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## **Knowledge Games, Truth Seeking, and Organ Transplants Regulation**

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## **Knowledge Games, Truth Seeking, and Organ Transplants Regulation**

### **Introduction**

Multidisciplinarity has become a buzz word.<sup>1</sup> From health care to academia, the synergy of different knowledges is a sign of robust knowledge. In turn, this robust knowledge ought to be oriented and pressed towards the resolution of practical problems: the image of experts rolling up their sleeves and toiling together at problem-solving tasks is compelling indeed. Shirtsleeves knowledge, as Marilyn Strathern puts it, flourishes: issues cannot be addressed by one approach alone (2006: 192). The practice of crossing disciplinary boundaries and of making connections between them is thought to be inherently creative, hence productive. In addition and more generally, it is often assumed that the most interesting matters are located at the boundaries rather than at the core of a discipline (Gannon 2005; see also Abbott 1995). Unsurprisingly, multidisciplinary teamwork has become a research site of itself, a privileged laboratory where to study confrontations between scientific and non-scientific expertise, formal and informal knowledge, strict rules and flexible standards, written files and spoken material (Anspach 1997; Strathern 2000, 2004; Lengwiler 2008; Aviram 2008).

Managing multidisciplinarity is a task familiar to lawyers. These days the vast majority of lawyers and legal scholars are self-proclaimed 'legal realists' (Horwitz 1992): lawyers know that in order to make a good brief -- a 'Brandeis brief'<sup>2</sup> --and to win a case, it is critical to cooperate with multiple sciences and disciplines.<sup>3</sup> While

among legal realists a recurrent critique of the judiciary is that it is not scientific enough, in Science and Technology Studies (STS) forums the reliance of positive law on science has itself been questioned (Jasanoff 1992, 2006; Mercer 2002). Within contemporary biomedical regulation in particular, law and science are mutually constitutive; law utilizes expert evidence in adjudication as well as administrative and legislative policy-making, and legal and managerial decisions shape bioscientific practices (Lynch et al. 2008)

Recently within STS attention has been paid to the question of ‘How does Law end up transforming understandings and representations of scientific knowledge and the ‘Other’?’<sup>4</sup> In this article I would like to ask a related yet distinct question: How do the multidisciplinary relations between science and non-science impact on the understanding, representation and claiming of knowledge in regulatory circles? Scientific claims, as well as the construction of expertise, blur the boundaries between law, policy and science as authoritative discourses (Jasanoff 1995). But what kinds of tools are used, within medical-social-legal decisions, to negotiate knowledge and adjudicate truth-claims? What kind of tools are used to demarcate not so much the scientific from the non-scientific, but rather the relevant to the irrelevant, the evidentiary weighty to the insubstantial?

In this paper I show that the answer to these questions is inexorably linked to a variety of knowledge games, or knowledge moves, (Valverde 2009: 143) and to the extensive use of legalistic forms and styles of reasoning outside of tribunals, agencies and other formally legal forums. In turn, I ask: what happens when legal knowledge gets into nonlegal settings and into the hands of nonlegal people? The field I examine is an organ transplants decision-making apparatus in Israel. In this organization, which

prides itself for its multidisciplinary decision-making, I was able to trace strategies used to negotiate knowledge or lack thereof, and to attempt to analyse truth-claims. The article also suggests that in this organization, which does not adopt formal legal standards, legal knowledge still propagates. Non-traditional actors learn to master and to recycle legal axioms, and mobilise them to fulfil their roles. In turn the use of legal knowledge builds the institutional, personal regard and identity of decision-makers. This, I hope, will pose non-normative, knowledge-oriented questions relevant not only to the Israeli kidney transplant context, but to various decision-making practices about exchange and use of human tissues in economic and non-economic biomedical contexts.

I begin the paper by introducing the field of transplant decision-making in Israel. I then analyse ethnographic material drawn from a multidisciplinary body operating in this field. After examining the daily activities of Israeli experts who toil at making living organ donations legitimate, I identify two main patterns in this management of knowledge: a preoccupation for information that is hidden from view and thus has to be revealed; and a propensity to trace boundaries around and within knowledge, including the use of ignorance, or “limited knowing” (Lamble 2009: 118; cf. McGoey 2007) as regulatory discourse. Both forms of engagement with knowledge - knowing more, and knowing less - are mobilised to regulate transplants, and to demonstrate the ethical authority of the regulatory system. I show the implications of these patterns of engagement with knowledge for our understandings of the role of multidisciplinary in contemporary governance, beyond the realm of transplants. The conclusion explores the conundrum that it is precisely when the law relies on knowledge outside of its remit that legal knowledge most proliferates. The paper thus contributes to a body of

literature using medico-socio-legal ways of making decisions in order to understand how knowledge itself is produced or falls apart (Latour 2002, Maurer 2005, Riles 2000, 2004, Stathern 2000; Lamble 2009; Barrera 2010). The paper is based on ethnographic fieldwork conducted among health care providers, regulators, bureaucrats and patients involved in living transplantations in Israel over a period of fourteen months between 2004 and 2006. All identifying information about informants, including dates, has been removed.

### **The Field: Regulating in the Shadow of the Organ Traffic**

In its official representation to the Council of Europe's Committee on Experts on the Organisational Aspects of Co-Operation in Organ Transplantation, the state of Israel declared in 2003 that transplants were highly regulated, and organ trafficking "strongly prohibited" (Israel Report to Council of Europe, 2003).<sup>5</sup> However when I began my fieldwork in 2004, I was told repeatedly by actors of the Israeli transplant milieu that as of yet, "there is no law." Fieldwork, and this article, thus sprung out of this enigma. After I left the field, the Israeli Knesset has approved on 24 March 2008 new bills overseeing post-mortem (*Chok Mavet Mochi Neshimati* (Brain Respiratory Death Act)) and living transplants (*Chok Hashtalot Evarim* (Organ Transplantation Act)). A member of the Israeli Knesset had indeed commented that the law regulates Israeli organ donation "for the first time" (Ilan 2008). Over the last few years, there had been numerous law proposals on the table, and many expert consultation task forces launched by ministerial committees.

At the time of my fieldwork, transplants were governed by an internal Directive of the Ministry of Health (2002), which is "not law, but supervision," as a transplant unit

employee said to me. Drafted and published by the Ministry of Health, the internal Directive was not empowered by a higher act and regulation, and materially did not carry the letterhead of the state. It was handed over to me by several people at the very beginning of my fieldwork, and was referred to as being what the law demands of local actors. The fact that the state of positive law in Israel recently changed does not alter the social and legal significance of the internal Directive. At the dawn of a new legislative era for Israeli transplants,<sup>6</sup> it is worthwhile learning from what has happened in terms of legality, bureaucracy and multidisciplinary in a place where there had been arguably “no law” so far.

Many health care providers working in the milieu repeated to me that this Directive was not “real” positive law, but most did not care about such distinction as much as lawyers would. Some did argue that there were transplant practices that were wrong precisely because they were “illegal,” thus evoking that “there was a law.” To an Israeli lawyer working and writing in the field of “transplantation law,” the Directive was voidable because it exceeded the jurisdiction of the Minister. Yet to another lawyer, “the law does not have the legal background to do what it is supposed to do” and “it can’t bite.” The principal aim of the Directive is to enforce altruism in transplant practices. The professionals know that the Directive is an attempt to curb the seemingly uncontrollable phenomenon of organ trafficking, this “horse that has already bolted,” as a surgeon well put it to me. In other words, for many, organ trafficking is bound to happen, and uncontrollable at this stage. In this sense healthcare professionals and bureaucrats knew that they regulated in the shadow of organ trafficking.

According to the 2002 Directive, a hospital-based “family committee” adjudicates cases where the kidney donor is a family member up until two degrees, which is in the case of:

Donation from an individual to its relative, being the relative his brother, sister, son, father, mother, spouse, grandfather, uncle, or cousin (sic). To this effect, “spouse” includes life partner (hereinafter: “First Degree Relative Donation”). (Living Organ Transplants Procedure Amendment 2002: s. 2.1)

A different kind of approval process for transplants is in place for nonfamily donations, that is, cases where donor candidates are further than two-degree relatives, or unrelated, to the patients (Living Organ Transplants Procedure Amendment 2002: s.2). The latter are termed altruistic donations in the internal Directive, but called donations by *chaverim*, “friends,” among transplant staff. They are said to constitute the “growing arm” of the transplant system. *Chaverim* is used both cynically and seriously by many in the transplant community, as will be explained later. The committee that handles these applications is called the “committee of the altruistic,” or “the committee of the Ministry of Health.” Its members convene once or twice a month, and they review about six applications at each meeting. Donor candidates and patients are interviewed separately at the meeting. The objective of the committee is to accept donors on the basis of their informed consent and their altruism, and reject donors who receive financial compensation by patients.



Under both schemes (family and non-family donations) before a transplant can proceed, a transplant file must be completed, which includes medical checkups and medical approvals for both donors and recipients. Information about the two patients - the donor and the recipient -- is combined into one file, which suggests that the object of the file is the pair or match, rather than an individual patient. The donor and recipient pair needs approval either from a hospital-based family committee in cases of first degree relative donations, or from a nation-wide evaluation committee for altruistic donations. The living transplants are permissible when and because they are approved by committees concerned with adjudicating the consent and altruistic motives of the donor. Approximately four out of five donor-recipient pairs' files receive committee approval.<sup>7</sup>

Under the Israeli binary system of committees (for family and nonfamily donations), the nonfamily donations are those that get more scrutiny because they can mask financial transactions. It is ironic that they are officially termed altruistic, given the widely shared suspicion that none of them truly are. I was told that this “unrelated donors” fraction of the system forms the main bulk of transplantations today in Israel. Many informants told me that these unrelated donations were the “heavy problem” of the system, and my field research taught me that a considerable portion of the field of “unrelated donations” is occupied by financial transactions between patients and organ procurers who are matched through intermediaries (XX 2009).

I now turn to more detailed ethnographic material about the multidisciplinary committee that adjudicates altruistic donations.<sup>8</sup>

## The Committee of Altruism

The flourishing arm of the living transplant system in Israel is embodied in the general committee that adjudicates altruistic donations among friends or acquaintances. In this sector of the field, actors try, with more or less faith and zeal, to regulate and control organ trafficking. The meetings of this committee were closed, confidential meetings. Unlike what happened in other decision-making instances, I was never granted access to the meetings themselves, which is an ethnographically rich fact of itself,<sup>9</sup> and hence I cannot report on them directly. I was able, however, to follow, observe and interview individual members of the general committee, and to sit with its secretary to look at her recording of the committee minutes.

On many occasions professionals insisted to me that no one with an interest in the outcome of a decision by the committees can sit on these sorts of committees. “No surgeon on the committee!” emphasized a surgeon, showing immense surprise if not contempt at my question as to whether he was serving on such decision-making forums. I often noticed among my informants an insistence on letting me know of their objectivity and their attempt to avoid *nigoud inyanim*, conflicts of interests. I repeatedly heard explanations of what constitute conflicts of interests, and of what are the techniques to “fight” them, usually with great emphasis. The recurring reference to “conflict of interests” is a concrete mobilization of legal knowledge, as I will explicate further, and a way to construct parameters around decision-making.

### *Adjudicating Altruism*

The general committee was composed of volunteers who worked in the health care system and who had particular expertise in health care governance. At each meeting three or four donor-recipient pairs were called before the committee. Donor and patient got interviewed separately. The idea was to ask more or less the same questions to both, for committee members to be able to compare versions, and track discrepancies. Although members were divided on their views about the depth of the committee's inquiry, members generally agreed about what kind of information they wished to hear from the donor-recipient pairs.

Expert and amateur interpretations of social issues of economic class, gender and psychology, as well as lawyerly issues of consistency were heuristic keys to the discovery and adjudication of altruism. The committee asked questions about the demographic and socio-economic situation of the donor. Questions included: Does the donor candidate work? Is she married? Does he have children? Does she have insurance? What educational background does he have? The committee must also ask questions about the relation between the donor and the recipient such as: How many times has he met the recipient? How long do they know each other? Whom the idea to donate comes from? It was seen as critical to know whether it was the donor who offered by uttering 'I will give to you,' or whether the recipient asked 'Can you give me?'<sup>10</sup>

The committee did not ask the pair about exchange of money *per se*. It also did not ask for bank statements to investigate deposits. The committee looked for lies and inconsistencies about issues around the main issue. "They are very sensitive, they ask smart questions," pointed out a staff member. For example, in one case, after

interviewing the donor candidate and the recipient candidate, the committee refused to grant the authorization for an unrelated transplantation based on the inconsistencies detected in comparing their respective interviews. The particular points at issue that formed the rationale of the committee's recommendation not to allow the donation in this case were the following:

- One individual says that they are cousins because their respective mothers are sisters; the other one says it is his mother and the other's father who are brother and sister;
- One individual says they have known each other for 5 years; the other 19 years;
- As for why they don't have documentation that proves that they are cousins, one says his parents died; the other says he was adopted and learned about this family link later in his life;
- One says they have fun and do trips together; the other says he is lonely and does not like to do trips;
- The donor says the recipient does not have money; and the recipient says he has enough to have a good life.

Because of these inconsistencies, the committee recommended not to allow the transplant in this case. It was "because they don't say the same things" reported the secretary. On the recommendation paper, the reason for refusal was the discrepancies

and lies in the story. For the secretary of the committee, however, the real reason was about altruism.

The performance, evidence and assessment of altruism occurred in distinct ways. Altruism was thought to be decipherable, and revealed by expert knowledge. Describing the work of the committee, the secretary described to me how the committee got the information it needed:

They don't say: 'do you get money for this?' They say: you pay to go to the hospital, you take time off, you pay for transportation to come here ... don't you think you should get something for it? The members try to be very sensitive. It is not a police interview... they ask smart questions... you know, like... twisted.

One of the committee co-Chairs explained to me that the committee assumed that there was payment when there was a lie in the story, and that she knew that people lied to them to hide financial transactions: "we get the feeling that there is something not ok ... no one says 'I got ten thousand dollars,' but he is nervous, he sweats, screams, and we get the feeling..."

An intermediary who trained recipient-donor pairs to appear before this panel recounted that:

The Committee, they don't check. They need to hear something good. ... Once, the donor entered first in the

committee and said something about the children of the patient. He said the names of the children, and he mixed up the names, confused the name of the older with the smaller. So when the patient entered the committee, she said something different. But they don't bother with what the patient says, they bother with what the donor says. But they got the approval anyway, even with the mistake... .

...the committee asks the donor 'from where you'll have money if you don't work for one month after the operation, who will take care of you?' The donor has to say that the patient does not have money. The Committee asks the patient if they feel they owe the donor something, but the patient must say something about feeling of owing gratitude that the donor saved his life, that he'll live better because of the donor."

And yet among the members of the committee and the staff of the Central Bureau, there was an expressed trust in the committee's capacity to dig and find the truth: the "committee has the tools to feel because all the disciplines sit together... everyone gives his thoughts, his feelings."

In addition, for the committee altruism got translated for instance, into mundane bits of information such as knowing how to speak, behave and dress properly before the committee, or how to read well the graphic images presented in a psycho-diagnosis Rorschach test made of inkblots. Professionals tried to uncover a history of altruism in

one's life, and they purported to recognize altruism among other less noble motives. The expert practices generally privileged an understanding of altruism informed by a person's individual genealogy or history over a more transient concept of altruism.

Most of the transplant professionals I met did not believe that these days, people could actually donate a kidney to a friend; they generally thought that such generosity was possible, but unusual and very unlikely. A "friend" (*chaver*) donation had gained the pejorative connotation of being a financial deal for the purpose of transplant. Many professionals hence claimed to be ambivalent towards the system they were part of. Because "the horse has already bolted," there was, really, "nothing left to do" about organ trafficking, some expressed in dismay. This ambivalence informed the legal and bureaucratic consciousness of the actors, and brought about escapism, cynicism, and a sense of "coping" (Sharkansky 1999). As I explain below, many of the people with an expertise required precisely to undertake the discovery altruism, preferred "not to dig" into the personal history of donors and recipients. As a result, what can emerge out of the multidisciplinary zeal and profusion of knowledge can also be a refusal of knowledge itself.

Experts face a paradox: they are asked to resolve a problem on the basis of information they do not have or might want to obviate for other reasons. So how can they play their role of knowledge experts?

### *Discovering and Uncovering*

A key knowledge practice of the general committee was its preoccupation with information. Gathering and exposing as many bits of information as possible, served as a sort of stand-in for making the legitimate decision, and provided committee members with “ritualistic assurance that appropriate attitudes about decision-making exist” (Feldman and March 1981:177). Information about the case also provided for a decision that is less likely to be contested through judicial review.<sup>11</sup> A lawyer serving on the general committee was sensitive about which types of knowledge were acceptable to law, and how this played in the context of the Committee’s function. Her perspective was on the contestability and judiciability of the decisions rendered by the general committee: “Today we’re in an era that everything is contestable in court. It would be problematic to say we base our decision on gut feeling, in front of a judge.”

The sought after information or facts did not stand alone: they had value because they were gathered and assessed by experts who knew how to read them. The existence (and visibility) of information is to be mediated by the experts who know how to see, and who are able to detect when they cannot see. I thus link this reliance on information to a pursuit of transparency (Garsten and Montoya 2008). As Coutin and her colleagues (2002) put it in their work on legitimation, transparency presupposes secret; a “transparent narrative is one that is too clear, hinting at a hidden story that has not been told.” (816) Key to the committee’s way of knowing through transparency, was its referral to and understanding of psychology. Psychology was conceived here as a technique of transparency, of making what is hidden visible.

The referring to external psycho-diagnosis tests and to a clinical interview between the donor and a psychiatrist or psychologist, remained critical parts of the evaluation



process of the pair. This outsourcing made the task of discovering altruism epistemologically exterior, hence immune from one's hand-on, personal knowledge, squeamishness, and interests. Outsourcing the task was a method of doing the task, the privileged one. To detect altruism the general committee relied on the famous and controversial Rorschach test, an "objective personality test," which includes a battery of projective tests with pictures, sentence completions, etc. Aimed at verifying if the donor is under stress, the test was run by a private consultancy group, and was accompanied by a clinical interview. Transplant professionals relied on the external, independent power of the Rorschach test to detect hidden motives.

Nevertheless, some also felt personally involved in the task of finding hidden motives. Despite the widely shared ambivalence towards the committee system as a whole, the task of making things transparent seemed a skill open to all, and mobilized by all. Health care professionals and bureaucrats not trained in psychology saw themselves invested with a role of psychologist, both as consultant and investigator. Idioms from psychology and psychiatry, but also from detective-work and legal testimony, were appropriated by almost all professionals in the field. This creates what I would call an ethic of suspicion. Altruism was not only what professionals searched for, but claiming altruism was what made the experts suspicious of a donor candidate. A claim to be altruistic could provoke long interviews of those who were seen as making dubious altruistic choices. It was by presenting themselves as altruistic that some people became the target of disciplinary inquiries and questionings. Standards of normal of deviant altruism did not remain within the private choice or conscience of the agents, and instead, became the subject of the discursive practices of experts, in a rather Foucauldian manner. Further to that, behaviours which in other contexts might be viewed as rebellious or eccentric, for example an exaggerated altruism, could

become possible symptoms of mental illness, and trigger the deployment of medical and psychological apparatus. This is representative of the field, since transplant experts regularly ask themselves whether altruism towards strangers is a sign of lunacy or saintliness (Henderson et al. 2003).

For example, an Israeli transplant coordinator reflected in hindsight about a case in which a transplant recipient, a nine year old girl, had died after rejecting the kidney she had received as a donation from a man unrelated to her. To the coordinator, the donor had donated a kidney because “he needed recognition ... and after the death of the little girl, he got depressed, and his wife divorced him.” The professional used and mobilized pop psychology to make sense of a transplant story that went wrong, and to demonstrate how the bad motives to give a kidney brought bad luck to the donor and recipient, and disrupted proper kinship arrangements.

There was a shared belief in the field that the different professionals were not only capable of understanding what the donors and recipients thought, but were competent to make these thought processes transparent for all to see. A bureaucrat asserted that she could know the real motivations by “feeling them.” “It is important to see the faces; you can see this one is a good liar, not a good liar.” At times, making things transparent meant concluding that what was being uttered by the applicant was necessarily not to be believed. Further, what was being said sometimes had to be turned upside down as a revelation of the opposite of what the applicant actually said. The secretary of the general committee pointed out:

We asked: ... ‘Have you done something big to help people in the past?’ Once, a candidate answered the latter by saying she goes to a homeless shelter to make sandwiches for the poor. ... I feel like she goes there to make it for herself. When she says it, in the eyes, you see something else.

As mentioned earlier, the question “have you received some money for procuring your kidney?” was rarely asked directly. Instead the committee members seemed to try to demystify the performances of the potential donor, to dig behind what is being said.<sup>12</sup> The professionals however recognized the limits of their work. They told me about the evidence problems they had: “we never have good sources to check.” Since the committee had limited powers, it could not check bank statements; more generally it had limited resources to do the investigations properly. It could only rely on the evidence that it had before itself.

It was as if one thing always hid something else. This ambient suspicion is analogous to Harding and Stewart’s description of “conspiracy sensibility,” which makes agents scan for “signs, symptoms and sources of dysfunction,” (2001:265) surveil “banal surfaces to discover hidden threats,” (260) and fixatedly attempt to “discover the secret collusion or the treachery” (265). In other words, the evidential project of some committee members is no longer to find the truth, but to discover the lie. Uncovering, knowing the lie becomes a stand-in for knowing the organ trade (or the truth), which experts don’t have the tools to expose. Of course a caveat to this interpretation is that the general idioms of transparency, of uncovering lies and truths, cannot do complete justice to the complexity of the social life described here. In other words, things were never inherently or innately secret or open knowledge; certain things were concealed

and others made known or made true at particular junctures, for specific purposes.<sup>13</sup> The negotiation of when, how, why and for whom things were kept in secrecy or considered open knowledge is critical, but unfortunately space constraints prevent me to delve into these issues here. I discuss them elsewhere.<sup>14</sup>

Another member of the committee, a lawyer, said:

We would like to know the whole truth, to use hidden camera, the polygraph... but our tools are limited. My only tool is to ask questions, to compare stories, check discrepancies...

To be legitimate, accounts of altruism ought to be made transparent, that is, “they must be cohesive accounts with clear origins, histories, destinations, and trajectories.” (Coutin et al 2002: 817). In addition, this professional described her work as some kind of limited detective-work indeed, and expressed a wish to work with sophisticated detective-work equipment. She explained that she, as a lawyer, had special skills at – noticing details, tracing inconsistencies for example, but that these were not sufficient.

To summarize, one strategy committee members use is the negotiation of ethical truth-finding through a preoccupation with knowledge, facts, and information, under conditions where members know they can never know the truth. In this context, knowing the lie becomes fills-in for knowing the truth. Let me now turn to another decision-making strategy.

### *Refusing to Know*

One day a psychologist member of the general Committee assessed the composition of the group, and told me he had understood different understandings of justice that prevailed there. To explain it to me he used the biblical story of House of Shamat and House of Hillel. Shamat and Hillel are two Rabbis: Shamat is following the rules, and is more attentive to details; Hillel is nice, generous to everyone, and tolerant. The psychologist saw himself and some other members of the committee as the Hillel, who have to adjust with the Shamat attitude that other committee members have. Members classified as Shamat were those who tried to check for inconsistencies more attentively. The detective tasks and techniques mentioned above by the lawyer of the committee, constitute a type of work that falls under what this member would call the Shamat's point of view. The psychologist saw himself in the category of those who only looked for gross, shouting problems, and were more indulgent towards patients. The paradigm of justice suggested by this psychologist is an individualized perspective focused on the medical needs of patients. His normative justice concept was understood as being about tolerance and generosity towards the patient who applies to the committee and about allowing the transactions out of compassion for the needs and suffering of patients: the Rabbi Hillel point of view. Here "generosity" was understood as privileging the perspective of patients, and in not being scrupulous in detailing inconsistencies in the presented evidence in order to catch a sale.

A second strategy utilized by experts is a move away from knowledge. This includes the construction of boundaries around one's epistemic authority (Rees 2010) as well as a more direct and wilful embrace of ignorance.

As the story of the two Houses shows, not all the professionals shared the enthusiasm for psychology, “conspiracy sensibility,” and detective-work techniques. Among the professionals who least wished to delve into the internal psychological motivations of the candidates was the transplant unit’s psychiatrist. Unlike most other professionals, this psychiatrist appeared not to be involved in the psychological, “conspiracy sensibility” type of inquiry. The psychiatrist told me he was “happy not to be involved in understanding the psychological motivation.” He was reducing his mandate to a minimum, by checking only for a “gross psychopathological issue,” in which case the transplant file could not go ahead. Hence, he was also not inquiring about altruism, because according to him, “it is not his role.” He told me he usually asked donors about use of drugs, whether donors slept well, and other general health issues.

Such instances of limiting knowledge occurred recurrently on the field, in the phrases of experts such as “I prefer not to dig,” “I close my eyes,” and even, “I do not want to know.” Alongside the psychologism and legalistic urge to make things transparent, many other professionals did the opposite: they closed their eyes, and they pinched their nose, as one nephrologist showed me with her fingers, literally. Closing one’s eyes evokes a detachment, an ethic of disbelief that is much more than just a personal anxiety or exhaustion towards the difficult ethical questions raised by the technological and social possibilities of transplants. “Closing one’s eyes” is intimately, unavoidably a by-product of making things too transparent. In other words, what emerges out of a multidisciplinary zeal and profusion of investigative knowledge might well be a refusal of knowledge itself. And as we will see further,

this alternate coming forward and receding of disciplinary knowledge entails a proliferation of legal knowledge.

Because experts function in multidisciplinary bodies, they often repeat what they know and do not know. As a nephrologist pointed out in a satisfied tone to her patient and myself: “There is the ethics side. I do not know anything about ethics. I know about the kidneys.” In saying so, she herself enacted a specific ethic. She relinquishes knowledge explicitly and in doing that, she makes ethics something not accessible to her (and to others who are untrained, for that matter): an expert knowledge rather than a common sense, subjective way to do things. To her, ethics was an expert knowledge rather than a subjective, reflexive approach to action. She would often mention that ethics “was very interesting,” but again, she would add and repeat, almost with thrill, that she knew “nothing about it.”

Once in a meeting of the family committee (whose proceedings I do not describe in this article), a social worker abruptly put an end to a debate between committee members on the rationale and consent to a transplant, by simply asking rhetorically whether this issue was “within the mandate of the committee.” Clearly, to her, it was not, and her assertion immediately rallied everyone. Within seconds, the committee approved the transplant.

I argue that there is a similarity between arguing for not exceeding the mandate of the committee, closing one’s eyes, and the proud affirmation of lack of knowledge. These specific relations to knowledge are paradoxically sustained by multidisciplinary, and produce specific effects when they are performed in legal settings. Limited knowing,

and refusing to know, can be very efficient regulatory techniques (Lamble 2009; McGoey 2007). They allow for maintaining dangerous knowledge at bay, and for evading responsibility (Lamble 2009: 119), for example.

The ethnographic finding here is that the evidential discovery of altruism provides an occasion for various knowledge games among transplant professionals. Narratives of “making things transparent” and “closing one’s eyes,” but also “what is our mandate?” and “it’s not my role”, are artefacts, in short, “found objects” (Riles 2004; Greenhouse 2006) of the field of transplant decision-making. I argue that these are deployed through legal idioms, produce legal effects, and thus that they enact a particular form of legality.

### **Jurisdiction, Discretion, and other Recycled Tools**

I hope that so far I have made explicit how multidisciplinary settings bring about the retreat of certain types of disciplinary knowledge. Multidisciplinarity brings along compartmentalization, separation, and sometimes decline of knowledge itself: knowledge collapses when, for example, an individual expert argues for reducing the jurisdiction of the expert committee she is part of. And yet, at these specific moments when disciplinary knowledge recedes, another kind of knowledge gets mobilised: legal knowledge.

Especially critical here is how unknowing is made alive through the experts’ deployment of concept of jurisdiction, like in the social worker’s comment about the mandate of the committee. The refusal to know is a restricted, privileged mode of



knowing, that is particularly facilitated by legal processes. Invoking issues of jurisdiction to carve out a domain of examination or discussion, is a specific mapping tool which is not only medico-administrative and strategic, but characteristically legal.<sup>15</sup> Jurisdiction – the “where” of the law,<sup>16</sup> authorises experts to choose not to know, because to know and consider would exceed one’s power. Thus another essential component of this latitude about knowledge is the use of discretion: an under-examined characteristic of what legal decision-making is also about.<sup>17</sup> The committee members work under the general terms of the Directive, which broadly states that no organ sales are to be forbidden. The vast discretion they have is neither a loophole, nor a gap in the law (Sossin and Pratt 2009; c.f. Makaremi 2009) but rather a distinct sphere of legal action. Increasingly recognized as a mode of governance in its own right (Sossin and Pratt 2009: 303-4), discretion both allows for and is produced by decisions not to know. Here in particular, both discretion and jurisdiction make the committee members’ refusal to know distinctly legal. In other words, this position of “refusing to know” is the expression of a specific legalistic expertise: the exercise of one’s discretionary power, which gives license to choose or not to take up a fact or another. The notion of relevance, that is, whether a fact is relevant or not in the hearing of a case, is at the heart of a decision-maker’s discretion. In scientific disciplines, in contrast, if one does not use a fact, one has to explain why. What this means is that at the specific moments when expert knowledge retreats, another kind of knowledge gets mobilised: legal knowledge.

In the present context, the multidisciplinary collaborations of the committee are constitutive of a legal resource for committee members. Here this legal resource was used precisely to refuse certain knowledge. When a social worker configured a

committee's decision on the basis of the limitations of "the mandate of the committee," a particular epistemology was set into motion, on which all members agreed. This particular epistemology is crucial because it seems almost immune to critique, even in the most eclectic multidisciplinary forum, whose aim is supposed to foster a contextual, critical, creative analysis of problems.

To reemphasize, it would be a mistake to equate "closing one's eyes" to a disobedience to the letter of the law. It is true that by "closing one's eyes," professionals give favours to some transplant donor-recipient pairs. But, first, in doing so the professionals do not necessarily acquire financial, legal symbolic capital that can be exchanged (Bourdieu 1990). So "closing one's eyes" cannot be reduced to an issue of naked power. Second, conceiving "closing one's eyes" as noncompliance to the law would omit something much more important: "closing one's eyes" can also mean following scrupulously the letter of the law, and can constitute a regulatory mode of itself. Neither disobedience nor exceptional measures, but rather excessive formalism and literal interpretation of the law, participate in a decision maker's license to "not wanting to know," or "closing one's eyes." In the present case, the mobilization of legal resources, especially by excessive literal interpretation of the law was inscribed in the very idea of the legal-bureaucratic logic at work in the transplant units.

"Closing one's eyes" opens up a more general question about the management of knowledge. As mentioned earlier, a great deal of analysis has been devoted to legal demarcations between science and non-science. However, alongside social science inquiries into the legal probing of what constitutes science or not, a critical question

seems to have remained neglected: that of the lack of knowledge itself. At times the critical epistemic tension that legal and bureaucratic actors have to grapple with is not between science and non science, but between knowing and not knowing. Claiming to “know” and “not to know” produce certain legal effects, at times more powerful than the effects of displaying modes of knowing (as a scientist, a reasonable person, etc). The very performance of not knowing, of professing one`s ignorance, holds a particular legal significance that ought to be better unpacked.

Here, the professionals` wish not to know, and activation of this wish into practice, might resemble the “account of ignorance, or, rather, a reason for the lack of thought” displayed during courtroom examinations. The Scopes Trial, a milestone in the Fundamentalists battle against the teaching of Darwin` theory of evolution, provides a useful example of such activation. Lezaun (2010) has closely examined the cross-examination of famous spokesperson of fundamentalist Christianity William Jennings Bryan during the Scopes Trial. In what became a well-known intriguing statement, Bryan uttered to his cross-examiner`s question about what he thought: “I don`t think about things I don`t think about.” To Lezaun, Bryan “did not only exhibit lack of thought ... but actively claims it.” What does an active profession of ignorance procure, in law? In actively claiming one`s inability to know or to remember (rather than just not knowing certain facts) actors may withdraw from legal processes altogether by making themselves unavailable for inquiry (Lynch and Bogen 1996). The history of expert evidence shows how the lay jury decision-making faculties came to be coveted by the judiciary precisely because of the jury`s lack of specialist knowledge: not knowing could be the signal of one`s impartiality. (Jones 1994: 32-4) In other legalistic contexts such as the incarceration system, detailed mastery of

knowledge is seen as not something to be displayed, as it could be viewed as a dubious sign of wickedness. Knowledge deficits on the other hand could be mobilised usefully to show one's innocence (Prainsack and Kitzberger, 2009). In our present context, the actor's lack of knowledge is not only legally valid, but valorised. "Not to know" is in line with the activation of other (legal) devices, such as limitation of the powers of the committee, and respect for patients' privacy.

The credibility and ethical poise of the system seemed to rely to a large extent on the repetitive instantiations including "informed consent," the "patient's advocate," or "fighting conflicts of interests." These recycled axioms, mostly drawn from legalese and bioethical frameworks, resemble "bullet points" (Strathern 2006) in that they exist while rarely generating meaning or analysis. They enact what Guyer (2006) refers to in another context, as a phenomenal "capacity to proliferate names of things rather than assimilate novelties to old categories." The concerns about conflicts of interests, for example, rather than being a daily practice, even seemed rehearsed and overstated at times. As Riles (2000: 80) puts it, language in institutional life not only has a representational function, but has "a shape, a feel, not simply a meaning." In this context, attention to *nigoud inyanim* (conflicts of interests) for example, did not only secure personal and institutional regard for the law, but also created, by its repetition, a visible symbol of this regard for the law (Edelman et al. 1993).

Aside from accrediting a refusal to know as a valid form of knowledge, the mobilization of legal resources does many other things in the field. "Fighting conflict of interests" and "respecting the mandate of the committee" for example, procure authoritative and ethical poise to the transplant system in general. They give a

standardized, recognisable form to the case by case judgements of the committees, and yet they do so in quite a flexible, open-ended fashion. Showing concern about conflict of interests and about the limited mandate of the committee does not prove that truth is established, or certainty achieved. Instead, vague but no less critical standards of reasonableness and credibility are attained. As shown earlier, invoking a concern about conflict of interests or the limited jurisdiction of the committee, the committee provides itself with a valid proxy for truth-making. In fact, it manifestly procured a certain degree of satisfaction to committee members, who felt otherwise disappointed with the business and decision-making capacity of the committees. Thus legal tools also built the identity of the committee members. By expressing a particular type of personal ethical scrutiny, the legal tools can be legal warrants that assure institutional, but also personal regard (Maurer 2005).

### **Conclusion**

When asked about his expert area of inquiry, law and society scholar Richard Abel answered that he is “interested in the law but everything except the rules” (Abel 1995). Indeed this article has used the term legal knowledge (Valverde 2003) instead of ‘the law’ precisely to underscore that my examination is distinct from inquiries about whether substantive legal rules are sustained by one medical apparatus or another, or whether specific laws supported or not the selling, buying and gifting of organs. With this article I have shown that in the general field of living transplants, legality *is* precisely this process of technocratic consultation and verification with experts. Although I focused on a few individuals, I by no means wished to convey that decision-making is an individual venture: focusing on the context of

multidisciplinarity allowed me to highlight those multiple, collective, medico-administrative, and managerial decisions about knowledge itself that precede the official legal decisions (cf. Hawkins 2003: 30; Lamble 2009).

In the Israeli transplant milieu, a decision-making process that is less strictly legal and more multidisciplinary (as if these two qualities were in a zero-sum relationship) was conceived as necessary to address the unique circumstances of people who wished to give or receive an organ. This contextual, multidisciplinary decision-making, in turn, created opportunities for more rules. Arguably, the revisability and flexibility of the expert opinions generate the need for order, hence for more legal tools and frameworks (e.g. Silbey and Ewick 2004, Riles and Jacob, 2007). In other words, we face a circular process: multidisciplinarity, itself elicited by law, becomes an occasion for further legality. (Teubner 1988)<sup>18</sup> I hope the paper showed how the ethical scrutiny over organ transplants extends particular forms of legal knowledge, and also how recognizable and recyclable these forms are in other contemporary medical and scientific contexts.

What we have also seen is that medical and bureaucratic experts not only transact with legal knowledge, but that they treat it as an expertise of its own. This means that the managerial activities I observed in the field of transplant decision-making, including assessments about how to manage multidisciplinarity, tell us something about legality *too*. Accordingly, these activities ought to be documented and interpreted not only as social, but also as legal problems. What should call for the critical attention of socio-legal and Science and Technology Studies (STS) projects, aside from the contrast between how science and non-science interrelate with legality,

is the difference in how profusion and absence of knowledge itself produce particular legal effects. This paper was a step in that direction too, I hope

Finally, I showed that legal reference to multidisciplinary decision-making creates an opportunity for surprising forms of engagements with knowledge. In contrast to ordinary conceptions of the law as a tool that facilitates the circulation of information, legality might well be used to obviate issues and to facilitate knowing less, not more.

### **Acknowledgements**

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<sup>1</sup> Multidisciplinarity is referred to as the non-integrative collaboration of different disciplines toward a common goal, where each continue to use theories and methods from their own discipline. Interdisciplinarity refers to the emergence of insight of a problem through the integration of different concepts, methods, and epistemologies from different disciplines (Rogers et al. 2005)

<sup>2</sup> In the memory of the skilful lawyer then U.S. Supreme Court Justice Louis Brandeis.

<sup>3</sup> Lawyers remember that the *ratio decidendi* of a milestone of legal realism, the famous school desegregation decision *Brown v. Board of Education of Topeka* (347 U.S. 483, 495), is almost entirely pending upon the decisive footnote 11, which referred to scientific studies about the psychological impact of segregation on African-American children.

<sup>4</sup> Manjari Mahajan, invitation, Law and the Question of Non-Science, February 2007.

<sup>5</sup> The statement of Israel reads as follow: "In Israel is it strongly prohibited to give any compensation to living donors, including compensating for expenses incurred to the donor in the process of the donation. (...) In fact, the situation in Israel is a certificate of honor: the issue of transplants from non-related living donors is better regulated here than in any other place in the world. There is no option in Israel for organ trafficking:" Israel's Position Concerning Compensation for Non Related Living Donors, 2003, 6

<sup>6</sup> The new law would prohibit trafficking, thus clarifying the positive law aspect of the problem. In addition, it states that a living person who donated an organ would receive a financial compensation from the State (NIS 18 000, i.e. about USD 5100), would be able to recover for expenses for psychological treatment and a recovery leave, and would receive a certificate of merit from the State. It remains to be seen whether the law will be enforced, and whether it will affect the transplant milieu and culture at all.

<sup>7</sup> I detail this process, and explain its implications for conceptualizations of kinship and of the legal frameworks of transplants in another paper: Marie-Andrée Jacob, "The Shared History: Unknotting Fictive Kinship and Legal Process" (2009) 43:1 *Law & Society Review* 95-126.

<sup>8</sup> I discuss how consent to transplantations is mediated by committees, other hospital practices and kinship relations in: XXX 2007

<sup>9</sup> This fact is ethnographically rich for what it says about the care not to open this committee to an outsider, but it remains unfortunate that the powerful explicitness of the debates I witnessed when I attended the family committee were not available to me with respect to the general committee.

<sup>10</sup> This demonstrates that the literal sequence seems important for actors. Pre-requests are sometimes used to signal interest in something that then will be offered; or, if not offered, no request follows. Schegloff (1988) credits ethnomethodologist Harvey Sacks for this analysis on the phenomenon of pre-requests in conversation.

<sup>11</sup> Once, during the enactment of this system, a patient filed a petition to the *Beit Hamishpat Haelyon*, the Supreme Court of Justice as it sits as the *Bagatz* - the High Court of Justice. - to contest the decision of the general committee, and the Court confirmed the decision the general committee in a brief decision (*Gadban v. State of Israel* HCJ 5785/03, P.D. 58(1) P.D. 29 (2003 Israel).

<sup>12</sup> On "digging" as a style of reasoning and mode of analysis see Latour, (2002: 261-86); Valverde (2003). For an analysis of the valiant efforts of a team of U.S. bureaucrats to dig and retrieve "what really happened" during the Iran-contra affair, see: Lynch and Bogen 1996: 122-53.

<sup>13</sup> I thank Jeanette Edwards for warning me about the subtlety of negotiating what is considered hidden and/or revealed knowledge

<sup>14</sup> I discuss these issues in my book manuscript, *Matching: Experiences of Legality and Kinship in Organ Transplant Bureaus*, under review.

<sup>15</sup> "Law need to take place. In order to be, law needs to be somewhere" : Andrea Brighenti, "On Territory as Relationship and Law as Territory" (2006) 21: 2 *Canadian Journal of Law and Society/Revue canadienne de droit et société* 65-86, at 83. On jurisdiction as a machinery, see: Mariana Valverde, "Jurisdiction and Scale: "Legal "Technicalities" as Resources for Theory" (2009) 18: 2 *Social & Legal Studies* 139-157.

<sup>16</sup> This where is not only a physical space, it can be a person, a relation, an activity.

<sup>17</sup> But see the recent special issue on discretion of the *Canadian Journal of Law and Society*, co-edited by Lorne Sossin and Anna Pratt.

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<sup>18</sup> As Teubner (1988) puts it, legal discourse modifies elements of daily life and transforms them in autonomous constructs fitting to law's autoreference process. Law connects to reality not by being influenced by it, but by selectively processing social events, social knowledge and social acts and reconstructing them within its legal discourse. (1)