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Review Article

A nuanced ethic for live kidney donations

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ABSTRACT

Introduction: Like other countries, Poland relies on the altruism of potential kidney donors but has an insufficient number of organs available to meet the growing need for organ transplantation.

Aim: We investigate the ethics of non-altruistic kidney donations from the perspective of Jewish Medical Ethics, and consider how that ethic might work to alleviate the shortage in donations currently experienced by Poland and other countries.

Discussion: Jewish medical ethics outlines a nuanced response to this shortage, suggesting that the requirement for organs to be donated without any commercial consideration may be modified to allow compensating an organ donor for his or her time, discomfort, inconvenience and recovery. Compensating an organ donor is fully consistent with traditional Judaism's moral code and does not detract from the ethical quality of the donation.

Conclusions: While non-altruistic sale of kidneys might be theoretically acceptable, it requires creating a state system to insure that potential donors are properly informed and not exploited; that medical screening and support of the donors to insure that their health is not permanently endangered is provided; that vulnerable potential donors are protected; and that payments are regulated so that they reasonably reflect compensation for pain and suffering.

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1. Introduction

Like all other countries, Poland has an insufficient number of organs available to meet the growing needs for organ transplantation. Acquiring organs for transplantation from live donors relies on the altruism of potential donors because Poland, like other countries, insists as a matter of law and ethics that organs should be given without commercial consideration or commercial profit. This is also the position

of the Roman Catholic Church as enunciated by Pope John Paul II (born Karol Józef Wojtyła, and later the archbishop of Krakow before his election to the Papacy).¹

However, absence of a legal mechanism for non-altruistic live kidney donation and given the desperation to which sick people are driven, there develops in some places a black-market commerce in organs. Milaniak et al.² report that while there is no evidence of commercial transplantation in Poland, this problem is not well investigated, and up to 75% of young Polish people believe that there is an organ trade in Poland.

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Jewish Medical Ethics has a nuanced approach regarding the acceptability of non-altruistic donations. Jewish Medical Ethics is rooted in the Hebrew Bible (what Christians call the Old Testament) and the Talmud. It finds its practical expression in the Halakha (literally, “the way”), the foundational book of which is Rabbi Yosef Karo's *Shulhan Arukh* with the glosses of Rabbi Moshe Isserles (Krakow, 1520–1572). The Rema (or Ramu) – the Hebrew acronym for Isserles's name – was one of the greatest Jewish scholars of Poland and the primary halakhic authority for European Jewry. He also served on the Council of the Four Lands, which was from 1580 to 1764 the central body of Jewish authority in Poland. His wife died young, and in 1553 he established in her memory what is now known as the Rema Synagogue in Kazimierz, the Jewish quarter of Krakow. He is buried in the adjacent cemetery, along with other rabbis whose works helped establish Greater Poland as one of the epicenters of Jewish law and ethics, as well as with Shmuel bar Meshulam (d. 1552), physician to the Polish kings Sigismund I “The Old” (1506–1548) and Sigismund II Augustus (1548–1572).

Wulman chronicles more than five centuries of Jewish physicians in Poland.³ In the 1931 national census, professionals of Jewish descent represented 54% of all doctors.⁴ Between the World Wars, Jewish physicians in Poland established both their own medical society (because applications from Jews to join Polish medical societies were increasingly rejected after Poland achieved independence following the First World War) and a central Jewish health organization.⁵ During the Second World War, a clandestine Jewish medical school was established within the Warsaw Ghetto.⁶ With the Holocaust, Greater Poland's central position in European Jewry came to an end. The Rema cemetery was used until 1799. After Second World War, it was restored and the memorial cemetery wall included pieces of broken headstones which could not be matched.

1.1. Halakhic ethics

There is no central halakhic authority in Judaism. Positions on contemporary issues are circulated via responsa written by accepted halakhic leaders, with specific judgments eventually gaining communal acceptance. Among the current authorities is the former Chief Rabbi of Israel Yisrael (Israel) Meir Lau (born 1 June, 1937 in Piotrków Trybunalski, Poland). His son was recently installed as the current Chief Rabbi of Israel.

In reaching a specific halakhic judgment, authorities often have to balance competing values and precedents. Among the considerations that the *posek* (halakhic decisor) must take into account is the practical effect that a particular decision might have on society as a whole, balancing the ideal with the down-to-earth realities of human behavior. The imperative for charity must be balanced against the realistic needs of a functioning community and the competing motivations of human behavior.

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 it demands subservience to halakhic obligations and

responsibilities, including the prohibition to gratuitously harm one's own body. Another basic principal is the biblical command “Do not stand idly by the blood of your neighbor” (Leviticus 19:16), which obligates a person to save another who is in danger. Yet 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 religiously required “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*.

1.2. Live organ donations

The 16th-century rabbi Ibn Zimra⁷ 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. Ibn Zimra, 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. Yosef⁸ and Goren,⁹ both late former Chief Rabbis of Israel, maintain that medical judgment determines the permissibility of the donation. The current normative halakhic position is that such donations constitute a permissible and most pious act.

Goren also 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 or her expenses despite the fact that there was an obligation to act, and such financial considerations do not affect the religious quality of the act.

Abraham,¹⁰ expressing the view of Auerbach, another of Jerusalem's late senior halakhists, writes that one cannot say that a person who contributes his or her 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 or she nevertheless does so, it remains most commendable even if the primary purpose was not wanting altruistically to save a life but rather, say, to obtain finances to pay off one's debt or obtain medical services for one's family members. But, adds Abraham, what does that say of a society that allows a person to reach such a desperate state that he or she must sell an organ to get out of financial debt or obtain necessary medical services. Shafran,¹¹ director of the Jerusalem Rabbinate's Department of Halakaha 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.”

Israel Lau,¹² Polish-born 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 specific question of financial consideration for donating one's organs, he notes that 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, must be prevented by appropriate governmental supervision.

Writing in the *Journal of the Israeli Medical Society*, Rapoport, Kagan and Friedlander¹³ argue for legalizing the sale of kidneys for transplantation and provide suggestions for guidelines. In an accompanying editorial, Steinberg¹⁴ endorses the argument, noting: “Almost all the rabbinic authorities who expressed an opinion stated clearly that from a halakhic or Jewish moral point of view there is nothing wrong in receiving reasonable compensation for an act of self-endangerment, whereby one still adequately fulfills the most important commandment – to save a life.” Warburg¹⁵ reviews the major halakhic sources and public policy discussions.

2. Aim

We investigate the ethics of non-altruistic kidney donations from the perspective of Jewish Medical Ethics, and consider how that ethic might work to alleviate the shortage in donations currently experienced by Poland and other countries.

3. Discussion

All these halakhic authorities reject out of hand the notion that payment for a kidney donation in and of itself deprives the action of its 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.

Wilkenson¹⁶ has argued that the commodification argument against organ sale is not persuasive. However, the halakhic authorities do not attack the commodification argument, but rather focus on the pain and suffering of the donor, drawing an analogy to 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 authorities concur with the arguments put forth by, for example, Radcliffe-Richards et al.¹⁷ 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 access to medical care unavailable to poor people,

but that is the reality 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, a study by Halpern et al.¹⁸ concludes that theoretical concerns about paying people for living kidney donation are not corroborated by empirical evidence. A real-world test of regulated payments for kidney donation is needed to definitively show whether payment provides a viable and ethical method to increase the supply of kidneys available for transplantation.

4. Conclusions

Non-altruistic sale of kidneys are theoretically ethical from a Jewish perspective, provided a state system is in place to insure that potential donors are properly informed and not exploited; that medical screening and support of the donors to insure that their health is not permanently endangered is provided; that vulnerable potential donors are protected; and that payments are regulated so that they reasonably reflect compensation for pain and suffering. It remains to be seen whether any legislation could accomplish these goals.

Goodwin's observation¹⁹ regarding the situation in the United States rings true for all of Europe: “The United States' organ transplantation system suffers under the weight of its exclusive commitment to altruistic organ procurement. The prohibition against any procurement mechanism's use of ‘valuable consideration,’ including specialized exchanges, incentives, and payments, most likely contributes to thousands of unnecessary deaths each year [...] A better tailored response is needed to reduce human trafficking and save lives.”

Jewish medical ethics outlines such a “better tailored response.” In the meantime, a practical immediate solution lies in the direction of increased cadaver donations. Perenc et al.²⁰ point out, “Poland needs to develop a nation-wide, up-to-date, and youth-oriented health education program that builds on favorable attitudes toward organ donation and transplantation.” Kosieradzki et al.²¹ report that a new comprehensive program (Regional Partnership for Transplantation) was initiated in four districts of southern Poland by the Polish Union for Transplantation Medicine. The preliminary results (after the first year) showed 40%–70% increases in activity of the local hospitals in the organ donation process.

In this respect, it is worth noting the halakhic ruling by Goren⁹: “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.’”

Conflict of interest

None declared.

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