
The Shared History: Unknotting Fictive Kinship and Legal Process

Marie-Andrée Jacob

This article looks in detail at a form of kinship that is contingently crafted and mobilized to achieve specific purposes. On the basis of ethnographic material collected among local actors within bodies that regulate kidney transplants in Israel, the objective of this article is to expand the sociolegal definition of fictive kinship. I use *transplant relatedness* to refer to the set of formal and informal norms that grow out of social and medico-legal practices in the field of kidney donations and sales; however, the form of fictive kinship that appears in this specific field tells us something broader about kinship as it is constructed and performed in legal processes more generally. The configuration of fictive kinship that is examined is the shared history (*historia mesh-outefet*). I argue that in the present case, the shared history alters social and legal deep-seated understandings of kinship and ultimately makes the distinctions between allegedly real and pseudo-kinship collapse.

Unless a relationship is grounded in some intrinsic or natural connection, then Euro-Americans are likely to think of it as artificial, and to be thought artificial is to be open to uncertainty. Reality must lie elsewhere.

(Marilyn Strathern, *Reproducing the Future*)

The study of kinship is usually interested in the arrangements that manage the “reproduction of material life” (Butler 2000:72) or, more broadly, in the sharing of material life. In this article on the regulation of organ transplants, I am interested in the kinship, or relatedness (Carsten 2000) produced by the displacement and replacement of bodily materials, namely, kidneys. This relatedness is

I am grateful to all my informants for their time and generosity. Because of the sensitivity of the issues discussed in this article, I cannot thank them personally here. For thoughtful comments on earlier versions of this article, I thank Annelise Riles, Michael Lynch, Martha Fineman, Leticia Barrera, Eyal Ben-Ari, Rosie Harding, Tsachi Keren-Paz, Ann Kelly, Shai Lavi, Amy Levine, Julie McCandless, Zvi Triger, and the four *LSR* anonymous reviewers. I also thank the editor of *LSR*, Carroll Seron, for her astute guidance, as well as Danielle McClellan and Evelyn Rubak from *LSR*. The research reported in this article has received approvals from offices of protection of human subjects in Israel and the United States. For financial support I thank the Lady Davis Fellowship Trust, the Gender, Sexuality and the Family Fund at Cornell University and Emory University, and Cornell Law School. Please address correspondence to Marie-Andrée Jacob, Keele University School of Law, Staffordshire, United Kingdom; e-mail: m.jacob@law.keele.ac.uk.

Law & Society Review, Volume 43, Number 1 (2009)

© 2009 Law and Society Association. All rights reserved.

a connection implicated in but distinct from kinship as it is traditionally understood in Euro-American legal discourse—that is formed on the basis of biology and legal status (Schneider 1980). These “relations through displacements” are formed by the very sharing of a particular material substance. Thus it is not only “life itself” (Rose 2001) that seems undeniably vital, but the movements of biological substance: in transplants, “biology, as corporeal substance in the form of one’s own body, becomes the central object in articulating moral claims on and relationships with another” (Kaufman et al. 2006:83). If biological substance is indeed constitutive of social and legal relations, the particular contexts of how, where, and when substance travels are key to assigning meaning to the channels in question (Gillison 1980; Giles 2004). I ask in this article what the meanings attributed to and produced by the legal organization of the displacements of kidneys in Israel are, and what larger consequences this has for the character of kinship in legal process.

The article proceeds as follows: it first situates kinship within law and anthropology scholarship. My main purpose in this first section is to put forward an enlarged conception of kinship, by taking it not only as a discovered set of raw material to draw from for social scientists, but also as a present-day problem for law and society studies, social studies of medicine, and their joint streams. As both theory and resource, kinship becomes useful in unique ways; yet I show that as a conceptual package, kinship has retained a basic taken-for-grantedness, especially in its relation with legal process. I explain that this taken-for-grantedness is particularly alive in works on fictive kinship. The second part of the article briefly describes Israeli law on transplants and situates it within Israel’s broader legal frameworks pertaining to kinship relations, and the third part outlines this project’s methodology. In the following part, I present general trends in what I call transplant relatedness, by describing recurring practices within the Israeli transplant milieu. I then focus on the detailed ethnographic analysis of one of these practices, the shared history (*historia meshoufet*), forming the central part of this article. The shared history can be described as an unrelated donation that parades as a kin donation. I describe and analyze the different activities of intermediaries who bring unrelated people together for transplant, as well as the joint efforts in the making of and performance of shared histories. I next show how the ethnographic material brings into view a layered practice of fictive kinship that destabilizes some basic premises of kinship as reviewed in the first part of the article. The article finally exposes the potential implications of the shared history on the relation between fictive kinship and legal process generally. As a result, a particular component of kinship is carefully unpacked, as it brings with itself a problematic assumption about

law, nature, and culture that is highlighted in the context of transplant practices but is relevant far beyond transplants' remit. I begin by providing some contextual backdrop to the transplant practices the article is about to examine.

Transplants, Kinship, and Legality

In a world of seemingly endless biological and technical transplant possibilities, some social, professional, and state-induced constraints endure, and others erode. For example, for transplant purposes, a delusional constraint-free "we" has emerged, one that makes us think we are all the same, interchangeable, and kin, belonging to what Herring calls the "great give-and-take of humankind" (2002:55). In other words, in Euro-American contexts, shared substance is often viewed as a signal of getting closer, of more sharing of more substance.¹ In the 1950s, organ donations had to be between biologically and genetically close people. An identical twin constituted the ideal transplant kin (Wolstenholme & Cameron 1962). Thus a pre-existing sharing of substance (blood group, genetic make-up) had to precede transplant relatedness. Bodies' tendencies to reject foreign materials meant that the success of transplant medicine had to be secured either through transfers between genetically close people or through developing means of suppressing immunological responses. From the 1970s onward, the development of anti-rejection medicines such as cyclosporine has expanded the pool of potential donors, and naturally, of compatible donor-recipient couples. When anthropologist Lawrence Cohen writes that "cyclosporine globalizes transplant" (2001:11), he refers to the expansion of transplant relatedness, which is now possible not only between kin-like friends, but also among coworkers, strangers, and anonymous suppliers and recipients. This globalization is accommodated by the literal suppression of old biological kinship restrictions from the body. Bodies far from the family tree of those in need of a kidney thus became available and compatible. If Indian transplant surgeon Kishore celebrates the phenomenon as a "state of organic and functional integration" (1996:3603), Cohen sees it as the fruit of a seedy orchestration: "Difference is selectively suppressed, allowing specific subpopulations to become 'same enough' for their members to be surgically disaggregated and their parts

¹ Making relations through shared substance cannot, however, be taken for granted. For instance, Gillison (1980) suggests that sharing substance is not necessarily about relations, let alone harmonious ones, and can instead be based on constant strife. According to Gimi views, hiding and theft of substance, as well as the disguise, transfer, and recycling of one given substance into another, can make biological matters extremely contentious. For example, the passage of male materials in female orifices is seen as a dangerous contact of substance that may impair rather than create life (Gillison 1980:61).

reincorporated” (2001:12). All this of course poses the problem of physical (or biological) nearness in light of socioeconomic distance. In this article, however, my interest lies elsewhere. One relevant question is to see how, if at all, the concept and boundaries of kinship in the context of transplants have remained alive, in light of the expansion of the pool of those who are compatible with each other. More broadly, in this piece I am taking stock of this state of affairs in order to ask questions about kinship itself.

The study of kinship has traditionally looked at affiliations through blood and marriage (Lévi-Strauss 1949; Bourdieu 1977; Borneman 1992) and inheritance (E. Leach 1961). Legal and lay conceptions have generally implied that kinship is a thing to discover, whereas anthropologists have rather conceived it as an analytical grid to be used to study societies. More recently, kinship studies have addressed problems pertaining to the circulation of body parts and fluids, and more broadly to how people relate to each other based on their understanding of the way life entities move (Weston 2001; Franklin & MacKinnon 2001; Kaufman et al. 2006; Helmreich 2001; Thomson 2001, 2005; Carsten 2004; Herzfeld 2007). In addition, an abundant literature in anthropology and feminist science and technology studies on kinship (Strathern 1992a, 1992b, 2005; Franklin 1997; Edwards 2000; Thomson 2001, 2005; Clarke 2007) has provided rich ethnographies and analyses to help us examine what happens when “biology” ceases to be unequivocally “natural,” and when kinship is naturalized rather than natural. Before that, Schneider’s critique of kinship (1980) had precisely put forward the idea that the understanding of kinship-as-biology is a specific Euro-American folk cultural construct. For Schneider, anthropologists had presumed the object of biological kinship, and studied it accordingly, on the basis of their Eurocentric assumptions. This finding does not make kinship whole: even within the specifics of the United States and Europe, it is complex and unfixed. Broadly understood, kinship could also be a form of bureaucracy, materiality, or spirituality.

Some kinship arrangements can become mobilized for the purpose of reaping the benefits of kinship. In the social sciences literature these arrangements have been termed “fictive kinship” (Al-Haj 1995). Instrumentally, kin groups are redefined to encompass members of the community linked by actual or fictive relationships (Al Haj 1995:313–5). This fictive kinship is not always recognized as “real” kinship, but it often “operates as a safety net for the genetic nuclear family and provides a form of extended family network—often forging alliances between stronger and weaker members” (Woodhouse 1996:601) of a congregation, a village, etc. One consequence is that kinship evolves as a resource: for example, if the concept of kin may be played with tactically by the

welfare state and its bureaucrats as a tool to allocate (or not) benefits (Fineman 2004), it can surely be maneuvered, in response, by the people who wish to adapt fittingly to the state's definitions of kinship. We have seen this idea in some of the arguments supporting gay and lesbian marriage, for instance (Chambers 1996; Barker 2008). The material presented in the following pages should make this more explicit.

Although some argue that the concept of kinship may have exhausted itself (Harrington et al. 2008), my informants saw things differently: they still think of kinship as a tool that brings dividends. Being productive for my informants, kinship thus remains a crucial resource for me. This does not say that the analytical construct is without problems. For example, while there is a rich extant literature on the lives, functions, and practices of kinship, the concept of fictive kinship still seems to revert to simplistic understandings of relatedness, and to rely on a distinction between real and pseudo-kinship that is ultimately unhelpful. In this article I do mobilize fictive kinship, but I show how my ethnographic material forces us to modify it.

"Next of kin," in Hebrew, is *she'er basar*, which is the literal coming together of the verb *lehisaher*: to remain, and of the noun *basar*: meat or flesh. Soon enough during my fieldwork, encounters with informants and the more or less disembodied regulatory environment kept pulling me out of this rich language on substance as flesh per se, and pushing me into other issues—still very material—but more of a legal and bureaucratic nature. Therefore this article is less interested in kinship's flesh and more concerned with how people think and imagine ideas of kinship in daily legal and bureaucratic encounters. In this sense the article is anchored in a growing body of literature in sociolegal studies and anthropology interested in matters of forms (Riles 2000; Jean-Klein 2003) and in seemingly mundane ways of knowing such as paperwork, files, and committees' proceedings and procedures (Riles 2000; Latour 2002; Reed 2006; Heimer 2006). This stream of scholarship has recognized how "unseen," commonplace activities in modern practices are important to study, precisely because they remain unquestioned and implicitly agreed upon.²

The regulation of transplants is constituted around the deep divides between family donations versus unrelated donations; close family versus remote family; family versus friend, etc. The professional actors cling to these classifications, and so do the patients,

² The nature and functions of documentary forms—waiting lists, informed consent documents, etc.—in the field of transplants are beyond the scope of this article, but fruitful comparisons can be made between how Israeli and American bureaucracies transact with patients and their kin through the medium of paper forms (see Jacob 2007).

kidney donors, and sellers who have to comply with legal requirements and transplant professionals' expectations. Kinship thus emerges in the experiences of "relatedness" but also in the perceptions and documentations of such experiences by professionals.

Family and Nonfamily Kidney Donations Under Israeli Law

There are four parallel systems of organ procurement in Israel: one can get on the waiting list for a post-mortem transplant, receive an organ from a family member, receive an organ from a nonfamily member, or get a transplant abroad. In contrast to the United States, where the system is often oblivious (or attempts to remain as such) toward the distinctions between kin donors and "friend" donors or unrelated donors, in Israel patients and donors need to go through a series of bureaucratic procedures that differ greatly depending on whether patients and donors are considered family members or unrelated. This system of a "million of committees," as put with humor by a transplant coordinator, receives some sarcasm from the transplant staff. Yet other staff members are proud of this elaborate screening machinery.

At the time of my fieldwork, there was no law in the sense of a statute voted on by the Israeli Parliament (Knesset) that governed living organ donations and made organ trafficking illegal. Over the last few years, numerous law proposals were on the table, and many expert task forces were launched. Transplants were governed by an internal directive drafted and published by the Ministry of Health (Living Organ Transplants—Procedure Amendment 2002). This internal directive was referred to as being what the law demanded of local actors at the time of my fieldwork.³

According to this 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. To this effect, "spouse" includes life partner (hereinafter: "First Degree Relative Donation"). (Living Organ Transplants—Procedure Amendment 2002: Sec. 2.1)

³ On March 24, 2008, the Knesset approved new bills overseeing post-mortem (*Chok Mavet Mochi Neshimati* [Brain Respiratory Death Law]) and living transplants (*Chok Hash-talot Evarim* [Organ Transplantation Law]). Among other things, the Organ Transplantation Law prohibits trafficking in organs and offers donors compensation by the state. At the dawn of what might be a new era for Israeli transplants, it is worthwhile learning from what has happened so far in terms of legality and of the mutual co-constructions of legality and kinship in this area.

The norm of what family is and should be, from a transplant patient's perspective, thus seems unequivocal. Yet outside the specific context of transplants, what is considered "family" today under Israeli law, (like under many other Euro-American frameworks) is often hotly debated. Legal definitions of "the family" have multiple bases. Israeli law defers to religious sources (mainly *halacha* and *shari'a*) and jurisdictions for matters of marriage and divorce (Rabbinical Court Jurisdiction (Marriage and Divorce) Act 1953: s. 1–2; Kings' Order-in-Council 1922–1947: s. 52). Matters of civil status are subject to civil law (Kings' Order-in-Council 1922–1947), but in the absence of comprehensive legislation remain indirectly subject to religious law interpretation and analogies (Zafran 2008). Under *halacha*, there is no connection between parenthood and marital status, as legal parenthood is based on one's biological link with a child following coital reproduction, although there are exceptions (Shifman 1981).⁴ More recently, definitional questions are being framed through adjudication of "the right to parenthood," "the right not to be a parent," and the "legitimate means of realizing motherhood" (Kahn 2000:68; *Nahmani v. Nahmani* 1995). Same-sex couples have also succeeded in modifying the definition of parenthood through judicial challenges to adoption legislation (Adoption of Children Law 1981; *Yaros-Hakak v. Attorney General* 2001) and private international law (*Brenner-Kadish v. Interior Minister* 1999; *Yaros-Hakak v. Attorney General* 2001; Zafran 2008). Incidentally, the case of adoption offers a rich analogy for the material covered in the next pages: the adoption decree, as a legal object, enacts a permanent "as-ifness" that speaks to fictive kinship (see Yngvesson 2007).

Jewish and Israeli family law have many common features, including their pro-natalism (Fogiel-Bijaoui 2002; Triger 2003:26), celebration of motherhood (Shalev 1998), and vestiges of heterosexism (Triger 2003). The essential function of the Jewish Israeli family, nuclear or not—this ought to be noted—is to procreate: "Give me sons or else I am dead" (Genesis 30:1; see also Kahn 2000). Permissive regulations about assisted reproductive technologies (ARTs) and Jewish law's refusal to delegitimize children of unmarried women unsettle the widespread ideology that marriage is the sole legitimate site for social reproduction, as mentioned above (Kahn 2000:71). The fact that Israel is among the world leaders in research and consumer use of ARTs also contributes to lively debates in Israel about who is and who is not a family member. In the context of reproductive technologies, definitions of a family member focus on biology. The Israeli Surrogate

⁴ I do not elaborate here on the case of the *mamzer*, the child of an adulterous or incestuous relation.

Motherhood Agreements Law (1996) prohibits the surrogate mother from being a “relative” of either of the intended parents (Surrogate Motherhood Agreements Law 1996: s.2(3)b), The law defines a relative as: “mother, daughter, granddaughter, sister, aunt and paternal or maternal cousin, excluding a relative by way of adoption” (Surrogate Motherhood Agreements Law 1996: s.1). Based on a specific understanding of incest, biologically related kin are thus ineligible to make surrogacy agreements among themselves, unlike adoptive kin. In the context of organ donations, by contrast, the biological aspect of family membership is downplayed at the expense of emotional bonds: no explicit distinction is made between adoptive and nonadoptive family membership.

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. *Friends* is used both cynically and seriously by many in the transplant community, as explained later in the article. 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.

The principal aim of the 2002 directive is thus to enforce altruism in transplants, and the professionals know that one of its purposes is to curb the phenomenon of organ trafficking. 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. Before I turn to these transplant practices in detail, a brief note on methodology.

Fieldwork in Israeli Transplants

The research reported on here is based on ethnographic fieldwork among health care providers, regulators, bureaucrats, informal sector workers, and patients involved in living transplantations

in Israel between October 2004 and January 2006. Ethnographic methods included passive observation and interviews. I did passive observation of interactions among patients and staff in the transplant unit and nephrology clinic of a major hospital located in an urban-suburban setting, as well as among bureaucrats and experts involved in the transplant system at the national level. In addition, I spent time among people working outside the state and hospital levels, for small informal businesses and patients' organizations, including two Israeli intermediaries who at the time of my fieldwork organized brokered transactions between patients and organ procurers. Hence a considerable part of my data was collected in restaurants and cafés, since this is where I met actors who work, to use their terms, "behind" the system.

Altogether I was able to conduct 52 interviews across the various players. On average interviews lasted one hour, with a range of 20 minutes to two hours. Some were conducted in Hebrew, and some in English. Hebrew quotes from informants were translated by the author. Because of the sensitivity of the issues discussed, I was not allowed (except for one interviewee) to use a tape recorder, so I used jottings (Emerson et al. 1995) during interviews and observations, and I transcribed and completed my notes later that same day. With these notes I was able to reconstruct meetings and interactions almost in their entirety. In some cases even the use of a notebook during encounters was problematic, so in these instances I recounted and jotted down the interactions immediately after the encounter. As an outsider I was gradually let into formal meetings and informal conversations, and I was given access to documents in a similar manner—starting from the most official directives to informal memos. I acknowledge that my mere presence during some interactions sometimes influenced the content of what was discussed in these interactions: these changing degrees of opacity and transparency are part of the field itself, and they constitute data as well. The names of all the people cited in this article are pseudonyms.

Coding and analysis took place in the course of the fieldwork. While analyzing these data, the objective was to capture the daily hand-work of professionals and patients. The analytical method used in this study seeks to follow the actors with empathy (see, e.g., Emerson et al. 1995). The analysis of the ethnographic data thus consisted of closely observing members' constructions of meanings and actions to capture consistency out of elements that may seem contradictory to outsiders (see, e.g., Berger 1981). My analysis gives precedence to the practices of subjects and the effects they produce over inner psychological intentions (see, e.g., Bourdieu 1977; Strathern 1988; Butler 1999). I now turn to these practices, which exist in the shadow of and in parallel with the transplant legal frameworks described above.

Israeli Modes of Transplant Relatedness

What I call transplant relatedness is a set of normative kinship practices or scripts, privileged by the legal-bureaucratic apparatus regulating lived organ transplants. Through detailed observations of transplant bureaus and their users, one can see how the normative discourse on transplants is reflected in and complemented by real social practices. In all cases, the actors are concerned with making transplant an occasion for something else. Transplant is always an occasion for a relation, among a vast array of possible kinds of relations. It cannot stand on its own, as just the movement of material substance from one body to another. In other words, the transplant is always to be accompanied by an invention of sorts (Wagner 1982). Norms and practices form together this inventive process that is constitutive of transplant relatedness. This transplant relatedness can take different forms.

Whereas dominant understandings of patients as well as legal and professional practices privilege the nuclear family as the best site for living donations and “gifts of life,” an ethnographic listening of transplant relatedness shows that the story is more multi-valent. There are variations from the predictable script according to which organs and tissues should circulate among the biological family. In fact, patients may express their affection toward their family members by not allowing these members to donate to them. Often explicit and implicit calculations are made about the appropriateness and utility of donating a kidney. Under this logic, echoed in material gathered by Cohen (2001, 2003; see also Waldby & Mitchell 2006; Jacob 2006; but see Kaufman et al. 2006), the question is often this: why jeopardize the health of a family member if I can pay to get an organ from someone I do not know and do not have to care for as kin? Another recurrent calculation is the idea that if no donation happens now, the organs can be saved for future transplants. In addition, I encountered many cases where men and women needed an organ but refused to let their children give it to them, without providing an explicit reason other than repeating what seemed to them self-explanatory: they did not want a kidney from their child. This fits with sociological understandings of patterns of intergenerational help in Israeli society: a route that goes from parents to children (Birenbaum-Carmeli 1999) or among laterals, but that almost never ascends from children toward parents. Hence “kinship” is not a unified bundle of reciprocal duties. Some duties may flow only in one direction.

Another exemplary transplant scenario occurs when a “pair” composed of one potential recipient and one want-to-be-donor see themselves as real kin, but they are not biologically compatible to allow for a transplant. Today there are sophisticated medical, legal,

and bureaucratic tools to fix this impediment. One of these tools is the swap, where a pair of biologically incompatible kin is “matched” with another pair that is also not compatible together (Jacob n.d.).

Yet in some other cases there is neither a pre-existing family connection nor a social relation between biologically compatible organ suppliers and recipients. The connection is carried by a third person, called an “intermediary.” In these scenarios, the very biological bonds that appear through compatibility and sharing do not necessarily create social relations. The configurations of what sort of kinship remains and what sort is left out are deeply intertwined with sociolegal processes, as is exemplified below. Despite the fact that they are explicitly sharing substances, biological resemblances, and compatibilities such as blood group, suppliers and recipients linked through an intermediary can eclipse their potential kinship altogether in several ways. The monetary payments handed over to “nonbiologically related kidney suppliers” are an effective way to assist some recipients in expelling kinship connotations from what otherwise looks like transplant relatedness. The selective insertion and erasure of social kinship, independently from shared substances, are not unique to the field of kidney transplants. For instance, despite its life-saving upshots, blood compatibility is neither strategically, ethically, nor aesthetically conceived as a producer of kinship bonds. Indeed, blood itself is not constitutive of an affiliation, despite the common appellation that suggests that sameness of blood can form “blood groups” (Weston 2001:157). The context of assisted reproduction in Israel provides another example: in cases where reproductive materials from non-Jews are utilized to assist Jews to procreate, kinship shows its dissolving faculty. If donated semen comes from a non-Jew, halachic interpretations of the transfer carefully circumvent its kinship implication so that, in turn, a Jew can refrain from dealing with problematic kinship. Kahn took notice of this “social process of fabricating nonrelatedness where there is a biological basis” (2000:165).

These constructs of kinship and nonkinship show how ideas about nature and culture can be mobilized differently for several purposes. The remainder of this article considers in depth the connections made by intermediaries as a variant form of kinship. The ethnographic material gathered makes explicit how stories of transplant relatedness, or contingent kinship, are invented. I do this by narrating the whole process during which Israeli intermediaries match a patient and a supplier unknown to each other, and then turn them into a kinship “pair” that is both biologically and socially fit for transplant relatedness.

The fact that I possess detailed material about unrelated donations swathed as kinship donations reflects the privileged access I

had to the work of intermediaries, health care professionals, and patients in Israel, not a specificity of Israel as a place where organ trade happens more than elsewhere in the world. The trade in organs, as well as ways to make it look legitimate, is flourishing in the United States, Europe, and Asia as well (Rothman et al. 1997; Scheper-Hughes 2002, 2004; Kennedy 2002; Cohen 2001, 2003; Waldby & Mitchell 2006).

Matchmaking

I met my first intermediary, Michal, one summer night around 10 p.m. at her home in a suburb of Tel Aviv. We had planned and replanned the meeting several times. I was very excited that she had agreed to meet with me. The work she does is considered controversial, and many people in Israel had warned me that I would most probably not succeed in meeting someone who does this type of work. I got her contact details from an Israeli lawyer who had invited her to speak in a course on “The Markets of the Future,” which he taught at an Israeli university. The lawyer had given me Michal’s number, saying that she would decide herself whether she wanted to speak with me or not. To my surprise, she had been very warm and eager to meet with me at her home.

So one night I drove to Michal’s apartment. After politely greeting me, she put her children to bed, and we sat in her living room. Michal started by asking me if I knew “the anthropologist, y’know . . . from California?” I risked: “Scheper-Hughes?”⁵ and she said proudly, “Yes, she was here you know, and also with the journalist from *The New York Times*.” Unlike other people involved in transplants in Israel, Michal was manifestly not bothered by the famous anthropologist’s critical writings about the Israeli organ trade. What seemed important to Michal was that a famous anthropologist from California came to her home to listen to her stories. To Michal the reasons she came were not so important. Michal had her own, very clear views about the transplant field, and she was not hesitant about voicing them. She believed that the work she was doing was fundamentally good and important, and so it seemed that the opinion of a professor was not at all important for her.

At the time of my fieldwork, Michal was an independent businesswoman and worked with a partner, Noah, who was also one of her close family members. She tried to coordinate transplants abroad; however, at the time of my fieldwork the main bulk of her

⁵ Nancy Scheper-Hughes has written widely on organ trade (e.g., Scheper-Hughes 2002).

work took place in Israel. Her work consisted of “helping patients to cross the committees” (*la’azor la cholim la’avor et hava’adot*). “I am also like a psychologist,” she added. She and Noah did not work in office spaces but from their homes, cars, and cell phones. Flexibility and informality were necessary components of their work.

Michal and Noah focused their matchmaking work on a few Israeli hospitals, one of them where, incidentally, I was conducting fieldwork. Hence, when they referred to people who worked in the formal hospital bureaucracy, I could understand about whom they spoke. To enroll their patients-clients, they did not have to hang around hospital waiting rooms or get patients’ lists from the staff; their names circulated informally, and patients told each other about them by word of mouth.

These intermediaries offered patients a *heskem* (contract), and then patients decided if they wanted to continue with them. Under the intermediaries’ terms, patients had to pay a sum up front and the rest of the total price at the end, after they had “passed the committee” and had a scheduled date for their transplants. Michal said that when the donor-recipient pair did not pass the committee and did not get the *ishour* (approval), the patient did not have to pay the remaining portion of the price. In exchange, the intermediaries committed to try and find a donor⁶ for the patient, and to assist the donor-recipient pair in the *ta’alich* (process). If successful at the first attempt, the process took about three to four months.

Michal found about half of her donors herself, and half through another intermediary. She and Noah put their own ads in *mekomonim*, the local supplement of a mainstream newspaper that differs from region to region. When we met in her apartment, Michal reached to the living room table for the newspaper and showed me the page. In the advertising section, there was a small square of about 2 × 3 cm with a red background. Written on top, in Hebrew and in yellow, was: “Needed,” followed by this text:

Kidney donor, between the age of 28 and 40, possibilities of visa for the U.S.⁷

The ad was followed by two cell phone numbers, different from the contact details I had for Michal and Noah. The relationship started like that, with a phone call to Michal’s or Noah’s cell phone. When I spent time with them, I saw they were continuously taking calls on

⁶ I am reluctant to use the expression *sellers* to describe those who provide a kidney against financial compensation, because *they* do not use it. However, I am conscious that a sum of money is handed over and of the global and local contexts in which these transactions take place. The taboo over the words *sale*, *trade*, and *purchasing* is quite prevalent in this milieu. People prefer to speak about compensation for donation.

⁷ This intriguing reference to the possibility of obtaining an American visa was never elucidated during the fieldwork.

their cell phones. An initial phone exchange between Noah and a would-be “donor-seller” included the following topics: questions about age, blood group, first name, and how long the person had been and would be in the country; basic information about the length of the process, and about the fact that there are blood tests; arrangements of test dates; and finally, the setting of a time and place for a quiet meeting in a coffee shop in the town where the donor candidate lives.

To find the other half of her pool of donors, Michal was dealing with a man she called Boris. She told me this was not his real name, and that he had refused to meet with me. She said she usually phoned Boris and asked him “what she needs [what Michal needed as the intermediary]: what blood group, etc.” Boris always managed to find potential donors and made the contact with Michal in exchange for a commission. In fact, when Boris searched for a donor and found one, Michal gave the money paid by the organ recipient to Boris, on the assumption that Boris “closes his own deal with the donors.”⁸ At the time of our meetings, Michal started to think that she might not need Boris after all: “Why would I use Boris, he has the client, but I do all the work, he is young and not responsible, he sleeps till late in the morning . . .”

The connections made by Michal and Noah were organized with the idea of creating a fit pair, echoing what is being done in ordinary matchmaking for getting married and in the premarital genetic screenings that are prevalent in Orthodox and ultra-Orthodox Jewish communities (Prainsack & Siegal 2006). More generally, and with a bit of irony, the matchmaking described below unsettles the descent-based core of transplant relatedness reviewed earlier, in favor of a sort of affine-making practice.

Michal next contacted the donor candidates and met with them, to see if they were “OK.” “If OK, I make the connection.” To know if someone is OK, Michal checked the following characteristics:

. . . not stupid, speaks nicely, looks fine, not fat, not small, not young. He works, is married, most of the time they work and they are married and they have children. They have stability. I’m looking for stable, not 22, 25 years old, but 30, 40. . . I don’t like to work with women, lots of emotions; I prefer to work with men. Men, they’re more stable . . . with emotional people, perhaps there will be problems.

⁸ The type of deals that Boris arranges with donors is unknown to me, as I was not able to meet Boris. It is difficult to know what “commission” was retained by Boris, and how much was actually handed out to the seller in exchange for his or her kidney. Lack of transparency is a general characteristic of the field.

Hence, for Michal, men were better donors than women. But there were not many candidates, so:

It is like when you are a poor beggar; you don't choose what you get. But if I could choose I'd prefer not with women . . . but if I have only women candidate[s], then I take women.⁹

If the candidate was found suitable, Michal sent him or her to do blood typing tests in order to make a cross-match between the patient and potential donor. For one patient, Michal might have to try several would-be-donors before a negative cross-match was obtained and, equally, would-be-donors might have to try several cross-matches before succeeding to be compatible with a patient. During my fieldwork, one donor in particular had tried three times and still not succeeded because of antibodies. Michal and Noah paid their donor candidates 100 *sheqelim* (approximately USD \$30) to do a cross-match. Good biological compatibility was thus necessary before going any further with the connection.

Once this was established, the next stage of Michal's work was to arrange a meeting between herself, the patient-client, and the donor candidate. Michal described the purpose of the meeting: "We sit together, we talk, we try to find a story, make a connection . . . We invent a story, a cousin, an uncle, etc . . . from nothing." The story was made by them together, in order to hide a financial arrangement and hence satisfy the legal requirements of the committees that approve kidney donations. Later, when I asked her more specifically about stories, she told me she did not like the expression *sipour* ("story"), and would prefer to call her project a *historia meshoutefet* ("shared history"). Sometimes, explained Michal, the wife of the donor came to the meeting and helped with the creation of the story. Hence, donating a story could be another way for kin to give and contribute to this project. All this was usually done in one meeting only, early in the morning in a coffee shop, where they could sit discreetly, in a corner.

"Somebody brings me the people, they bring me donors. And we make a story for the committee . . . not a true story," she said with a confessional look. She explained the process of crafting a *historia meshoutefet*:

⁹ This was about the only generalized distributive gender pattern I could identify in the field. In the literature, however, one finds evidence of gender disparities in transplants, since women are willing to procure organs more easily (Simmons et al. 1987) and to be less successful as recipients due to past pregnancy-induced increases in their antibody levels (Society for Women's Health Research 2001). An Israeli surgeon once told me he was very concerned about the family pressures that women, and especially women from "another culture" such as Druze or Palestinian women, may endure when a male family member needs an organ. In this case, this surgeon seemed to provide another example of how sophisticated humanists feel they have to save "a brown woman from brown men," to echo Spivak's rhetoric (1988).

I sit with the patient and the donor, I ask the patient about his history, and also about the history of the donor, we do it together, everyone says something, and then one says “Oh you’ve been there also, me too, etc.” I have a lot of imagination, I always have ideas. It is all of us together, like a brainstorm.

Making the Shared History

So what constitutes a good *historia meshoutefet*? A story that would fit well with the committee’s requirements. One important thing is that the story has to be learned, and performed. Hence Michal told me they did not make it hard; they made a simple story, easy to remember. A good *historia meshoutefet* also builds on the reality of participants, which it uses as starting point. As anthropologist Adam Reed puts it, for many people what characterizes “good fiction” is that it is based on truth and historical realities.¹⁰ In this sense, *historia meshoutefet*, as fiction, always contains truth, because it constitutes a recombined reality. Michal and Noah used these guidelines and models for *historia meshoutefet*:

Friends from work is a type of relationship that works. If the patient is old, his daughter may have a boyfriend who can give. *The daughter’s boyfriend*, these are good candidates. He needs to be old enough, we don’t do it with children of 24, 28, or something like that, if they are young, it does not make a good story.

But if the patient is young, then the donors can also be young, and it’s easy to make the shared history. You can say that they grew up together, they went to the army together. Friendship works well too.

Another example is *the freelancer who works with the husband* [of the patient]. Here, the patient’s husband is a bigger constructor, and the donor is a smaller contractor who works for him. The two men had got to know each other by playing chess. It is not a very close relationship.

General rule is it should not be too close, because then they will need too many details. If they are less close, there are fewer details. It is easier. For example, if it is a contractor, the patient and the donor do not know each other too much, the donor works for her husband and that’s it.

If the donor is religious and the patient too, it is good. If the patient is religious and the donor not, we try to insert religious expressions in the donor’s explanations to the Committee, like *Be’azrat Hashem* (“with G_d’s help”), etc. (emphasis added)

When making the *historia meshoutefet* along with the intermediaries, the donor and recipient also needed to exchange information

¹⁰ Adam Reed, University of St. Andrews, personal communication, June 2006.

about one another's demographic and socioeconomic situation, to be prepared to answer questions about each other. They also had to be prepared to answer questions about their relationship, such as how many times they had met, how long they knew each other, and even whom the idea to donate came from. Another very crucial part of the making of the *historia meshoutefet* was to figure out and practice how it would be delivered. The making of these stories, though highly personalized and self-interested, is in this sense bound to be part of a collective project (Ewick & Silbey 1998), as their production must anticipate collective conventions of narrative such as shared "linguistic formulations, structures and vocabularies of motives" (1998:243). I elaborate in more detail on the performance of the *historia meshoutefet* in the next section.

In addition to learning through these detailed guidelines, I came to learn how a *historia meshoutefet* exists by witnessing one in practice. Perchia was a 40-year-old religious woman, divorced and without children, whom I had met in a hospital's transplant unit before I met Michal, without knowing she was dealing with Michal. One day, Michal announced to me that she heard I had met Perchia, and that Perchia was a contact she got from Boris. When I had met with her in the hospital, Perchia had given me a different version of the story. She had told me that she had done her national service (the equivalent of the army for religious women, hence about 20 years ago in Perchia's case, given her age) in a hospital where she had seen people suffering on dialysis. Later in her life she had worked for a family as a babysitter and got to know some of the family's friends, among whom someone needed a kidney donor. She also had said that a very respected rabbi had encouraged her to donate, and that she absolutely did not want money. For their part, the potential recipient of Perchia's kidney and his wife, whom I had also met in the hospital, had told me with a scandalized tone that they had never even imagined how one could purchase a kidney. Later, Noah explained to me how they built a *historia meshoutefet* for Perchia and the patient:

It's stories that we build together, we ask the history of the donor, the history of the patient, and then we put together and make a connection . . . for example, Perchia is religious, and they [the patient and his wife] also are, it works well . . . another example is, if the patient is very young and religious, and the donor a "born-again Jew."

In retrospect, I can say that I learned what *historia meshoutefet* is by experiencing one directly. Here, one such *historia* was prepared and served to me, the outside ethnographer, in the same way it was being prepared and served to other bureaucrats and agencies.

These detailed explanations of the craft of the stories say something important about kinship in two ways: first, in the way they are representations of connections that try to imitate the connections of biological kinship, and second, in how they show that kinship can be something that is made only to be instrumentalized. As explained at the beginning of this article, in many cases of fictive kinship, the instrumentalization is only part of the story. Here, however, the kinship is the instrument itself; it is contingent, ad hoc, and for Michal, Noah, and their clients, it does not endure after the objective has been achieved.

As I now turn to the description of how the *historia meshoutefet* is activated before the Israeli bureaucratic administration, I will argue that what is happening here says something about extensions of bureaucratic practices. For example, often the narratives created by actors do not necessarily mimic biological kinship (as one could predict) but rather resemble some relatedness that is more remote and vague and hence more convenient a fit with bureaucratic expectations.

Performing the Shared History

The following steps in the matchmaking process involved entering the official transplant system. Equipped with their *historia meshoutefet*, and coached by the intermediaries, the donor-recipient pairs now had to go through a series of three performative events, each with its own nature, goals, and evaluative principles. The pairs tried to get their unrelated kidney donation approved by the transplant unit of a hospital, a psychology consultant firm, and the national health authority. The patient-client and donor pairs thus began by going to meet a hospital's transplant unit coordinator: Michal said, "They come to her, the patient says, 'This is my donor,' she asks them a few questions, and they do a cross-match."

Intermediaries called this screening process the first committee (*va'ada rishona*). For them as well as for transplant coordinators, the term *committee* (*va'ada*) seemed to refer to the challenges and the obstacles people working on both sides had to overcome in carrying out their work. The *va'ada rishona* was a series of individual meetings between the professionals of the unit with patients and donors, and a weekly assembly during which the unit's surgeons, social worker, nephrologists, psychologist, and head nurse met in the office of the head of the unit. During these weekly group meetings, the professionals reviewed all the cases of the week together, recounted their notes, and shared anecdotes about the patients and donor candidates they had met.

One day in the hospital, a transplant coordinator murmured to me that there was a girl that day who was doing it for money. I asked her why she was sure. She laughed and rolled her eyes:

She did not know the name of the person she wants to give to. I ask her, "To whom do you give?" She tells me, "Yossi." I say, "Yossi who?" She did not know his last name.

The coordinator also thought that the woman had previously told different things to her and to the physician, "because she forgot." I was not able to verify if this case was a match organized by intermediaries, but in this particular situation, it seemed that the story, the contingent kinship story, had not been learned quite right. A story not learned right most probably leads to a failed encounter with the committee. In this case, from the beginning, the coordinator had a sense that it was not right: "I don't think it will get accepted by the committee," she anticipated. For her, being illegal and not being accepted by the committee were two different things. In this distinction, one begins to see the particular, contingent nature of the legitimacy of the committees themselves.

The professionals—nurses, social workers, psychiatrists, and psychologists—who listened to the *historia meshoufet* usually rewrote it, or part of it, in the would-be-recipient's file. The degree of depth of the story as it is written down in hospital documents can be contentious. Different professionals have different views about how detailed such story and background information should be. Some hospital professionals believe the story of the relation between donor and recipient should be reported thinly, as this facilitates approval, whereas others would prefer to have "more meat" in the file. The professionals described themselves as having very limited powers of investigation: they can question the patient and donor but cannot verify beyond what they are being told. In lieu of assessing the legality or truth of what they are being told, the professionals are interested in the reasonable probity of stories (Jacob 2006). As in many instances in bureaucratic settings, apparent reasonableness and credibility are common proxies for truth (Lynch & Bogen 1996) and warrants of ethical, institutional, and personal regard (see Maurer 2005).

Two weeks after this first stage came what Michal called the second committee (*va'ada shnia*). This "second committee" in fact consisted of a psycho-diagnosis test of the donor-candidate, performed by a private firm based in Tel Aviv. This test was designed in conjunction with and sanctioned by the national health authority, but the transplant staff emphasized that this was an independent, private psychological consultation. The emphasis on the independence of the consultation contributed to the construction of legitimacy, in which combating conflicts of interest was

considered important. Intermediaries usually accompanied the donors at the firm, waiting for them outside. The director of the firm told me they try to search and eliminate those who have a “conscious or unconscious financial interest in donation,” and they also eliminate those who might look, in a clinical evaluation, as if they cannot handle psychological stress. The psychological condition that motivates people to donate or sell a kidney is translated into how to read the graphic images presented in the psychodiagnosis evaluations well, including the famous and controversial Rorschach test built around a series of figures. As put by Michal:

They check if he [the donor] says all the time the same thing, that he does not change his mind every time he says something. They show him a drawing—if he sees a lion, he is aggressive, but if he sees flowers, he is nice and sensitive.

At this stage, the donor’s altruistic motivation toward the recipient was scrutinized, along with the donor-recipient relation itself. It was thought that altruism could be detected by expert evaluation, and that it was an essential motive to the procurement of a kidney. After the meeting with the donor, the psychologist who conducted the tests and interview wrote a report and sent it to the national health authority, which was in charge of the next and last evaluation stage. The director of the firm mentioned:

We try to eliminate the difficult cases . . . we don’t select who will be the next leader of Israel, or who will be the next best student at Cornell In the report, we try to balance, we try to give dichotomous answers but it is hard for us to decide, we don’t want to be the decision makers. There is no format in which we have to answer yes or no, we recommend or not. We may pinpoint to [*sic*] one aspect, raise a reservation, illuminate a point, for example, to write: “This person looks fragile.”

Later, there was the *va’ada achrona* (“the last committee”), the committee of the national health authority, or “committee of the altruistic.” This committee was the forum where the historia mesh-outefet had to be performed in a more formal way, and where I was never authorized to conduct observations. (To gain my knowledge of this committee’s activities, I interviewed most of its members individually, as well as the secretary of the committee, to talk about her work recording the minutes.) This committee expected consistency in the telling of stories. The search for altruistic motives was there, but found in a surprising form: “My working assumption is that if it’s altruistic, there should not be inconsistencies between the stories of the donor and the patient,” told me the lawyer who sits on the committee. While a “feeling that it does not smell good” was often the basis of transplant committees’ decisions, many different types of knowledge (legal, rabbinical, psychological,

medical) were deployed to determine what were legitimate or illegitimate social relations in this particular context. Legalistic and bureaucratic techniques as well as expert jargon were used to make these distinctions. The specialists (more or less carefully) separated consistent from inconsistent, and acceptable from unacceptable.

I elaborate elsewhere (Jacob 2006) on the legal and managerial organization of this multidisciplinary decisionmaking body, and on some of the epistemological problems they faced. One of these critical epistemological problems has to do with negotiating among the different committee members' relations to knowledge itself. For instance, one trend within this committee was to push to know more, probe, and investigate to uncover the "truth" that some members believed existed behind the *historia meshoutefet*. The other trend was to be more complacent toward the applicants, and to restrain one's expert assessment by relying on different legal and procedural techniques, such as the importance of not exceeding the jurisdiction of the committee. In addition, seemingly mundane bits of information such as knowing how to speak, behave, and dress properly before the committee could carry some weight in the evaluations as well.

Intermediaries and their clients only knew at the end of the process whether they passed or not,¹¹ and if they failed, they were not told at what stage they did—that is, before what instance/committee they did fail. If the patient-client received approval, there were still further medical evaluations to be scheduled at the hospital: "Sometimes we pass the committee, and it fails medically," explained Michal.

Ad Hoc Contingent Kinship

One major part of Michal and Noah's work was using their inventiveness to make up a kinship story with their client and the donor. When Michal said that "together, we make a story for the committee," she made explicit the fact that "family" can be a discursive project (Holstein & Gubrium 1994) or a process (J. Leach 2003). In the previous pages we saw that before the state, fictive kinship means presenting a family *per se*, but as important is managing a simple, easy-to-remember story, and ensuring that it is told and repeated without inconsistencies before the state. This tweaks and supplements previous conceptions of fictive kinship.

¹¹ In one case, 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 committee, and the court confirmed the decision of the general committee in a brief decision: *Gadban v. State of Israel* 2003.

In his ethnography of person-formation, James Leach has emphasized the very creativity, combinations, and re-combinations that are involved in making persons and relations (2003:xvii). He points out that the creative aspect of kinship interactions seemed to be missing in earlier analyses of kinship. For example, the distinction between so-called real, biological kinship, and social or fictive kinship, albeit viewed as natural, is nothing but the product of psychological and immensely creative subjective constructions. The idea that social kinship is a construction that is perceived rather than something “true” reveals the agentive creativity that is crucial in processing kinship. The very idea that kinship-as-biology would be created rather than simply bred also speaks to this idea of creative kinship (J. Leach 2003:23–4). It is this creativity in making kinship that I tried to highlight in the material above. Now, using this material, I wish to take seriously Leach’s challenge of the distinction between biological, and social, or hand-made kinship.

I suggested earlier that kinship connections were often thought by transplant regulators to produce a natural propensity to donate and receive organs among kin. Therefore, mimicking kinship or inventing it altogether is the tactic that is privileged by many. What gets to be performed before the committee is essentially the relation itself. Convincing the committee members of the true nature of friendship relations or of one’s genuine altruism would also be an option, but it seems that starting from scratch with an entirely fresh kinship story, while based on historical reality (remember, a good *historia meshoutefet* contains bits of reality), is simpler: if the kinship story is believed, the donation gets accepted more easily. This makes explicit the theory about kinship being a tool to play with to make one’s self and others visible by the state. In the case of the Israeli transplant bureaucracy, perhaps the most critical thing to do to acquire kinship and its dividends is to invent and learn a simple, easy-to-remember story, and to ensure that it is delivered without inconsistencies before the appropriate legal body. A detailed account of the practices of patients, donors, and transplant professionals, including gray-sector intermediaries, demonstrates how for local actors kinship is devoid of a grand and distinct structure and is instead an extension of bureaucracy and legitimation. As an instrument for local actors, kinship was understood for what it does rather than for what it is.

As conceived by Al-Haj, and as I showed in the ethnographic material, “[k]inship is used for tactical means for the mobilization of power and the promotion of personal interests” (1995:314). The associations observed in the field were of a self-serving and temporary nature, which may be why some would be reticent to treat these ad hoc connections as kinship proper. It is known that after

“passing the committees” and after the transplant surgery has occurred, the so-called transplant relatedness that has been invented, orchestrated, and staged, quickly disappears and turns out to be one of the inequitable financial transactions that have been documented abundantly (Cohen 2001; Goodwin 2006; Scheper-Hughes 2004). If one uses the biological understanding of kinship, the very kinship that appears through detected biological compatibilities and physical sharing of body material among recipients and suppliers usually does not create social relations. Yet it would be a mistake to overlook the fact that pragmatic associations formed in the name of kinship say something about the character of kinship itself. I think since these associations claim kinship and impersonate it, their effects are kinship effects, and this is at least as important as blood or love relations in the understanding of transplants. The fact that within the above material, kinship seems transient and purely strategic adds specificity to our understandings of what can be done with kinship rather than what kinship is made of. In other words, this material emphasizes not so much what makes kinship, but what kinship makes. The strategic use of ad hoc contingent kinship shows once again how ideas about nature and culture can be mobilized instrumentally for several purposes.

There are other examples of such strategies. In her important work on infertility clinics, Thomson engages with what she calls “strategic naturalizing” (2001). This mode of thought is helpful in understanding what kinship may mean in our context. “Strategic naturalizing” refers to how infertile women who have recourse to ova donation view their motherhood experience. Being gestational rather than genetic mothers, these women strategically naturalize specific connections and the absence of connections to reinterpret what is natural motherhood. The gestational mother interprets the absence of genetic connections between herself and her fetus as irrelevant to establishing parenthood, and she replaces this absence with the biological ideas of nourishing the ovum and fetus. This reinterpretation—making the ova production and donation process irrelevant or at least less relevant than the nourishing of ova—contributes to a better acceptance of ova receiving. It is based on specific ideas of nature—that is, that nourishing acquires a specifically important meaning for reproduction because it is thought to have natural, not *simply* cultural, attributes. These classifications are clear manifestations of the conceptual interplay between nature and culture. They show how in reproductive matters, nature is given much more weight than *just* culture and, in turn, “nature” follows the prerogatives of culture (a sense of “naturalness” follows the contractual relationship between egg donor and “gestational mother”).

The ordinary concept of fictive kinship, like “strategic naturalizing,” has a very specific existence and rhetorical force that speaks to Holstein and Gubrium’s social construct. They write:

As a social construct, family does not simply emerge as a description of inherently meaningful domestic circumstances. Rather, it is a resource—a concept, image or metaphor to be *used*—for responding to interpretive challenges regarding the status and meaning of social bonds. (1994:273; emphasis in original)

One of the problems with this concept of fictive kinship is that it is generally conceived to be hidden among the subjects, and “revealed” afterward by the scientists (Gubrium & Buckholdt 1982:886–7). By contrast, the fictive kinship that I identified in the field is organized and constructed by people, and it is visible on the surface. This is important methodologically, in part because in the present case the metaphorical processes by which people create kinship are fully explicit. Hence the scientist does not “discover” this form of kinship, since it is there for all to make and to see. As an ethnographer, I simply offer an analytics that is already elaborated by my informants.

The situation described in this article is radically different from dominant understandings of fictive kinship in other ways. The material suggests the presence of a contingent kinship that exists on an ad hoc basis and is used for a particular purpose and within a specific temporality. In this sense it is distinct from what is ordinarily known as fictive kinship, which is a more or less long-term alliance that can be instrumentalized. In addition, the kinship arrangements reviewed here are productive of and reactive to the legal organization of kidney transplant supplies. Between suppliers and recipients who are unknown to each other and who are matched by agents, one hears echoes of kinship ideas. This ad hoc kinship consists of a strategy: it is literally invented for the sake of the regulation of transplants. This strategic relating is necessary for participants because it fulfills the bureaucratic and legal requirements they must meet in order to carry out their transaction.

Finally, while the contingent transplant relatedness builds on the naturalness of family duty and altruism, it is not necessarily biologized, meaning that unlike “strategic naturalizing,” it is not a fiction that takes its main inspiration from the idea of the natural, biological family. Recall that nowadays, since the advent of anti-rejection drugs, transplant relatedness does not have to be based on biological nearness (Cohen 2001). In this article kinship has been introduced as an extension of legal, bureaucratic forms: something that is essentially imitable and replicable. Kinship can stabilize connections, but it seems this stabilizing power can itself be mimicked (see Franklin 2001; Butler 1999). In addition, kinship is

seen as the way dutiful bounds of sociality get to be imagined, debated, and performed efficiently in legal-bureaucratic spheres. Hence kinship ought to be understood as performative—that is, without an ontological existence except from the various acts that constitute its reality. As put similarly by Butler (1999) in the context of gender, and Munro (1999) in that of culture, performativity is as reliable a signal of agency as inner, intimate subjectivity. As Munro observes, performance does not efface individuality, performance is rather what makes individuality manifest; this is how persons make themselves “visible” and “available” (1999:619–20).

In addition, conceiving this form of kinship as ad hoc and contingent is not to say that it should be seen as opposed to real kinship, or as a parasite that impairs what real kinship is or should be about. In the conclusion, I tease out this last point and draw some broader implications from our newly found artefact. But I first draw some lessons about transplant regulation itself.

Conclusions

The above can take us in different directions. One is to question the idealization of family donations in the context of transplants. These types of donations are rarely problematized; in this sense, they seem to occupy “the ethical position” in transplant, the one that should be replicated. Posited as being the most virtuous modes of sharing material, and always opposed in a false dichotomy to market transplants, family donations, when conceived as non-coerced by transplant professionals and bioethicists, have an aura of virtue that is worth paying attention to. The field of transplant is a field of utilities and of supply and demand. Hence the rhetoric of family gift metaphorically takes up a particular and increasingly familiar message in the context of health care privatization and of the shrinking welfare state: rely on your kin. I saw glimpses of this appear in U.S. hospitals (Jacob 2006; see also Hamdy 2008). The fact that the biological family is again posited as the site where the most useful and most virtuous solution lies should not surprise (see, e.g., Fineman 1995). That transplant issues and their related social problems are framed and remedied by reference to the family should not surprise either. The morality and utility of family donations and of transplant relatedness cannot be separated from this particular context.

I now turn to how this tells us something important beyond the specific context of organ transplants, and about the link between kinship and legal process. Ultimately I also wish to re-emphasize how ad hoc contingent kinship unsettles the whole real versus pseudo-kinship dichotomy.

In this piece I have described how individuals plot together to meet, evade, and play with the rules of a regulatory system that is engaged in curbing kidney trafficking. To my informants, this meant that the affiliations they made among themselves had to be built, learned, and performed by relying on the forms and idioms of kinship. All this says something about how legal process anticipates and precipitates kinship. Kinship relations are often conceived as separate, positioned outside of the state. As Fineman points out, it has generally been assumed that “individuals interacting in the context of family do not interact with the same independence and distance as strangers dealing with property and contract issues” (Fineman 1995:227). The “caregiving family” is not only a factual depiction of existing social arrangements. As we saw, it is also an analytical category and rhetorical device that is learned, and that orders the world—in our case the transplant world—regardless of whether the category is representative of social arrangements. In other words, kinship encompasses not only the experience, but also the imagination, sustaining, and mimicking of caregiving and duty fulfillment. This is the idea that the *historia meshoutefet* exemplified, I hope, in this article. But the *historia meshoutefet* is by no means unique in this sense. It offers an opportunity to rethink other productive coalitions that appear in the legal domain. The “marriages of convenience” and “paper sons” (Lau 2006) are examples of relations crafted for the purposes of facing immigration laws and administrations. Arranged marriages to protect wealth and title, and “lavender marriages” used to create proper heterosexual appearance in the face of a homophobic state, are other cases in point. In transplant situations, people linked together by different relations that can be mediated by money, bureaucracy, or religious beliefs invoke *as if* family connections, because this script is the one that allows them to go through the legitimate path of obtaining a transplant. In reaction, the transplant milieu has developed bureaucratic and legalistic strategies sometimes to counter, but even more so to work in tandem with, the stories of kinship in order to translate these stories into data that fit within the category of approvable, legitimated transplants. Through this process, not only does kinship become an extension of legal process, but the practices of kinship and of legal process also mutually react to and challenge one another. In sum, the close analysis of *historia meshoutefet* helps not only to unpack the relation between kinship and legal process, but also to question what the “real kinship” allegedly means.

Legal anthropologists Barbara Yngvesson and Susan Coutin (2006) have described how they inquired into what the “natural child” and the “native citizen” meant, by looking at adoptees and

deportees respectively. Building on the work of Brian Axel (2004), they describe their conceptual approach as a “return”:

Instead of conceptualizing diaspora as dispersal from an origin point, one can usefully think of the seeming originary site as a place that comes into being through diaspora. Similarly, we suggest that, rather than viewing adoption and immigration as imitations of “natural” families and nations, a more productive approach is to examine how adoption and immigration anchor (but also potentially unsettle) the “natural child” and the “native citizen.” (2006:178)

In a similar fashion, one can get at the core of kinship by unwinding the meaning of what is viewed as fictive, contingent kinship. Through imitations and simulations of the biological/natural/original/real kinship, one is able to *see* clearly what the original kinship was allegedly meant to be. Here, based on the experience of patients, donors-sellers, and professionals, it seems that what characterizes kinship is precisely that it can be performed, replicated in the legal sphere, and that it produces a series of expected effects. Rather than having roots that pull people back to a ground of belonging (Yngvesson & Coutin 2006:187), kinship, like legal process, engenders new relations. This definitional connection between kinship and legal effects potentially challenges not only essentialist and structuralist, but allegedly “realist” understandings of kinship.

What this means is that kinship appears mainly as a template: a pattern to be reproduced. If kinship exists as such, then *ad hoc* contingent kinship cannot be a pale carbon copy of the “real thing,” because the quintessence of the real thing is precisely its replicable quality. The ability to be extended and reproduced is also a characteristic of legal knowledge; in this sense, kinship and law share a similar form, or aesthetic.

Note that the reproduction of patterns is not devoid of creativity. For Michal and Noah, the instrumental power of the *historia meshoutefet*, aside from being about the financial profit it brings, is a power for crafting “a sort of authority for one’s self” or “one’s own rubber stamp” (Siegel 1998:57) and for attesting to their creative abilities. Michal made this explicit: “I have a lot of imagination,” she told me with poise. In this sense the *historia meshoutefet* echoes the forgeries of divorce certificates, university diplomas, and driving licenses that anthropologist James Siegel (1998) studied in contemporary Indonesia. The power of *historia meshoutefet* is analogous to the sort of instrumental power and even prestige that is derived by Siegel’s counterfeiters. It is a strength residing precisely in techniques and creative dexterity for mimicking what the state expects. In that context, the idea of

“forgery” and of the fictive takes on a different significance. If something is essentially replicable, copying comes as a matter of course, and forgery can be judged not only on the basis of its malicious intentions, but also on the basis of its efficiency.¹²

This is why the idea of the false cannot work here. In its relation to legal process, kinship can be copied and even magnified, but it cannot really be false. This is also why I argue that the bureaucratic and legal enactment of kinship has its own, rich autonomous existence that is not encompassed within the real versus pseudo-kinship binary.

It does seem as if the problem of the distinction between kinship-as-biology and “genuine kinship” is haunting many science studies scholars and feminist critics of science (see Franklin & MacKinnon 2001). But relevant questions might include the following: How are we to address kinship in ways other than by comparing it *against* the rhetorical device of the “real” family or kinship-as-biology? How can we think about kinship without opposing the fake one to the real one? This article does not provide for conclusive answers, but by pointing at the concept of kinship as template, I hope it is putting down some building blocks for the larger project of taking such questions seriously as sociolegal problems.

References

- Al-Haj, Majid (1995) “Kinship and Modernization in Developing Societies: The Emergence of Instrumentalized Kinship,” 26 *J. of Comparative Family Studies* 311–28.
- Axel, Brian Keith (2004) “The Context of Diaspora,” 19 *Cultural Anthropology* 26–60.
- Barker, Nicola (2008) “Not the Marrying Kind: Feminist Critiques of Marriage and Legal Recognition of Same-Sex Relationships.” Ph.D. diss., School of Law, University of Keele, United Kingdom.
- Berger, Bennett M. (1981) *The Survival of Counterculture: Ideological Work and Everyday Life among Rural Communards*. Berkeley: Univ. of California Press.

¹² Siegel writes:

One cannot understand the lack of the sinister in these descriptions without seeing the admiration for doing something, for making something more efficiently if not always with a value that lasts, and without understanding that in some cases such people, in real life, actually do help one get, say, a driver’s license in a few days rather than weeks or months. These people may cheat, but the esteem for them, even the recipes for being like them given by the details, is not explicable as a desire for transgression. The admiration is not getting away with it, for defying authority. It is for creating a sort of authority for one’s self. One has one’s own rubber stamp. It explains the lack of rancor.” (Siegel 1998:57)

- Birenbaum-Carmeli, Daphna (1999) "Inter-Generational Relations among Upper Middle-Class Jewish Families in Israel," 41 *The Jewish J. of Sociology* 24–49.
- Borneman, John (1992) *Belonging to the Two Berlins: Kin, State, Nation*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Bourdieu, Pierre (1977) *Outline of a Theory of Practice*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Butler, Judith (1999) *Gender Trouble. Feminism and the Subversion of Identity*. New York: Routledge.
- (2000) *Antigone's Claim. Kinship Between Life and Death*. New York: Columbia Univ. Press.
- Carsten, Janet (2004) *After Kinship*. Cambridge, United Kingdom: Cambridge Univ. Press.
- , ed. (2000) *Cultures of Relatedness: New Approaches to the Study of Kinship*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Chambers, David L. (1996) "What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," 95 *Michigan Law Rev.* 447–91.
- Clarke, Morgan (2007) "Closeness in the Age of Mechanical Reproduction: Debating Kinship and Biomedicine in Lebanon and the Middle East," 80 *Anthropological Q.* 379–402.
- Cohen, Lawrence (2001) "The Other Kidney: Biopolitics Beyond Recognition," 72 *Body and Society* 9–29.
- (2003) "Where It Hurts: Indian Material for an Ethics of Organ Transplantation," 38 *Zygon* 663–88.
- Edwards, Jeanette (2000) *Born and Bred: Idioms of Kinship and New Reproductive Technologies in England*. Oxford, United Kingdom: Oxford Univ. Press.
- Emerson, Robert, et al. (1995) *Writing Ethnographic Fieldnotes*. Chicago: Univ. of Chicago Press.
- Ewick, Patricia, & Susan S. Silbey (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: Univ. of Chicago Press.
- Fineman, Martha (1995) *The Neutered Mother: The Sexual Family and other Twentieth Century Tragedies*. New York: Routledge.
- (2004) *The Autonomy Myth. A Theory of Dependency*. New York: New Press.
- Fogiel-Bijaoui, Sylvie (2002) "Familism, Postmodernity and the State: The Case of Israel," 21 *The J. of Israeli History* 38–62.
- Franklin, Sarah (1997) *Embodied Progress, A Cultural Account of Assisted Conception*. London: Routledge.
- (2001) "Biologization Revisited: Kinship Theory in the Context of the New Biologies," in S. Franklin, & S. MacKinnon, eds., *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke Univ. Press.
- Franklin, Sarah, & Susan MacKinnon, eds. (2001) *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke University Press.
- Giles, Fiona (2004) "'Relational, and Strange': A Preliminary Foray into a Project to Queer Breastfeeding," 19 *Australian Feminist Studies* 301–14.
- Gillison, Gillian (1980) "Images of Nature in Gimi Thought," in C. MacCormack & M. Strathern, eds., *Nature, Culture and Gender*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Goodwin, Michelle (2006) *Black Markets: The Supply and Demand of Body Parts*. New York: Cambridge Univ. Press.
- Gubrium, Jaber F., & David R. Buckholdt (1982) "Fictive Family: Everyday Usage, Analytic and Human Service Considerations," 84 *American Anthropologist* 878–87.
- Hamdy, Sherine F. (2008) "When the State and Your Kidney Fail: Political Etiologies in an Egyptian Dialysis Ward," 35 *American Ethnologist* 553–69.
- Harrington, Jennifer, et al. (2008) "Nonreproductive Technologies: Remediating Kin Structures with Donor Gametes," 33 *Science, Technology and Human Values* 393–418.

- Heimer, Carol A. (2006) "Conceiving Children: How Documents Support Case vs. Biographical Analyses," in A. Riles, ed., *Documents: Artefacts of Modern Knowledge*. Ann Arbor: Univ. of Michigan Press.
- Helmreich, Stephen (2003) "Kinship in Hypertext: Transubstantiating Fatherhood and Information Flow in Artificial Life," in S. Franklin & S. MacKinnon, eds., *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke Univ. Press.
- Herring, Jonathan (2002) "Giving, Selling, Sharing Bodies," in A. Bainham et al., eds., *Body Lore and Laws*. Oxford, United Kingdom: Hart.
- Herzfeld, Michael (2007) "Global Kinship: Anthropology and the Politics of Knowing," 80 *Anthropological Q.* 313–23.
- Holstein, James A., & Jaber F. Gubrium (1994) "Constructing Family: Descriptive Practice and Domestic Order," in T. R. Sarbin & J. I. Kitsuse, eds., *Constructing the Social*. London: Sage.
- Jacob, Marie-Andrée (2006) "The Match of Relatedness: Bureaucracy, Legitimation, and Kinship in Organ Transplants." Doctoral thesis, Cornell University.
- (2007) "Form Made Persons: Consent Forms as Consent's Blind Spot," 30 *Political and Legal Anthropology Rev.* 249–68.
- (n.d.) Discipline Exchange on Organ Swaps," in M. Freeman, ed., *Law and Anthropology*. Oxford, United Kingdom: Oxford Univ. Press. Forthcoming.
- Jean-Klein, Iris (2003) "Into Committees, Out of the House? Familiar Forms in the Organization of Palestinian Committee Activism During the First Intifada," 30 *American Ethnologist* 556–77.
- Kahn, Susan Martha (2000) *Reproducing Jews: A Cultural Account of Assisted Conception in Israel*. Durham, NC: Duke Univ. Press.
- Kaufman, Sharon R., et al. (2006) "Aged Bodies and Kinship Matters: The Ethical Field of Kidney Transplant," 33 *American Ethnologist* 81–99.
- Kennedy, Karen (2002) "Organ Donation and Transplantation in India: An Inquiry in Kerala," 11 *J. of Social Distress and the Homeless* 41–67.
- Kishore, R. R. (1996) "Organ Donation: Consanguinity vs Universality—An Analysis of Indian Law," 28 *Transplant Proceedings* 3603–6.
- Latour, Bruno (2002) *La fabrique du droit. Une ethnographie du Conseil d'État*. Paris: La découverte.
- Lau, Estelle T. (2006) *Paper Families: Identity, Immigration Administration and Chinese Exclusion*. Durham, NC: Duke Univ. Press.
- Leach, Edmund R. (1961) *Pul Eliya, a Village in Ceylon. A Study of Land Tenure and Kinship*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Leach, James (2003) *Creative Land. Place and Procreation on the Rai Coast of Papua New Guinea*. Oxford, United Kingdom: Berghahn.
- Lévi-Strauss, Claude (1949) *Les structures élémentaires de la parenté*. Paris: P.U.F.
- Lynch, Michael, & David Bogen (1996) *The Spectacle of History: Speech, Text, and Memory at the Iran-Contra Hearings*. Durham, NC: Duke Univ. Press.
- Maurer, Bill (2005) "Due Diligence and 'Reasonable Man' Offshore," 20 *Cultural Anthropology* 474–505.
- Munro, Rolland (1999) "The Cultural Performance of Control," 20 *Organization Studies* 619–40.
- Prainsack, Barbara, & Gil Siegal (2006) "The Rise of Genetic Couplehood? A Comparative View of Pre-marital Genetic Testing," 1 *BioSocieties* 17–36.
- Reed, Adam (2006) "Documents Unfolding," in A. Riles, ed., *Documents. Artefacts of Modern Knowledge*. Ann Arbor: Univ. of Michigan Press.
- Riles, Annelise (2000) *The Network Inside Out*. Ann Arbor: Univ. of Michigan Press.
- Rose, Nikolas (2001) "The Politics of Life Itself," 18 *Theory, Culture and Society* 1–30.
- Rothman, David J., et al. (1997) "The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs," 29 *Transplant Proceedings* 2739–45.

- Scheper-Hughes, Nancy (2002) "Commodity Fetishism in Organ Trafficking," in N. Scheper-Hughes & L. Wacquant, eds., *Commodifying Bodies*. London: Sage.
- (2004) "Parts Unknown: Undercover Ethnography or the Organs-Trafficking Underworld," 5 *Ethnography* 29–73.
- Schneider, David (1980) *American Kinship: A Cultural Account*, 2d ed. Chicago: Univ. of Chicago Press.
- Shalev, Carmel (1998) "Halakha and Patriarchal Motherhood: An Anatomy of the New Israeli Surrogacy Law," 32 *Israel Law Rev.* 51–80.
- Shifman, Pinhas (1981) "Marriage and Cohabitation in Israeli Law," 16 *Israel Law Rev.* 439–60.
- Siegel, James T. (1998) *A New Criminal Type in Jakarta: Counter Revolution Today*. Durham, NC: Duke Univ. Press.
- Simmons, Roberta G., et al. (1987) *Gift of Life: The Effect of Organ Transplantation on Individual, Family and Societal Dynamics*. New Brunswick, NJ: Transaction.
- Society for Women's Health Research (2001) "Sex Differences in Immunology and Autoimmunity." Proceedings from Understanding the Biology of Sex Differences Scientific Advisory Meetings, Boston, http://www.womenshealthresearch.org/site/DocServer/samboston_report.pdf?docID=309 (accessed 8 Aug. 2008).
- Spivak, Gayatri (1988) "Can the Subaltern Speak?," in C. Nelson, & L. Grossberg, eds., *Marxism and the Interpretation of Culture*. Chicago: Univ. of Illinois Press.
- Strathern, Marilyn (1988) *The Gender of the Gift*. Berkeley: Univ. of California Press.
- (1992a) *After Nature, English Kinship at the End of the Twentieth Century*. Cambridge, United Kingdom: Cambridge Univ. Press.
- (1992b) *Reproducing the Future. Anthropology, Kinship and the New Reproductive Technologies*. London: Routledge.
- (2005) *Kinship, Law, and the Unexpected: Relatives Are Always a Surprise*. Cambridge, United Kingdom: Cambridge Univ. Press.
- Thomson, Charis (2001) "Strategic Naturalizing: Kinship in an Infertility Clinic," in S. Franklin & S. MacKinnon, eds., *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke Univ. Press.
- (2005) *Making Parents. The Ontological Choreography of Reproductive Technologies*. Boston: MIT Press.
- Trigger, Zvi (2003) *Remembrance of Laws Past: The Adoption of Religious Marriage and Divorce Law as a Means for Reviving the Jewish People's Lost Manliness*, working paper, New York University Law School.
- Wagner, Roy (1982) *The Invention of Culture*, expanded ed. Chicago: Univ. of Chicago Press.
- Waldby, Catherine, & Robert Mitchell (2006) *Tissue Economies: Blood, Organs, and Cell Lines in Late Capitalism*. Durham, NC: Duke Univ. Press.
- Weston, Kath (2001) "Kinship, Controversy, and the Sharing of Substance: The Race/Class Politics of Blood Donation," in S. Franklin & S. MacKinnon, eds., *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke Univ. Press.
- Wolstenholme, Gordon E. W., & Margaret P. Cameron, eds. (1962) *Ciba Foundation Symposium on Transplantation*. Boston: Little, Brown.
- Woodhouse, Barbara Bennett (1996) "'It All Depends on What You Mean by Home': Toward a Communitarian Theory of the 'Nontraditional' Family," 1996 *Utah Law Rev.* 569–612.
- Yngvesson, Barbara (2007) "Refiguring Kinship in the Space of Adoption," 80 *Anthropological Q.* 561–79.
- Yngvesson, Barbara, & Susan Coutin (2006) "Backed by Papers: Undoing Persons, Histories and Return," 33 *American Ethnologist* 177–90.
- Zafra, Ruth (2008) "More Than One Mother: Determining Maternity for the Biological Child of a Female Same-Sex Couple—The Israeli View," 9 *Georgetown J. of Gender and the Law* 115–64.

Cases Cited

- Brenner-Kadish v. Interior Minister*, HCJ 1799/99 P.D. 54(2) 368 (1999).
Gadban v. State of Israel, HCJ 5785/03, P.D. 58(1) P.D. 29 (2003 Israel).
Nahmani v. Nahmani, CA 5587/93 P.D. 49(1) 485 (1995 Israel).
Yaros-Hakak v. Attorney General, CA 10280/01 P.D. 59(5) 64 (2001).

Statutes and Circulars Cited

- Adoption of Children Law 1981, S.H. 1028 (Israel).
Brain Respiratory Death Law 2008, S.H. 2144 (Israel).
Kings' Order-in-Council 1922-1947, Drayton Laws of Palestine III, p. 2569.
Living Organ Transplants—Procedure Amendment 2002, Director General circular, Ministry of Health, Israel.
Organ Transplantation Law 2008, S.H. 2144 (Israel).
Rabbinical Court Jurisdiction (Marriage and Divorce) Act, 1953 S.H. 134 (Israel).
Surrogate Mother Agreements (Approval of the Agreement and Status of the Child) Law 1996, S.H. 1577 (Israel).

Marie-Andrée Jacob is a lecturer in the School of Law, University of Keele, United Kingdom. She received her LL.B. from Université Laval (Québec City), her LL.M. from Osgoode Hall, and her J.S.D. from Cornell University. She employs legal and ethnographic methods to study how law, experts, and society interact in generating controversies and consensus on issues pertaining to modern medicine. She is working on her first book, based on her research in the social and legal management of transplants in the United States and Israel.