
International norms, local worlds: An ethnographic perspective on organ trafficking in the Israeli context¹

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Abstract

International norms have denounced and banned the trafficking of human organs for transplant. However, these unequivocal norms have not always been accepted and implemented in local settings. Based on multi-sited ethnography that includes participant observations, in-depth interviews and content analysis of documents, this paper aims to address this gap. Focusing on the Israeli context, this paper examines the particular socio-cultural factors shaping the moral perceptions, discourses, practices and public policies regarding organ trafficking. These factors include: fundamental moral attitudes, particularly deontological versus utilitarian approaches; deeply-rooted religious views on ethics, social relations and the body; the human rights discourse in its transnational as well as vernacularized versions; dominant socio-economic conceptions, particularly the neoliberal paradigm; and bodily perceptions, including the perceived connection between the body parts and the self. This paper explores how in the Israeli case, the interactions between these factors have produced a relatively tolerant attitude toward the buying and selling of organs amongst different stakeholders. By analyzing the construction of the 'local moral worlds' and the experiences of diverse actors, this study sheds light on the tensions and relations between international norms on the one hand, and the practices and discourses in Israel concerning organ trafficking on the other.

Key words: Organ trafficking, vernacularization, local moralities, Israel, utilitarianism, Jewish law; human rights, neoliberalism, autonomy, bodily perceptions

Introduction: The theoretical model

International organizations such as the United Nations [1] and the World Health Organization [2, 3], as well as the legislative bodies of most countries have all denounced and banned commerce in human organs for transplant. This ban rests on an ethical position which precludes the commodification of the human body and the idea that a person is a mere means to another's goals [4-8]. The

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ban also rests on a concern about the actual consequences of this practice on global society and on the lives of poor people in countries such as India [9, 10], Bangladesh [11], Pakistan [12], Iran [13], and Moldova [14, 15]. This ban has been reflected in clear, unequivocal positions or ‘international norms’ formulated by international organizations. However, these norms are not always in keeping with moralities and practices which are prevalent and accepted in local social, cultural and religious settings. The practice of organ trafficking continues, and at the same time a lively public, professional and academic debate is surging over the question of whether prohibiting commerce in organs for transplant is justified [4-8, 16-19].

Researchers who discussed the philosophical-ethical aspects of the topic tended to ignore the ethical local-particular dimension. Those who do approach the social and cultural context of this issue usually tend to emphasize the global dimensions of the phenomenon, and not to examine its local contexts in depth [as indicated in 20]. The present research seeks to contribute to filling this gap. It explores the particular socio-cultural factors shaping the moral perceptions, discourses, practices and public policies regarding organ trafficking in specific local contexts. Focusing on the Israeli context, we identify five main local-particular factors:

1. Fundamental moral attitudes, particularly deontological versus utilitarian approaches.
2. Deeply-rooted religious views on ethics, social relations and the body.
3. The human rights discourse in its transnational, as well as localized, versions.
4. Dominant social and economic worldviews and conceptions.
5. Bodily perceptions.

We propose that the specific interactions between these factors, which vary in different domestic contexts, shape the ways in which international ethical norms are implemented, rejected, or adapted and translated to domestic cultural meanings and social institutions (Figure 1). These processes of translation are often referred to as localization [21], vernacularization [22] or glocalization [23].

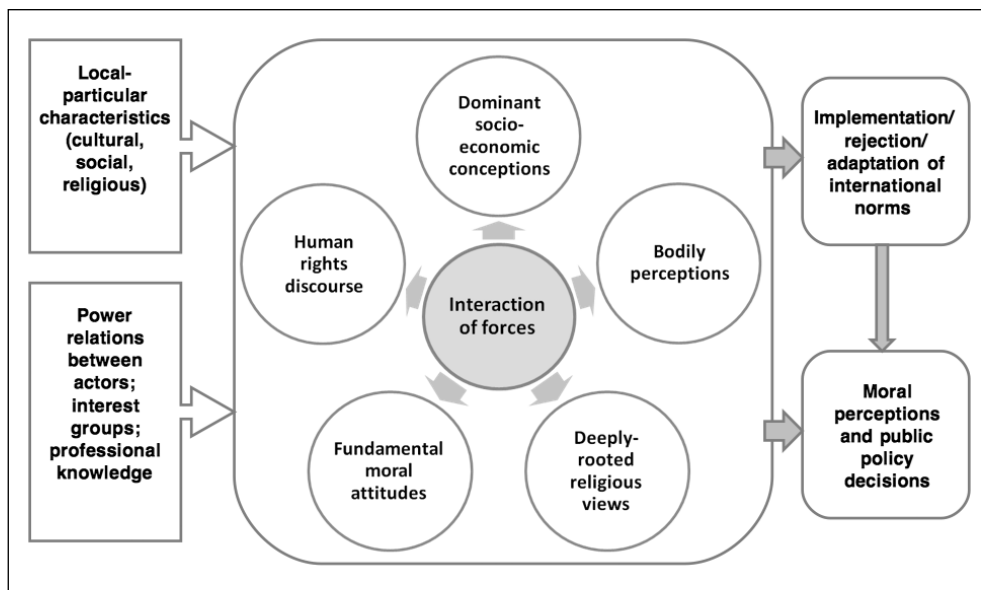


Figure 1: The theoretical model

Methodology

This article is based on a multi-sited ethnographic research [24], which includes interviews, observations, and content analysis of documents. We have been conducting fieldwork in Israel since 2009. Though the research focuses mainly on the Israeli case, we wished to add an international comparative perspective that sheds additional light on the Israeli case. For this purpose, we conducted in-depth interviews in the state of Saxony, Germany as well as in Switzerland. However, this article remains focused on the Israeli case.

We conducted in-depth semi-structured interviews with different social agents, including kidney recipients, dialysis patients, organ donors/vendors, organ brokers, lawyers, doctors and other medical staff members, and others. In addition, we conducted observations in Israel: in criminal proceedings against organ brokers in the Jerusalem and Nazareth district courts, in a dialysis center, and in parliamentary discussions on the issue. Likewise, we collected and analyzed hundreds of sources such as news articles, legal documents, the protocols of committees that discussed the issue, drafts of bills, governmental memoranda, and more.

The shortage of organs available for transplant in Israel

Israel's deceased organ donation rate has ranged between 7.2 and 11.4 per million population in recent years, a relatively low figure when compared to other Western countries [25, 26] (Figure 2). Around half of the families with deceased relatives who were appropriate for organ donation consented to donating the organs [26]. Some 14% of the adult population in Israel are registered donors, a sharp rise from 10% in 2009 [26] though still low in comparison to other countries such

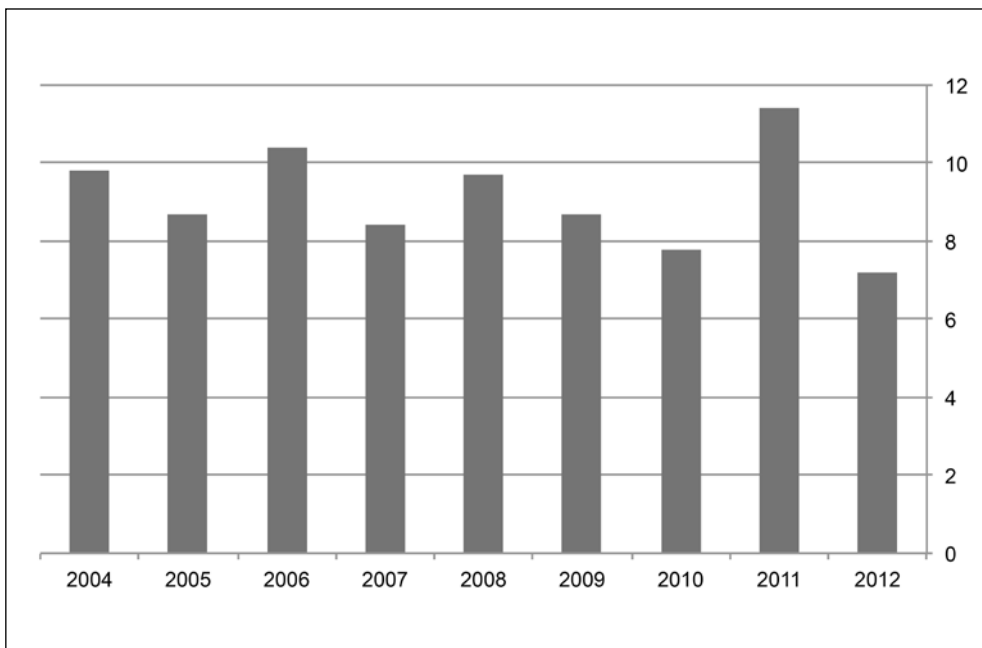


Figure 2: Annual deceased organ donation rate in Israel (per million population), 2004-2012 [25, 26]

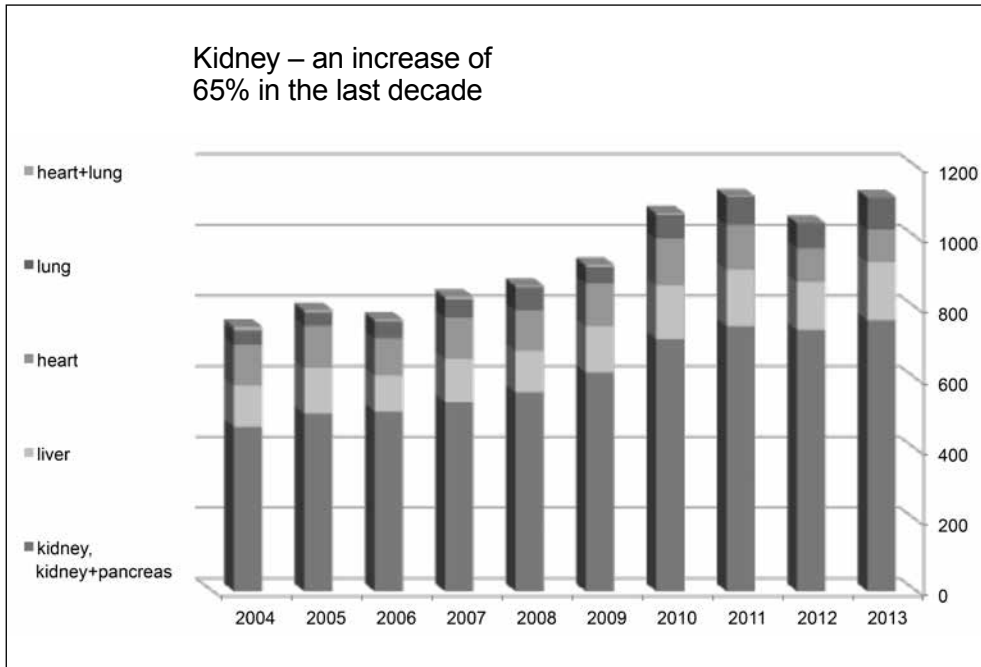


Figure 3: Number of patients on the organ transplant waiting list in Israel, 2004-2013 [26,28]

as the Netherlands, the UK, Australia and USA [27]. A 65% increase in the number of people awaiting kidney transplant was recorded between 2004 and 2013 [26, 28] (Figure 3).

The practices and public policies regarding the buying, selling and trafficking of organs in Israel

Given the extended waiting period for kidney transplant (more than four years in 2006), and in the absence of any legal ban on the buying, selling or trafficking of organs until 2008, the phenomenon of buying organs from foreigners grew steadily in Israel from the mid-1990s to 2007. It is estimated that every year between 2002 and 2007 some 150-210 Israelis underwent transplant surgery outside the country and paid foreigners for their organs [e.g., 29]. The fact that several extensive global organ trafficking networks are managed by Israelis is another reflection of this process.

The states that have served as destinations for transplant surgery have changed over the years, from Turkey in the 1990s to South Africa, the Philippines, China, and the Ukraine in the peak years until 2007, to Kosovo, Sri Lanka, Azerbaijan, Cyprus, Panama, Ecuador, Costa Rica and Egypt in the last few years. Kidney sellers were brought in from states such as Brazil, Moldova, the Philippines, India and Kazakhstan, while some were Israelis – many of them immigrants from the former Soviet Union and Palestinian citizens of Israel.

For years, the public healthcare providers as well as private insurance companies in Israel would pay for transplants that are the result of organ trafficking. In this way, they both facilitated these transplants economically and accorded them legitimacy. In addition, nongovernment organizations

and workplaces helped patients raise funds for out-of-state transplants, and public support was high.

In 2006, the Israeli Ministry of Health published a memorandum which instructed the public healthcare providers to avoid covering transplants that are the result of organ trafficking.² In the same year, lawmakers amended the penal code to include imprisonment as the punishment for those who 'traffic in persons for the purpose of removing an organ'.³ In 2008 the Organ Transplant Act was passed, a law which prohibits giving or receiving compensation for an organ and prohibits 'brokering organ transactions', thus officially adopted the international norm on the subject.⁴

Our research demonstrates that international norms, criticism and both formal and informal international pressure, mainly in the medical field, had a decisive role in producing a legal ban on brokering organ transactions in Israel. Deliberations conducted by the parliamentary committee entrusted with resolving the issue lasted several years, whereas most committee members were initially supportive of legalizing payment for organs for transplant. Opponents of organ commerce, among them senior physicians and Ministry of Health officials, emphasized the moral censure to which they were treated in international professional forums. Representatives of the World Health Organization visited Israel and worked to prevent the possibility that the buying and selling of organs would be legalized [see also 30].

We argue that in the process of implementing international norms, however, these norms have been localized in complex fashions, and that the resultant policy is rather ambivalent for several reasons. First, the crime of 'brokering organ transactions' is a regulatory crime, for which there is a relatively light punishment of imprisonment for up to three years or a fine equal to 44,000 Euro. Furthermore, it seems that the Organ Transplant Act narrowed the legal interpretation of the ban on trafficking in human beings for the purpose of removing organs by creating a special, much less severe offense – 'brokering organ transactions'.

Second, the Organ Transplant Act does not set a punishment for those who purchase and sell organs, thus rendering the prohibition against these acts declaratory only. Most other states set sanctions for people who buy organs, and sometimes even require physicians and care providers to report to the police when they suspect that a transplant resulting from trafficking has taken place. Furthermore, as Greenberg [31] indicates, the public healthcare providers still perform and fund some preparatory medical tests required prior to the transplant surgeries abroad, and they also fund the post-operative treatment provided in public hospitals in Israel.

Third, enforcement thus far has been scant. Enforcement focused on those cases in which organ brokers cheated or defrauded either the kidney sellers or the patients who needed a kidney, and on cases where violence, threats or extortion were used. At this very moment, there are organ brokers operating in the open who are not being prosecuted in Israel, as state prosecutors admitted during court deliberations. No physician has been prosecuted in Israel thus far.

Fourth, regulations based on the Organ Transplant Act and formulated in 2010 put forth a payment by the state as compensation for altruistic living organ donations.⁵ Some raised concerns about the

² Ministry of Health, The Director General's Memorandum No. 7/06 dated 13 March 2006 on: Funding of Organ Transplants in Foreign Countries.

³ The Penal Act, 5737-1977, Amendment no. 91, 5767-2006. Book of Laws 2067, 29 October 2006, pp. 2-6.

⁴ The Organ Transplant Act, 5768-2008. Book of Laws, 2144, 31 March 2008, pp. 394-405.

⁵ Organ Transplantation Regulations (Payment of Compensation and Reimbursement for Expenses to the Donor), 5770-2010.

fact that compensation for lost working hours resulting from the donation is given even to people who were not employed at the time of donation.

On the other hand, the policy of public healthcare providers and insurance companies regarding coverage of organ transplantation resulting from organ trafficking became more restrictive following government regulation. Beginning in 2008, there has been a sharp, consistent drop in out-of-state transplants funded by Israeli public healthcare providers and insurance companies [25]. Those transplants which are still funded by public healthcare providers are only cases where the healthcare providers were convinced that the organ donation is altruistic and from deceased donors.

All the above suggests that it is still relatively easy for patients to be transplanted with a kidney purchased from a foreigner, but it is much harder to obtain financial reimbursement for the transplant.

Moral perceptions regarding the buying, selling and trafficking of organs in Israel

We argue that the ambivalent policy described above reflects prevalent ethical perceptions in Israel combined with the impact of international norms. The empirical research findings indicate that many Israeli actors are still tolerant of the purchase and sale of organs, especially so long as organ sellers receive the sums of money that they were promised. The level of tolerance is higher when the organ sellers are not Israeli and the recipients are. Many stakeholders still view the buying and selling of organs as a win-win situation, as a morally acceptable practice, or at least as a natural and unavoidable practice. On the other hand, some of the actors have adopted a more critical view of the phenomenon in recent years, especially members of the health system who maintain international connections.

We propose that the interaction between the five factors outlined in the model help explain moral perceptions and public policies toward organ trafficking in Israel.

Fundamental moral attitudes: Utilitarian versus deontological ethical perceptions

An approach that denounces the purchase and sale of organs often relies on Kant's deontological ethics [32, 33]. Different philosophers, following Kant, see in the existence of an organ market a phenomenon that dishonors and disgraces humanity, or a violation of the categorical imperative [4, 6, 7]. International norms on organ trafficking are based largely on deontological premises. In contrast, utilitarian approaches might see the buying and selling of organs in a positive way. These approaches weigh the moral value of deeds by their result and not by the deeds in themselves [34].

Our research findings indicate that utilitarian approaches are more prevalent in Israel with regard to organ trafficking, a fact reflected in the aforementioned moral perceptions of the issue. In conducting the fieldwork, we observed a moral perspective subscribed to by many actors in Israel according to which the act of buying or selling an organ in most cases maximizes the utility of the individuals involved in the process. According to this perspective, similar to Bentham's [34] 'act utilitarianism', kidney transplantation that is made possible through payment could save the life of

the recipient and help her avoid the suffering that is part of the prolonged waiting period for transplant, all the while causing much less severe harm (if any) to the person who sold the organ. Others put forth an approach similar to Hare's [35] 'preference utilitarianism', explaining that buying and selling a kidney maximizes the preferences of the individuals involved in the process, so long as no action is imposed upon them.

Deeply-rooted religious views: Jewish religious ethics

Relatively broad agreement exists amongst rabbis that buying and selling organs from a living donor for transplantation is permitted according to Jewish law.⁶ Some rabbis even see kidney selling as a mitzvah (a good deed), despite the economic incentive for the action. Some rabbis permit the organ broker to receive payment, but others state that this is forbidden [36].

Different rabbis use different arguments to justify their rulings on religious law. For example, one possible obstacle that would ostensibly forbid the buying and selling of organs is the religious prohibition on placing oneself at risk. Rabbis asked whether a person is allowed to put himself in possible danger in order to save the life of another from certain danger [36]. The answer largely relates to their assessment of the risk in undergoing transplant surgery. Most ruled in favor, basing their ruling on a perceived low risk to the donor [37, 38]. Likewise, there is a religious law according to which a person is allowed to risk their own life for their livelihoods under certain conditions.

Throughout our fieldwork, people who are not themselves rabbis mentioned the Jewish issue and raised arguments based on religious principles, even ones that the rabbis did not discuss in relation to the issue of organ transplantation. For instance, the Jewish proverb 'The poor of your city take precedence over the poor of another city' was raised, expressing the moral position that the Israeli state and Israeli society are responsible for Israeli patients first and foremost, in this case patients requiring transplantation.

Transnational and localized human rights discourses

Transnational human rights discourse is frequently used in international discussions on organ trafficking. This discourse usually emphasizes the human rights of kidney sellers [39]. However, human rights discourse is not used intensively in Israel in the framework of the discussion about the purchase and sale of organs. When human rights discourse is used, it is usually to emphasize the rights of patients who are in need of an organ transplant, notably the right to health and to life.

The application of human rights discourse to kidney sellers is less common in Israel, and when it is used it usually emphasizes the right of a person over their body, the autonomy of the individual and their liberty to decide what happens to their body. In parallel, this discourse emphasizes the right of the kidney seller to receive appropriate compensation for an organ, and the obligation to prevent exploitation of the organ seller in the organ transaction. The right to bodily integrity, though prominent in the normative international discourse in the context of organ sellers, is less dominant in Israel. The organ sellers' citizenship and nationality also impact the manner in which human rights discourse is used.

⁶ Prominent Rabbis such as Auerbach, Yisraeli, Goren, Lau, Halperin and Sherman.

Dominant social and economic conceptions: liberalism, neoliberalism and individual autonomy

A key question in the debate over the moral legitimacy of organ transactions is whether and under what conditions would permitting the sale of organs truly serve the autonomy of organ sellers [5, 10, 17]. It seems that there is a positive correlation between neoliberal approaches on the one hand, and moral perceptions emphasizing complete autonomy of individuals over their body, and their freedom to sell or buy organs for transplant, on the other. In the course of our fieldwork, we found that in Israel, where the neoliberal paradigm and the liberal citizenship discourse are dominant [40], the connection made between the possibility of selling an organ and the individual's ability to realize her autonomy over her body is more widespread. This autonomy is seen as a right and a dominant, positive value in Israeli discourse which must be protected, while at the same time protecting kidney sellers from exploitation by organ brokers.

Moreover, many of our informants often emphasized the rationality and judgment of kidney sellers, attributing considerable agency to them, in contrast to the discourse common in several international arenas, as Lundin [15] demonstrates.

Bodily perceptions

Socio-cultural meanings and conceptions of the body can be examined along several axes. One of these is the axis of wholeness: one end of the axis represents a holistic perspective on the body according to which it is forbidden to disrupt its wholeness, while the perspective of the body as an aggregation of organs is located on the other end [41, 42]. Each location along the wholeness axis refers to the perceived connections between a person's body parts and her identity, sense of self, personality and 'symbolic existence' [41, 43]. Different body parts are attributed different symbolic meanings and importance [42, 44, 45].

According to our research findings, the common perception in Israel is closer to the view of the body as a collection of exchangeable or removable organs rather than a holistic view, and this perception has an impact on the attitude towards sale, purchase and trafficking of organs. In keeping with Sperling and Gurman's [44] findings, the kidney in particular is not seen as closely tied to one's sense of self.

The interaction between the factors

There are complex interactions between the five factors described. Thus, for instance, there is the connection between neoliberal attitudes and utilitarian conceptions, particularly 'preference utilitarianism', and perceptions of the body as private property. There is another connection between Jewish religious ethics and the utilitarian approach: the rabbis' decision is, to a large extent, the result of evaluating the degree of risk and benefit for the 'donor' and the recipient. Muslim [46, 47] and Christian [48-50] clerics, on the other hand, tend to rule out payment for organs because of a strict moral principle which is not dependent on the action's possible results, a position which is in line with deontological approaches. Deontological conceptions are often connected to a holistic view of the body [4], and are interrelated to the transnational human rights discourse.

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