

Organ and Tissue Donation

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In 2007, there were 28,358 transplants performed in the United States, 22,049 from deceased donors and 6,309 from living donors. While 78 people received an organ every day, an average of 19 people died each day in 2007 while waiting for a transplant which could not take place, often because of the shortage of donated organs.¹ As of the end of July 2008, there were 99,495 waiting list candidates.²

The Organ Shortage

There is a severe shortage of organs for transplantation throughout the world, including in the most scientifically advanced countries. While organ transplantation has offered a new life to those whose native organs have failed, it has raised a myriad of ethical issues. These questions involve both cadaveric and live altruistic donation. A particularly contentious issue from both a secular and halachic perspective is whether the sale of organs should be permitted. Although the issues raised in live and cadaveric donation are different, all organ transplantation questions have three elements. Ethical issues must be clarified with respect to the donor, the recipient, and society at large.

Issues in Cadaveric Donation

The modern halachic consensus is to allow cadaveric organ transplantation under certain circumstances.³ Whether Jewish law would permit

cadaveric organ donation in a particular case would depend on several related questions, including how one views ownership of the human body, why desecration of a corpse is forbidden, what purpose burial serves, and for how long and for what reasons may burial be delayed.⁴ There are several biblical principles that circumscribe the scope of autopsy and cadaveric organ donation.

Respecting the integrity of the body

It is generally forbidden to desecrate a dead body in any way. This prohibition, called *nivel ha'met* (desecration of the dead), is learned from the biblical passage that instructs how to handle the body of an executed criminal.⁵ The Talmud explains that this law applies to all dead bodies and the application is to any situation which is degrading to a corpse.⁶ As a result, the Torah forbids any invasion of the dead body unless there is sufficient justification. Desecration of a corpse is permitted in a situation where it would save a life.⁷

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¹ John Green, Director of Community Relations for Gift of Life Donor Program (<http://www.donors1.org/>). United Network for Organ Sharing data reported 27,885 transplants (heart-lung, heart, intestine, kidney, kidney pancreas, liver, and lung) and 18 deaths per day in 2007.

² For up to date statistics, see the United Network for Organ Sharing website, www.unos.com.

³ Two notable modern poskim who forbid cadaveric transplantation are Rabbi Eliezer Yehuda Valdenberg (*Tzitz Eliezer* 13:91) and Rabbi Yitzchok Yaakov Weiss (*Minchat Yitzchak* 5:8).

⁴ It is also important to note that any discussion of cadaveric transplant presumes that the patient is indeed dead. There is dispute in the halachic literature regarding neurologic criteria for the determination of death (brain death), with many *poskim* insisting that only the traditional respiratory and cardiac definition of death is acceptable. **Additionally, an inquiry must be made to a competent posek in every case in which there is a question as to whether transplant is appropriate.**

⁵ Deuteronomy 21:22-23: "And if a man has committed a sin worthy of death, and he shall be put to death, and you hang him on a tree; his body shall not remain all night upon the tree, but you should surely bury him the same day; for a reproach to God is he that is hanged. . ."

⁶ *Talmud Bavli Sanhedrin* 47a

⁷ *Talmud Bavli Chullin* 11b. Rav Kahana proves that we execute murderers based on *rov*, the halachic concept that mandates following the majority. Even though it is not possible to absolutely

Immediate burial

The Torah also commands that a body be buried as soon after death as possible, preferably on the same day, and adds a separate prohibition of leaving the dead unburied overnight.⁸ These *mitzvot*, are called *k'vura* (burial) and *halanat ha'met* (lit. leaving the dead overnight). While these *mitzvot* also may appear to apply only to executed criminals, Maimonides explains that the laws of burial apply to every dead body.⁹ Postponement of burial is not always forbidden. The concern of the Talmud is that by delaying burial, one is showing a lack of respect for the dignity of the body.¹⁰ In a situation in which no disrespect is shown, delay of burial is permitted.¹¹ This is the justification for postponing burial until relatives have had the opportunity to arrive. If the delay is to increase the dignity and honor of the dead person, a delay of even several days is permitted. In other cases where autopsy would be considered honorable or would bring honor to the deceased or his relatives, the prohibitions of desecration and of immediate burial might not stand in the way.¹²

prove that a murder victim was not a *treifah* (non-viable person whose murder is not a capital offense) even if we did an autopsy, the accused murderer is executed anyway, based on the rule that a majority of healthy appearing individuals are not *treifot*. The Talmud explains that while autopsy is usually forbidden, were an autopsy to contribute to saving a life, it would be permitted. *Talmud Bavli Bava Basra* 154a also objects to exhumation of a body for examination when it will only avoid monetary loss and is therefore a desecration of the dead body.

⁸ Deuteronomy 21:22-23

⁹ Maimonides, *Mishneh Torah*, Laws of the Sanhedrin, 15:8

¹⁰ *Talmud Bavli, Sanhedrin* 46A "Whoever delays the burial to honor the dead, or to bring a casket and shrouds, there is no transgression . . . it is for the honor of the survivors . . . for the verse says: "his body shall not remain all night upon the tree", i.e., delay that involves shame, similar to being left on the tree. Thus where there is no such shame, it is not forbidden." *Rashi (Sanhedrin 47A)*, the preeminent medieval biblical and Talmudic commentator, interprets the Talmud to be explaining that "where the honor of the survivors is increased, there is no shame [to the deceased], and delay [in burial] is permitted."

¹¹ The Talmud also discusses whether immediate burial is required because of "*kavod*" (the honor of God and/or the person who died) or "*kappara*" (atonement for the individual). While one may not forgo the honor due to God, one may conceivably (at least temporarily) forgo one's own atonement. This issue is much more important in the area of cadaveric transplant where the time between death and burial may be much longer.

¹² For instance, *halacha* considers fulfilling the deceased's expressed or assumed wishes to be according honor to the deceased. While there are dissenting opinions, autopsy to identify a person's killer

It is important to note that the use of transplanted cadaveric organs brings up other important issues, including the requirement of complete burial.¹³ However, were a cadaveric transplant to be permitted in a particular case, there is an expectation that the transplanted organ will eventually be buried with the organ recipient and if the organ is rejected, it would seem that several halachic experts would require burial after removal.¹⁴

Benefit from a corpse

Another commandment effecting cadaveric transplant is the prohibition of gaining benefit from a corpse, called *hana'ah min ha'met*¹⁵. Most

(*Gesher HaChaim* II 28:2, *Responsa Tzitz Eliezer* 4:14) or to identify remains in order to allow the deceased person's wife to remarry would be permitted (Rabbi Shlomo Zalman Auerbach as well as several other opinions quoted in *Nishmat Avraham*, Vol. 3 *Choshen Mishpat*, pp. 224-226 (2004, Mesorah Publications, English). See also *Responsa Yebia Omer* 3 *Yoreh Deah* 23).

¹³ There is a difference of opinion in halachic literature as to whether partial burial fulfills the obligation of burial. The *Jerusalem Talmud (Nazir 7:1)* states regarding burial, "*kulo v'lo miktzaso*," that is "all and not [only] part" of the corpse must be buried. *Tosofot Yom Tov, (Mishna Shabbat 10:5)* states that as long as a single organ remains unburied, the obligation of burial is not fulfilled. Rabbi Eliezer Yehuda Waldenberg (*Tzitz Eliezer* 13:91) rules that the body must be interred intact for future resurrection of the dead. In cadaveric organ transplant, where the issue of not burying the transplanted organ is a bigger issue, there are various rabbinic opinions. Rabbi Meir Steinberg rules that the prohibition of incomplete burial is only when the remaining parts will never be buried (which is not the case in transplant since the recipient will eventually be buried with the organ). Rabbi Yehuda Unterman (*Responsa Shevet Meyehuda* p. 314), a prior Chief Rabbi of Israel, ruled that a transplanted organ is no longer dead, so it does not require burial. Rabbi Yitzchak Liebes rules that burying a majority of the body fulfills the obligation of burial since we have a *halachic* concept called "*rubo k'kulo*," meaning that a majority of something has the status of the whole thing. Therefore, burying a majority of the body is considered to be burying the whole body.

¹⁴ See Avraham, Dr. Avraham, *Nishmat Avraham, Yoreh Deah*, 349:(3)2:3, p. 527 (expanded Hebrew second edition) and *Nishmat Avraham*, Vol. 2 *Yoreh Deah* pp. 342-343 (2003, Mesorah Publications, English). While Rabbi Yehuda Unterman (*Responsa Shevet Meyehuda* p. 314) does not require burial of a cadaveric transplanted organ (see note 13), both Rabbi Yosef Shalom Elyashiv and Rabbi Shlomo Zalman Auerbach ruled that a cadaveric organ retains the requirement of burial even after being transplanted into a donor. It would follow that burial of the organ should be accomplished with the burial of the donor or by independent burial of the rejected organ.

¹⁵ *Talmud Bavli, Avodah Zarah* 29b: "How do we know that one may not derive benefit from a cadaver? It is learned by analogy from the *egla arufa* (the killing of a calf when a stranger is found murdered between two cities), where the word "*sham* (there)" appears, just as it does at the death of Miriam. For it says here (Numbers 20:1) "and Miriam died **there**," and it says there (Deuteronomy 21:4)

authorities consider the prohibition to be biblical in nature and include all types of benefits, including extraneous benefits.¹⁶ Therefore, they rule that one may only derive benefit from a corpse to directly save a human life.¹⁷

Whose body is it?

Whether the three previously mentioned *mitzvot* (the prohibitions of desecration of a corpse and benefit from a corpse as well as the requirement of immediate burial) may be superseded for cadaveric transplant centers around the question of whether an individual has the degree of ownership necessary to justify choosing what will be done with his body after death. That is, may one forgo one's honor with respect to desecration of one's own body after death? In general, we say that our body is God's and we are mere caretakers in line with the accepted halachic opinion composed by Rabbi Yechezkel Landau, that autopsy is permitted to save the life of a gravely ill person who is "before us" (*l'fanenu*).¹⁸ Therefore, in cases where cadaveric transplant is expected to save a life, the

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above-mentioned *halachic* restrictions may be waived.¹⁹

The operative question is what constitutes *l'fanenu* in the modern world. The Israeli Chief Rabbinate ruled in the 1980's that for life-saving skin grafts, skin may be removed from a cadaver and cultured so that it might later be used for transplant onto a person who was not yet burned at the time of the skin harvesting!²⁰ Similarly, for solid organ transplants, having a transplant list is sufficient even if we do not know which patient will get the organ when we harvest it.²¹

¹⁹ Cadaveric transplant adds the complication that the transplanted organ will not be buried until the recipient dies and is buried.

²⁰ The Chief Rabbinate ruled that it was permissible because, while we do not know who will need the skin, unfortunately the odds were very high that someone would need it. See Rabbi Shaul Yisraeli, "The treatment of burns by skin transplantation from the dead," *Techumin* (Winter 5740/1980), pp. 237-247 and Rabbi Shalom Meshash, "Banking skin for the treatment of burn patients," *Techumin* 7(1986), 193-205. See also the excellent chapter in *Biomedical Ethics and Jewish Law* (Rosner 2001) entitled "Grafting Skin and Skin Banks," pp. 355-365. It is important to note that not all *poskim*, including Rabbi Shlomo Zalman Auerbach (quoted in *Nishmat Avraham*), accept this definition of *l'fanenu*.

²¹ The modern definition of *choleh l'fanenu* (a sick person before us) has been interpreted in various ways. Rabbi Avraham Yeshaya Karelitz (*Chazon Ish*, *Yoreh De'ah* 208:7 - *Oholot* 22:32) took a more statistical approach, ruling that if a disease is prevalent, so that we can presume there are people suffering from it in the present, those patients are considered *l'fanenu* with respect to permitting the performing of an autopsy on a patient who died of the same disease. Rabbi Bentzion Uziel was more expansive in his definition, claiming that the existence of hospitals full of patients surely fulfills the requirement of *l'fanenu* (*Responsa Mishpatei Uziel*, *Yoreh Deah* 1:28-29). Rabbi Yechiel Yaakov Weinberg, (*Techumin* 12:382-384 [1991]), argues that the definition of *choleh l'fanenu* may be expanded due to the major improvement in worldwide communication. Nevertheless, with respect to autopsy, Dr. Avraham Avraham disagrees (*Nishmat Avraham*, Vol. 2 *Yoreh Deah* p. 337 [2003, Mesorah Publications, English]): "Although, these days, one can virtually instantly transmit information to the whole world and thereby inform those interested in the results of the autopsy, thus saving the lives of patients in other medical centers, this has never been done. Even the most important and far-reaching breakthroughs are only accepted by the medical profession after they have been published in peer-reviewed articles in a well-known medical journal, a process that can take many months at least." However, Dr. Avraham agrees that "the point is the time factor i.e. the post mortem (or transplant when otherwise permitted, DE) is permissible if a patient who is there at the time - anywhere in the world - can be saved at the time of the post

"and they shall axe [the back of the neck] of the calf **there** in the valley." Just as it is forbidden to derive benefit from the calf, so too, it is forbidden to derive benefit from the human cadaver.

¹⁶ Maimonides, *Mishneh Torah*, Laws of Mourning 12:1

¹⁷ However, some rabbinic authorities consider the prohibition to be rabbinic in nature, including only "usual" types of benefit and permit medical use of the dead body, such as autopsy. See Rabbi Yaakov Emden, *Responsa Yaavets*, 1:41. Even Rabbi David ben Abu Zimra (*Responsa Radvaz* 3:548), who considered gaining benefit from the dead to be a biblical prohibition, ruled that conventional uses of a corpse are forbidden, but non-conventional uses such as medical are permitted. See also Rabbi Ovadia Yosef (*Responsa Yebia Omer* 3 *Yoreh De'ah*, 21) who also permits medical benefit from a corpse. Rabbi Shlomo Kluger held that the prohibition of deriving benefit from a corpse is to avoid preventing dishonor to the corpse that would result from delayed burial.

¹⁸ *Responsa Nodeh Beyehuda*, (*Medura Tinyana*) 2, *Yoreh Deah* 210. However, see the minority opinion of Rabbi Yaakov Ettlinger, a noted 19th century German *posek*, who argued that to some extent our bodies are our own and if one wishes to donate his body to science, he may. On the other hand, the outcome of this decision is that no one else can decide whether to allow autopsy or to donate a relative's organs, even to save a life (*Responsa Binyon Zion* 170-171).

The Live Organ Donor

From the perspective of the donor, the issues of desecration of the dead body, gaining benefit from a corpse, and prolonging the burial do not apply when the donor is alive. The issues that do arise are whether the donor is allowed to wound himself to donate the organ and whether the harvesting is acceptably safe. In most cases, the prohibition of wounding oneself may be superseded by other considerations, such as medical necessity, or as in this case, saving the life of another.

As will be discussed later,²² the consensus of modern *poskim*²³ (rabbinic legal decisors) is that one may undergo a small risk to save someone else from certain danger or death.²⁴ Nevertheless, one may never obligate or coerce someone to donate an organ, even to save the life of another. Additionally, one may not significantly risk one's own health even to save the life of another and one who does so is called a "pious fool".²⁵

Donating a Kidney

With respect to kidney donation, the issue is whether the surgery poses a significant risk to the donor and whether living with only one kidney is an unacceptable risk. Rabbi Yitzchak Weiss, author of *Minchat Yitzchak*,²⁶ was very concerned about both of these considerations, and was inclined to forbid such a transplant, but suggested that kidney donation may be permissible if the donor will definitely save the life of the recipient by his donation. Even in such a case, he remains circumspect. Rabbi Eliezer Yehuda Waldenberg, author of the *Tzitz Eliezer*, was also hesitant to allow live donation, but wrote that while it is not a mitzvah, if the expert doctors are sure that there will be no danger to the donor, he may donate a

kidney to one who is seriously ill.²⁷ Dr. Avraham Avraham describes Rav Waldenberg's approach as meaning that being sure does not mean that there is no possibility of harm, but rather that "there is a good possibility that he will not come to harm."²⁸

Rav Moshe Feinstein,²⁹ among other rabbinic authorities³⁰ permitted, but did not require, the donation of a kidney to a very ill person, considering the act to be a pious one. Rav Ovadiah Yosef evaluates the objections of both Rav Weiss and Rav Waldenberg, but asserts that since the true risk of kidney donation is so low, it is a great mitzvah to donate a kidney.³¹ He even suggests the possibility that donating a kidney to save a life might be required by the Torah's command "not to stand idly by

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as your neighbor's blood is shed."³² Rav Yosef ends his responsa with the words: "Thus it appears that the standard rule is that it is permitted and also a mitzvah to donate one of his kidneys to save the life of a fellow who suffers from renal failure."³³ Rav Shlomo Zalman Auerbach, arguably the preeminent decisor of Jewish law in Israel during the latter part of the 20th century, ruled that "if the seriously ill patient is present (and known to the potential donor) it is certainly permissible for a

²⁷ *Responsa Tzitz Eliezer*, X:25:7

²⁸ *Nishmat Avraham*, Vol. 2 *Yoreh Deah* pp. 347 (2003, Mesorah Publications, English)

²⁹ *Responsa Igrot Moshe*, *Yoreh De'ah* II 174:4

³⁰ See Hershler, Rabbi Moshe, "Where Organ Donors are Considered Mentally Incompetent by the Halacha," *Halacha U'Refuah*, vol. 2:122-128, Regensberg Institute, 198; Zilberstein, Rabbi Yitzchak, "May Parents Give Permission to Donate the Kidney of a Child to a Sibling," *Halacha U'Refuah*, vol. 4:156-57, Regensberg Institute, 1985; Halevi, Rabbi Chaim Dovid, "Donating Organs from Living Donors and Cadavers in Jewish Law," *Assia* vol. 4:251-259, Schlesinger Institute, 1983.

³¹ The risk of mortality from live kidney donation is now estimated at .03% with a low rate of serious complications. See Surman, O.S., "Perspective: The Ethics of Partial-Liver Donation," *New England Journal of Medicine*, 346:1038 (Number 14, April 4, 2002)

³² Leviticus 19:16

³³ *Responsa Yechava Da'at*, III 84

mortem. Not a patient who may only benefit some years later." (personal communication August 7, 2008)

²² See footnote 54

²³ *Responsa Igrot Moshe*, *Yoreh De'ah* II 174:4

²⁴ See SARS and Self-Endangerment-
http://www.aish.com/societyWork/sciencenature/SARS_and_Self-Endangerment_to_Save_Others.asp.

²⁵ *Responsa Radbaz*, Volume 3:627 (1052)

²⁶ *Responsa Minchat Yitzchak*, 6:103

person to even undergo much suffering, for example, by donating his kidney, to save the life of the patient.”³⁴

Rav Yosef Shalom Elyashiv, a current leading posek in Israel, also rules that live organ donation of kidneys is permissible and appropriate, while not an obligation. Rav Elyashiv became personally involved in the case of well-known Knesset member Rabbi Avraham Ravitz, who required a kidney transplant. Rabbi Ravitz’s 12 grown children argued over who would have the privilege of donating a kidney to their father. In the end, with the guidance of Rav Elyashiv, the choice was narrowed down to two sons, with the final decision being made by means of a lottery.³⁵

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Dr. Avraham Steinberg, author of the *Encyclopedia of Jewish Medical Ethics*, encapsulates the four requirements necessary for ethical live organ donation.³⁶ He asserts that surgery to remove

the organ must not be dangerous, the donor must be able to continue his life normally after the donation, the donor must not require prolonged and chronic medical care, and the success rate in the recipient must be high.

Live Donation of a Liver or Lung Lobe

Donation of some other solid organs such as liver or lung lobes presents a significantly higher risk than renal transplants. Such transplants are more difficult to justify because of the increased risk of morbidity and mortality to the donor.

Partial liver donation is most frequently from parent to child, although less commonly trans-

plantation occurs between adults.³⁷ Exact statistics for partial liver donation morbidity and mortality are difficult to obtain, with reported mortality ranging from 0.2-2% and major morbidity below 10%.³⁸ Current mortality statistics are probably improved from the initial surgical reports, but still remain a real consideration. Nevertheless, despite ethical concerns voiced in the medical literature, partial liver donation from live donors is practiced in multiple academic centers around the world, with the risk considered medically acceptable.³⁹

Living donor lung transplantation has been utilized for the treatment of patients with end stage lung disease since the early 1990’s. As of 2006, approximately 250 recipients had received transplants. In the standard operation, each recipient receives a lower lobe from each of two live donors. As a result, there are two donors for each recipient and therefore double the morbidity and potential mortality for each transplant procedure. Living donor transplantation is usually reserved for cases where the recipient will likely die due to a lack of suitable cadaveric organ availability. While no perioperative deaths were reported in live lung donors as of 2006, the potential morbidity from the surgery is not insignificant.⁴⁰

³⁷ National Kidney Foundation website,

<http://www.kidney.org/transplantation/livingDonors/infoQA.cfm#1e>

³⁸ Katrina A. Bramstedt, Katrina A, “Living Liver Donor Mortality: Where Do We Stand?” *The American Journal of Gastroenterology*, 101:4, pp. 755-759 (Number 4, Published Online: 22 Feb 2006). The University of North Carolina reports to prospective donors in their donor handbook that the rate of death from major hepatic resection is from 0.5% to 2% and that the rate of major complications is <10%.

(http://surgery.med.unc.edu/AbdominalTransplant/pdfs/liver/Living_Donor_Handbook.pdf)

³⁹ Owen S. Surman, M.D. “The Ethics of Partial-Liver Donation,” Perspective column in *New England Journal of Medicine*, 346:1038 (Number 14, April 4, 2002)

⁴⁰ Information taken from “The Risks of Living Lung Donation,” prepared for the Canadian Council for Donation and Transplantation

by Dale Lien, MD and John Mullen, MD, both part of the Lung transplant program at the University of Alberta, Edmonton, 2006:

“The immediate and long term surgical risks are those of an elective lower lobectomy. The usual initial hospitalization for an uncomplicated case is 4 to 10 days. Some of the potential intraoperative complications include cardiac arrhythmias, hemorrhage, the need to sacrifice the middle lobe because of anatomical difficulties, phrenic nerve injury, and blood transfusion.

³⁴ *Nishmat Avraham*, ibid

³⁵ Personal communication with Dr. Avraham Steinberg. Rav Elyashiv used the *gorel* of the GR”A, a traditional means of deciding complex questions.

³⁶ Steinberg, Dr. Avraham. *Encyclopedia of Jewish Medical Ethics*; pp. 1095; Feldheim: New York, 2003

Regarding both of these forms of more hazardous live organ transplantation, *halacha* would not require a donor to expose himself to such a large risk. But, if a potential recipient were to be in mortal danger, such a donor would likely be permitted to donate by at least some major *poskim*.⁴¹ Permission would depend on how much risk one may accept to save someone who is in immediate certain danger.⁴²

Donating Blood and Bone Marrow

However, donation of blood and bone marrow are much easier to justify halachically. Blood and marrow are quickly renewable, and while the donation process may be somewhat painful for the bone marrow donor (sometimes requiring general anesthesia) both forms of donation are very safe, presenting minimal risk to the donor. For these reasons, these types of live donation are permitted by all.

Rav Shlomo Zalman Auerbach felt that it is a *mitzvah* to be a bone marrow donor to save life.⁴³ Both Rav Auerbach and Rav Moshe Feinstein ruled that one is permitted to donate blood to a

blood bank even without knowing that it will go to save a life.⁴⁴ Interestingly, Rav Auerbach ruled that a competent minor may agree to donate bone marrow and the parents of an incompetent minor may consent for him.⁴⁵

If the potential donor does not wish to donate his blood or marrow, there is a difference of opinion. Some rabbinic authorities feel that one cannot be compelled to donate, even at the cost of the potential recipient's life, while others feel that coercion is permitted to save a life.⁴⁶

The Recipient

The perspective of the recipient is straightforward. As long as the donor is permitted to donate the organ, and there is a medical indication for the transplant, the recipient is permitted to accept it, so long as there is no other viable, less dangerous medical treatment available. The recipient must understand the risks associated with transplant, including the need for life-long immunosuppressive therapy and must be capable of following the necessary post-transplant medical regimen, including being able to afford the anti-rejection drugs. Judaism has no intrinsic objection to accepting an organ donation per se, but insists only that no prohibitions be transgressed in the process of donation.

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Society

Societal issues also come into play with respect to live organ donation, the most sensitive being payment for organs. While society wants to provide incentives to increase the donor pool, incentives that are overly persuasive may unduly influence a potential donor to undertake a course of action

Short term complications may include infection, pain, hemorrhage, pleural effusion, pneumonia, empyema, bronchopleural fistula with prolonged air leaks, airway dehiscence or stricture, pericarditis, arrhythmias, pulmonary embolism, chylothorax, and a potential need for reoperation. A small percentage of lobectomy patients may require readmission because of further complications including pneumothorax, infection, pericarditis, pulmonary embolism, pneumonias, bronchopleural fistula, pleural effusion, hemoptysis and cardiac events. The available reports indicate that these types of significant complications have occurred in 4 to 5 % of donors. . . Long term health risks include chronic incisional pain, chronic airways disease, the risk of recurrent infections, and chronic dyspnea. Available data indicates that donors lose between 10 to 20% of their pre-donation lung function as measured by pulmonary function testing. This usually does not have a significant impact on everyday activities but potentially may be important if the donor later develops lung disease."

⁴¹ See *Responsa Radbaz*, Volume 5:218 (1582) and a ruling of Rabbi Ovadia Yosef cited in *Nishmat Avraham, Orach Chaim*, 329:6 (expanded Hebrew second edition pp. 502-503) and *Nishmat Avraham*, Vol. 1 *Orach Chaim* p. 217 (2000, Mesorah Publications, English). Nevertheless, I know of no definitive ruling as of the time of this writing.

⁴² See Eisenberg, Daniel, "SARS and Self-Endangerment to Save Others,"

http://www.aish.com/societyWork/sciencenature/SARS_and_Self-Endangerment_to_Save_Others.asp.

⁴³ *Nishmat Avraham*, Vol. 2 *Yoreh Deah* p. 346 (2003, Mesorah Publications, English)

⁴⁴ *Responsa Igrot Moshe*, Choshen Mishpat 1:103

⁴⁵ See *Encyclopedia of Jewish Medical Ethics*, page 1096 for a full discussion of blood and bone marrow donation.

⁴⁶ *ibid*.

that is not prudent. Donors are routinely reimbursed for expenses related to donating their organ, but such payment is not usually considered to undermine the purely altruistic motivation of the donor.

Selling Organs

Actual payment for organs themselves is a very controversial topic. Most experts in the field of transplantation, including surgeons and ethicists, have expressed opposition to payment for organs. In the United States, federal law prohibits the sale or trade of organs. The motivation behind the ban is three-fold, with two of the concerns applying to live donations. There is a concern for exploitation of people who would not donate except for the monetary incentive, as is already the case in India. Additionally, there is a fear that the creation of a market in human organs will create an inequity that would discriminate between rich and poor. Those who can afford organs would be able to obtain them and those who could not afford them would be left without options.

Nevertheless, there are benefits to allowing direct payment for live organ donation.⁴⁷ Obviously, it might increase the supply of organs saving more lives, even if it does skew the distribution of the organs. While allowing compensation for organs would surely encourage only the poor to donate, causing a degree of inequity, in the current situation it is only the rich who currently can afford to buy a kidney on the black market anyway. Hence, the best solution for society might be a national registry of people who

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are willing to donate for compensation, with the kidneys allocated by the national registry in the same way that is currently done for cadaveric organs. This would hopefully lead to equal distributions to all recipients, including the poor.⁴⁸

Additionally, society does not object to the many people who undertake dangerous forms of employment for monetary compensation (such as miners, soldiers, firefighters, and policemen).⁴⁹ Another justification of payment for organs is that it would bring an end to the thriving international black-market in human organs, which now currently functions unregulated, with most of the profits going to middle-men, not the poor people selling their organs.⁵⁰

But from a philosophical point of view, there is another reason to consider allowing the sale of organs. It may be a misplaced sense of paternalism that leads us to prevent the sale of organs by the poor. While other less traumatic means of helping the underprivileged would be far better, the reality of the world situation today is that there are millions of people whose only chance of overcoming poverty might be by selling their organs.

Avoiding Coercion

However, even before considering the merits of selling organs, it is an absolute necessity that society protects potential donors from coercive tactics or from being preyed upon due to donor ignorance. Reports of “transplant tourism” associated with organ trafficking are well documented.⁵¹ Such disreputable behavior, which has allegedly involved even high-profile transplant

⁴⁷ See the journal *Current Opinion in Organ Transplantation*, August 2008 for three articles discussing the merits and disadvantages of allowing the sale of organs. The articles are: Matas, Arthur J a; Hippen, Benjamin; Satel, Sally, “In defense of a regulated system of compensation for living donation,” 13(4):379-385; Gabriel M Danovitch; Francis L Delmonico, The prohibition of kidney sales and organ markets should remain,; 13(4):386-394; and Khamash, Hasan A, Gaston, Robert S, “Transplant tourism: a modern iteration of an ancient problem,” *Current Opinion in Organ Transplantation*. 13(4):395-399.

⁴⁸ Suggested in personal communication with Dr. Avraham Steinberg.

⁴⁹ The true danger of some of these professions was brought into stark relief with the events of September 11, 2001, when hundreds of firefighters and policemen perished in the twin towers of lower Manhattan.

⁵⁰ Finkel, Michael, “This Little Kidney Went to Market,” *New York Times Magazine*, May 27, 2001.

⁵¹ Khamash, Hasan A; Gaston, Robert S, “Transplant tourism: a modern iteration of an ancient problem,” *Current Opinion in Organ Transplantation*. 13(4):395-399, August 2008.

surgeons, often involves donors who do not understand the significance of their decision to donate and are left with inadequate post-donation health care.⁵² Sometimes, the ill-informed would-be donor is physically coerced into donating if he chooses to withdraw consent. In an ethical system of remunerated live organ donation, such practices cannot be permitted.

Informed consent is an absolute requirement of live organ donation. For this reason, mentally incompetent people who cannot consent to donate in a meaningful way are usually barred from becoming live donors.

There is no particular reason why receiving compensation for an action which involves risk should necessarily be forbidden either morally or halachically

A particularly interesting question raised by Dr. Steinberg for additional consideration is the case of an incompetent potential living donor whose primary caregiver is a relative in need of the transplant. The potential donor may suffer more from *not* donating if the caregiver will die for lack of a donor organ!⁵³

May Jews Sell Organs?

Taking all of the previously discussed considerations into account, we must ask whether selling one's organs is permissible from a Jewish legal perspective.

As alluded to above, while there is a clear requirement to save another person from danger, there is a debate regarding whether one is obligated to risk his own life in order to do so.⁵⁴ In the final

⁵² See Sarig, Merav, "Israeli Surgeon is arrested for suspected organ trafficking," *British Medical Journal*, 2007:973 (May 12, 2007).

⁵³ See Elon, M. "Medicine, Halacha, and Law: The Values of a Jewish and Democratic State" *JME Book Vol. I* pp. XXVII-XXXIII; also see Halperin, M. "Transplantation from Live Donors" (*Hebrew ASSLA* 9, pp. 346-347. -Editor

⁵⁴ The *Babylonian Talmud* (Sanhedrin 73a) derives the fundamental requirement to save another person from danger directly from the Torah. The Talmud explains "From where do we know that if one sees his friend drowning in a river, or if he sees a wild animal

analysis, while there are those rabbis who oppose the sale of organs or limit the situations in which organ sales are permitted, there is no intrinsic halachic objection to selling organs, per se.⁵⁵

Rabbi Yaakov Weiner, Dean of the Jerusalem Center for Research, integrates the issues that we have discussed (the problem of injuring oneself, the degree of acceptable risk, and the motivations that might drive someone to sell an organ) when he rules:⁵⁶

attacking him, or bandits coming to attack him, that he is obligated to save [his friend]? The Torah (Leviticus 19:16) teaches: "do not stand over your neighbor's blood (but rather save him)." According to Maimonides (*Mishneh Torah*, Laws of Murder and Guarding Life 1:14), this translates into a positive obligation to use one's time, money and even body to save his fellow.

In discussing the Biblical obligation to save one's neighbor from harm, Rabbi Yosef Karo (*Beis Yosef*, *Choshen Mishpat* 426) adds the crucial concept that according to the *Jerusalem Talmud* (*Terumos*, end of 8th chapter), the potential rescuer "is obligated to even enter into a questionable danger (*safek sakana*) to save his fellow. And the reason appears to be because the danger to his fellow is definite, but the danger to the rescuer is questionable." Interestingly, Rabbi Karo does not include this ruling in the Code of Jewish Law (*Shulchan Aruch*). Two possible reasons are proposed for this fascinating omission. Rabbi Karo establishes in the introduction to the *Shulchan Aruch* that he rules according to the majority opinion of three major authoritative Rabbis-Maimonides (*Rambam*), Rabbi Yitzchak Alfasi (*Rif*), and Rabbeinu Asher (*Rosh*). Since none of these noted Jewish legal experts mention the ruling of the *Jerusalem Talmud*, it is reasonable that Rabbi Karo did not codify it in the *Shulchan Aruch* (*S'ma*, *Shulchan Aruch*, *Choshen Mishpat*, 426:2). Alternatively, neither Rabbi Karo nor Rabbi Isserles (*Rema*) include the ruling because the *Babylonian Talmud* (*Sanhedrin* 73A and *Nida* 61A), generally considered more authoritative than the *Jerusalem Talmud*, renders a contrary ruling (*Pischei Teshuva*, *Shulchan Aruch*, *Choshen Mishpat*, 426:2. The actual ruling of the Babylonian Talmud is probably found in *Sanhedrin* 73a; see *Maharam Shik*, on the 613 mitzvot, mitzvah 238 and *Aruch L'ner*, *Sanhedrin* 73a. Alternatively, the argument may be that found in *Baba Metzia* 62a, regarding the disagreement between Rabbi Akiva and Ben Petura regarding whether someone must share the last of their water with someone else if it will possibly endanger the owner's life. The *Ohr Someach*, Laws of Murder 7:8, points out that Maimonides' ruling that an inadvertent murderer may not leave a city of refuge, even to save the whole Jewish nation, proves that one may not enter a questionable danger to save others from a definite danger.)

⁵⁵ Rabbi Yosef Sholom Elyashiv requires that "the need must be great and the sale must accomplish the financial goal, otherwise it cannot be considered of sufficient value to override the prohibition of injuring oneself." Rabbi Shmuel Vosner, in what appears to be a minority opinion, does not permit sale of organs. Kunin, JD, "The search for organs: halachic perspectives on altruistic giving and the selling of organs," *J. Med. Ethics*, May 2005; 31:269 - 272.

⁵⁶ Weiner, Rabbi Yaakov, *Ye Shall Surely Heal*, p. 155, Jerusalem Center for Research, 1995. Also see Rabbi Weiner's extensive chapter entitled "Transplants from Live Donors."

One may sell his organs to save a life, if it causes no halachic risk to the donor's life. This would not be subject to the prohibition of injuring oneself, because selling the organ is seen as a great need to save life and also because saving a life is a *mitzvah* which suspends all others. If however a lifesaving situation does not obtain, for example, selling organs to a bank or for research purposes, then doing so is prohibited. But if the motivation for his selling the organ could be defined as a great need (e.g., avoiding bankruptcy with its accompanying legal and social repercussions), it would be permitted.

The consensus of the decisors of Jewish law is that live organ donation is a permissible and noble act, but is not an obligation

This ruling may seem novel, but in reality it is very logical. There is no particular reason why receiving compensation for an action which involves risk should necessarily be forbidden either morally or halachically.

While most secular experts remain opposed to payment for organs, there is growing support for the idea. In an article in the respected British medical journal *Lancet*,⁵⁷ the authors make several cogent arguments for why payment for organs should be revisited, raising each objection and explaining how they might be solved. A review article in the *Israel Medical Association Journal*⁵⁸ also supported permitting payment for organs under tightly controlled guidelines.

From a Jewish legal point of view, the mere fact that one is being rewarded for an act, does not take away from the ethical value of that act. In fact, Rav Shlomo Zalman Auerbach ruled that “even if the person selling his kidney is poor (and needs the money for himself) or to pay off his debts, since he

obtains this money by saving the life of another Jew, he will certainly be doing a *mitzvah*. This is true even if he would not have donated his kidney only to save life.”⁵⁹

If we put aside the issue of live organ donation itself, there is a precedent in Jewish law for the selling of organs. Rabbi Moshe Feinstein ruled⁶⁰ that one may sell one's blood to a blood bank, as mentioned above. While blood is a renewable resource and blood donation causes no long-term disability to the donor, if the donation process for solid organs such as kidneys were to present no other halachic impediments, then the selling of blood and the selling of organs might be considered comparable. Simply put, if donating an organ were to be permitted in a given situation, then there is no intrinsic reason why selling it should be forbidden. It is only external societal concerns and fear of exploiting the donor which might persuade us to forbid the selling of organs.

Conclusion

The consensus of the decisors of Jewish law is that live organ donation is a permissible and noble act, but is not an obligation. Those who are hesitant to allow live organ donation do not object to the concept, but feel that the risk may be too great to the donor. Since the risk of mortality or serious complication from live kidney donation is now low, even those *poskim* who had discouraged live organ donation might consider it safe enough to be permitted. Regarding the sale of organs, while the thought may be distasteful, and we pray for a society that would make donating one's organs for money unnecessary, we are a long way from such a world. If allowing payment for organs with proper safeguards would increase the number of lives saved, then Jewish law would sanction such an approach.

⁵⁷ Radcliffe-Richards, J et al, “The Case For Allowing Kidney Sales,” *The Lancet*, 351:9120, June 27, 1998 p. 1950-1952

⁵⁸ Rapoport, J., “Legalization of Rewarded Unrelated Living Donor Kidney Transplantation: Suggested Guidelines,” *Israel Medical Association Journal*, 346:1038 (2002)

⁵⁹ *Nishmat Avraham, Even Ha'Ezer and Choshen Mishpat* (Vol. 3), p. 347 (English version)

⁶⁰ *Responsa Igrot Moshe*, Choshen Mishpat 1:103