Organ transplantation has now evolved to be standard and life saving therapy for a wide variety of illnesses. One of its major limitations, however, is a shortage of donor organs. Over the last ten years, the need for organs has grown nearly five times faster than the number of available donors. The number of patients dying while awaiting transplantation in the United States alone is estimated to be 6000 annually.1 Although brain stem dead donors are a critical source of donation, the donor pool is insufficient and other means of procuring organs are continually being sought. These sources include organ harvesting from non-beating heart donors and from living healthy adults. The latter is the subject of this paper.

Organ procurement from the healthy donor may be divided into two categories: 1) altruistic giving in which there is no monetary reward, and 2) selling organs for profit. In the ethical literature, altruistic donation is universally accepted and widely praised as a virtue. Healthy persons, usually relatives of end stage renal failure patients, have been donating kidneys for decades. This is well accepted medically because it entails extremely low risk to the donor and has a high success rate for the recipient. Although donation of a lobe of a liver or lung carry higher risk to the donor than does a donor nephrectomy, advances in surgical care have resulted in sufficiently low risk to make donation of these partial organs from living volunteers medically acceptable. Unlike altruistic donation, however, the practice of selling organs is banned in the vast majority of countries and its ethical status is very much open to question.

In Jewish law (halacha), these methods are of particular interest because donation from brain dead patients is highly controversial. (Publication is pending of a paper by myself on this subject entitled: 'Brain death: reconsidering the rabbinic opinions in light of current medical knowledge.') From the viewpoint of halacha the acceptability of either type of giving is not a simple question. Is altruistic giving a proper course that should be encouraged? As well, does halacha prohibit the sale of organs? In the following pages both of these ethical dilemmas will be examined from a halachic perspective.

Abstract

Altruistic donation of organs from living donors is widely accepted as a virtue and even encouraged as a duty. Selling organs, on the other hand, is highly controversial and banned in most countries. What is the Jewish legal (halachic) position on these issues? In this review it is explained that altruistic donation is praiseworthy but in no way obligatory. Selling organs is a subject of rabbinic dispute among contemporary authorities.

ALTRUISTIC DONATION

It is widely assumed that saving human life is an absolute value in Jewish law. Saving another life is indeed a mitzvah (commandment) of the Torah as Maimonides states: “Anybody who is able to save someone else and fails to do so transgresses the mitzvah of ‘Do not stand idly by the blood of your brother’.”2 This being so, perhaps it would not only be allowed to give an organ to save a fellow human being but would be mandatory to do so to fulfill this Torah commandment. 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. One such potential conflict is the mitzvah to preserve one’s own life (Maimonides,3 ch 11 p 4).4 Inclusive in this mitzvah is the prohibition of placing oneself in danger. With this potential conflict, which mitzvah takes precedence? The Talmud records a dispute between Ben Peturah and Rabbi Akiva.4 A case of two men dying of thirst in the desert is brought before the sages. One of them has a jug of water that is sufficient to get him alone to safety. If they share the water, however, they will each live a little longer, but they will both eventually die in the desert. Ben Peturah rules that the owner of the jug should share his water because otherwise he would be denying his friend temporary life, and thus he will be hastening, albeit indirectly, the death of his friend. Rabbi Akiva rules that the owner may drink it all himself, stating “one’s own life takes precedence over his friend”. The Talmud leaves the dispute unresolved, but one of the major medieval codifiers of halacha (Rosh,4 Bava Metzia 62a) rules according to Rabbi Akiva.5 Rabbi Moshe Feinstein of the modern era rules that the halacha unequivocally follows Rabbi Akiva.6

If this is so, however, what of the policeman or fireman or soldier who risks himself for the sake of another? In fact, there are clear examples of self sacrifice in the Bible and the Talmud that seem to contradict this prohibition on sacrificing one’s own life for another. The most famous example of sacrificing one’s own life is the suicide of King Saul. Suicide is considered a subcategory of murder by halacha and is unequivocally prohibited. There is considerable controversy among the authorities whether King Saul was acting properly in committing suicide. One authority concludes that King Saul may have committed suicide in order to save the lives of his fellow Jews.4 What emerges from this debate is a principle that self sacrifice may be permissible if it is for the sake of saving one’s country, or, in practical terms, even the saving of a community—that is, many lives.

The question with regard to organ donation is, however, much more restrictive. Here, the issue is not sacrificing one for the many, but one individual sacrificing for the sake of another individual. It is in such a circumstance that the above quoted talmudic rule, “Your life takes precedence over your friend’s,” might apply and one would not be permitted to donate the organ. This principle was codified into law in the modern era by the well accepted 16th century responsa of Radbaz who wrote on the question of placing oneself in danger to save another: “[In trying to save another life,] if there is any doubt of threat to [your] life, [saving another’s
life over your own] is piety of idiocy takes precedence over your fellow man’s definite danger”.7

While this responsum may apply to a case where there is a high probability of danger to one’s life, the halacha is not so clear cut on the question of placing oneself in possible but unlikely danger in order to save another person. The majority of opinions hold that when danger to oneself is unlikely there is permission but no obligation for self sacrifice. On the other hand, there are two notable opinions that mandate saving a person who is in definite danger, even if one must put oneself in possible, although unlikely, danger. Radbaz himself, in another responsum, states that so long as one’s likelihood of dying is less than 50% one is obligated to save a person in definite danger (Ben Zimra,7 1582). The Jerusalem Talmud also teaches that it is incumbent upon someone who is only in possible danger to proceed and save somebody in definite danger (Maimonides,7 ch 1 p 4).

Fortunately, the concern of danger to the life of the organ donor is not much of a halachic problem today. In the current state of medicine, operations to harvest a kidney are of minimal risk of mortality and long term morbidity. Such procedures cannot even be considered “possible danger” in a halachic sense. This is supported by studies of perioperative mortality and long term morbidity. In a US national survey, the mortality rate was measured to be a mere 0.03%. In a 20 year follow up of patients who had donated kidneys, all criteria measuring possible renal disease, including abnormal creatinine clearance, hypertension, and proteinuria, were similar compared to siblings.8 Therefore, even going by the opinion that one may not place oneself in any substantial danger, in the current state of extremely low mortality from organ donation, the concern over one’s own danger is not sufficiently strong to exempt one from the obligation of saving another life by donating an organ. It would appear then that halacha would mandate somebody to donate an organ to save another life.

There is, however, another potential halachic conflict when considering the mitzvah of saving another’s life. This is the prohibition on injuring oneself. Donating an organ is by definition self injury. Is this permissible? Again, here is a conflict between two Torah obligations. On the one hand there is an obligation to save another life. On the other hand, one is prohibited from self injury. In resolving this conflict it is 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 mitzvos of the Torah. This is emphasised by the many areas in halacha where “pikuach nefesh” (the saving of a life) overrides even stringent prohibitions such as Sabbath observance and the fast of Yom Kippur. By this reasoning the prohibition of wounding oneself should probably be deferred for the sake of pikuach nefesh (Feinstein,9 Part II, ch 174, s 4).

However, the obligations of pikuach nefesh also have limitations. Exactly how much one needs to sacrifice to fulfil the mitzvah of saving somebody else’s life, be it monetary loss or pain and suffering, is a matter of considerable halachic controversy. All agree, however, that there are limits to the obligation. No authority suggests—for example, that one would be required to sacrifice an organ to save another life. This is above and beyond what is mandated. (Likewise, one is not mandated to spend all of one’s wealth to save another’s life.) Therefore, the halachic conclusion is that because of the force of the mitzvah of saving another life, it is permissible to injure oneself but is not obligatory. So too it is permissible but not obligatory to donate an organ.

Indeed, Radbaz in his responsum cited above permits self injury to save another life. His emphasis is, however, telling. In no uncertain terms he states that there is no obligation to sacrifice an organ, even for the saving of another life. Writing on the question of a sadistic murderer who gives an ultimatum, “give me your arm or I will kill your friend,” he writes “The law of the Torah must agree with reason and logic. How is it possible to make a person blind, or cut off his hand so another doesn’t die? Therefore, I see no reason to rule that this sacrifice is anything but an act of piety, and praiseworthy is his lot, who is able to perform them”.7

This widely accepted responsum is the basis for the permission to donate an organ to save another person.

It is worth mentioning that in discussing the permissibility of donating an organ to save another person, Rabbi M S Klein, a senior judge of the influential rabbinic court of Rabbi S H Wosner of Bnei Brak, Israel, downplayed the wording of Radbaz that it is “an act of piety”. He said the halacha is simply that it is permissible. Period. In current ethical trends it is considered a great virtue to donate an organ. This attitude is so pervasive that one could conclude that if someone chooses not to donate an organ he or she could be considered negligent in their duty. There could well be an expectation by family members that one should donate an organ and refusal would be a great shame. Therefore, says Rabbi Klein, the halacha says only that organ donation is permissible and should not be construed in any way as obligatory. In other words, such donation, even to save a life, is above and beyond what is necessary to fulfil the law of the Torah.

**Selling organs**

The ethical literature is quite divided on the permissibility of selling organs. The arguments against selling organs include the concern that the possibility of selling an organ may undermine a poor person’s status as an autonomous individual—that is, given the opportunity to sell an organ, a desperately poor person may be compelled to sell. The permissibility to sell an organ raises the concern that the wealthy may exploit and coerce the desperately poor. Deontological principles play substantial roles in the arguments against the sale of organs. One such line of reasoning is that by permitting the sale of organs, society would make the parts of human beings and, by extension, people themselves, commodities. This may dehumanise society.10 It is argued that donation should be limited to altruistic giving because altruism is a value that ought to be encouraged in society. The permissibility to sell an organ raises the concern that the wealthy may exploit a poor person’s status as an autonomous being. The arguments against the sale of organs present similar questions to those mentioned above in connection with altruistic giving. Here again, the primary problem is the prohibition on injuring oneself. As was stated, the prohibition on injuring oneself may be lifted when fulfilling the mitzvah of saving another life. Here, however, in selling for financial gain, one does not have the countervailing force of the prohibition of injuring a life because this is in no way the intent of the action.

When a new question arises, halachic authorities, much like secular courts,
The source for adjudicating the problem of self injury is in the talmudic tractate Bava kamma, (Babylonian Talmud; tractate Bava kamma 90a, 91b), which must be studied in detail to understand the problems involved in the halachic question of selling organs. It states there directly that one is prohibited from injuring oneself. The Tosafot, the classic mediaeval school of talmudic commentary, teaches that even if one wishes to injure oneself because of a material need such as preventing mone

...One needs to say that [the actions that] are prohibited...are things that are done for the good of the person undergoing the cosmetic surgery. With organ donation for the good of the person undergoing the cosmetic surgery seems also to be a violation of the prohibition...
selling organs. So the question may be posed, if the sale of an organ results in saving a life, even if that is not the intention of the donor, would it not be permissible? That is to say, just as with altruistic giving where the prohibition on self injury may be lifted for the sake of pikuach nefesh, why should it not be lifted here too if it results in saving a life? Does the intention of the donor really matter when in the end a life is saved? As mentioned above, this question is also debated in the secular literature, with some saying that maintaining the spirit of altruism is important and others, adopting a more utilitarian perspective, saying the intent of the donor should not matter.

This question of profit affects many areas of halacha. Does a mitzvah remain a mitzvah even if one profits from its performance? One example offered by the Code of Jewish law is the question of whether a scribe who writes sacred documents such as a Torah scroll, but is also making his livelihood from this, is considered to be involved in a mitzvah. If the scribe writes when no money is involved this is unquestionably considered a mitzvah. This is true to the extent that so long as he is writing he is released from any other daily obligation such as praying. Is the same true if he is earning money for his writing? The Code of Jewish law rules that so long as he has some intention that he is performing a mitzvah, the fact that he may also be profiting from his action does not nullify the mitzvah. If, however, he is writing with no substantive intention of performing a mitzvah, then his motivation for profit may well cancel the mitzvah (Caro,1 Shulchan Aruch, Orach chaim 33:8). So too, if someone wishes to donate an organ and get some monetary compensation, the mere fact that he requests some remuneration may not cancel the mitzvah of saving a life. Indeed, even by the more stringent standards of Rabbi Wosner, this may be permissible. According to the decision of Rabbi Wosner, however, and in keeping with the analogous case of the scribe writing, if his intention is purely for profit, it would be problematic and perhaps forbidden.

In summary, there is a difference of opinion among the great halachic authorities on the permissibility of selling organs. Certainly, a major figure in the person of Rabbi Elyashiv allows sale under specific circumstances and one is surely on solid footing in relying on this opinion. As is recorded by A S Abraham, the late Rabbi Shlomo Zalman Auerbach, another of the great contemporary authorities, seems to agree. He writes that even if a donor’s primary motive is for profit, the donation is permissible because it saves a life.17 It cannot be overemphasised, however, that in Jewish law even if this more lenient opinion is used, in practice, a legislated policy permitting organ sale would not obviate the need for an individual to obtain a rabbinic approval, making certain that the need was sufficiently great; that the goal was achievable in order to justify the prohibition against injuring oneself, and that the person was physically fit so there would be no concern about any health consequences. Moreover, as Grazi and Wolowelsky have written, the ultimate permissibility of selling organs “is inextricably connected to solving a series of pragmatic problems, such as creating a system that ensures that potential vendors and donors are properly informed and not exploited … [and] regulation of payments so they reasonably reflect compensation for pain and suffering”.18 One such system has recently been proposed in Israel19 where there would be a central registry in which people could sell organs, and where direct purchase of organs would be illegal. In this proposed system priority would be given to medical need rather than ability to pay. Again, it is worth emphasising that even if such a policy is instituted, while in principle it would be permissible by some rabbinic authorities, from a halachic perspective it would nevertheless require adjudication on a case by case basis, as is true in all areas of Jewish jurisprudence. In this way potential abuse of such a public policy could be averted.


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The search for organs: halachic perspectives on altruistic giving and the selling of organs

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