

# Whose Blood is Redder? A Halakhic Analysis of Issues Related to Separation of Conjoined Twins

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What could be more important than the immeasurable value of a single life? Can prolonging one life at the expense of another be justifiable? Unfortunately, for some cases of conjoined twins, these questions demand life and death decisions as precious time runs out and the babies' lives rest in the balance. Although conjoined sets of twins are rare, the complex issues involved in such cases cause many concerns within Jewish law in addition to weighty medical and ethical dilemmas.

There are two types of twins: fraternal and identical. Fraternal twins, also known as dizygotic twins, result from the fertilization of two eggs by two sperm. Identical, or monozygotic, twins are formed from the fission of a zygote resulting in two genetically identical individuals. Conjoined twins are a type of monozygotic twins whose origins are scientifically debated. One commonly accepted theory proposes that conjoined twins arise from the incomplete fission of the zygote, resulting in two individuals who are physically attached to each other. According to a second hypothesis, after the zygote undergoes fission, the stem cells from one embryo seek out similar cells in the second embryo and re-fuse [1].

Conjoined twins may be attached at the head, chest, back, or pelvis. In many cases, these twins can be successfully separated by surgery and go on to lead normal lives. In the case of thoracopagus conjoined twins, who are joined at the heart and liver, separation is necessary but has dire consequences. In other cases, surgery is not a viable option because the twins share vital organs.

In 1977, in Lakewood, New Jersey, a set of thoracopagus conjoined twins was born to a prestigious rabbinic family. The sisters were joined in the frontal area from the shoulder to the pelvic region. They shared one six-chambered heart, composed of a stunted two-chambered heart fused to a normal four-chambered heart. The wall separating the four-chambered heart from the two-chambered heart was too thin to divide between the twins. Even if this wall had been thick enough to allow for surgical separation, the two-chambered heart would not have been able to support the infant's life. The twins' surgeon, Dr. Everett Koop, informed the family that if they were not separated, both twins would die. However, if the twins were separated, only the stronger twin would live at the expense of the weaker twin [2,3]. From a medical standpoint it was clear that the babies needed to be separated. However, according to Jewish law, many questions were raised. Taking a life is no simple matter. Accordingly, there must be a valid halakhic reason to separate the twins, thus ending one child's life. Without a valid reason, performing the surgery would have been forbidden because it is considered equivalent to killing one of the twins, despite the fact that both babies would die if not separated from one another.

A fundamental idea in halakha is that one life may not be saved at the expense of another. While analyzing the three cardinal sins of

idol worship, immoral relations, and murder, the Talmud in both Yoma 82b and Sanhedrin 74a examines a case in which a man approaches Rabbah for advice. The man's life was threatened if he would not kill a specific person. Rabbah tells him that he must sacrifice his life and not kill, for he does not know "whose blood is redder." From this it can be derived that a person cannot take an innocent life, even at the expense of one's own life, for it is not man's role to determine who will live and who will die.

However, the Torah states two exceptions to the above rule that are analogous to the case of separating conjoined twins. The first exception is the case of a *rodef*, a pursuer. The Torah says, "Do not stand idly by the blood of your neighbor" (Leviticus 19:16). From this, the Mishna (Sanhedrin 8:7) elaborates that if one person is pursuing another, the *rodef* should be killed in order to protect the pursued. These laws also apply in a case of unintentional pursuit by the *rodef*, as illustrated in Ohalot 7:6. This Mishna discusses a situation in which a mother's life is threatened while in childbirth. If the baby is still in utero, the mother's life takes precedence over the infant's. The Mishna explains that the fetus is considered an unintentional *rodef* and should therefore be sacrificed to save the mother. However, the Mishna continues to say that, if the baby's head has emerged, the newborn cannot be sacrificed to save the mother because the baby is now an independent being.

The Talmud (Sanhedrin 72b) asks why the Mishna permits one to save the mother when the fetus is still in the womb but forbids involvement once the baby's head has emerged. It would seem that the infant should be considered a *rodef* regardless of its position. However, the Talmud explains that once the head has emerged, Heaven, not the infant, is the *rodef*. As Maimonides, a medieval Sephardic philosopher, elaborates, childbirth is "*tivo shel olam*," the natural course of the world. In both cases, the child not only endangers the mother's life, but the mother also endangers the child's life, and they could be classified as mutual pursuers [3].

In his commentary on Ketubot 33b, Rabbi Akiva Eger explains that in a case of mutual pursuit between two individuals, a third party should not become involved because the two lives are equally valued. If this is the prevailing halakha, one would think that a fetus whose head has not yet emerged cannot be sacrificed to save its mother since each poses a threat to the other. Yet Rabbi Moshe Feinstein explains that in a case of mutual pursuit, if one of the individuals poses a qualitatively greater threat than the other, then that individual is deemed the *rodef* and may be sacrificed to save the life of the other [3].

Additionally, the Torah teaches that feticide, unlike homicide, is not a capital crime. It states in Exodus 21:22, "And if men strive together, and hurt a woman with a child, so that her fruit depart, and yet no harm follow, he shall surely be fined, according as the

woman's husband shall lay upon him; and he shall pay as the judges determine". The Rabbis deduce from this verse that feticide is not a capital offense and demands only monetary compensation (Chagiga 11a). In contrast, unpremeditated manslaughter cannot be resolved by payment of a fine; one who commits such an offense must seek asylum in a city of refuge. Prior to the emergence of its head, the unborn child is considered a fetus, and any lethal threat it poses to its mother is considered homicide, which is a capital offense, and any threat the mother poses to her unborn child is considered feticide. Once the infant's head has appeared, it gains the status of an independent human being, and killing it is considered homicide.

Another exception to the fundamental idea that one life may not be saved at the expense of another life is derived from Samuel II (20:1-23). Sheva ben Bikhri led a rebellion against King David. Yoav, David's army general, chased after Sheva and besieged the town in which Sheva was hiding. Yoav declared that if the townspeople handed Sheva over, the siege would end, and innocent civilians would not be harmed. Upon hearing Yoav's proposal, a townswoman threw Sheva ben Bikhri's head to Yoav, thus sacrificing him to save the townspeople.

Based on this account, the Talmud Yerushalmi analyzes a parallel case in which a caravan of Jews is surrounded by heathens (Terumot 8:4). The heathens demand that unless the Jews in the caravan give over one of the Jews, the entire caravan will be killed. The Jews are prohibited from acquiescing to this request, even if it will result in all of their deaths. In contrast, if the heathens had demanded that a specific individual be given over, the Jews would be allowed to obey the request in order to save their lives. Rabbi Shimon ben Lakish clarifies that in order for the Jews to hand over the designated individual, it must be known that the specified person is guilty of a capital offense. Rabbi Shimon ben Lakish derives this conclusion based on the case of Sheva. Sheva ben Bikhri was deserving of the death penalty for rebelling against King David, since rebellion against the king is a capital offense. Therefore, it was permitted for Sheva to be sacrificed for the safety of the town. Rabbi Yohanan disagrees with Rabbi Shimon ben Lakish and states that the specified person should be handed over, even if he was not deserving of the death penalty, because the enemies specifically demanded that he be handed over. Rashi expounds on Rabbi Yohanan's opinion and states that if protecting Sheva ben Bikhri would not have prolonged Sheva's life and still would have resulted in the murder of the townspeople, it would have been permissible to deliver him to Yoav. But, if it were within their capacity to save Sheva ben Bikhri, then the townspeople would have been forbidden from sending him to his death. Maimonides cites only Rabbi Shimon ben Lakish's opinion (Hilkhos Yesodei HaTorah 5:5), but the Ran agrees with Rabbi Yohanan (Yoma 82b). Rabbi Moshe Feinstein explains that in this case, the designated individual will be killed whether the others deliver him into the hands of the heathens or try to protect him [3].

Yet how could Rabbi Yohanan rule that it is permitted to shorten an individual's life simply because he is the designated victim? Through an analysis of Rabbi Moshe Feinstein's earlier writings, Rabbi J. David Bleich explains that the caravan surrounded by heathens is similar to the case of two pursuers, in which the specified

individual and those who have been requested to hand him over represent mutual pursuers. Although it is an unintentional pursuit, the designated victim's mere existence poses a greater threat to the overall community because he is destined to die relatively soon, while the other individuals anticipate normal longevity [3].

Rabbi Shimon ben Lakish argues by stating that the only pursuers are the heathens. The designated individual may only be delivered to the heathens if he is deserving of capital punishment. If he is not deserving of capital punishment, he is not considered a rodef, and is seen as a victim. Rabbi Moshe Feinstein elaborates that this individual gains the status of a rodef, even if he has not committed a capital crime, but has committed any act that may have offended the heathens, thereby placing the caravan in danger [3].

The situation in which a baby whose head has emerged from the womb and is threatening his mother's life is considered a case of mutual pursuit and is consistent with Rabbi Shimon ben Lakish's opinion. According to Rabbi Yohanan's interpretation, the mere existence of the designated victim in the caravan poses a threat to the others and classifies him as a rodef. The baby poses an even greater threat than the designated individual in the caravan, because the baby actively threatens the mother's life as it pushes through the birth canal.

These halakhic discussions can also be applied in the case of the thoracopagus conjoined twins in Lakewood, New Jersey. According to the twins' surgeon, Dr. Koop, it was known that if the sisters were not separated, both would die within nine months, and if separated, the weaker twin would surely die. The case was brought before Rabbi Moshe Feinstein to determine if it was permitted to perform the surgery at the expense of the weaker twin's life. He inquired if the heart belonged specifically to one sister or if it could be shared by both. Dr. Koop responded that it was clearly the stronger twin's heart and the weaker twin's life could not be extended, even if she were to receive the heart. Therefore, Rabbi Moshe Feinstein concluded that the weaker twin was considered to be a treifah, an individual who has less than a year to live.

Through an analysis of Rabbi Moshe Feinstein's earlier responsa on the Talmud Yerushalmi, Rabbi Bleich suggests that Rabbi Feinstein thought that the situation represented one in which the conjoined twins posed a mutual threat to one another. Mutual pursuit indicates that surgery should not be performed because a third party should not become involved in a case of mutual threat [3].

Although it is forbidden to take the life of a pursuer in a case of mutual pursuit, it may be permitted to separate the twin sisters based on Rabbi Shimon ben Lakish's opinion. While killing a treifah is still considered murder, it is not a capital crime. Medical evidence indicates that in cases of thoracopagus twins, the twin on the left side of the connection has a greater chance for survival than the twin on the right. Additionally, in the Lakewood case, the weaker, right-sided twin had cardiovascular anomalies and was incapable of living for longer than a few short months, regardless of whether the surgery were to be performed [3]. In this specific case, the weaker twin's congenital anomalies deemed her a treifah. According to Rabbi Shimon ben Lakish, although the two were mutual aggressors, the threat posed by the treifah twin as an unintentional

rodef to her sister was greater because it was considered homicide—a greater offense than killing a treifah. Therefore, Rabbi Feinstein concluded that the weaker sister's life could be sacrificed in order to save the life of the stronger sister.

After discussing this case with his father-in-law Rabbi Moshe Feinstein, Rabbi Moshe Tendler concludes that even according to the Rabbi Shimon ben Lakish, the twins can be separated, for even though “there was no ruling of a beit din [Jewish court] that she was guilty of any sin and therefore would be subjected to capital punishment, Hashem [G-d] Himself issued such a ruling. There was an edict from Heaven that the child could not live” [2]. The twin deemed a treifah was designated by Heaven to have a shorter amount of time on this Earth.

According to Rabbi Yohanan, the conjoined twins could be separated because the weaker twin had been “designated” for death by her inherent biological state. In the case of Sheva ben Bikhri, Rashi explains that he should have been delivered to the

surrounding army if his death were a certainty in order to prevent the destruction of the entire city. Similarly, because the treifah sister has a limited lifespan, the surgery should be performed to prevent the death of both sisters. By extrapolation, Maimonides and Rabbi Shimon ben Lakish would likely draw the same conclusion, albeit through different reasoning. The twins cannot be separated even though the weaker twin was “designated” because she is not guilty of a capital crime but rather because of her status as a rodef who poses a greater qualitative threat.

On October 11, 1977, Dr. Koop performed the first successful surgery of separation of thoracopagus twins on these sisters. Unfortunately, although the surgery was a success, the surviving child contracted hepatitis B from a blood transfusion and died forty-seven days after the surgical procedure [3]. The surgery was a revolutionary moment not only in the medical world, but because it also allowed for the development and application of halakha in a new realm of science pertaining to life.

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