish rules in one place (Bava Metiza 62a - Siman 20) that the third party could give the water to one of them, but rules elsewhere (notes on Chiddushei R. Chaim HaLevi Hil Yesodei HaTorah Chap 5) that he may not.

52. Also, would he be required to use the principals of triage set out in Mishna Horiyot 3:7.

53. On the basis of Rabbi Tendler's analysis above, Rav Kaminetzky may have held that the difference in life between a fetus and mother is far greater than that between the twins. On the basis of Rabbi Bleich's analysis, Rav Kaminetzky may have held that Reish Lakish would NOT agree with the basic thesis of relative degrees of rodef and may insist that the rodef must be actually guilty. Since the halacha may be like Reish Lakish, we could not rely on the lenient view.

54. Rabbi Bleich examines and rejects this view in his 1996 article.

55. <https://traditiononline.org/survey-of-recent-halakhic-periodical-literature-20/>

56. <https://traditiononline.org/survey-of-recent-halakhic-periodical-literature-34/>

57. <https://www.koltorah.org/halachah/separating-conjoined-twins-part-i-by-rabbi-chaim-jachter>

<https://www.koltorah.org/halachah/separating-conjoined-twins-part-ii-rav-moshes-position-on-rodef-amp-relative-degrees-of-pursuit-by-rabbi-chaim-jachter>

<https://www.koltorah.org/halachah/separating-conjoined-twins-part-iii-tereifah-amp-rav-moshe-feinsteins-ruling-by-rabbi-chaim-jachter>

58. <http://nleresources.com/kiruv-and-chinuch/nle-gemara/the-conjoined-twins-dilemma/#.XviYIgzY2w>

59. [http://www.daat.ac.il/daat/kitveyet/assia\\_english/tendler-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/tendler-1.htm)

60. [http://www.daat.ac.il/daat/kitveyet/assia\\_english/drake-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/drake-1.htm)

61. <https://www.jlaw.com/Commentary/cojoinedtwins.html>

62. <https://aish.org.uk/resources/siamese-twins#>. See also [https://en.wikipedia.org/wiki/Re\\_A\\_\(conjoined\\_twins\)](https://en.wikipedia.org/wiki/Re_A_(conjoined_twins))

63. <http://www.hakirah.org/Vol26Klein.pdf>

64. <https://outorah.org/p/42174/>

65. [https://download.yutorah.org/2013/1053/799083.pdf#\\_ga=2.164551162.411067685.1593351136-1396410270.1535122734](https://download.yutorah.org/2013/1053/799083.pdf#_ga=2.164551162.411067685.1593351136-1396410270.1535122734)

66. [https://download.yutorah.org/2008/991/723474/split-decision-separating-conjoined-twins-in-halacha.mp3#\\_ga=2.94944473.411067685.1593351136-1396410270.1535122734](https://download.yutorah.org/2008/991/723474/split-decision-separating-conjoined-twins-in-halacha.mp3#_ga=2.94944473.411067685.1593351136-1396410270.1535122734)

67. [https://content.yutorah.org/viewer/2015/1053/842361.pdf#\\_ga=2.190224622.411067685.1593351136-1396410270.1535122734](https://content.yutorah.org/viewer/2015/1053/842361.pdf#_ga=2.190224622.411067685.1593351136-1396410270.1535122734)