



Jewish Medical Ethics: Monetary Compensation for Donating Kidneys

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Abstract

The Israel Health Ministry is preparing legislation that would allow a person to receive monetary compensation in exchange for donating a kidney for a lifesaving transplant. Such a bill would be the first of its kind, and would seem to establish a policy that is in contrast with both existing international professional ethics and major Christian and Islamic religious ethics. In an attempt to investigate the extent to which such a bill would be consistent with traditional Jewish ethics, we reviewed the opinions of major traditional Jewish ethicists/halakhists, with emphasis on contemporary opinions, and found that compensating an organ donor for his or her time, discomfort, inconvenience, and recovery is fully consistent with traditional Jewish law and ethics. While non-altruistic sale of kidneys might be theoretically ethical from a Jewish perspective, ultimately its ethical status is inextricably connected to solving a series of pragmatic issues, such as creating a system that insures that potential vendors/donors are properly informed and not exploited, controlling and supervising medical screening and support of the donors to insure that their health is not permanently endangered, protecting minors and incompetents, and regulating payments so that they reasonably reflect compensation for pain and suffering.

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Siegel-Itzkovich [1] recently reported that the Israel Health Ministry is preparing legislation – the first of its kind – that would allow a person to receive monetary compensation in exchange for donating a kidney for a lifesaving transplant. Such a policy would be in contrast with both existing international professional ethics and major Christian and Islamic religious ethics, although medical ethicists like Veatch [2] have recently revisited the issue, arguing for accepting financial incentives for organ procurement, and McCarrick and Darragh [3] have provided a short introduction to the range of recent opinions expressed on this issue. In any event, the Israeli bill – which would designate the money not as payment for sale but as compensation to the donor for his or her time, discomfort, inconvenience, and recovery – is fully consistent with traditional Jewish law and ethics, as we have outlined elsewhere [4].

In 2000, the Consensus Statement on the Live Organ Donor [5] reported that “direct financial compensation for an organ from a living donor remains controversial and illegal in the United States” and took note of the position of the Transplantation Society that “Organs and tissue should be given without commercial considera-

tion or commercial profit.” This position reflected not only the view of the medical community, but that of the overall Christian and Islamic community as well.

The United States Conference of Catholic Bishops [6] held that “The transplantation of organs from living donors is morally permissible . . . [but] the freedom of the prospective donor must be respected, and economic advantages should not accrue to the donor.” Likewise, Catholic theologians Ashley and O'Rourke [7] state, “if society is to live in a humane manner, generosity and charity, rather than monetary gain and greed, must serve as the basis for donation of functioning organs.” Bishop Dimitrios of Xanthos (personal communication, 29 October 2001) reports, “The Greek Orthodox Church accepts the possibility of any kind of transplant, if it is not a commercial transaction. Only philanthropy is a proper motive for giving and receiving organs. Otherwise it commodifies human organs and thus deprives the action of ethical quality.” The Church of Scotland [8] “totally endorses the moral judgment of the British Parliament in passing a Bill which makes it a criminal offence to buy, sell, or advertise human organs If the tissue or organ to be donated is the gift of God and if the imperative of the Gospel is to love our neighbor unconditionally, then donation must be made freely on the grounds of need, not conditionally on the grounds of creed, or lucratively on the grounds of greed.” Breidenthal (personal communication, 1 December 2001) reports that in the Episcopal tradition, “to sell a kidney to a needy recipient is better than selling one's body as a sexual object, because the purpose of the sale is better. But the selling remains morally wrong – indeed, it may even be more wrong, since the need of the sick person is an example of what God (who alone ‘owns’ our bodies) intends us to use our bodies for, namely, to glorify God and serve our neighbor.”

Badawi [9] reports that in 1996 a council of scholars from all the major Muslim Schools of Law in Great Britain concluded that “Human organs should be donated and not sold. It is prohibited to receive a price for an organ.” Al-Munajjid [10] reported that the Islamic Fiqh Council (*Majma' al-Fiqh al-Islami*) has issued a *fatwaa* (religious ruling) which states that, “It is not permitted to trade in human organs under any circumstances. But the question of whether the beneficiary may spend money to obtain an organ he needs, or to show his appreciation, is a matter which is still under scholarly debate.”

In general, all these positions share the ethical objections outlined by Dossetor [11] to a system under which the state would regulate organ purchase from voluntary kidney vendors. (The state would not be concerned with the motivation of the vendor, but would check that the donor is competent and fully informed.) First, he argued, vital human organs would become market commodities, thereby compromising society's attitude towards individual human dignity. Second, the medical profession as a whole would have compromised its deontologic commitment that all individuals have value beyond price by adopting a utilitarian ethic that maximizes the good for the largest number. Third, such a system would allow society to accept the premise that poverty and desperation can be the basis for desperate, irreversible, one-time-only self-sacrificial acts, provided that the individuals claim to know the implications of their actions. Fourth, it ignores the strength of communal opinion, which insists on limits to personal autonomy for reasons other than physical harm to others. Fifth, it is an affront to those who see society as being based on transcendent values in which each human being has a sanctity, however hard it is to define what that means.

Halakhah (Jewish Law) certainly has no principled objection to any of these arguments, but it nevertheless comes to a different conclusion. In reaching a specific halakhic judgment, authorities often have to balance competing values and precedents. As Lichtenstein [12] 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."

Among the considerations that the *posek* must take into account is the effect that a particular decision might have on society as a whole. Thus, for example, the Talmud [13] records that each Friday afternoon Rabbi Huna would send someone to the market to buy up all vegetables unsold before the onset of the Sabbath in order that the farmers not give up on selling produce and thereby leave the community without vegetables. But despite the fact that the Bible and Talmud have a concrete and robust concern for charity on the private as well as public level, Rabbi Huna would throw the produce in the river rather than distribute it to the poor. He reasoned that such charity would have had negative societal impact, as the poor would begin to rely on these gifts rather than provide for themselves. The imperative for charity must be balanced against the realistic needs of a healthy community.

Halakhah acknowledges limits to personal autonomy for reasons other than physical harm to others. It assumes transcendent values in which each human body has a sanctity by virtue of it having housed a being created in God's image, and demands subservience to halakhic obligations and responsibilities, including the prohibition to gratuitously harm one's own body. Another basic principle is the biblical command [14] "Do not stand idly by the blood of your neighbor," which obligates a person to save another who is in danger.

The Talmud [15] records an argument regarding the responsi-

bility of two travelers in the desert who are in danger of death. One has only enough water for himself and the other has none. Let them share the water and both die, says Rabbi Ben-Petora; however, normative *Halakhah* accepts the view of Rabbi Akiva that he who has the water should keep it for himself. He reasoned that the Bible (Lev. 25:36) commands that "Your brother shall live with you," indicating that your life takes precedence. The obligation to save another does not extend to sacrificing one's own life.

While *Halakhah* surely concerns itself with the motivation underlying religious observance, it generally adopts the position that the religious value of a *mitzvah* (a good deed) is not obviated by the absence or diminution of proper motivation. Of course, the deed acquires greater religious value as the virtuousness of the intention increases. But inadequate motivation does not undermine the inherent ethical value of the act itself, or provide an exemption to the obligation to perform a particular *mitzvah*.

Live organ donations

In the sixteenth century, ibn Zimra (known by the acronym Radbaz) [16] took up the question of a ruler who had threatened to kill one person if another did not allow the amputation of a non-essential organ. Radbaz, quoting Proverbs 3:17 that "[the Torah's] ways are ways of pleasantness," rules that the *Halakhah* could not possibly demand the amputation of a limb even to save another person. Nonetheless, it is a most "pious act" to do so voluntarily, provided it does not endanger one's own life. If, however, the procedure actually endangers the volunteer, the donor is dismissed as a "pious fool" for doing a dangerous thing. This is the dominant opinion in halakhic literature.

On this basis, Weiss [17], one of Jerusalem's late senior *poskim*, held that live kidney donations are forbidden, because they constitute too dangerous an enterprise for the donor. However, Yosef [18], former Chief Rabbi of Israel and senior contemporary *posek*, indicated that that ruling was based on the medical information available at that time. Now that medical authorities maintain that the risk for the donor is reasonable, such donations are permissible. Goren [19], late Chief Rabbi of Israel, likewise maintains that this medical judgment determines the permissibility of the donation. The current normative halakhic position is that such donations constitute a most pious act.

Goren writes that donation of a kidney in consideration of financial reward does not change its positive characteristic. His reasoning is based on the *Halakhah* concerning the obligation to not stand idly by your neighbor's blood. One is obligated to save someone in mortal danger even if it involves financial loss. However, if the rescued person has the financial means, the "good samaritan" can recover his expenses, despite the fact that he was obligated to act, and such financial considerations do not affect the religious quality of his act. "We have no halakhic basis on which to prohibit one from donating a kidney in consideration of financial gain," he wrote, "inasmuch as this reflects an agreement between the donor and recipient."

Abraham [20], expressing the view of Aurbach, another of Jerusalem's late senior *poskim*, writes that one cannot say that a person who contributes his kidney in consideration of financial gain

is doing something contemptible rather than praiseworthy. The vendor/donor has no obligation to contribute an organ and, if he nevertheless does so, it remains most commendable even if his primary purpose was not wanting altruistically to save a life but rather to obtain finances to pay off his debt or obtain medical services for himself or his family members. But, adds Abraham, what does that say of a society that allows a person to reach such a desperate state that he must sell an organ to get out of financial debt or obtain necessary medical services. Shafran [21], director of the Jerusalem Rabbinic Department of Halakha and Medicine, similarly notes, "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."

Lau [22], former Chief Rabbi of Israel, sees a different ethical issue in allowing the sale of organs, namely that the organs might eventually become available only to the rich. But with regard to the question of financial consideration for donating one's organs, he sees no ethical issue at all. A person who is injured by another is allowed to collect not only for his medical expenses and lost income, but also for pain and suffering. One who volunteers to be injured in order to save another does not forfeit similar compensation. It is true that poor people are at a disadvantage in competing for limited resources, but that is true for a wide range of medical issues. Any possible underground exploitative industry in organ sales, he adds, should be prevented by appropriate governmental supervision.

Discussion

All these halakhic authorities reject out of hand the notion that payment for a kidney donation deprives the action of ethical quality. They agree that a donation motivated by generosity and charity, rather than monetary gain and greed, is a most "pious act," but they deny that this is the only ethical basis for donation of functioning organs.

Auerbach's position – that one's donation remains most commendable even if his primary purpose was not wanting altruistically to save a life but rather to obtain finances to pay off his debt or obtain medical services for himself or his family members – coincides with Dossetor's "indirect altruism." An impoverished father, in Dossetor's example, wants to help his seriously ill daughter. If she had renal failure, he would gladly donate his kidney with no thought of financial compensation. However, she does not have renal failure but a white-cell malignancy that requires expensive treatment. The father sells his kidney to obtain the money to pay for her medical treatment. Dossetor sees this as morally acceptable, despite his objection to allowing the sale of kidneys, but objects to allowing it for pragmatic reasons.

It is difficult, though, to separate indirect altruism from non-altruistic financial gain. Dossetor quotes the case of an impoverished Indian widow with two unmarried daughters for whom it is essential that she have a dowry. The sale of her kidney allowed her to provide dowries that enabled them to marry. In a society in which

spinsters may lead a sorry and dangerous existence, this was a life-fulfilling, altruistic act. However, this logic would move most kidney sales into the category of indirect altruism, as few healthy impoverished donors intend to use the money obtained capriciously.

Wilkenson [23] has argued that the commodification argument against organ sale is not persuasive. The *poskim*, however, avoid the issue of commodification by framing the payment as the "fine" imposed on someone who commits a bodily assault on another, which includes payment for pain and suffering in addition to medical expenses and lost income.

In general, these *poskim* concur with the arguments put forth by Radcliffe-Richards and her colleagues [24]. There is a possibility of exploitation of potential donors/vendors; but it is the responsibility of governments to protect such individuals by regulation, as they now do in many other areas. Rich people will have opportunities for medical care unavailable to poor people, but that is the reality in many areas of medical care throughout the world. It might reflect poorly on a society that it allows a person to reach such a desperate state that he must sell an organ to get out of financial debt or obtain necessary medical services; but outlawing such sales will not correct the underlying social inequities. Interestingly, the proposed Israeli protocol, as reported by Friedlaender [25], gives poorer patients an equal opportunity to receive unrelated donor kidney transplants by having the Israeli National Transplant Center, and not the recipient, pay the donor.

Conclusion

While non-altruistic sale of kidneys might be theoretically ethical, ultimately its ethical status is inextricably connected to solving a series of pragmatic issues, such as creating a system that insures that potential vendors/donors are properly informed and not exploited. Without such arrangements, ethical non-altruistic kidney donations remain but a theoretical possibility.

Exactly what specific social safeguards beyond informed consent must be instituted are not spelled out by these halakhists, but presumably they would mirror those created by secular legislatures in areas such as adoption, surrogacy, or even employment. These would include control and supervision of medical screening and support of the donors to insure that their health is not permanently endangered; protection of minors and incompetents; and regulation of payments so that they reasonably reflect compensation for pain and suffering. It remains to be seen whether the pending Israeli legislation will accomplish these goals. In this respect, Shafran sees an internal contradiction in principle between allowing payment for surrogacy, for example, and outlawing the sale of organs, both of which involve a person taking payment for the "use" of their body.

In the meanwhile, a practical immediate solution lies in the direction of increased cadaver donations. In this respect, it is worth noting the halakhic ruling given in 1978 by Goren [19]: "When there is a deathly ill patient waiting for a kidney transplant and there is a cadaver whose kidney is an appropriate match for transplantation, it is a *mitzvah* and obligation for the family of the deceased to allow the transplant, as this is a matter of saving a life and 'not standing by the blood of your neighbor.'"