

Organ-Trafficking and the State of Israel: Jewish and Ethical Guidelines for a Regulated
Market in Human Organs

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ABSTRACT

Because of low donation rates in their own country, many Israeli citizens have recently turned to purchasing organs from abroad, risking their lives in highly unsanitary hospital conditions. The trafficking of organs also poses an ethical dilemma for those who sell their organs. Often, these vendors are under-compensated for their body parts, while follow-up medical treatment is minimal. The Jewish faith has always placed the sanctity of human life at its core, and it appears that Judaism allows for the donation of organs, and in some instances, payment for organs. Many Israeli medical professionals have called for a regulated market for organs that is consistent with Jewish ethical values and that compensates the donor for his sacrifice, and ensures that proper medical attention is paid to the recipient.

Keywords : Organ-Trafficking, Organ Donation, Jewish Medical Ethics, Regulated Markets, Israel

RÉSUMÉ

En raison du faible taux de dons dans leur propre pays, de nombreux citoyens Israéliens ont récemment tourné à l'achat d'organes à partir de l'étranger, au péril de leur vie dans des conditions d'hygiène hospitalière. Le trafic d'organes pose également un dilemme éthique pour ceux qui vendent leurs organes. Souvent, ces fournisseurs sont sous-rémunérés pour leurs parties du corps, tandis que le suivi des traitements médicaux est minime. La religion juive a toujours placé le caractère sacré de la vie humaine, à sa base, et il semble que le judaïsme autorise le don d'organes et, dans certains cas, le paiement pour les organes. Beaucoup de professionnels de la santé israéliens ont appelé à un

marché réglementé d'organes qui est compatible avec les valeurs juifs et qui compense le donateur pour son sacrifice, et assure que les soins médicaux est versé au bénéficiaire.

Mots-Clés: Trafic D'Organes, Le Don D'Organes, Éthique Médicale Juive, Les Marchés Réglementés, Israël

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To the People of Israel

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Organ-Trafficking and the State of Israel: Jewish and Ethical Guidelines for a Regulated Market in Human Organs

INTRODUCTION

A disturbing trend in the world of organ transplantation is emerging. It brings together desperation, poverty and the sheer callousness of human greed. The trend I am describing has little to do with transplant medicine or other medical interventions we have become accustomed to in the West. In fact, the trend I am alluding to is illegal in almost every country, and its practice has been widely condemned by every major medical association, yet it is growing by leaps and bounds in the developing world, and gaining favorable acceptance by many respected transplant surgeons and medical ethicists. I am referring to the trafficking of human organs which, for all intents and purposes, could be the most hotly debated issue that has surfaced on the contemporary bioethics scene. There is no reliable data on organ-trafficking. The World Health Organization (WHO) speculates that the practice is on the rise across the developing world, with brokers reportedly charging between US \$100,000 and US \$200,000 to organize a transplant for wealthy patients. Donors, frequently impoverished and ill-educated, may receive as little as US \$1000 for their kidneys.¹

The growth in the organ-trafficking industry can be attributed to the demand for transplantable organs. The large gap between those who require organs for their survival and the number of organs currently available has widened. Nowhere has this gap been felt more acutely than in Israel. Each year, the waiting list for organs increases by 20% (Rohter 2004,), while the number of Israelis who have signed organ donor cards remains among the lowest in the world in comparison to other Western nations (Hershenson

¹ See "Draft Principles on Human Organ Transplantation" Online available at: http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index.html

2006). To address the very serious shortage of available organs in Israel, many Israelis have sought other alternatives that could effectively address their health problems. One such option has involved turning to the global underground economy or black market in commercial organ transplants. Confronted with rapidly declining health, some Israelis have attempted to purchase commercial organ transplants in such countries as China, India, Pakistan, the Philippines, Turkey, and the Ukraine. There, organs are procured from highly questionable sources, including the poor, the disabled, small children, and those who may have been coerced into donating their organs without providing genuine informed consent. Many Israeli-based insurance companies have facilitated organ-trafficking by reimbursing Israeli patients for costs associated with commercial organ transplants. While buying organs is illegal in Israel, many health insurance companies would rather cover the costs of the surgery since dialysis and other treatments can be more expensive (Finkel 2001). Several Israel-based companies broker such agreements by matching Israeli citizens to individuals willing to exchange an organ for payment. Around the world poor, vulnerable individuals are the main source of commercially acquired organs.

Israel's commitment to maintaining democratic values in conjunction with identifying itself as a Jewish state has often meant that these two objectives clash (Shapira 2006). The Israeli government has been accused of complying with, and in some instances, even aiding directly the trafficking of organs by allowing its citizens access to organ brokers. Given the Israeli public's very low rate of organ donation, many observers believe that the country has effectively turned itself into a pariah in the organ transplantation world (Scheper-Hughes 2002). Critics argue that some Israeli citizens

acquire transplants from desperate citizens of poor countries. Though illegal in Israel, they further insist that Israel needs to develop extraterritorial legislation and policies that discourage “transplant tourism” excursions to other countries (Scheper-Hughes 2002). This dissertation is interested in the process of organ-trafficking, the role such trafficking plays in the State of Israel, and why so many Israelis have opted for this immediate solution to their ailing health.

In the first chapter, I trace the routes of organ trafficking from the perspective of vendors, brokers, and recipients of organs. I demonstrate how the surreptitious nature of the trafficking itself necessarily requires the process to be well-organized, efficient, relying often on the collusion of corrupt governments and health professionals. I also describe in some detail the physical and emotional pain felt by the vendor. The second part of the chapter focuses distinctly on the Israeli case. Complex in nature, the Israeli organ-trafficking dilemma is exacerbated by the shortage of organs and the fact that insurance companies have demonstrated a willingness to partially refund organ transplants performed abroad.

Chapter two attempts to debunk some of the myths that surround Jewish positions toward organ donation. I start by emphasizing Judaism’s eternal respect for the sanctity of life and analyze how this religious tenet might affect modern medical advancements, particularly organ transplantation. A careful analysis of the dilemma facing Israel must ultimately emphasize, in great detail, a respect for the Jewish faith. As I make clear in this chapter, Israel has struggled to define itself between ultra-liberal and conservative-religious tendencies. This lack of definition, I argue, creates broad misunderstandings

about how Judaism interprets organ donation both in Israel and in the wider Jewish world, giving way to the very low donation rate by Israel's citizens.

The second part of this dissertation focuses on the ethical analysis of commercial organ transplants. In this spirit, chapter three goes back and forth between two axes of comparison: comparing some of the major arguments made against commerce in organs with those in favor, and also analyzing how the Jewish faith might view the sale of organs for profit. It is here that I acknowledge that organ-trafficking in Israel, and in other developed countries, has become, in many respects, a harsh response to the failures of the current organ procurement system. Those who can afford to pay are willing to risk their lives in medical procedures that are facilitated by cruel profit-seeking middlemen. It is also here that I begin to make the case for the compatibility of a regulated market for organs in Israel, given the country's Jewish nature.

Chapter four outlines how a regulated market for organs could help to solve Israel's organ-trafficking dilemma. By removing the illicit nature of the practice and placing trust in the public system, I argue that the most practical solution to Israeli shortages in organs is to create a regulated market that would guarantee proper medical treatment for donor, and recipient, effectively eliminating the dangerous secrecy evident in black markets for organs. Echoing the sentiments of many in the Israeli medical establishment, I make the case for an ethical market whose goal it would be to increase the number of donors by reimbursing their medical expenses and fairly compensating them for their risk.

Finally, this dissertation weaves its way in and out of modern moral philosophy and ancient religious teachings. It takes a very commonsensical approach to a problem

that plagues Israel. In essence, I believe that in order for one to fully appreciate the nature of this Israeli dilemma, we must dig below the surface for what ultimately constitutes an overlapping, multi-faceted, complicated problem. Just as we cannot overlook the role that Judaism plays in the life of Israel and in the lives of Israelis, so, too, we cannot overlook the powerful role that the Jewish faith can play in the solution to this problem by allowing for a regulated market for organs.

CHAPTER ONE: THE PROBLEM OF ORGAN TRAFFICKING DEFINED

The trafficking of human organs is a widespread global phenomenon made possible by a series of inequalities and human desperation. This relationship is often exploited by unscrupulous “middlemen” who broker the deal which usually includes travel for a companion or nurse, fancy excursions, and fine accommodations in Pakistan and the Philippines. The process relies on a series of transactions: brokers negotiate fees, arrange for payments to be made to hospitals, and recruit surgeons willing to travel abroad. Nancy Scheper-Hughes, a medical anthropologist who has conducted field research on this topic, argues that the global traffic in organs “follows the modern routes of capital and labor flows, and conforms to the usual lines of social and economic cleavage. In general, the organs flow from South to North, from poor to rich, from black and brown to white, and from female to male bodies” (2002, 45). Organ trafficking can also be the cause of systemic, even economic hardships. From a systemic perspective, physicians are sometimes placed in the difficult position of having to expose themselves to liability in their respective countries for failure to treat a patient who obtained an organ abroad. Economically, many governments from countries where organs are being sold promise a “trickle down” effect of improved services for local populations, but often these luxury “high-tech hospitals” serve only to improve the health of affluent medical tourists. A closer look at the trafficking in human organs reveals a complex, well-organized web that is largely unregulated, that is illegal in most countries, and that often exploits those who are not financially secure. It is the purpose of this chapter, then, to untangle this tightly-knit web by identifying its main actors- donor, broker, and recipient. In so doing, I shall divide this discussion into two sections. The first section addresses

from a global perspective the problem of organ trafficking. I concentrate on the processes of the black market in organs. One example of this is how such a market may infringe on privacy and autonomy, and how they operate in a coercive manner that promotes unethical conduct. The second part of this chapter signals a beginning of my analysis about Israel's organ trafficking dilemma. Tacit acceptance by its government, coupled with a low donation rate has resulted in Israel becoming a global leader in organ trafficking (Finkel 2001). Understanding the global pattern of this black market will help to put Israel's problem into greater perspective; indeed, before we can focus on one nation's dilemma, we must define our terms and offer a global view of this black market practice.

Part One: The Routes of Organ Trafficking

The Vendor

With the advent in the early 1970s of Cyclosporine, an immunosuppressant drug used in post-transplant surgery, commerce in organs became a growth industry where the rules of the marketplace, in conjunction with an intermediary, brought together demand and supply. A closer glimpse at the countries of origin of organ vendors reveals that they hail primarily from Pakistan, India, South Africa, Eastern Europe, and the Philippines. Of the countries where paid transplants are performed, many score poorly on the Corruption Perception Index (the degree to which corruption is perceived to exist among public officials and politicians) compiled by Transparency International (Jha 2004). According to some observers in India, the sale of kidneys has mushroomed from 2000 kidneys sold in the early 1990s to over 3500 in the middle of the decade, turning a profit estimated to have exceeded 25 million US dollars (Chugh 1996).

The rapid success of this growth industry has led to large number of private, backstreet clinics that lack basic sanitary facilities. It is not uncommon, therefore, to stumble across advertisements in local newspapers from willing kidney vendors desperate for the highest bid. Indeed, a study of the motivations of kidney vendors in India published in the Journal of the American Medical Association reveals that a large majority (over 95%) were motivated to sell for reasons other than to help a person with kidney disease (Goyal 2002). Close to half (47%) of the individuals surveyed noted that their spouse had also sold a kidney in order to repay debts to their landlords. Equally revealing is the socioeconomic status of the vendors prior to their operation. One survey of vendors in Pakistan notes that the overwhelming majority were in bonded labor working on farms driving tractors and rickshaw, and as domestic servants and housewives. A smaller number of those surveyed worked as small shopkeepers or for their landlord (Naqvi 2007).

That the vendors often do not receive in full the payment they were promised is well-known among those who study this phenomenon; Many expenses are known to be “hidden” from them or deducted from the agreed sum to pay for travel, food, and hospital costs. What is less known, however, is the post-operative distress many vendors suffer as a result of chronic pain, social isolation, and general stigma of selling one’s organs. Scheper-Hughes (2002) believes that kidney vendors’ economic condition declines following the sale due to negative perceptions of kidney sellers as physically weak and emotionally disabled:

The feelings of disappointment, anger, resentment, and even seething hatred by kidney sellers toward the surgeons and the recipients of their organs suggest that the practice engenders deep social pathologies. [...]

Kidney sellers are often alienated from their families and coworkers, excommunicated from their churches, and excluded from marriage (1701).

As a result, many vendors who initially reported their general health status to be normal not only experienced a decline in their post-operative health to the point where they no longer could perform physical labor, but were also shunned by their respective community and, in some instances, their immediate family. Significant evidence suggests that many organ vendors would not recommend selling their kidney to others (Jha 2004).

The combination of extreme poverty coupled with heavy debt makes it possible for a kidney vendor to contemplate the surgery. However, this vicious cycle of debt followed by surgery and followed again by additional debt and poor health is a burden borne by the most vulnerable and the poorest human beings. As we will see, it is this extreme desperation that is exploited by organ brokers.

Brokers

Global trade in human organs brings together transplant surgery and the trafficking of human beings. This practice, however, would not be possible without the assistance of a third party responsible for the logistics, necessary fees, and recruitment of the requisite parties. Transplant brokers range from corrupt officials such as police officers or immigration officials to crime syndicates that employ hundreds of coordinators, surgeons, and hospital directors that span the globe in search of a matching donor. Brokers often recruit through the use of force, coercion, and deception. It is clear to most observers that corruption does not end there. It involves transplant clinics, surgeons, insurance agencies, and often the use of false affidavits used to obtain 'donor consent.' In his discussion of the complex organ trafficking system currently employed in

India, Stephen Wilkinson (2003) notes that organ traffickers operate in a deceptive manner, often making artificial promises to would-be vendors. “Middlemen, who tell them that they will be given good jobs, bring many organ sellers to Amritsar under false pretences,” he writes. “Victims find themselves imprisoned in private houses and ‘persuaded’ to donate their kidneys, sometimes being subjected to torture if they don’t ‘consent’” (105).

Because of the clandestine nature of these acts, it remains difficult to obtain precise data. Middlemen are rumored to span the globe in search of a potential match once requisite tests are performed on the recipient. Reports have surfaced where brokers have fudged the test-results in order to present matching blood-types, leading to post-operative complications for the potential recipient. An investigative report published in the *New York Times* by Michael Finkel (2001) uncovers the culture of secrecy with which some middlemen operate. Documenting the journey of one Israeli man’s desperate search for a matching kidney, Finkel seems amazed by the efficiency and thoroughness of the operation. ‘Everything was done by a handshake,’ Moshe, the Israeli man, admitted to Finkel. After handing a bank check for \$145,000, Moshe found himself on a plane traveling with four family relatives, and three other kidney patients- one from Italy, and two other Israelis. Accompanying them were a team of professionals that included an Israeli surgeon, two nurses, a psychologist, as well as the broker. “It was only then, once he was aboard, that Moshe learned he’d be going to Turkey,” writes Finkel (2001, 28). Moshe’s case resembles that of many transplant recipients who have landed abroad, destination unknown. Many recipients report being transplanted in the early hours of the morning when working hospital staff is kept at a minimum and operating rooms are

available. Often, specific sites and locations are rotated by the broker to maintain a low profile, while recovery time and the flight home usually takes place 48 hours after the operation. This quick ‘recovery’ turnover rate in conjunction with post-operative complications due largely to poor sanitary practices, can have severe, often-life threatening ramifications for recipients.

The Recipients

With the hope of beginning a new, healthy life free of dialysis treatments, many potential kidney recipients often are not aware or are not made privy to the risks that come with purchasing an organ abroad. While transplantation surgery normally carries with it little guarantee for success or improvement in the quality of life of the patient, this risk is often multiplied by the nature of this surreptitious operation. Physicians, placed in the difficult position of having to care for patients who have opted for transplantation abroad, often obtain medical records that are incomplete or in a foreign language. “These matters can create ethical discomfort for medical teams and some personnel might choose to abstain from giving post-transplant care to patients who have participated in transplant tourism,” (Bramstedt 2007, 1700). Ethical dilemma aside, the lack of information presented to physicians upon return is but one example of a danger rendered to the patient. Aside from the usual poor medical care that recipients often receive in the form of inadequate screening and follow-up, these covert operations usually occur in highly unsanitary conditions. An Australian study of 16 patients who received transplants in countries like China and the Philippines underscores the nature of the medical dilemma. Of the 16 patients, early acute rejection or delayed graft function was documented in four cases. In one such case, the patient was given an inadequate supply of requisite

medications before returning home (Kennedy 2005). Patients 2 and 16 contracted the Hepatitis B Virus. Three other patients were admitted to hospital soon after their return home with serious cytomegalovirus infections. Another patient returned home from an operation performed in Lebanon with aspergillus infection of the kidney and required a nephrectomy.

In the case of India where an abundant supply of kidneys exist “because physicians and brokers bring together the desperately poor with the desperately ill,” (Rothman 2002, 5), and where vendors include impoverished villagers, slum dwellers, power-loom operators, manual laborers, and daughters-in-law with small dowries, recipients have been known to come from the Gulf States of Egypt, Kuwait, and Oman, and from India’s very large middle class which, according to Rothman, numbers over 200 million people. Most are willing to pay between \$2,500 and \$4,000 for a kidney. According to Scheper-Hughes (2004), who divides the nations of organ trafficking into the categories of ‘donor,’ ‘recipient,’ and ‘transfer,’ many recipients come from wealthy cities like Berlin, London, New York, Tel Aviv, Vancouver, and Tokyo. Often these end-stage renal disease patients feel as if they have no choice but to purchase kidneys on the black market. Understanding the illicit nature and harsh risks that are associated with this form of surgery, many recipients believe this to be their only hope for survival (Rothman 2002).

Surgical complications following these transplants are often directly related to morbidity and mortality occurring in post-transplant periods. Aside from the viruses contracted by some of the recipients other, more unusual post-operative complications were detected. In another study of 115 commercially transplanted patients, Sever et al.

(2001) found the rate of unusual surgical complications like malaria and invasive fungal infections to be very high. “Although the reason for these complications is obscure, very probably it is due to surgical methods that do not meet the current standards of transplantation practice,” they write. “[...] It is our and other authors’ impression that many of the complications found in [living unrelated transplants] probably resulted from unhealthy donors and/or poor hygienic conditions. [...] It is obvious that if the current standards of medicine had been applied, these complications might have been prevented” (Sever et al. 2001, 1481).

Now that we have mapped out the route taken by many organ recipients, I will focus on one country’s struggle with commercial organ transplantation. Israel’s organ trafficking dilemma is a reflection of a developed country with a well-equipped transplantation infrastructure that is underused due to extremely low donation rates (as compared with other developed countries). Israel is also mired in a definitional crisis. Purportedly Jewish and democratic, the country’s medical achievements are sometimes overshadowed by its commitment to maintaining strong Jewish ethical ideals. Many Israeli patients in need of an organ have turned to organ tourism as a means for solving their health dilemma. The following section, then, will outline the problem at hand in Israel. Keeping in mind the routes followed by organ recipients, this section seeks to define Israel’s dilemma paying particular attention to the problem of low donation rates, and how Israeli law has shaped transplantation practices in this specific country.

Part Two: Spotlight on Israel’s Organ Trafficking Dilemma

In his book about Israeli history and Zionism, Gil Troy (2001, 101), describes Israel as a country that “has a European head grafted on a Middle Eastern body.” This

picture captures the complexity of Israeli society quite well. The country, founded just three years after the end of the Nazi Holocaust, became a great safe haven for many Jews fleeing various persecutions. In their ancient homeland, Jews began to build their life anew, while constantly fighting for its existence against external threats. Yet, the dream of Zionism as the savior of the Jewish people in their ancient homeland failed to produce many of its intended purposes. The Israel of today is fractured along many cleavages. Despite the promise made in the Declaration of Independence in 1948, Israel is still without a formal constitution. Like most Western countries, Israel still does not recognize the full separation between church and state. Instead, Israeli lawmakers, bioethicists, and other healthcare professionals are often forced to tackle complex ethical and legal dilemmas while lending credence to the fact that Israel wishes to maintain strong Jewish and democratic principles.

Israel is mired in a crisis of identity that manifests itself within the realm of bioethics. In describing the secular, liberal, and individualistic lifestyles that are enjoyed by most of Israel's citizens, law professor Amos Shapira (2006) believes certain Jewish-religious tenets are woven into the fabric of Israeli communal life. "The bioethical discourse in Israel," he writes "has evolved in a socio-cultural context which manifests a unique mix of orthodoxy and secularism, of communal paternalism and assertive individualism, of proscription and permissiveness, of religious norms and liberal ethical values" (2006, 117). Bioethical and judicial opinions often must negotiate between liberal, secular values like human dignity, autonomy, and bodily integrity, and Jewish-religious norms. One such norm, the infinite value of human life- perhaps above all other norms- pervades the psyche of Israel's Jewish citizens.

Because of the frequent bereavement that has plagued Israeli society, the status of death is socially significant and, by consequence, self-sacrifice is held in high regard (Ben-David 2006). While I will touch on this issue in greater detail in the following chapter, it is perhaps worthwhile to note that the synthesis between secular and religious values extend to such issues as new technology and human reproduction. Gross and Ravitsky (2003, 251) note that “relative to other countries, guidelines for genetic research in Israel allow researchers considerable freedom. Israelis tend to trust new technology and rapidly embrace the benefits it offers. [...] Moreover, Jewish values do not regard human efforts to intervene in nature as an assault on divine will but rather as an appropriate use of the powers with which God endowed mankind.” Israel maintains as liberal and open-minded an attitude about therapeutic research, as it does about fertility treatments. The fusion of legal and political factors with the religious responsibility to “be fruitful and multiply,” has resulted in a pro-natalist policy that has netted a birth rate double the average of most European countries (Gross and Ravitsky 2003). Bearing this mix of traditional Jewish and secular values in mind, I turn now to the root cause and prime reason for Israeli patients to engage in organ-trafficking: the lack of Israeli organs.

Shortage of Organs

The shortage of organs available for transplant in Israel is well-known. With a population of slightly more than seven million, Israel’s donation rate is one of the lowest in the western world, averaging eight donors per million/population each year (Boas 2005). To put this number into perspective, we can compare Israel’s donation rate to Canada and the United States, respectively. Both of these countries are considered by observers to be among the lowest in the Western world for donation. In Canada, the

donation rate is 13 per million/population, while the United States averages roughly 20 per million/population (Dingman 2008). The latest statistics report that almost 850 patients were listed for transplant, 500 of them were awaiting kidney transplants. One year earlier, in 2006, only 150 patients underwent deceased or living donor transplantation in Israel (Mor 2007). As of last year, just 7.2% of Israel's adult population (compared with some 30-35% in other Western countries), have signed donor cards (Friedman 2007). The donation problem does not stem from a lack of transplant facilities. With six transplant centers, including three in the Tel-Aviv area, and one each in Jerusalem, Beersheba, and Haifa, the country is well-equipped for performing more transplants. One such location, the Rabin Medical Center in Tel-Aviv which performs over 75% of Israel's kidney transplants reported a drop from 51 cadaveric donors in 1999 to 36 donors in 2004, while the number of living-related and living-unrelated donors also fell significantly over the same five-year span (See Appendix B). This low donation rate coupled with the fact that since 1994, the Israeli Ministry of Health began to allow medical insurance companies to reimburse patients for life-saving transplants performed abroad (kidney transplants abroad have been defined as 'life-saving' since 2001), has spurned a growth in Israeli interest in transplants performed abroad.

Involvement of Israeli Medical Insurance Companies in Organ Tourism

Since 1994, Israeli transplant tourism has been tacitly accepted by Israel's government for economic reasons. Complicit in this practice has been many Israeli health insurance companies who are able to sell high-priced policies that cover transplants abroad. According to Mor (2007), almost 70% of Israelis pay the additional fee to buy such policies, while others also carry additional private policies that cover transplants

abroad (Mor 2007). The Ministry of Health, for their purposes, saves the expense of dialysis in Israel, while in many cases, health insurance companies are in a financial position to reward their clients with compensations that have totaled more than \$70,000. One such company, Ventex Management Medical Services, openly advertises liver and kidney transplants on its website. Satisfied Israelis give their testimonials about the quality of care received in Colombia, while another section of the website publicizes the biographies of the Colombian doctors involved in the transplantation (See Appendix C). This symbiotic relationship, whereby brokers act as informal agents for health insurance companies has produced significant problems. Mor (2007,18) notes that “local Israeli physicians with minimal knowledge of transplantation medicine became involved in the transplant trade, acting as medical advisors and advocating transplant abroad for their patients.” The Ministry of Health is not the only Israeli governmental agency to be involved in organ tourism. The Israeli Ministry of Defense, also charged with the task of caring for Israeli veterans’ health costs, has been known to refund sometimes up to \$40,000 in costs related to transplantations overseas for veterans (Friedlaender 2003, 12). Tacit acceptance, even encouragement, by Israeli governmental agencies, has created many of the dilemmas outlined in the earlier part of this section, including the return from abroad of many Israelis with kidney rejection, severe infections, a lack of information about the donors, and foreign medical records.

Missing the Opportunity for Organ Procurement?

Some argue these dilemmas could be curbed, if not avoided entirely, if organ procurement practices in Israel were more productive. One study points to the ineffective ability of medical practitioners to identify potential donors in a tertiary healthcare setting

in Israel. By examining the medical records of the 2,709 patients who had died over a two-year span at Soroka Medical Center in the South of Israel, Finci et al. (2003) identified 41 who match the “brain death” criteria as mentioned in the survey. In 31 of these cases, an *ad hoc* committee was formed and the patients were evaluated for organ donation. In 10 cases, however, no committee was formed. This significant loss of potential donors suggests that “the reluctance of healthcare providers to refer potential donors may stem from grief, lack of familiarity with transplant procedures, difficulty in perceiving the patient as a donor, or time limitations” (Finci et al. 2003, 617). According to the authors, these results confirm that further education and donation protocols may alter the attitudes of healthcare professionals toward potential donors. They suggest educational workshops about how to detect possible brain death individuals, focusing on the eligibility of older patients who have suffered a non-traumatic event. As we will see, the “brain death” debate is a major source of disagreement among many scholars of Jewish law, potentially making the identification of “brain dead” individuals an even greater challenge to Israeli healthcare personnel.

Israeli Legislation

Over the last decade, Israel has emerged as a significant player on the contemporary organ-trafficking scene. While precise data is often difficult to attain, Israelis have been known to travel to countries in Eastern Europe such as Moldova and Romania, and more recently to the Philippines, China, and Turkey. In recent years, Israeli police have disrupted organ-trade rings that operate within Israel proper. In August 2007, for example, Israeli police interrupted a ring, subsequently arresting nine Israeli citizens involved in persuading other Israeli citizens, largely of Russian origin, to have their

kidneys removed in the Ukraine for \$30,000. In early 2007, Professor Zaki Shapira, the former director of transplant services at Bellinson Medical Center near Tel-Aviv, was arrested in the midst of a gun battle on suspicion of being involved in an organ-trafficking ring that operated out of a private hospital in Istanbul. In the past, Shapira was able to take advantage of a lack of national and international legislation dealing with the problem of organ-trafficking. Lackluster policing in conjunction with tacit government acceptance had created a toxic brew- and Professor Shapira and other Israelis like him, were able to cash in. This, however, should change after the Knesset, Israel's parliament, approved in its third reading, a law that explicitly encourages Israelis to donate by offering them certain insurance benefits like prioritization on the transplant list and tax and social security benefits (Friedman 2007).

Organ donation laws in Israel are aimed at encouraging both deceased and living donation but they can also be seen as a reflection of the country's sharp religious and ideological divide. While, on one hand, Israeli laws seek to define the time of death (the ramifications of which will be discussed in the second chapter), they also seek to regulate unrelated donation. In particular, they offer protection of the live donor by offering compensation for income loss and travel expenses, coverage of potential health problems incurred as a result of donation including psychological treatment, a secured life-insurance policy, and an obligatory yearly medical checkup. These new laws state that a living person who donates his organs will receive the status of a chronic patient after donation, while monetary compensation will total 18,000 NIS (about \$5,100) from the state. In addition, the donor will receive a certificate of merit from the state, and is exempted from paying entrance fees to nature reserves and national parks. The law states

that brokering sales of organs, whether in Israel or overseas, is a criminal offense punishable by up to three years in prison.

Though it passed on the third reading, this new legislation was met with significant dissenting and controversial voices. Indeed, for the law to be passed, the Sephardic, Ultra-Orthodox Shas party's elected officials had to be counted on for their support. Their swing votes, however, were not matched by their Ashkenazi Ultra-orthodox counterparts. For their leaders, who define death as the cessation of cardiac activity, this state law remains insignificant for them and their followers. It remains to be seen how this policy of refusal to consent for organ donation will affect Israel's more religious and traditional elements. One thing, however, remains certain: Israeli society, fragmented along many religious cleavages, has proven to be a difficult society to convince a change in life-cycle rituals and death rituals.

The following chapter seeks to unravel this rigid, some would say even traditional, view of death. Included in my discussion shall be Jewish positions of medical intervention and the medical profession, more generally. The stigma of organ donation in the Jewish community, both in death, and as a living donor, has been well documented. I will focus on the Jewish view of organ donation and the religious obligation to maintain the sanctity of life, in all its God-given form. My attempt is to describe the prevailing attitude many Jews- not just Israelis- share of the prospect of donating one's organs before and after death. Death is a concept that is seared in the Israeli conscience because of the Jewish people's history of suffering, and Israel's ongoing war against its Arab neighbors.

CHAPTER TWO: THE JEWISH PERSPECTIVE ON ORGAN TRANSPLANTATION

Judaism holds the body in high regard, and expects its adherents to respect the integrity of God's creation. It is often said that the body is not the property of any one individual, but of the Creator who has the power to produce life and take it away. This divine ownership has generated deeply rooted attitudes and behaviors toward medicine, and toward the medical profession. With the progression of modern medicine, a new set of literature and scholarship has emerged dealing with ethical issues that arise in medicine that may be relevant to Judaism. Rooted in ancient literature, responsa, and commentary, many Jewish medical ethicists have undertaken the task of attempting to formulate consensus within the Jewish community. One such topic that has produced significant interest is the Jewish attitude toward organ donations, and the practice of organ transplantation. Underlying these topics is tremendous misperception about where exactly Judaism stands on these issues- both among religious and secular Jews. This chapter attempts to clarify some of these misperceptions, but it also acts as a description about the many debates that have taken place within the community on the issue of "brain death." Finally, this chapter works in collaboration with the first chapter in that it will highlight the attitudes of Jewish law toward organ donation. This predominantly negative attitude is a primary factor why Israelis seek organs outside of their own country.

On the Sanctity of Human Life in Judaism

Of paramount importance to the Jewish faith is the sanctity of human life. For human life is not only created by God, it is maintained by Him, and it is thus preserved

by Him. In this vein, each life is considered to be of supreme value. Consider the following discussion from the Talmud about the creation of Adam:

Adam [the first human being] was created alone to teach you that if any person causes a single soul to perish, Scripture regards him as if he has caused an entire world to perish- and if any human being saves a single soul, Scripture regards him as if he has saved an entire world (Sanhedrin 22a).

Preserving or honoring the sanctity of life trumps all other *Mitzvot*, Jewish biblical commandments. A Jew is permitted to violate the Sabbath in one, and only one, instance: if there is a possibility to save a life. Amsel (1996,65), in discussing the Talmudic ruling on the issue, states that “even if there is a remote opportunity to save a life, one should violate the Sabbath. [...] If violating the Sabbath only saves a few hours of life, one can still violate the Sabbath.” Here, too, we understand the importance that human life- even for a few hours- encompasses in the Jewish imagination. For without human life, Judaism claims that nothing is possible. Each minute of life has infinite value, thus the commandment to save even a few hours of it, if at all possible. But in describing these Talmudic rulings, we must also discuss the opposing position. Since every second of each human life is of value, so ending human life prematurely may be seen as taking away precious time in one’s life. “The problem is that in the case of donating an organ, there may be conflicting obligations that would overrule the mitzvah to save another’s life,” writes Kunin (2005, 70). “One such potential conflict is the mitzvah to preserve one’s own life. Inclusive in this mitzvah is the prohibition of placing oneself in danger. With this potential conflict, which mitzvah takes precedence?”

The controversy, therefore, is clear: there is a risk associated with living organ donation. To what extent can one risk his life in order to (potentially) save another’s life?

Whose life takes precedence? These questions are of extreme importance to Jewish commentators and modern medical ethicists. But before we can purport to analyze some of the responses given by Halakhic commentators, let us first examine the tension that naturally exists between modern medicine and basic Jewish values. As we will see, modern medicine and Jewish religious ethics do not make for strange bedfellows. Indeed, because of the value placed on the sanctity and infinite values of human life, medicine is viewed as a means for preserving life in all its forms.

Modern Medicine Meets Jewish Ethics

In the secular biomedical ethics world, four cardinal values of medical ethics are generally accepted. They include: autonomy, beneficence, nonmaleficence, and justice. Jewish medical ethics, as has been derived from Jewish law, possesses definitions for each of these principles. Significant differences of opinion on the general applicability of these values exist across the Jewish spectrum. While secular medical ethics defines autonomy to mean the specific right of an individual to choose among available alternatives, the Jewish version of autonomy states that autonomy is voluntary and is limited to being consistent with Jewish law. Therefore, as Kinzbrunner (2004, 561) asserts, “when faced with questions pertaining to end-of-life care, traditional Jewish patients and families will look to God’s law and the rabbi, who is the expert in God’s law, for advice and counsel prior to making choices regarding appropriate end-of-life care.” As we shall continue to see, this tension between secular and religious, between the interpretation of ‘God’s law’ and the secular nature of medical ethics, will come into conflict on the issue of organ transplantation in Judaism.

In Jewish law, it is considered an *obligation*, not merely an option, for patients to seek treatment that will benefit them. This obligation can be derived from Deuteronomy 4:15 which states “take ye therefore good heed unto yourselves,” which has been interpreted to mean that man’s body and his life is the property of God Himself, and thus, man does not have the permission to give it away. Jews are also obligated to avoid bodily harm. The concept of nonmaleficence, then, as it can be interpreted with Jewish law has come to mean that Jews have an *obligation* to protect their body, to shield it from harm inflicted upon it by themselves and by others.

The concept of justice, and the pursuit thereof, can be seen as the backbone of the Jewish tradition. The issue of justice within the realm of medical ethics typically arises with regard to the allocation of resources and in the equality of all patients who receive medical treatment. Biomedical ethical principles closely resemble Jewish ones. In examining what Judaism has to say about the sanctity of life, we can also see how Jewish medical controversies revolve around the four principles previously covered.

The role of the medical practitioner is held in high-esteem in Judaism. Because of the importance Judaism accords to the human life, doctors are viewed as the necessary means by which sick people have the chance to return to proper health. The late Jewish medical philosopher, Benjamin Freedman, believed that medicine in the Jewish sense, at least, is a bilateral agreement between patient and physician. While doctors have a duty to heal and bring his patient back to health, Freedman (1999,146) claims that a “clear norm was established in Judaism that persons are obliged to preserve and protect their lives, to seek to be healed, if necessary.” Preservation and protection comes in the shape of engaging in activity that is reasonably safe and hence, not placing oneself in an injurious

situation could be seen as a duty to safeguard one's body. As the Creator, it is God who owns the entire body, and we are commanded to do everything in our power to safeguard God's creation. Individual autonomy, at least in the classical Jewish sense, is of little concern to such a fundamental issue as the well-being of a human life. The right to own your body is hardly recognized in Jewish legal thought. "The majority of authorities are of the opinion that people hold their bodies in trust from God, and hence, patient autonomy is not a legitimate value in Jewish tradition," writes Sinclair (1999, 366). However, some degree of ambiguity does exist, as Jewish Halakhic laws are not static, and interpreting ancient legal codes to suit modern needs can be seen as murky at best. Some Jewish scholars argue for a limited ownership of one's body if a situation arises whereby no decisive view of the best medical treatment is available. Others believe that the community as a whole should assume responsibility over those whose needs involve mortal risk. However, depriving life-saving technologies to individuals may be justified if said technologies in some way place the community at risk. Here, we see that Jewish teachings favor the practical, while most commentators understand that committing sacrifices in the name of communal welfare is acceptable. While specific biblical injunctions can be obscure, as Freedman (1999, 150) notes "medical care is treated as a duty as one among the other contingencies of life, and duties associated with medical care are continuous with other duties of concern for self and for others." I turn, now, toward an explanation of the way Jewish commentators treat organ transplantation. In the case of living organ transplants, some degree of risk may be acceptable, while cadaver donations pose a completely new set of problems for many within the Diaspora Jewish community as well as in Israel. Organ transplantation, like other new medical

technologies, poses a significant concern for some in the Jewish community- a concern, by the way, that has no formal consensus among Jewish medical philosophers.

The Status of Organ Donation in Jewish Law

The dual cardinal obligations of preserving the infinite value of human life and seeking medical treatment when one is ill have defined the positive Jewish attitude toward organ transplantation among Rabbis, scholars, and Jewish medical ethicists. While Jewish legal considerations like the desecration of the donor, deriving benefit from the donor, and delaying the burial of the donor have worried some commentators, most agree that these prohibitions are set aside in favor of saving the life of the recipient. We must understand, however, that in no way should a donor ever be forced to donate his organs. A donor who gives a kidney to save another's life is understood to have fulfilled a great mitzvah of exceptional merit. But the prohibition against harming patients (non-maleficence), and the controversy that has brewed recently about how the Jewish faith ought to define the time of death of a person, has created some tension on the subject of organ transplantation. The best way to analyze the dilemma may be to look at the subject from the perspective of the donors- living and cadaveric. Organ donation does pose a risk to the living donor and involves harming the patient. This conflict between two religious obligations- the prohibition against self-injury and the commandment to preserve life- shall be analyzed in further detail. I shall also unearth the debate that is currently taking place within the Jewish community about how the faith ought to define when a person dies. This controversy carries with it ramifications for organ procurement as medical professionals seek to harvest organs from a deceased donor before they become irreversibly damaged and are no longer viable for transplantation.

Living Organ Donation

Jewish law is very clear on the issue of preserving one's own life, but it is less clear on the risk associated to one's own life when a fellow human being is in significant danger. Mordechai Halperin, a medical doctor and an ordained Rabbi who publishes widely on the topic of Jewish medical ethics understands that the basis of the law is rooted in the infinite value of each human. "Although the principle which prohibits one from risking one's life to save that of another can be taken to absurd lengths," he writes, "the halakhic authorities emphasize that one may, and indeed one must, undertake a 'reasonable' risk to save the life of another. Unfortunately, the definition of the acceptable level of risk has not been formulated" (Halperin 1993, 571). While no formal opinion on the 'acceptable risk' has ever been implemented into any code of Jewish law, many Rabbis have attempted to define what would constitute a reasonable risk. The majority of opinions hold that when danger to oneself is unlikely, permission can be granted for self-sacrifice. Again, one is not obligated to do so. As Rabbi Bleich (2002, 163) asserts, "it is unconscionable, and a violation of Jewish law, to subject a person to such hazards without fully apprising him of all possible risks and obtaining his informed consent."

While Jewish law is clear that one may not risk his own life to save another one, Halakha is less clear on the issue of self-injury. Donating organs today involves, by definition, some degree of self-inflicted injury. Some authorities suggest that when the likelihood of death is deemed to be less than 50%, one should do everything possible to save another's life. With the advances in modern medicine today, however, doctors have estimated that the chance for morbidity and/or mortality is less than 0.03%. This low

percentage rate is not enough for Halakhic commentators to ban organ donations outright. It would appear, therefore, that organ donation, when one is properly informed about the risks, is in fact encouraged in the Jewish tradition. Still, the idea of injuring oneself does not sit well with some Jewish legal scholars, particularly because the Halakha is clear about its prohibition. Kunin (2005) argues that “in resolving this conflict it important to appreciate the unique strength of the mitzvah of saving a life. The commandment of saving a life is a higher priority mitzvah than almost all other *mitzvot* of the Torah” (272). Again, we pay tribute to this “ranking” of principles so evident in the Jewish faith. The act of saving a life is so paramount in the Jewish faith, that one is obligated to everything in his power to assure that life is treated with respect and dignity. The idea that “we are our brother’s keeper” is one that is shared across the Jewish ideological spectrum and is considered a lofty ideal. Therefore, the notion of “self-injury” must be placed in context with the larger potential of saving one’s life. This sacrifice is considered to be a tremendous act of piety that deserves praise. Given the low rate of risk to the donor in conjunction with the sacredness of safeguarding life, the Halakhic position on living organ donation agrees that such an act is permissible but in no way obligatory. Let us now examine the Jewish position on cadaveric donation. As we will see, this position is one that is less clear and mired in a controversy that has yet to be resolved within the realm of Jewish law.

Cadaveric Organ Donation

Brandeis University student Alisa Flatow was only 20 years-old when a suicide bomber struck the Israeli bus she was traveling in killing seven people instantly and rendering Flatow brain-dead and on life support. When her father, Steven, positively

identified the body of his young daughter he was asked one simple question: Would you be willing to donate your daughter's organs? After consulting their local Rabbi, the Flatow family agreed to donate her organs to six people on Israel's national organ waiting-list. The act received national attention, and the family's gesture made front-page headlines across the country. 'People have called it a brave decision, a righteous decision, a courageous decision,' Steven proclaimed. 'To us it was simply the right thing to do at the time' (quoted in Berkowitz 1995, 33). Flatow's decision to donate was praised by many in Israel and the wider Jewish world, but it was scrutinized and condemned by others. Aliza Flatow's death raises a significant Halakhic dispute that still has not been resolved: How does Judaism define death?

To the casual observer, the moment of death may appear obvious and simple to define. For the Jewish community, this is a question that has plagued Rabbinical commentators over many centuries. More recently, however, this dilemma has been brought to the forefront with the advancement of medicine in general, and transplantation technology most specifically. In the past, the classic determination of death was the cessation of any respiratory and cardiac activity. When one is declared "brain dead," the heart continues to beat, but because the brain-stem has died, the patient can no longer breathe on his own and is sustained by a respirator. Transplant technology requires that organs be harvested from bodies whose cardiac and respiratory functions may be maintained through mechanical means, but the refusal on the part of many Jews to accept this "version" of death has made it almost taboo to donate organs within Israel and the Jewish community. In reality, though, three different Halakhic opinions exist on the matter, all of which will be elaborated on shortly. Friedman notes that according to Rabbi

Halperin “one follows the traditional determination of cardiac death. The second posits that unless the entire brain is dead, not just the stem, a person is still alive. The third, which is subscribed by the Chief Rabbinate [of Israel] defines a person as dead when the brain stem dies and he is unable to breathe independently” (2007, 19). In reality, any one of these opinions could be subscribed to by a Rabbi, which makes consensus for those families seeking advice on organ donation very difficult.

In the case of cadaver transplants, significant ethical issues arise from the perspective of the Jewish tradition. Rules and regulations conduct the appropriate treatment of the body when it is presumed dead. For instance, it is prohibited to derive benefit from the dead body, just as it is prohibited from mutilating the body proper. It is also prohibited to delay the burial of the dead, and a positive commandment exists to bury the whole body. While harvesting organs from the dead violates some of these rules, these prohibitions are set aside in order to save the life of a human being. As we have seen, organ donation both from living and cadaver bodies is allowed, even encouraged, when the life of another human being can be saved. The crux of the issue, though, is how death ought to be defined in a cadaveric donation. In Israel, at least, this uncertainty may change. Recently, the Knesset approved a law that defines the time of brain-respiratory death. According to the law, the time of such death will be determined by two certified doctors according to such fixed parameters as no blood pressure, and failure to breathe without the need for life support. The law also stipulates that these certified doctors must not have any link whatsoever with organ transplants, nor will they be permitted to treat any patient requiring such a transplant. Therefore, no conflict of interest shall exist as matter of principle on this issue.

The “time of-death” controversy is a rather recent phenomenon that it is rooted in the advancement of transplantation technology. A landmark 1968 article on brain-death written by an Ad Hoc Committee of the Harvard Medical School proposed a new definition of death based on the following criteria: 1) lack of response to external stimuli or need; 2) absence of movement or breathing as observed by physicians over a period of at least one hour; 3) absence of elicitable reflexes; and 4) a flat or isoelectric electroencephalogram (Bleich 2002). This definition of death has produced significant discussion within the Jewish community proper. The first definition of death in Jewish law is first mentioned in the Babylonian Talmud, which dictates circumstances under which one may desecrate the Sabbath. If debris, for example, falls on a human being and it is doubtful whether he is alive, one may desecrate the Sabbath. The Talmud comments as follows:

How far does one search [to ascertain whether he is dead or alive?] Until [one reaches] his nose. Some say: Up to his heart [...] life manifests itself Primarily through the nose, as it written: “In whose nostrils was the breath Of the spirit of life” (Genesis 7:22).

It is worth noting that many commentaries by noted scholars of Jewish law throughout time have always pointed to the cessation of respiration as a sure sign that someone is dead.

Judaism has always been a forward-looking, progressive faith that seems to embrace new technologies and integrates the medical practice with Jewish obligations. Rabbi Moshe Feinstein, a preeminent American commentator on Jewish medical ethics, accepts the idea of “physiologic decapitation” as a sign of death (Rosner 1991, 270). In a 1976 responsum, Feinstein (1991) reiterates the classic definition of death as the total and

irreversible cessation of respiration, but he goes on to suggest that if a physician can determine that the patient is absent of any circulation to the brain, meaning no connection between the brain and the body, then that person is considered dead in Jewish law. It is thus Rosner's contention that death can occur before all organs cease to function noting that "Jewish law defines death as an organismal phenomenon involving dissociation of the correlative or coordinating activities of the body and not as individual organ death" (1991, 271). This position correlates with the Chief Rabbinate of the State of Israel who, in 1987, accepted the performance of heart transplants in Israel based upon the declaration of brain death to the donor:

- 1) Knowledge of the cause of illness;
- 2) Complete cessation of spontaneous ventilation;
- 3) Clinical demonstration of the destruction of the brain stem;
- 4) Objective support of the clinical determination by brain stem auditory evoked potentials;
- 5) Demonstration that absent respiration and brain stem activity persist for at least 12 hours under full therapy

(Rappaport 1995, 382).

The criteria put forth by the Israeli Chief Rabbinate satisfies Rabbi Feinstein's version of "physiological decapitation." The loss of the ability to breathe has always been a main criteria for determining death in Judaism and patients with irreversible and total destruction of the brain fulfills this definition that has been put forward for centuries by scholars of Jewish law.

Even with the publication of the Harvard criteria on brain-death, and with the significant advancement in transplantation technology, many Rabbis and Talmudic

scholars refuse to accept the notion that Judaism defines death based on complete and permanent absence of any brain-related bodily function rather than cardiac function. One notable proponent against the “brain-death” criteria is Rabbi David Bleich, an expert on Jewish medical ethics and professor of law at Yeshiva University in New York. Bleich believes the “brain death” concept is deceptive and should not represent the view of Jewish law. “The term ‘brain death,’ although it has attained wide currency, is a misnomer,” he writes, “since the clinical criteria employed do not serve to establish the fact that the brain has been destroyed but rather are indicative of a dysfunction which has occurred within a limited part of the brain”(Bleich 2002, 194-5). Citing a number of biblical scholars, including renowned authority, Rabbi Zevi Ashkenazi states definitively that the absence of cardiac activity is the crucial criterion of death and that respiration is simply an indicator of the presence of a heartbeat. Bleich also finds fault with the Harvard Ad Hoc Committee’s definition of “brain death.” He does not believe that a clinical method currently exists that can possibly determine whether total destruction of the brain tissue has occurred. According to the definition, “death is equated, not with destruction of the brain or even of a part of the brain, but with the loss of the body’s integrating capacities as signified by the activity of the central nervous system”(Bleich 2002, 194). Therefore, even with the various radioisotope techniques that are present within the realm of modern medicine, Rabbi Bleich remains unconvinced that these technologies are sufficient enough to determine death of a person. As a case in point, Rabbi Bleich also uses the reported case of a woman who gave birth to a healthy baby via Caesarean section 63 days after being declared “brain dead” based on the Harvard Committee’s criteria. Had this woman actually been dead, he believes, there is no

possible way a healthy baby could have been delivered. Still, for all his reasons put forward against the case for “brain death,” Rabbi Bleich’s opinion is in the minority.

Many Diaspora Jews and Israelis share a profound fear when it comes to the issue of organ donation. While most Israelis’ level of Jewish practice remains extremely secular, their position on (what they perceive to be) a “religious” issue like organ donation is very conservative. The following section looks to examine the attitudes of both Israelis and Diaspora Jews toward organ donation. As will be evident, both groups share the same fears, and the same misconceptions about the Jewish position toward organ donation. In turn, much of this misperception allows for an elevated number of Israelis to seek organ transplants outside of the Jewish State, leading ultimately to organ trafficking and other illicit practices.

Jewish and Israeli Attitudes Toward Organ Donation

The primary factor for the low donation rate amongst Israeli and Diaspora Jews stems from a lack of understanding about brain death (Rassin et al. 2005, 81). While clinically and legally accepted worldwide, the term “brain death” strikes a nerve of fear of organ donation within the Jewish community. This fear manifests itself in Israel where, by some estimates, the donation rate is close to 50% lower relative to other Western countries. This figure, however, may actually be lower given the fact that in Israel a common practice exists of notifying the family of a person who has signed an organ donor card. It is often the case that the family does not offer their consent, even though their loved one agreed to become a donor. Rassin et al. (2005) write that “brain death lacks the familiar clinical and social signs of death, consequently, it blurs the border between life and death, and can lead to the disruption of the social order” (81).

Brain death diagnosis creates a murkiness for families who often have to decide on organ donation while, in their perception at least, their loved one exhibits signs of life. The absence of external injury in conjunction with the appearance of a body sleeping comfortably with no indication that a heart will stop beating, creates further misunderstanding of the “brain dead” notion.

In a telling survey of a sample of the Toronto Jewish community about the position of Jewish law on organ donation, results confirmed that a major barrier to organ donation stems from a misperception that Jewish law prohibits the act of donation outright (Feld 1998). Respondents were asked if they were ever taught that Jewish law prohibits organ donation and if they would be willing to donate a family member’s organ if approached by a physician on the topic. Of the 94% of respondents who had not signed an organ donor card, 41% cited religious prohibition as the main reason for not signing, followed by 21% who cited ethical concerns. 49% of all respondents indicated that they believed organ donation to be prohibited by Jewish law, and 57% stated that they had been taught that this was true. Finally, 92% of all respondents stated that they would be willing to accept an organ should the need ever arise, indicating a heavily positive attitude toward the reception of organs (Feld 1998). This survey of actively involved members of the Toronto Jewish community strongly suggests a misperception about organ donation. Moreover, these results suggest that the Jewish community’s educational system is not actively promoting the idea of organ donation- indeed, it is actively advocating against such an act. The State of Israel’s low donation rates could prove costly. Many European nations that have developed organ sharing agreements with the

country may opt out of the contract due to the ultra-low donation rate in Israel, and the lack of reciprocity between Israel and these nations.

In an effort to dispel the notion that harvesting organs runs contrary to Jewish law, Robert Berman has established the Halachic Organ Donor Society (HODS). Through his organization, Berman has amassed the opinions of many high-profiled Rabbis and other members of the Jewish community who believe that organ donation is fully compatible with Jewish law. Tali Pouny, the wife of an Israeli who traveled abroad for a kidney transplant, captures well the sentiment of many Israelis on the subject of donation. ‘The ignorance of Israelis on the subject of organ donations is appalling,’ she laments. ‘Many people I’ve encountered don’t know the difference between brain death and a coma, while others are convinced that if they carry a donor card, doctors will do less to save their lives’ (as quoted in Friedman 2007, 19). Berman’s organization attempts to break with this myth. A quick glance at the organization’s website, <http://www.hods.org/index.shtml>, reveals this widespread effort in the form of speaking engagements, an explanation of brain death and other Halachic issues, and the stories of those who have received organs thanks to the organization’s efforts. Still, it is evident that more work needs to be done. Donation rates in Israel are among the lowest in the world, while Diaspora Jews seem to ignore the fact that Jewish teachings favor organ donation. As we will see, Jewish sensitivity about the issue of death, both in Israel and in the Diaspora, remains the foremost concern impeding Jews from donation.

It is difficult for anyone to contemplate the process of death and the possibility of having their bodies used for purposes other than burial. Common misperceptions pervade the psyche of many of those who must think of donating their organs. Many Jews believe

that if they agree to donate their organs, physicians “and other health care personnel who care for them will not fight as hard to keep them alive” (Dorf 1998, 232). Dorf also believes that Jews, perhaps more than most people, are surprisingly superstitious. Many Jews, he notes, believe that in order for the body to be resurrected as a whole, the body must be buried whole (235). Similarly, Jews, even those who self-define as “secular,” are less likely than others to consent for an autopsy on the body after death has occurred. Even the founder of HODS, Robert Berman, has had a difficult time convincing Jews that cadaveric organ donation should be regarded as a *mitzvah* of epic proportions. ‘I even had a conversation with a man who, while eating a cheese-burger, protested that HOD’s principles defy Halakhic tenets,’ he related to Ina Friedman “‘I know I don’t live a Jewish lifestyle,’ he told me, ‘but when it comes to death, I want to be more frum [rigorously religious]’” (Friedman 2007, 19). Alas, the belief in the afterlife among many Jews, both in Israel and abroad, among secularists and the religious, confirms the notion that, on the issue of death especially, Jews tend to opt for a traditional religious burial spurred by a number of superstitious beliefs and false religious notions that seem to be ingrained in their psyche.

A Vicious Cycle

While the term “vicious cycle” is often used to describe the endless violence that seems to surround the Middle East almost daily, I believe that we are witnessing a vicious cycle of a different nature in the State of Israel. In short, this cycle can be explained as follows: Israelis in need of organs for transplantation can hardly rely on their country’s citizens for donation. For the variety of reasons I have highlighted, Israeli Jews are reluctant to become organ donors. It is a country born out of the ashes of great pain and

suffering, and the memory of the Holocaust still resonates. Great value is given to the primacy of life both within Judaism and in the Jewish State. Israelis, sometimes with the help of their insurance companies as we have seen, are willing to travel abroad for organ transplants. Often, they return home broke, and in worse medical condition than when they left. The donors, usually unknown to most Israeli recipients, seldom receive the financial incentive they were promised and often experience deterioration in their health.

Many Israelis are also willing to shop outside of their country for organs. Some of the explanations Israeli kidney buyers have offered Scheper- Hughes (2002, 54) in her research, are telling of this trend:

- I wouldn't *think* of asking a family member to make such a sacrifice for me.
- It is better to buy from an outsider than to take from another Jew.
- The world owes us at least 8 million hearts and 16 million kidneys.

This is a reality that exists within Israel. Few Israelis are willing to receive organ transplants from family members, and many believe the world owes them something in return for the injustices committed against Jews throughout history. This attitude, in conjunction with the lack of understanding many Jewish Israelis have toward their religion's position on organ donation has produced a vicious "body-trade cycle." While steps have been taken recently by the Israeli government to eliminate this practice, it is clear that this circular reality runs the risk of intensifying and becoming more violent as the demand for body parts in Israel increases.

With this in mind, many philosophers, and medical practitioners have offered their solutions to the problem of organ trafficking both within Israel and on a global level. Some have proposed a legal remedy combining government-regulated compensation to

donors, while others believe the practice should be banned and punished. The second part of this thesis offers an ethical analysis of the arguments made in favor and against the trafficking of organs. As we will see in the third chapter, there are compelling arguments to be made from both sides of the debate. Keeping in mind the Jewish position on organ donations and the Jewish- religious tenet of saving a life, the final chapter will offer solutions to this “body-trade” cycle in Israel that remain consistent with Jewish ethical codes.

CHAPTER THREE: COMMERCE IN ORGANS: JEWISH AND ETHICAL CONSIDERATIONS

With the ever-evolving advancements in the scientific and medical communities, human organ transplantation has been regarded as a reliable, life-saving means for those faced with organ failure. For some, however, the idea of selling one's organs strictly for pecuniary gain undermines the altruistic foundation upon which organ donation was founded. Others argue that the shortage of available organs must be taken into consideration as the current model for altruism remains insufficient to meet the demand from those who desperately wait. Whether one views the practice of selling organs through a consequentialist lens or through an exploitative one, there can be no doubt that this practice gives rise to questions of ethical judgment, and the respect for bodily integrity- however such integrity might be defined and interpreted. In this chapter, I would like to address the issue of selling organs from both an ethical perspective and a Jewish one. The cardinal secular values of personal autonomy, respect for the individual, and beneficence have traditionally also been values held in high-esteem by the Jewish faith. Keeping in mind the organ-trafficking realities faced by the government of the State of Israel and the great lengths to which its citizens have gone to obtain organs on the black market, this chapter seeks to clarify some of the arguments put forth by those who oppose selling organs on principle and those who believe in establishing a market in organs based on governmental legislative and regulatory standards. But going beyond that distinction, this chapter takes into consideration the various Jewish positions on commerce in organs and attempts to synthesize them with the realities facing the Jewish State. In particular, some of the issues include the viability of a market for human organs in Israel and its compatibility with Jewish-religious ethics, as well as the possibility that

such a market could counter the need for Israelis to seek organs in less-developed countries.

Israel's Organ-Trafficking Reality

The reality facing Israel's citizens who are awaiting an organ is stark: very few people in the country consent to cadaveric donations, and even fewer live donors agree to give their kidneys away. The result has given way to another stark reality: the State of Israel's citizens have emerged as a global player in the trade of human organs, particularly in the trade of kidneys from live donors in poorer and less-developed countries. Various factors have contributed to this reality, namely the misconception about the Jewish faith's position on organ donation, as well as governmental support for insurance companies' reimbursement plans for citizens who travel abroad for organ transplants. Israeli and other organ brokers have found a protected niche in local economies, where the interest in trafficking human organs remains high, and for some, even necessary. For quite some time, now, Israeli medical professionals have written about and reported on the need to establish a type of regulated system within the country whereby donors who are willing to sell their kidneys are properly compensated and fairly treated. Friedlaender et al. (2002) believe that Israeli society has a moral obligation to perform transplants in as many patients as possible, because such a treatment has been proven to greatly improve their quality of life. "It seems clear at the present time that the only way to substantially increase the number of kidney transplants is to permit the sale of kidneys by live donors. Such a scheme should also help to counteract the ugly international black market with its almost inevitable exploitation of donors that has developed in the past few years" (Friedlaender et al. 2002, 1133).

Friedlaender and colleagues' suggestion echoes the call by many others in the Israeli healthcare community. They understand that no easy solution is available, but they have also witnessed Israeli patients, faced with worsening health conditions, travel abroad and receive transplanted organs under horrendously unsanitary conditions with the help of organ brokers. In addition to being a witness to this new Israeli reality, they often defend the practice of commercial organ sales on the grounds that it enhances personal autonomy and liberty for the individual. Mario Morelli, in his Kantian ethical analysis of organ markets notes that "the more reliance there is on free markets, the greater is the risk of inadequate protection of genuine autonomy and the overextension of commodification of bodies" (Morelli 1999, 323). As I will discuss, many in the Israeli community believe in the integration of a free-market model mentioned by Morelli but with certain caveats.

To ensure that regulatory standards are being complied with, however, the Israeli professionals entrust various governmental agencies to act as a type of watchdog over the practice. To this end, much of the literature that has appeared about this topic in Israel centers on the need to incorporate the Israel Transplant Committee, the Israeli Ministry of Health, and the free-market model. One of the main Israeli challenges in addition to some of the obvious arguments against legalizing the sale of organs, comes from the fact that Israeli leadership must wholeheartedly take into account the tremendous role the Jewish faith plays in the lives of many of its citizens. Thus, it is critical to examine how Jewish scholars might view the sale of organs from a strictly Halachic perspective. If the government of the State of Israel ever does legalize the sale of organs for its citizens, there can be no doubt that consideration for a Jewish position will need to be addressed. Halakhic positions about the establishment of a regulated market, and the ethics of

demanding monetary compensation in return for the ultimate mitzvah of saving someone's life must be considered. While the goal, of course, is to eliminate Israeli citizens from having to travel abroad, Israel's organ trafficking reality cannot be separated from the reality that a majority of its citizens are Jewish, with many of them being strict adherents to the faith's legal codes. By first looking at some of the arguments against the sale of organs from a secular point of view, followed by an ethical analysis of the case for a regulated system, I will demonstrate that, from most accounts, Judaism seems to be in accord with the idea that selling one's body parts in order to save the life of a fellow human being is acceptable, and at times, even encouraged.

Paid-Living Donations: Concerns and Disadvantages

The idea of purchasing body parts from those who are desperate for financial reward has drawn worldwide condemnation from various medical associations and high-ranking religious leaders. Selling a human organ in the United States, for example, is prohibited. The National Organ Transplant Act states: "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce" (Public Law 1984, 507). In its draft guiding principles on human organ transplantation, the WHO prohibits the advertising of available organs by those who seek payment, while physicians are also urged to refuse any engagement in transplantation activities should they have reason to believe that the organs concerned have been the subject of a commercial transaction (5 November, 2007). The American Society of Transplant Surgeons has opposed the solicitation of organs by recipients or their agents whether through personal or commercial websites, billboards, media outlets, or any advertising

when the intent of such solicitation is to redirect the donation to a specific individual rather than according to the fair policies of allocation put forth by the United Network for Organ Sharing Policy on organ allocation. Further to the condemnation issued by various health agencies, Pope John Paul II echoed Kant's Categorical Imperative by claiming that buying and selling organs "violates the dignity of the human person" (5 November, 2007). Against this backdrop, I would like to examine in detail some of the primary concerns raised by these medical bodies and religious commentators in an effort to further understand their adamant refusal to accept the idea of financially rewarding organ donors.

Increased Risk to the Poor Donor

The removal of a kidney involves major invasive surgery under anesthetic. An argument is often advanced by many who oppose commerce in organs that it is the poor who will be the principle vendors in a market for organs and that such a market would unacceptably exploit the poor for the benefit of the rich. Chugh and Jha (2006, 466) write that "it is imperative that we recognize the immorality of allowing people to do serious damage to themselves for the sole purpose of making money. In some instances, individuals who have already sold a kidney have expressed their willingness to donate a second one and take the risk of living on dialysis." Earlier studies suggest that those from poor countries who sell their kidneys have little guarantee that their decision would have an impact on their long-term financial future. This argument is furthered by those who oppose a regulated market in kidneys; indeed, there is no reason to believe that kidney vendors in the developed world would be protected from this outcome (Danovitch and Leichtman 2006). Danovitch and Leichtman agree that those who propose a regulated

market in kidneys probably do not want to see the abuse of kidney vendors that is so common in third-world countries. But they ask two poignant questions: “Who would the donors be if not the disadvantaged and poor among us? How could we be sure that paid donors were not being manipulated or even blackmailed?” (1133).

Danovitch and Leichtman’s questions point to a common argument against the selling of organs, namely that donors are the people who will always be placed in the most vulnerable position, and even a regulated system with governmental checks and balances cannot avoid this reality. In short, a form of medical paternalism exists, here, whereby those who can afford to pay for a kidney will always be the beneficiary, while the donor’s follow-up needs, whether medical or financial, will never be looked after. This argument is advanced by those who believe that selling body parts subjects the most vulnerable to embarrassingly treat their bodies as a commodity, and a means to a greater end for those who can afford it.

Commodification

For some, the idea of treating a body part as an object or commodity that can be sold for gain in a market system violates the integrity of the human body. Fried (1978) distinguishes between a market in selling body parts and the idea of selling one’s talents and labors. “What is disturbing, therefore, about selling human tissue is that the seller treats his body as a foreign object [...] The shame of selling one’s body is that it splits apart the entity one knows should not be split. It is thus not the sale itself which is disturbing, but the treatment of the body as separate, separable entity” (Fried 1978, 142). Fried’s argument, here, captures the larger fear of producing a “slippery slope” in the trade of human body parts. Put simply, if society cannot agree on where to draw the line

between central and “dispensable” body parts, then how can a market for any form of body parts be created?

In addition to arguments based on the “slippery slope” concept, the idea of treating the body as a commodity that can be dispensed at will has drawn criticism from transplant officials in developed countries who believe their transplantation system must act as a model for the rest of the world to emulate. As the paradigm of healthcare shifts from being organized by charities and religious institutions to for-profit companies, many in the West are sounding the alarm against those who are willing to commodify the bodies of the world’s most vulnerable citizens (Hoyer 2006). Extreme efforts are being considered in order to ensure that the misery of the most disadvantaged people in the world is not furthered by consuming their body parts. Hoyer also believes that the Western transplantation establishment should not attempt to cloud over the problem of commodifying the bodies of the disadvantaged in favor of what could be deemed a “pragmatic solution.” This, he believes, may “jeopardize people’s trust in current transplantation regulations in developed countries” (1367). Hoyer’s argument is proof that institutional limitations by medical associations based in the West can lead the charge and can act as protection against those who are willing to commodify the bodies of the underprivileged. This argument, I will suggest, gives way to a form of paternalism that overrides cultural and religious practices that instead should be taken into account in any ethical analysis of commerce in organs.

Altruism

Perhaps the most repeated argument against the regulation of any sort of markets in human organs is the anticipated demise of altruism. Many critics are concerned that

kidney selling would ultimately distort and undermine the altruism and common citizenship upon which the organ donation system currently relies. “If kidneys could be bought, particularly if the government or an insurance entity was paying,” write Danovitch and Leichtman, “then the temptation or even demand not to expose the potential altruistic donor to the risk that is intrinsic to the process could be overwhelming; and it is not only altruistic living that kidney donation that could suffer” (1134). Opponents also often cite the openness between donors and recipients that cannot be repeated in a regulated market. As a reward for their generosity, kidney donors can take solace in the fact that they have contributed to the well-being of another person, something that cannot be duplicated in a regulated system, they argue. This sacred bond and degree of trust that relies on the kindness and generosity of human beings would ultimately be sacrificed at the hands of those who treat the body as if it were a commodity which can be purchased on the open market. Instead, altruism should be fostered, even encouraged, as the backbone of the transplantation process.

While these arguments against a regulated market are persuasive and, at times, compelling, it should be noted that this highly provocative issue has gradually evolved from an unmentionable practice primarily undertaken in developing countries to be openly debated by the American Society of Nephrology and the American Transplantation Society (Friedman 2006, 960). Even more remarkable is the fact that the Bellagio Task Force on Transplantation, Bodily Integrity, and the International Traffic in Organs, a document drafted by a working group based at Columbia University in New York in the late 1990’s- and a group that featured prominent voices against organ vending, including Nancy Scheper-Hughes has not fully ruled out the possibility of

experimenting with (under close supervision), programs for rewarding families of donors of cadaveric organs (Rose et al. 1997, 2741). While most Task Force members agreed that commercialization of organs, as it stands today, is unacceptable because of the abuses committed against the most vulnerable, the mere fact that they are willing to consider some sort of remuneration for organs sales is, in itself, a fascinating development. Examining the counter-arguments to those opposed to regulation, we will see that this issue, while highly provocative and controversial, continues to make its way into the literature of prominent medical journals with articles published by well-known and well-respected medical professionals and bioethicists.

The Case for Regulated Markets

To help make the case for a regulated market system for organs in Israel, I believe it is essential to understand proponents' perspectives. Upon further review of the literature, one finds that the most oft-cited argument in favor of markets resides with the fact that it is not the disadvantaged or poor who will be the main source of organs, nor will their personal autonomy in any way become jeopardized. On the contrary, a regulated market seeks to eliminate the callousness that is so prevalent in today's organ-trafficking system. While the goal of kidney sales is to ultimately increase the potential number of donors available, ultimately we find that regulated markets serve to protect the most vulnerable and ensure they are well-compensated with proper follow-up care.

Personal Autonomy

While critics such as Scheper-Hughes argue that the very language of *markets* itself subverts the dignity of human beings by conceiving them as commodities (2002), defenders of a regulated market believe that people have a right to make a decision to sell

a body part (Savulescu 2003). Savulescu poses an important question relating to the idea of personal decision-making with relation to one's body. He asks: "if people are allowed to sell their labor, why not sell the means to that labor?" (139). Indeed, a ban on markets, paradoxically, constrains what people are allowed to do with their own lives. Numerous examples in support of this theory have also been raised. Western society is replete with rewards for doing good, making self-sacrifices, and taking personal risks in order to help oneself, one's family, or one's community. Citing the United States volunteer military service as an example of those who are motivated by patriotism, idealism, and yes, by money, Monaco writes that these acts are "unequivocally established and considered ethically acceptable, even with the realization that more poorer people will undertake self-sacrifice and personal risk in part to gain the financial rewards" (Monaco 2006, 956).

Radcliffe-Richards, who strongly supports an ethical market in human organs, believes that the structure of this debate must be altered. She believes that most people, upon hearing about the idea of establishing a market for organs, are essentially opposed to the idea solely based on principle (Radcliffe-Richards 2003). "One indication of this," she notes "is the astonishing speed with which the practice was denounced and prohibited when it first came to light. There was no agonized weighing of pros and cons [...] indeed the rather striking *prima facie* benefits of allowing sales—saving lives, and allowing would-be vendors to decide for themselves about their own best interests—were not even mentioned" (140).

Another opinion in favor of allowing a market in organs stems from the idea that society has failed to allot sufficient assets to the poor; indeed, the very system that is sworn to protect the most vulnerable now also wants to prohibit them from having the

choice of selling their assets for a profit. Hansmann (1989) makes the argument that those who value their bodily integrity over compensation can choose not to be vendors, thus eliminating the notion against a total ban on sales. “After all, society does not prevent the poor from accepting pay for jobs such as coal mining and meatpacking that carry substantial risk of injury or death. Why should kidneys be different?” (Hansmann 1989, 73). This form of paternalism, even double-standard, whereby the poor are allowed to risk their lives in other ways- and as has been demonstrated- with greater risk for less money is, indeed, frowned upon by many authors. It bears reminder that the risk of morbidity and mortality from donating a kidney under proper medical conditions is extremely low compared to the daily risk that others are willing to take in their day jobs (often for less money than payment for a kidney). This debate about how exactly to define our “humanity”- whether by rational choice or by emotional attachment to one’s own body- touches on society’s own emotions as society grapples with the idea of characterizing human beings as “property.”

Exploitation

The ‘exploitation’ argument centers on the premise that the poor are more likely to sell a kidney rather than those more financially fortunate, and this offer will override their better judgment. Matas disputes this claim by noting that the exploitation issue really has nothing at all to do with equality; instead, he believes that coercive powers exist on any form of transaction whether made between financially stable people or the poor (Matas 2004). While financial offers may be seductive and render some recipients into unjustified, even disadvantaged circumstances, there remains no evidence to suggest that such offers are in any way threatening or coercive (Cherry 2000). As Matas (2004,

11) puts it, “I do not think we are willing to say that being poor removes the ability to make rational decisions [...] A regulated system is not necessarily exploitive if it pays a significant amount [...] and if it includes procedural safeguards to ensure that vendors know what they are doing and are acting voluntarily to seek their individual best. In the case of kidney sales, the system would not be seeking the typical exploiter’s gain, but would be established to help patients in need.”

Scheper-Hughes and other scholars have countered with the argument that allowing sales of kidneys by the poor will not guarantee that they will be free from poverty. But, as Andrews rightfully argues, “banning payment on ethical grounds to prevent [exploitation] overlooks one important fact: to the person who needs money to feed his children or to purchase medical care for her parent, the option of not selling a body part is worse than the option of selling it” (Andrews 1986, 31). Certainly, I believe that most people would agree that the ideal solution to poverty would be to eliminate the phenomenon altogether. Veatch, who at one time opposed the sale of organs in favor of prompting social change to alleviate abject poverty, has changed his tune and now favors a regulated market in organs. He asks why offers to induce consent to procure organs that are irresistible only to the poor are deemed unethical, while offers of jobs and basic necessities are not (Veatch 2003).

The idea of forming a regulated market for organs has experienced a transition from, at one point, an anathema which should never be conceived, to gradual acceptance of the fact that such a practice will always endure so long as people are dying from kidney failure. Therefore, the need to regulate the practice and remove it from the periphery of society and into the mainstream, government-controlled realm, is gaining

wider acceptance. But if I am to continue to make the case for regulated markets within the Israeli model, we must examine Jewish views on selling and buying organs. While the practice of Judaism and its laws, it must be said, have evolved over time, one thing has always remained constant: the tremendous emphasis placed on the value of human life has always been of supreme importance from the beginnings of Judaism to this very day, with all streams of Judaism cherishing the significance of safeguarding life.

Selling Organs from a Jewish Perspective

Like secular medical ethics, Jewish law is often called upon to mediate a balance between competing values. As Lichtenstein (1991, 11) notes,

a sensitive *Posek* [halakhic decisor] recognizes both the gravity of the personal circumstances and the seriousness of the halakhic factors [...] he might stretch the halakhic limits of leniency where serious domestic tragedy looms, or hold firm to the strict interpretation of the law when, as he reads the situation, the pressure for leniency stems from frivolous attitudes and reflects a debased moral compass.

When the issue of payment for organs arises, Halakhic commentators and decision-makers alike are faced with the difficult task of mediating between two long-standing, long-held Jewish legal premises. The first of these premises, as has been alluded to, is the obligation to do the utmost to preserve and protect and save a human life. This *mitzvah* overrides most biblical commandments. The second premise that often competes with this obligation is the prohibition against payment for fulfilling a commandment. Framed more appropriately, perhaps, the moral dilemma faced by Halakhic experts can be interpreted in the following way: Halakha acknowledges limits to personal autonomy for reasons other than physical harm to others. It also demands near absolute subservience to its obligations and responsibilities which includes the prohibition against harming one's own body. Another basic principle is the biblical command "Do not stand idly by the

blood of your neighbor,” which obligates a person to save another who is in danger (Grazi 2004, 186).

In a sense, this conflict becomes one of personal autonomy and its limits. On one hand, Jews are obliged to respect the human body, for it is God’s creation. On the other, Jews have a responsibility and a moral duty to save his fellow man’s life if the risk to his own life is deemed minimal. Another caveat that bares mention: Jews are forbidden from accepting payment for the fulfillment of a biblical commandment. This prohibition stands at the heart of the debate on Jewish views toward commerce in organs. It would seem that payment for organ donation should not be allowed in Judaism because the donor is performing a meritorious act or fulfilling a biblical commandment- in this case, one of the loftiest commandments- saving one’s life (Rosner 2006). Of the Jewish authorities researched, I have yet to come across anyone who has opposed selling organs for the purpose of saving someone’s life. Rabbi Mordechai Halperin reasons his decision to allow organ sales based on the premise that since physicians are entitled to be compensated for his time, effort, and expertise so, too should a live donor be allowed to receive payment for his physical pain, and suffering (Halperin 1993). The general prohibition against receiving payment for her performance of a mitzvah, Halperin concludes, does not in any way prevent the donor from being requesting and receiving payment for his organ.

The primacy of saving another life is evident among Jewish legal scholars and biblical commentators. Rosner, in his writings on the subject, observes that many Rabbis support the notion that payment to the donor is permissible because he has no obligation to donate the kidney and is therefore entitled to compensation even if the entire

motivation is strictly financial (2006). Rosner further touches on the views of Rabbi Abraham who believes that even if the donor is extremely poor or wishes to pay off his debts, since he knows that his donated kidney will benefit the recipient, the donor not only receives payment for his kidney [...] but also full credit for having performed a meritorious act (146).

Commercial organ transplantation raises numerous ethical considerations that fall outside the boundary of Halakhic opinion. The obvious problem that organs may eventually only be available to the rich while the poor are excluded is one that must be negotiated by proper legislation and appropriate government officials, say Halakhic officials. Alluding to this idea is Rabbi Shafran, a former director of the Jerusalem Rabbinat's Department of Halakha and Medicine, writes that "selling organs does involve an ethical problem, but it is one that relates to the general society and not to the individual buyer or seller. How did society reach a point where people are willing to sell their organs? This is a question of society's ethics, but it involves no technical Halakhic prohibition" (Shafran 1997, 4). His sentiment is echoed by the former Ashkenazi Chief Rabbi of the State of Israel, Yisrael Meir Lau:

I have not found in a Halakha a way to prevent a person whose life is in danger from saving himself by spending his own money. It is nor apparent to me how this can be denied him, based on the claim that another man who is in similar danger is unable to save himself because he lacks funds. The prevailing principle is, 'All that a person has may be given to save his life.'

(quoted in Warburg 2007, 30).

It is clear that the prohibitions against self-wounding and self-endangerment and the prohibition against receiving financial compensation for the performance or fulfillment of a biblical commandment are set aside because of the overriding cardinal principle that

human life takes precedence over all other biblical commandments except for murder, idolatry, and adultery.

Ethical acceptance of paying for spare organs by halakhic figures in Israel and in the wider Jewish world could prove to be extremely important if the State of Israel ever created a regulatory scheme for purchasing organs. Indeed, we cannot eliminate the prevailing Jewish attitude in arguing for regulated markets for Israel. With wide acceptance among many rabbinical authorities, I turn now to the final chapter of this thesis which examines the possible structure of a market in organs that could be suitable for the State of Israel. Such a market necessarily takes into consideration the Jewish nature of the State, as well as some of the secular objections made against selling organs. As we shall see, such a market protects the donor and the recipient and would essentially put a halt to Israelis having to seek organs abroad and engaging in illegal organ-trafficking.

CHAPTER FOUR: HOW A REGULATED MARKET CAN SOLVE ISRAEL'S ORGAN-TRAFFICKING DILEMMA

Organ-trafficking, as it is being practiced today in Israel and elsewhere is not morally permissible. As I have noted, some opponents to markets in organs believe it is not permissible because, in their view, organ vendors are often poor and incapable of making their own autonomous decisions regarding their bodies. I oppose this suggestion, instead choosing to believe that organ-trafficking is successful in Israel and around the world because the practice takes advantage of the distress on both sides- the vendor and the recipient- and exploits this distress to earn a significant profit. As one commentator has suggested:

The successful operation of organ –trafficking *depends* on defrauding vendors and recipients by routinely violating contractual agreements without avenues for redress, and deceiving vendors and recipients about the short and long-term risks to their health. Trafficking fraudulently trades on the successful outcomes of reputable transplantation, at the expense of vendors and recipients through inadequate medical and psychological screening.

(Hippen 2005, 611).

Many individuals and many medical associations have condemned the practice on the ground that it exploits the poor and offers them little compensation for their organs, but few have substantially offered alternative policies or practices that can effectively alleviate the shortage in organs. In this chapter, I examine the possible structure of a market system for organs in Israel. Such a market would provide safety to the vendor and recipient, ensure transparency regarding risks and outcomes, guarantee institutional integrity to eliminate financial conflicts of interest, and operate under the rule of law of the State of Israel. The cruel reality of the organ-trafficking industry has demonstrated that a market in organs must depend on a fragile trust between donor, transplant surgeon,

and recipient. The Israeli model of non-directed, paid donation offers the most practical solution to the country's citizens who too often rely on searching for organs in poorer, less-developed countries.

A Proposed Model for Organ Markets in Israel

A considerable number of organ transplant professionals in Israel have called for and, in some cases, have petitioned the government to adopt a model for the regulation of human organs. In 2003, the late nephrologist from Hadassah Hospital in Jerusalem, Michael Friedlaender, published what seemed at the time to be a landmark article in the Israeli Medical Association Journal outlining a protocol for paid kidney donation in Israel (Friedlaender 2003). The cornerstone of Friedlaender's protocol proposed to hand the responsibility of procuring international donors over to the public system and into the hands of the National Transplant Center (NTC) of Israel. The logic behind Friedlaender's proposal, as he describes it, is to provide a means by which transplantation costs could be reduced by bypassing organ brokers and having the procedure performed in Israel, and perhaps more importantly, to increase the number of living kidney donors (Friedlaender 2003). The protocol also aims to control the medical standards of transplant operations by performing them only in licensed medical facilities, while giving financially poorer people an equal opportunity to receive unrelated living donor kidney transplants (611). The logic behind this system is based on the protection of both donor and recipient and essentially eliminates any 'middlemen' or any form of power relationships.

In Friedlaender's system, potential donors undergo a process of medical and psychosocial screenings. Consent by the donors is sought for the surgical procedure, financing, and annual follow-up. Further to this, the donor is made aware of his right to

life-long medical treatment for matters connected to the donation of the kidney.

Friedlaender proposes that the financial burden be covered by the NTC, including all expenses the donor incurs for pre-donation screening tests, hospitalization, and post-donation follow-up. This “expense reimbursement” model greatly reduces ethical concerns about undue inducement (Halpern et al. 2005). They believe that such a system will encourage altruistic donation, while financial gain will not be the primary goal for donation. “Because the system would not preferentially target lower income donors,” they argue, “risks for exploitation are reduced” (Halpern et al. 2005, 17). Halpern and colleagues like the fact that all donors are able to maintain their personal financial status after donation. There is also evidence to suggest that the “expense reimbursement” model is safe. In Sweden, this type of model has been used since 1964, with over 80% of donors reporting a good quality of life post-donation and claiming little or no regret for their decision to donate (Fehrman-Ekholm 2001, 2068).

Friedlaender, for his part, has categorically refuted the argument that solely reimbursing a donor’s expenses will lead to a greater number of donors. He believes that “there would be very few non-altruistic donors who would be interested in expenses only, for tax or educational benefits, or other marginal benefits. Furthermore, the sum must compete with the offers of private entrepreneurs currently operating” (2003, 613). Friedlaender proposes a fee of \$20,000 to be paid to the donor tax-free by the NTC, provided the donor has satisfied all of the pre-requisite medical and psychosocial screening.

Predictably, the amount of money that should be paid to the donor for his decision to part with his kidney remains in disagreement among those advocating for markets in

Israel. Matas and Schnitzler, in their calculations, note that the breakeven point for reimbursing donors is \$90,000, compared to the mere average of \$15,000 offered by organ brokers (Matas and Schnitzler 2003, 219). Yet another commentator on the Israeli organ-trafficking dilemma, Samuel Jellinek, believes the price should be somewhere in the middle of Friedlaender's recommendation. Citing an earlier report based on data from Israeli medical insurance groups, the direct cost of medical treatment for a patient receiving dialysis in Israel amounts to some \$45,000 to \$50,000 per year, not including welfare allowances paid by the state to the patient and his family, which significantly increase the total cost (Jellinek 1999, 139). Jellinek believes that the NTC should, at the very least, be in a position to reimburse the donor the yearly cost of keeping one Israeli patient on dialysis (139). Financial considerations, though, are not the only staple of proposed organ markets. The issue of maintaining anonymity and appointing a "donor advocate" for the donor could be seen as equally important in maintaining the integrity of any future market system.

Anonymity and Donor's Advocate

Among those who argue in favor of regulatory markets for organs in Israel, near unanimous consensus exists that donor and recipient must not have any contact with one another, while the donor must have full access to an independent donor advocate. Friedlaender believes that the anonymity stipulation lends credibility to the program and donors must forgo the right to know the identity of the recipient (2003, 612). Maintaining anonymity minimizes psychosocial and emotional risks to the donor after the donation process. While such severe psychological risks are rare, instances of deep depression and suicide in donors whose organ recipients failed to benefit the recipient have been reported

(Anderson 1999, 719). While life-long anonymity may be impossible in some cases, stringent measures ought to be in place in order to avert possibilities of post-donation exploitative attempts made on the recipient by the donor.

Along with the strict guidelines enforcing anonymity of a potential transaction, the concept of a “donor’s advocate” has been discussed to promote the idea of long-term postoperative care for the donor. Boas and Mor (2005) argue that the advocate be appointed from the NTC so that full coordination can be maintained between the state and the donor. This advocate serves as the “point of contact” for the donor should he require further emotional support and counseling from clergy, psychologists, or public relations’ personnel. This advocate should also serve to minimize the appearance of a conflict of interest between donor, medical personnel, and recipient (Anderson 1999).

Public Awareness and Education

While the creation of a regulated market for organs in Israel offers a viable solution to the country’s organ shortage while providing incentive for Israelis to remain in their home country for transplant surgery, it is certainly not the only alternative that has been offered. One solution that has garnered much attention recently is the idea of Presumed Consent. The presumed consent doctrine operates on the premise that everyone as a matter of course, would agree to have her or his organs harvested upon death” (Kluge 2000). A person who has not opted out in advance is considered, upon death, to be a donor. In opposition to the Expressed Consent policies currently employed in Australia, Canada, and Israel among others, the Presumed Consent policy has been proven effective at increasing cadaveric organ donation rates by as much as 30% (Abadie 2004).

While opponents of this policy argue that it is morally forbidden, and a violation of individual autonomy to invade the body of a person in a way he or she may not wish to be treated (Wright 2007), I believe that the issue of Presumed Consent, as a method for organ procurement, provides but one example of the need for education and public awareness regarding the issue of organ transplantation in Israel. Whether one argues in favor of cadaveric donation, whether one argues in favor or against living donations, what is at stake is the future of any organ procurement method. In this spirit, Bonnie and Siegal, who favor a national procurement system of cadaveric organs, agree that “efforts to encourage formal donations and to record them in accessible registries should be intensified [...] Messages along this line can be included in educational materials and media spots relating to advance directives for end-of-life care” (Bonnie and Siegal 2006). Friedlaender who, of course argues for a paid-system, recommends that “a consensus be reached at the National Transplant Center concerning terminology and information procedures related to [paid kidney donation]. This is important since advertising of this program may be misconstrued as solicitation and exploitation” (2003, 613).

As we can see, no national consensus in Israel exists over how to alleviate the shortage in available organs. The by-product of this disagreement is an increased motivation for Israelis to shop for organs in other countries. What is in agreement, though, across partisan lines, is the need for education and public awareness. Both parties agree that the key element for attaining national consensus is a massive effort to educate the public about organ donation, about the medically viable options available to them, and about the advantages (and disadvantages) inherent in each option.

Altruism has always been the central backbone upon which organ transplantation has rested. Organ-trafficking not only has re-conceptualized the way we relate to each other; indeed, it has redefined the concept of human sacrifice in the most literal of terms. We have seen in the first part of this thesis the ends by which some people are willing to pursue (sometimes at the expense of others), in an effort to benefit themselves, be it in the context of health, or for pecuniary gain. Certainly, the lack of available organs arouses desperation and rewards greed, and I have attempted to paint a picture that reveals how well-organized the international trade in organs has become (See also Appendix A). As the routes of would-be organ recipients demonstrate, ‘altruism,’ as the prime foundation of organ donation and transplantation, has largely dissipated. In its place, commerce, greed, and desperation have become prime motivations for brokers to profit from organ donation. Organ-trafficking (with the kidney as its primary currency), has evolved into a well-organized, for-profit, supply- and demand, business that is causing human rights groups, and even the World Health Organization (WHO) to take note.

Ultimately, financial reimbursement is likely to remain a sticking point for those who defend the practice in the future. Advocates of any future Israeli model will need to guarantee governmental acceptance of a fixed amount of money that is deemed fair, and acceptable to the donor. While the “expense reimbursement” model offers a nice theoretical framework to encourage altruistic donation, I am in agreement with Jellinek (1999) and Mor (2007) that donors must feel like they are being remunerated fairly and equitably for their sacrifice- this means fair and proper post-operative treatment for life, and a financial incentive that is affordable for the state but also worthwhile for the donor. Altruistic donation may be the sought after goal- imaginary in our minds in a perfect

world- however, paying donors, in my view, offers the prospects of accomplishing two lofty goals: reducing the number of deaths incurred by those waiting for a kidney, and alleviating the financial burden of the State of Israel incurred by maintaining patients on dialysis machines. Whatever the government and the citizens of the State of Israel decide, there can be no question that an intensified and rigorous public relations campaign must be part of the solution.

CONCLUSION

In writing this concluding statement, I am motivated by a sense of optimism for having brought to the surface and unmasked a growing and frightening trend that has the potential to redefine human relations. The trafficking of human organs is a phenomenon that garners little attention- journalists have yet to fully expose this nasty trend, philosophers have yet to come to any sort of consensus about what to do, and medical professionals alike are conflicted by the overarching, lifesaving duties their patients have come to demand of them. In a word, organ-trafficking has paralyzed internationally established medical associations who have been too slow to adapt to changing realities that are taking place on the ground in some of the poorest countries on Earth. The result has been that unscrupulous brokers are taking advantage of lackluster laws and governments who are turning a blind eye to the human rights violations that are occurring almost daily under their watch.

This dissertation has focused on the effects of organ-trafficking on Israeli society due, in large part, to the country's low donation rates. Mainly purchasers of organs, Israelis have found themselves eager to exploit their government's tacit acceptance, even encouragement, of purchasing organs overseas. But Israel's case could be viewed in a larger, more developed picture. Indeed, this tiny country of a little more than seven million people has one of the lowest organ donation rates of any country in the developed world. While misconceptions about Jewish laws toward organ donation help to explain this low figure, Israelis have demonstrated that they are capable of and willing to travel great lengths in order to purchase organs. But Israel's citizens are not alone- many

Americans, Europeans, and Australians have proven their willingness to spend exorbitant amounts of money to obtain a second chance at life, quite literally.

Israel's case is unique, however, because of the country's Jewish majority. Despite the current lack of data on the subject, I have chosen to research the Israeli phenomenon precisely because its organ-trafficking dilemma is related to Jewish law. While the country's low organ donation rate can be chiefly associated with the misperceptions Israelis hold about Jewish law's stance on organ donation, as I have demonstrated, organ-trafficking presents a new challenge for Jewish philosophers, many of whom have only just begun researching the idea of selling one's organs for a profit. Even though many Jewish biblical commentators have refrained from commenting on the subject, I would argue that near unanimous consensus has been reached allowing for the sale of organs in the name of saving a human life. Indeed, one of the main themes of this project has been to highlight the great emphasis Jewish law places on the value of human life. In an era of unscrupulous "middlemen" seeking to turn quick profits from the world's most desperate people, whether vendors or recipients, Jewish law has proven its steadfastness and its ability to cling to the values that have sustained this ancient people.

But organ-trafficking also presents major challenges to secular, more recent laws and human norms. Scheper-Hughes (2004, 60) has argued that, in the midst of these new illicit medical transactions "modernist and humanist conceptions of bodily holism, integrity and human dignity" have been eroded. Indeed, I acknowledge that a case can be made against the sale of organs at all cost. However, in the final analysis, it may be worthwhile to return to some of the cardinal principles of secular medical ethics, in particular the idea of autonomy and beneficence. In a regulated market, the donor and the

recipient have the right to proceed with the surgery if those involved have fully accepted and understand the risks involved. From a beneficence standpoint, both the donor and the recipient stand to gain from the procedure. Lewis Burrows summarizes the dilemma most aptly claiming the following:

I have accepted the libertarian thesis that selling one's organs does not necessarily violate the right of self-determination, and should fall within the protected privacy of free individuals on the basis of the principle of autonomy. I have also been persuaded by pragmatic and utilitarian considerations—the current system is failing, and the benefits for all recipients of an increase in available organs outweigh most objections.

(Burrows 2004, 253).

The current system has, indeed, failed to prolong the lives of those who desperately wait for organs. This worldwide shortage can be blamed for the death of thousands. Israelis waiting for organs can hardly rely on their country's ability to provide them given the low donation rate. I have, therefore, outlined what I believe to be the ideal solution to Israel's organ-trafficking dilemma. Such a solution takes into account the very nature of the State of Israel, particularly the Jewish character of the State. With this in mind, I have demonstrated that Jewish law, by most accounts, seems to accept the idea of payment for organs if they can be used to save a human life. What does this mean? I believe that ethical standards cannot be applied uniformly throughout the world- indeed, what may be considered as an acceptable solution for Israel's dilemma, may not prove to be acceptable for any other country, given the deep differences in cultural values, and economic status. Thus, I have attempted to localize the dilemma and characterize organ-trafficking within an Israeli context. The Israeli government has already allowed partial reimbursement to recipients of organs from overseas. A regulated market can curtail this practice, legalize the sale of organs, and protect both donor and recipient on Israeli soil.

It remains all too easy for philosophers, and medical associations alike to condemn the idea of regulating a market for human organs. Yet, it remains clear to many others in the medical profession that the demand for organs is outweighing the global supply and nothing, it seems, is being done to reverse this terrible reality. But from this terrible reality has emerged an even greater tragedy that tugs at the core of human greed: organ-trafficking. My proposal for a regulated market in Israel, of course, will depend on a few important factors. Firstly, how should such a system be promoted? This is a question that I cannot answer. Rather, it is a fundamental internal matter that must be addressed by the Israeli people. Success in answering this question may go a long way in defining the ultimate success of a market in the future. Secondly, how much money should a recipient be paid? While I have suggested a potential amount, this is a question that will evidently be on the minds of many Israelis contemplating a sale of their organs. Lastly, what will the impact of Jewish law be on the Israeli public? I refer, here, to the (mis)perception Israelis might share with relation to the Jewish religion. As it stands now, many Israelis seem confused and completely unaware of the Jewish laws related to organ donation and organ procurement.

These three questions, infused with religious and financial underpinnings, squarely relate to the problem of organ-trafficking and its affect on Israeli lives. Inevitably in the bioethical world, consensus may be lacking, especially with regard to such a controversial topic that highlights a new dilemma. Many will undoubtedly find this idea of markets shocking, even revolting. Aside from the fact that such an idea is undergoing widespread research with more and more medical professionals and philosophers taking note, it may be worthwhile to recall the fact that social norms change

with time. As Hoyer notes, “issues formerly regarded as shocking such as women’s equality, interracial marriage, children born out of wedlock, necropsies, and cadaver organ transplants, are now accepted aspects of Western societies” (Hoyer 2006, 1366). The same can be said for markets in human sperm which, at one time early in their inception, was met with substantial ethical resistance to values involving paternity and sexual relations (Hansmann 1989, 77). It is not inconceivable, therefore, to think of a market in human organs for the State of Israel.

It is my hope that I have laid the groundwork for future scholarly inquiries into the clandestine world of organ-trafficking and the problem of low donation rates in Israel. In researching an Israeli society that places tremendous value on human life and a respect for (but a lack of knowledge of) the Jewish faith, I have come to appreciate that no uniform solution exists for this bioethical dilemma. Alas, it was Winston Churchill who once said that “no one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.” I believe that Churchill’s reasoning is apt and can be applied to commercially-regulated organ markets. I do not pretend that a regulated market in organs is the only solution to the world shortage. I do believe it is the best solution for the State of Israel.

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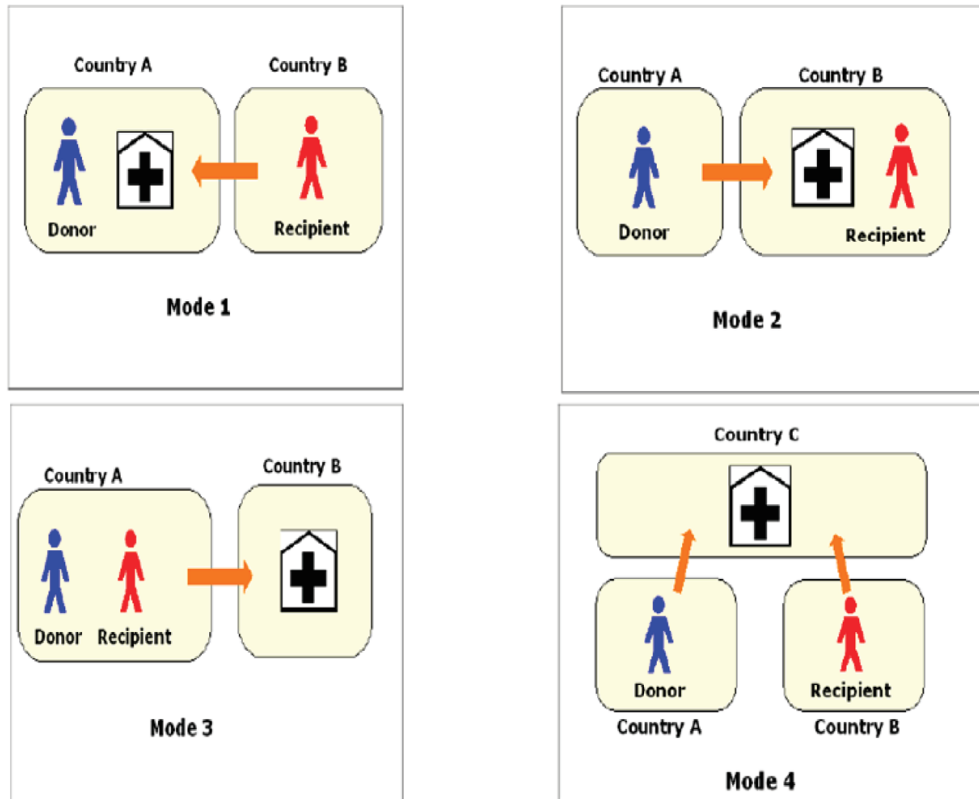
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APPENDIX A

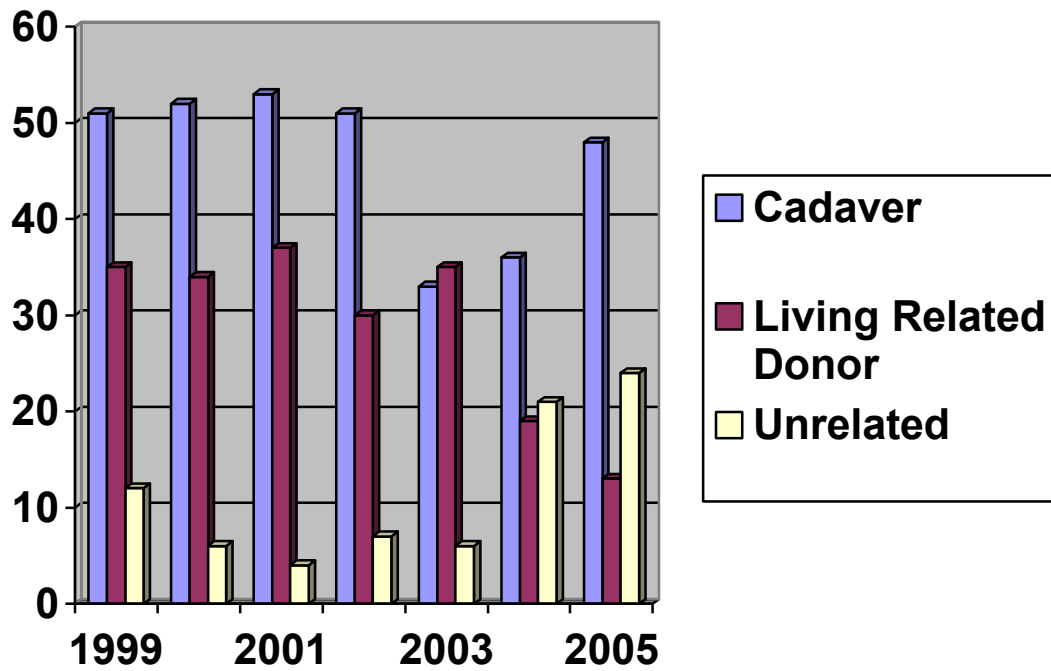
Modes of International Organ Trade and Organ Trafficking



Source: D.A. Budiani-Saberi and F.L. Delmonico, "Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities" *American Journal of Transplantation* 2008, 8: 926.

APPENDIX B

Organ Source in Patients Being Followed at the Rabin Medical Center Kidney Transplant Clinic



Source: Eytan Mor, "Transplant Tourism in Israel: Effect in Transplant Practice and Organ Donation" 25 Oct. 2007 <http://www.esot.org/Elpat/Content_Files/XYgDtPresentation_Mor_text.pdf>

APPENDIX C

Israeli Insurance Company Website Advertising Organ Transplants in Colombia

Israel citizens organ transplant in colombia - medellin



Ventex mangement medical services ltd. Is specialized in sending israel citizen for transplant in colombia, in hospital san vicente de paul in medellin colombia. And for heart transplant in hospital santa maria in medellin colombia.

We performe liver transplant colombia, kidney transplant colombia, lung transplant, madula transplant, pancreas transplant colombia



Liver Transplant for israeli citizen in colombia

[Click here for the doctors biography](#)

Kidney Transplant for israeli citizen in colombia

[Click here for the doctors biography](#)

Israel citizen will have good health performing transplant in colombia

Source: www.happyllife.co.il