CHINA PROFITS FROM PRISONERS: ORGAN PROCUREMENT AND THE ETHICAL ISSUE OF CONSENT

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ABSTRACT

After execution, prisoners become the primary source of human organs used for medical transplantation in China. Organ procurement from prisoners violates the principle of voluntary consent because of the very nature of incarceration. In China, extreme methods of torture are used and many prisoners are not given a free-trial, or a lawyer and, therefore, are wrongfully convicted. This thesis begins by discussing the rise of the Chinese security system and how this has led to unusual high records of arrests and executions. In addition, medical professional secretly involved in the process of removing organs from prisoners who are tortured and abused is a direct violation of international medial ethics and is inexcusable. A close examination on the prison system will reveal how laws in China permit the removal of organs from prisoners and how the country stands alone in this practice. As more individuals are arrested, the sale of organs in China increases and the nation profits off of its prisoners. The sale of prisoners abroad leads to a discussion of a controversial traveling exhibition displaying plastinated human bodies and cadavers from China in the Untied States. The exhibit organizers are unable to disprove allegations that the origin of the bodies on display came from executed prisoners in China. The analysis will then conclude that consent is essential and a universal principle applicable to all nations.
DEDICATION

This past year of my life has been dedicated to exposing an atrocity occurring in China which has given me some challenges. As I have set my goals to achieve these tasks it has been difficult for me to witness such extreme abuses of Chinese prisoners and impossible for me to remain silent. Everything I have experienced in my life has made me who I am today and continues to shape me as an individual. I would like to thank the professors who introduced me to the world of ethics and human values and the importance of their application. I would especially like to thank my mentor during this process, Gladys White, who has supported this endeavor and research during the entire process. In addition, I am very thankful for the Liberal Studies program at Georgetown University, which stresses the importance of interdisciplinary pedagogy and the connection of human values. This program has given me the chance to synthesize all of my research and interests into one paper. This thesis, however, is specifically dedicated to all prisoners of consciousness who were detained for their religious, intellectual, or political beliefs against their will who were then tortured, executed, and subject for organ procurement. Throughout history, torture has been used in both dictatorial and democratic societies to demonize or oppress those with different backgrounds and belief systems. In an enlightened society, the global community would not allow any individual or nation to violate the basic human rights allotted to every individual in every nation.
INTRODUCTION

Executed prisoners are the primary source of human organs in China. Organ procurement from prisoners contravenes the principle of voluntary consent because the very nature of incarceration is coercive. In addition, China’s lack of due process ensures that many prisoners are not given a free-trial or the right to a lawyer. Far too often the convicted are faced with execution simply for the sake of their organs; which proves to be a lucrative business. “Whether condemned prisoners donate their organs willingly is questionable, which is why the World Medical Association and the Transplantation Society both ban the use of organs from convicted criminals.”¹ In addition, according to international regulations, voluntary consent cannot actually exist if a person does not have a legal capacity to consent; therefore prisoners are considered a vulnerable population. While there are indeed moral dilemmas implicit, the lack of voluntary organ donors around the world, especially in China, has led many to believe that the use of executed prisoners bodies is morally permissible. However, China's heavy reliance on the use of prisoner’s bodies either to “enhance medical research,” or even “save lives,” violates international medical ethics. In addition, the removal of prisoners organs involves members of the medical profession in the actual execution process which is also a direct violation of international medical ethics. “Chinese doctors participate in pre-execution medical tests, matching of donors with recipients and scheduling of operations, often on a first-paid, first-served basis. Surgeons are commonly present at execution grounds to perform on-site removal of vital organs.”²
This thesis will begin by giving an in depth analysis into the rise of China’s security system, the nature of this rise, and how the system is protected through main government bodies and regulations such as the “Propaganda Department” and “State Secret” Laws. I will move on to discuss how these provisions have led to unusually high records of arrests and more executions than in any other nation. If citizens expose arbitrary “sensitive” subjects, they are often tortured and sentenced to execution without a free trial, due to China’s lack of due process. The Chinese prison system is unique compared to all other nations. Chinese Provisions allow the use of prisoners bodies and organs after execution. This thesis exposes how organ procurement from prisoners not only violates international medical ethics, but also creates economic incentives to increase the number of executions; holding the Chinese prison system open to extortion and wrongful convictions. This thesis should not be taken lightly as organ procurement from prisoners maybe one of worst medical atrocities ever to exist since the Nazi Regime and should call everyone into action. “Where capital punishment is invoked more sparingly than in China, the possibility arises of juries convicting for the sake of organs.” Ethical questions concerning informed consent, privacy, confidentiality, and other issues will be addressed in this thesis.

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.
CHAPTER I
SECURITY ON THE RISE

Nation in Silence

The Chinese Communist Party (CCP) maintains tight control over its media because of fear that political opposition will emerge. The reason why the CCP enforces this tight control is because of the belief that information on democracy, human rights, and religious beliefs threatens the stability and loyalty of its "one-party" system. This fear has grown since the establishment of the Internet and Chinese leaders have responded with unusual heightened security. “Anything related to individual leaders, the Communist Party, democracy, political reform, protests, discussions in government meetings, the 1989 Tiananmen demonstrations, human rights, Falun Gong, religion, corruption at the top, Taiwan, Tibet, and other topics that the Propaganda department considers politically sensitive because they could subvert Party power, is forbidden.”

The seminal idea that the nation should come together under one party was a response to when the nation did not have an established government in the early 1900’s and was undergoing western imperialism. In 1949, when the Peoples Republic of China was founded by Mao Zedong, patriotism and loyalty replaced religion, democracy, and human rights. This altered the country's moral, historical, and social perceptions in their entirety. In order to further enforce the belief that citizens do not have the right to different political, religious, or intellectual views other than the government’s views,
past-president, Deng Xiaoping established new laws defining that the primary right for the Chinese citizen is the right to economic development, not human rights. “The “Dengist” model also requires that leaders demonstrate absolute loyalty to the CCP for its survival, and to furthering the progress of the economic reform agenda.” Therefore, because the issue of human rights is interconnected to the idea of national sovereignty itself, anyone who does not remain loyal to the Party is quickly arrested. “One can count on the fact that every few months or so, China's security apparatus will lock up at least a few political dissenters or intellectuals or journalists or religious adherents or others who defy the restrictions of the one-party state.” As a result, citizens who attend universities in China are taught that “censorship” is a core concept needed to maintain a "Marxist one-party" political system. “The Chinese Communist regime has never hesitated to silence or even murder individuals who express political criticism in their private correspondence and it is even more determined to banish criticism from newspapers and magazines.”

The Great Firewall of China

In fact, censorship is so valued in China that it is known as a leader in technological advancements in this area and is often referred to as the “Great Firewall” of China. Monitoring sensitive information through the nation's advanced Internet censorship technology continues to grow. “According to Harvard University’s Berkam Center, China operates the most extensive and technologically sophisticated systems of Internet filtering in the world.” In addition, many U.S. Internet hardware and software
companies cooperate with the Chinese government’s regulations in order to become part of the lucrative market. “American companies like Cisco, Yahoo, Microsoft, and Google, in order to do business in the lucrative China Market, have swallowed their scruples and cooperated with the Chinese government in censoring searches.” As a result, Chinese citizens often find themselves arrested for “subverting state secrets” simply for searching the Internet and face possible execution. In fact, one of the most controversial stories is of a journalist imprisoned in China named Shi Tao, who was arrested after Yahoo! provided Chinese officials with his identity and private information. Yahoo!, a major U.S. Internet company, has taken heat for the handing of user information that helped Chinese authorities identify and jail dissentents, including Shi Tao, who was imprisoned in 2005 for 10 years. The journalist was going to cover a story on the 15th anniversary of the Tiananmen Square Massacre; which was considered a violation of “state secrets.” “Yahoo’s role in the Shi Tao case and its decision to turn censor in order to curry favor with the Chinese government shows the extent of corporate capitulation to China.”

In addition to providing private information, Yahoo! and Google have agreed to block websites that are banned by the Chinese government. “Key phrases like “Tiananmen massacre” or “Falun Gong” or “Dalai Lama” or “Taiwan independence” attract immediate scrutiny.” Far too often citizens who enter these “key phrases” into search engines, such as; http://www.google.cn, test the limits of the government and face retaliation. “American technologies of surveillance, encryption, firewalls, and viruses
have now been transferred to Chinese partners—and might even one day be turned against our own ludicrously open Internet. We funded, built, and pushed into China what we thought was a Trojan Horse, but we forgot to build the hatch.”

In a true democracy, the citizens of a nation should have the freedom to be informed and obtain all information existing domestically and abroad. Yahoo!, Microsoft and Google argue that they are still serving the “greater good” because China’s Internet users at least now have greater access to information with their services than ever before, despite censorship. “The continuing furor over the role of American companies (such as Cisco, Yahoo!, Google, and Microsoft) in cooperating with censorship or security monitoring has underscored the obvious point that the Internet in China is not free.”

The CCP is afraid of its citizens obtaining information and thus responds by implementing advanced technology to block websites. “In China, the role traditionally has been to support the government by spreading propaganda and suppressing news that contradicts policy or puts officials in a bad light.”

**The Propaganda Department**

The main form of monitoring such information passed in China is through the government’s Propaganda Department. The Propaganda Department in China, now called the “Publicity Department” is a major branch in the government responsible for censoring information released to its citizens. “As a department of the Communist Party Central Committee, the Propaganda Department outranks government ministries or the State Council Information Office, and dominates the processes of media.
The Propaganda Department was initially established to block Chinese citizens from reading about Western imperialistic views entering into the country as an aim to stabilize the one-party system. Now the department is primarily concerned with blocking information on domestic issues, such as human rights violations or large protests. “Operating through its national network of provincial and municipal branches, the Propaganda Department sends instructions to publications several times a week by fax or telephone about what topics to report on and what topics to play up.” The Propaganda Department acts as a main governing body in the government which controls and dictates exactly what information its citizens receive, thus information in China is not free and citizens are not informed. Anyone, including lawyers, who fail to follow these secret instructions, risks various legal sanctions. In fact, many are arrested for violating two main laws: The State Secrets Law, and the State Subversion Law.

**Subverting State Power**

The Chinese “State Secret Laws” are concerned with the eradication of, “circulating state secrets” and the “State Subversion Law” deals with direct violations to the Criminal Law. The crime of “inciting subversion of state power” is the most frequently used to arrest citizens and is arbitrary and subject to change when an event arises that is perceived to threaten its authoritarian regime. In other words, the definition of “state secrets” in China is very broad; encompassing matters which would be subject to public scrutiny in other countries. “Over recent years the Chinese authorities increasingly use vaguely defined criminal charges, including “subverting
state power,” “disturbing public order,” “endangering state security,” and “leaking state secrets,” to silence and imprison peaceful activists in China.”\textsuperscript{14} In addition, statistics on the actual number of arrests and executions connected to these charges are not released to the public under protection of these laws. “The PRC state secrets system, implemented through a CPC-controlled hierarchy of government bodies, is comprised of state secrets laws and regulations that work in tandem with the PRC’s state security, criminal procedure and criminal laws, to create a complex, opaque system that controls the classification of—and criminalizes the disclosure or possession of—state secrets. By guarding too much information and sweeping a vast universe of information into the state secrets net, the complex and opaque state secrets system perpetuates a culture of secrecy that is not only harmful but deadly to Chinese society.”\textsuperscript{15}

Many citizens arrested for these charges serve long term prison sentences and face execution simply for violating arbitrary “state secrets.” According to Article 4 of the “State Security Laws” of the PRC, citizens are arrested for “plotting to subvert the government, dismember the State or overthrow the socialist system.” Arbitrary imprisonment of Chinese citizens stems from the fear that such crimes have a goal to over-throw the government, thus crimes are defined as “counter-revolutionary.” “The arbitrary detention or imprisonment of people who seek peacefully to exercise their fundamental human rights is facilitated by a number of provisions in Chinese Law, and also by practices which, though contrary to the law, have nevertheless become the norm.”\textsuperscript{16} The primary issue is that almost every prisoner is tried for endangering state
security laws, which are grounds for execution if found guilty. “The conviction rate for first-instance criminal cases was over 99 percent in 2004.”\textsuperscript{17} In fact, only five criminals were acquitted that year making this the highest conviction rate tried by the Chinese Courts. These results reveal a lack of due process and extortion in the judicial process. “Defendants charged with having committed such crimes, or others relating to “state secrets,” are deprived of many rights, including access to legal counsel of their choosing, access to family and a public trial.”\textsuperscript{18}

**Lack of Due Process**

There are numerous reports that prisoners in China are not given a chance to appeal their sentences through a process of judicial review and court officials quickly deny appeals to the death sentence. Prisoners are held on death row for weeks or months without being informed that their appeals have already been rejected. “Crucially, condemned prisoners are usually not told that their appeals against the death sentence have been rejected until only a few hours before their actual execution, nor are their families so informed.”\textsuperscript{19} The issue here is that those arrested and accused with crimes are not given access to a fair and public trial. Many “prisoners” are not given an opportunity to appeal their sentence through proper judicial review. “The lack of adequate judicial safeguards in China, coupled with the existence of government directives allowing political offenders and other nonviolent criminals to be sentenced to death, virtually guarantee that a significant number of wrongful executions will take place. Some of those unfairly sentenced may be unwitting organ donors.”\textsuperscript{20}
Provisions in Chinese laws deny detainees access to evidence against them and allow citizens to be systematically detained for months without charge. In fact, prisoners who are detained by the police for months without charge are protected by the Criminal Procedure Law (CPL). “According to the CPL, criminal suspects may be detained by police for up to 10 days before they are formally arrested (charged) or released. The law also provides that, following arrest, investigation may last up to four and a half months before a decision is taken to either prosecute or grant release to a detainee.”

Far too often these time limits are extended for more than four and a half months and officers directly violate the Criminal Procedure Law. “However, in practice the police sometimes detained persons beyond the time limits stipulated by law. In some cases, investigating security agents or prosecutors sought repeated extensions, resulting in pretrial detention of a year or longer. The criminal procedure law allows detainee’s access to lawyers before formal charges are filed, although police often limit such access.”

Thus, many convicted criminals are illegally detained for months, without legal representation, before actually being charged under the Criminal Law.

There are different administrative detentions that hold many of these citizens prior to trial. “One form of administrative detention, known as "shelter and investigation" (shourong shencha), gives police the authority to detain people for long periods without charge merely on suspicion that they may have committed crimes.”

It is believed that these types of “shelter and investigation” detention areas are used secretly by police without judicial supervision in order to avoid violations to the
Criminal Procedure Law. “It denies detainees all safeguards provided in national legislation and international law, and violates the provisions against arbitrary arrest and detention in China’s Constitution and law.”

The most popular form of detention center in China is known as the “Re-Education through Labor” (RTL) system, in which half a million people are reported to be held. The condition is these RTL locations are very similar to those in prisons.

Far too often, violations of provisions increase as dissidents are refused a lawyer or proper due process. “The Chinese government continues to imprison, detain, or otherwise harass intellectuals, reporters, dissidents, believers engaged in “illegal” religious activities, unauthorized Internet publishers, and others for the peaceful exercise of fundamental rights guaranteed under China’s Constitution and the Universal Declaration of Human Rights.” In cases such as these, the possibility of prisoners receiving a fair hearing is less likely to occur than in ordinary criminal cases. Often these trials are closed to the public and are not reported by official sources. Relatives are not usually informed in advance of the trials and the convicted are not allowed to call a witness for defense. In addition, it has been reported that most detainees have no access to a lawyer or family for months while on trial. “Defendants are often denied the right to choose their own lawyer and must either accept one appointed by the state or prepare their own defense.”

Furthermore, in practice, the trial is already determined before the hearing even takes place or the defendant often goes to trial without a lawyer. Chinese jurists openly
refer to this practice as “verdict first, trial second.” In other cases, in which defendants cannot afford legal representation, the courts may appoint defense counsel or the defendant may apply for legal aid, but the law does not guarantee free legal representation. Lawyers are required to submit their defense statements to the government for prior approval. However, many defense lawyers who work on sensitive cases are often harassed, lose their licenses, or are even arrested. Such was the case of Guo Guoting who was arrested for defending Shi Tao, the journalist who was arrested in China for covering stories on the Tiananmen Square Massacre. “In February 2005, for example, Shanghai authorities suspended the law license of defense lawyer Guo Guoting and later placed him under temporary house arrest.” As a result, Shi Tao did not have a lawyer to appear on his behalf last April. Lawyers continue to be charged for “evidence fabrication” and other crimes. Those who are convicted are detained without proper defense. “Numerous articles in the official legal press have criticized this practice in recent years, as well as other practices which contravene Chinese law, such as the extreme limitations on the role of defense lawyers, the use of torture to induce "confessions" and the interference of political authorities in the judicial process.” In fact, the Criminal Procedure Law (CPL) which allows suspects to be detained for long periods of time without trial only increases opportunities of ill-treatment of prisoners.

**Torture**

Torture techniques have been used in many of these detention centers as a way to “extract confessions” or to change the political or religious belief system of the
convicted. It is common for the detaining authorities to subject them to constant pressure, and in some cases ill-treatment, in order to extract from them incriminating information and make them admit to the accusations against them.\textsuperscript{29} There is usually no control or appropriate supervision over the local authorities and police when they exercise their power to interrogate the convicted during investigation and trial. Immediately after someone is arrested they are subject to criminal detention and are completely isolated in usually helpless positions and shackled to the ground, with no proper legal defense. There are a variety of techniques used to extract confessions. These techniques are often so painful that even if the accused criminal was innocent, they would confess to committing the crime in order to end the suffering caused from torture. The methods of torture that have been reported include: constant interrogation, shocks with electric batons, shackles of handcuffs for long periods of time, sleep or food deprivation, exposure to cold temperatures, being pressed under a bed for long periods of time, having their bodies burned with red hot objects, such as irons; using batons to enhance electromagnetic shocks, stabbing with sharp objects, brutal beatings, being forced to sit on small stools, and sexual abuse. The issue is that many are forced to confess because of the extreme methods of torture, even if they did not actually commit the crime. In other words, the continued reliance on confessions as a sufficient form of “evidence” for prosecution only facilitates conditions for the continued use of torture. As a result, Chinese citizens are sentenced to execution once they have been forced to confess, regardless if they are innocent. The most common form of torture
used against prisoners to extract confessions is the imposition of handcuffs and shackles in which prisoners are often kept this way until they are sentenced to death months later. “The use of leg irons and chains as instruments of restraint is prohibited by international standards. The application of leg irons and the prolonged use of other restraints amount to cruel, inhuman and degrading treatment and add to the cruelty of the application of the death penalty.” increases in torture and execution are most noticeable during China’s “Strike-Hard” or “Anti-Crime” campaigns. “Even outside of the Strike Hard Campaign, China’s system of criminal justice stands in infamy for extracting confessions through torture and for blatant disregard of rights to due process.”

Anti-Crime Campaigns

“Anti-Crime Campaigns,” also know as “Strike-Hard” Campaigns, are “mass sentencing rallies” performed in public on particular holidays or anniversaries in order to show Chinese citizens what happens when citizens “disobey” or are “disloyal” to the one-party system. “In times of political tension, Strike Hard Campaigns offer the government a tool to manipulate the public and increase governmental control. Since its inception, the Chinese Communist Party has used public sentencing rallies and public executions to instill fear in the hearts of all its citizens, linking executions and violence as a tool to increase political power.” These prisoners sent to rallies are subject to violence and public humiliation in front of crowds of people and are used for “entertainment” in order to threaten disobedience. They are often paraded around in vehicles with their hands tied behind their backs. These rallies are held in very public
areas and attract huge crowds who watch the prisoners go off to execution. Prisoners are immediately executed, usually by a shot to the head, immediately after the rally in deserted fields, courtyards, or hospitals guarded by military police. “Authorities postpone individual executions until a sufficiently large group of condemned prisoners, usually ten or more, has accumulated for purposes of holding a pre-execution “mass sentencing rally” (xuanpan dahui) for public edification.”33 Through this system, the government of China performs large-scale executions that are protected through the nations “death penalty” laws.

**Execution on the Rise**

As a result of China’s heightened security and fear of political opposition, the nation has conducted more executions than the rest of the world combined. In fact, during the 1990’s; China conducted over 18,000 executions, however many believe the number is much higher since statistics are kept secret. “As the Chinese government always keeps secret the true numbers of executions carried out, and Amnesty International derived its figures from a few public Chinese official reports, the true number of executions that took place is likely much higher than those stated here.”34 Despite great efforts to keep these statistics “secret,” the government does have records of this data and runs reports during Strike-Hard campaigns. Central government records of the total numbers of executions carried out each year certainly exist. In fact, every month the actual number of death penalties and executions that were carried out are required to be reported to the Supreme People’s Court. In essence, China’s high
record of executions is troublesome and may be occurring because prisoners are denied their rights to appeal.

All prisoners about to be executed are supposed to be questioned by a court judge who is supposed to verify that they have the correct person. However, often a court judge is not present to question the prisoner and many face execution with no legal protection. “If a prisoner protests that he or she has been wrongfully convicted or presents new exoneratory evidence, the procuratorial official is according to law supposed to order the execution delayed for further investigation.” However, there are loopholes in the government regulations and officials often ignore prisoner’s rights to appeal. The issue here is that there are no set standards for these regulations yet there remains no delay in the execution process. In fact, the lack of clearly defined procedures led one official who had supervised many executions to complain, “at the most critical and important juncture, when the death sentence is finally being carried out, it seems as if there are no rules to be followed (wu zhang ke xun).”

Executions are usually performed immediately after a “Strike-Hard” Campaign and the criminal’s family is often required to pay for the bullet. Prisoners are shackled and forced to kneel down prior to receiving a bullet fired in close range behind the back of their head. These executions are usually performed by a solider or police squad. Another method is to shoot a bullet into the heart from behind using a powerful automatic rifle. One of the main reasons Chinese laws permit prisoners to be shot in the head is because this method allows the kidneys and livers to stay intact and remain
undamaged so that the prisoner’s organs can be extracted by medical professionals.

“The execution procedure prescribed by Chinese law (shooting in the back of the head), is sometimes violated in order to expedite procuring of prisoners organs. According to Chinese legal authorities, some executions are even deliberately mishandled to ensure that the prisoners are not yet dead when their organs are removed.”37 Perhaps fear of political opposition and the lack of due process can give significant reasons for such a high execution record; however, the lucrative business of selling prisoners organs suggests an alternative reason for this heightened increase. “Well, I think that our sense of revulsion at the inflated numbers of executions in China, which may possibly be linked to the fact that this is a lucrative business, is very difficult for us to bear.”38
CHAPTER II
PRISONERS: ORGAN PROCUREMENT

The 1984 Provisions

In 1984, the Supreme People’s Court, the Supreme People’s Procuratorate, Ministry of Public Security, Ministry of Justice, Ministry of Public Health and Ministry of Civil Affairs established the “Rules Concerning the Utilization of Corpses or Organs for the Corpses of Executed Prisoners,” which allows the use of prisoner’s bodies and organs for medical research and scientific studies. The Rules allow the use of dead bodies and organs, if and only if, they are: “1) the uncollected dead bodies or the ones that the family members refuse to collect; 2) those condemned criminals who volunteer to give their dead bodies or organs to medical institutions; 3) upon approval of the family members.” Essentially, the “uncollected” dead bodies stated in the first rule are prisoners left “unclaimed” or “unidentified” after execution. Many are left unclaimed by family members because they are often not informed until the day before execution, if at all, and thus are unable to either make the trip in time to refuse or have the finances to make it in time to claim the body and by that time organs are extracted regardless. “They also set execution dates and ensure that the family will not be notified until after the execution is already carried out.” In addition, prisoners are also marked as “unidentified” because they refuse to identify themselves to officials when initially arrested because of fear that their family members will be subject to the same arrest and torture; which usually occurs. Therefore, many prisoners choose to remain
“unidentified” and thus, by law become a legal source for organ procurement.

The second rule allows the use of prisoner’s bodies and organs if the condemned criminals “volunteer” to give their dead bodies or organs to medical institutions. However, the idea that a prisoner is in a position to actually “volunteer” is questionable. “But even in the apparent minority of cases where the consent of prisoners is sought as required by law, the abusive circumstances of detention and incarceration in China, from the time a person is first accused of a capital offense until the moment of his or her execution, are such as to render absurd any notion of “free and voluntary consent.””

However, even if prisoners did consent, are death row prisoners really in a position to make free voluntary decisions? Prisoners are not in a legal capacity or position to be fully informed about their decision as to what happens to the disposition of their body after death.

The third rule requires the “approval” of the family members, however, there are numerous reports of families testifying that they were not informed and did not approve of the procurement of organs from their sibling or loved one before they were removed and then “donated” to medical institutions. In some cases, family members were even given cash payments to remain silent if not they were threatened to be arrested. “In other cases, not only are families not informed but they are offered cash sums in advance - anything from several hundred to a few thousand Yuan, to authorize use of the condemned person's body. Refusal to grant permission, however, may reportedly result in the families being presented with unauthorized bills for large sums of money
by the police, covering everything from the cost of the prisoner’s food and “board” while in detention to the price of the bullet used for the execution (about six cents) plus onerous cremation charges.” In addition, officials are required by the regulations to cremate the body immediately after execution allowing any evidence of illegal organ procurement to vanish. Many family members have reported that the body was already cremated prior to their arrival and thus, they have no way of predicting whether or not organs have been removed without their approval. If the body has not been cremated, it is usually covered with a sheet and family members are not allowed to view the body or request autopsy.

Perhaps what is most concerning regarding the 1984 Provisions is the declaration that the primary recipients of these organs should first go to government officials, the military, and then the wealthy. The official document states that the recipients of the organs extracted from prisoners to be used for transplantation should be: “1) high ranking government officials; 2) members of the military 3) wealthy Chinese and other foreigners; 4) the common citizen.” The very fact that this has been ranked in a particular order indicates that the incentive to remove organs from prisoners is not necessarily to save the lives of the common folk, but only those who can afford to receive an organ or enhance research. In addition, what is most disturbing about the 1984 Provisions is that they require secrecy during the entire process. “The use of the corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding negative repercussions .... A surgical vehicle from the health
department may be permitted to drive onto the execution grounds to remove the organs, but it is not permitted to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation for organ removals is going on.”

Confidentiality or Concealment?

The 1984 regulations also enforce that the use or “utility” of the dead bodies and organs of prisoners must be kept strictly “confidential” and in supreme “secrecy.” “Use of the dead bodies or organs from condemned criminals must be kept strictly confidential, attention must be paid to the effect, and they should in general be used within the units. Only in real need, upon the approval of the Peoples Court executing the death penalty, can the operation from medical institutions be allowed entry into the execution grounds to remove organs, but vehicles with the logo of medical institutions are not to be used, and white clinic garments are not to be worn.” Securing organs from prisoners that requires a process that is hidden is subject to abuse. “Were consent meaningful, there would be no need to set for elaborate procedures for concealment and to exempt minorities from the law.” In addition, the provisions in the law require absolute secrecy and confidentiality regarding the actual procedure for procurement between health personnel and public security officials. The issue here is that often “confidentiality” in this case is not used to “protect” the prisoner’s privacy; it is used to conceal participant’s involvement in the process.

The relationship between secrecy and confidentiality tests the limits that ought
to be allowed especially if the restrictions are harmful, deceitful, and misleading.

Instead of “lying,” secrecy and silence is the preferred option or alternative when police and medical doctors are questioned by prisoners. “But the limits are uncertain where these strong personal and professional bonds are present. And so lies to protect confidentiality come to be pitted against the restrictions on harming innocent persons. Practices, some legitimate, others shoddy, persist and grow behind the shield of confidentiality.”9 Is it really ever alright to uphold confidentiality if it is harmful or deceptive. Perhaps there would be no need to keep such a practice secret if there were an established legal donor program within the nation.

**Lack of Consent**

The consent of prisoners for the use of their bodies and organs for transplantation, medical advancement, or scientific research, although required by law, is rarely sought. Perhaps the real reason why the government relies on prisoners as a source is because the idea of separation of the body after death goes against the traditional Chinese belief system. “In the case of Chinese prisoners, the issue of consent becomes even more contentious as Buddhist and Confucian beliefs dictate that the bodies are to be kept whole after death, meaning that voluntary donations are rare, if they occur at all.”10 Therefore, prisoners serve as the primary source of organ supply in China because there are no willing donors nor are there systems established where a citizen can actually volunteer to give their organs anywhere in the nation. “There is no national registry for people to sign for donation of their organs after they die.”11
Regardless of this fact, somehow China is miraculously able to supply organs and bodies to meet the international demand and do so more than any other nation.

“According to the report in the Chinese Journal of Organ Transplantation, over 25,000 kidney transplants have been completed in China in the past 20 years.”

Since there are very few donors in China, if any at all, the medical institutions and the judicial court feel pressured to extract organs from prisoners even if they break the rules of the 1984 Provisions, and they do so because they know prisoners would not “volunteer” or consent otherwise. “According to a former judge directly familiar with pre-execution procedures in Shenzhen, condemned prisoners would typically be taken, still in leg irons, into individual interrogation rooms at the jail at around 10:00 P.M. on the night before their execution. At no point, according to this informed source, were prisoners asked if they were willing to allow their organs to be removed after execution.” Such coercive pre-execution procedures as these preclude all meaningful possibility of “free consent” being given. In addition, the character behind these activities of torture truly belittles the claim that voluntary consent is actually obtained from the prisoner. “The notion that someone on death row can give meaningful consent to a procedure - particularly when death row is a miserable hovel in a local jail and the prisoner is kept shackled - is in itself very difficult to accept; add to that the exceptional secrecy that envelops the process, and the claims for consent become still weaker.” In addition, medical professionals are involved in organ retrieval prior to and after execution. The World Medical Association (WMA) in 1994 noted “the increasing number of reports of
physicians participating in the transplantation of human organs or tissue taken from the bodies of prisoners executed in application of a death sentence without previously obtaining their consent or giving them the opportunity to refuse.”¹⁵ Medical doctors should not participate in determining the fitness of the prisoner’s bodies for organ donation as their involvement creates incentives to schedule the prisoner’s death sentence simply for the sake of their organs.

**Medical Doctors Involvement**

Before an execution takes place and not soon after a criminal is convicted, medical workers are allowed to visit prisons, usually let in by guards, so that they can begin to perform blood tests to determine if the prisoner is healthy and suitable to be an organ donor. The tests are usually performed days before the actual execution, however medical personal are forbidden to inform the prisoner the reason for the tests. If the prisoner proves to be a perfect match and is healthy, the execution date is usually set sooner rather than later. “Hospitals are notified ahead of time of when the execution is to be held so they may arrange a donor-patient match and prepare to make the transplant.”¹⁶ Medical professionals are an intricate part of the process of the removal of organs from prisoners and are usually on the execution site to assist. They are also present on the execution ground so that at the moment of “death” they can begin to immediately remove the organs, store them on ice, and rush back to the hospital in secret vans. “Immediately after the prisoner was shot (in the head), the physician stemmed the blood flow, put the prisoner on the respirator, and injected compounds to
raise blood pressure and cardiac output so as to keep the organs perfused. In this way, the physician becomes an intimate participant in the execution process, functioning not to preserve life but to manipulate death in the service of transplantation.”

Thus, the killing and saving of lives become intermingled in the process. “It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees for the purpose of which is not solely to evaluate, protect or improve their physical and mental health.”

In addition, with medical advancements, such as “lethal injections” a medical specialist is almost always required in the process. “With the advent of lethal injections as a method of execution it is likely that more executions will take place in hospitals or clinics linked to prisons or police facilities.” Although execution by gun shot is required by the 1984 Provisions, if the prisoner happens to be a perfect match and it is too risky to damage the organs by gun shot, officials sometimes bypass the rule and instead illegally use lethal injection to induce death instead since it minimizes trauma to the body and it is the most convenient method for organ procurement. However, if a gun shot is used, it must be done in the back of the head to preserve the organs or if cranial injury destroys desired body parts, such as the corneas, prisoners are illegally shot in other parts of their bodies, such as the heart, in order to preserve the needed part.

“Obviously, the role played by health personnel in the execution and organ transplantation process in no way furthers the health of the prisoners involved. Instead, it converts state-sponsored killing into a grotesque, quasi-medical operation. Indeed the
physician's primary duty to safeguard life and health is fundamentally corrupted by the practice of using executed prisoners as a source of organs.” What is even more disturbing is that medical doctors even go so far as to keep the body “alive” after execution in order to remove the organs prior to death so that the transplantation of their organ is more viable; since a kidney or a liver, for example, must be properly stored within minutes prior to the actual death of the prisoner. “A very few localities, in order to be able to use particular organs from the criminals bodies, even go so far as to deliberately avoid killing them completely when carrying out the death sentence, so as to preserve live tissue. In other words, vivisection sometimes occurs.” The issue is that doctors are involved in the removal of organs prior to death and begin extracting while the prisoner is still “alive.” Perhaps this has to do with the fact that “dead on arrival” cases are unusable for most procurement purposes and China’s non-recognition of the “brain death” criterion.

**The “Brain Death” Criterion**

China’s current legal definition of death is when the “heart stops beating.” However, the majority of other nations have adopted the “brain-death” definition as a more accurate criterion for the standard of clinical “death.” In China, there are increasing reports that executions are actually prolonged in order to postpone brain death to assist in the retrieval of organs while the blood is still circulating. In addition, at the actual execution site it is required that a coroner be present to monitor the precise moment of “death.” “Two coroners, one from the court and another from the procuracy,
are required to be present at the execution ground to certify the prisoner’s death, which is measured as the time at which the heart stops beating. According to a former judge of the Shenzhen Municipal Intermediate Court who has witnessed executions, the coroners sometimes ignore the requirement altogether and proclaim the prisoner dead based only upon the fact that he or she has duly received a bullet in the head.”

Doctors play a dual role, that of a surgeon preparing to “save lives” through transplantations and another of assisting in the actual execution and “killing” of the prisoner. This creates conflicts of interest in which there are incentives to prematurely diagnose or even falsify death.

Regardless, even if the nation did recognize and adopt a brain death criterion, it would only assist by providing wider access to organs in China which may be why many in the medical profession are advocating for the adoption of this new standard. “According to a typical view, China should quickly formulate a law using the “brain death” (nao siwang) concept in order to broaden the supply and safeguard the quality of organs. This is really the key to developing China’s organ transplantation work; one might even say that whether or not corpses can be readily used for medical treatment and research constitutes the standard and measure of whether a country is modern.”

The issue is that “brain-death” is very difficult to measure and can be costly as it requires complex medical technology to determine particular brain waves. Even if a new brain-death standard were implemented, there are too many incentives for medical professionals to extract the organs without much concern if the prisoner is either “brain-
dead” or “heart dead.” There is pressure to expedite death and falsify pronouncements of death to ensure success of the organ transplant. “At the place of execution there are no adequate facilities for the diagnosis of brain death, and at the same time the recipient [of a transplant] may be in a hurry.”\textsuperscript{24} In addition, because of the government’s totalitarian nature, there is political pressure to increase the amount of organs available and doctors or coroners feel rushed in their decision in the pronouncement of death. “In a totalitarian country like Taiwan, a judge is not immune to political pressure. Those high up in the system may say that we need more transplant organs, and even those in the medical profession are subject to such political pressure. (Political pressure of this kind is likely to be much more pervasive in China than in Taiwan.).”\textsuperscript{25}

In addition, the People’s Liberation Army (PLA) actually runs the majority of the medical institutions and hospitals in China. The close relationship that the PLA has with the prisons and the justice system ensures that a great number of victims will be individuals who are condemned for their political and religious beliefs, but convicted under other pretenses. The issue is that this population is convicted more often than any other group because their religious beliefs become politically “sensitive” according to the Chinese Communist Party (CCP). In fact one particular group known as “Falun Gong” is currently under close investigation. There have been numerous reports by medical doctors from China confessing that they have been witnesses or participants in the procurement of organs from this particular group because they are the “healthiest” prisoners. In fact, the United States Congress’s Committee on International Relations
recently published a report entitled, “Falun Gong: Organ Harvesting and China’s Ongoing War on Human Rights.” I will examine this investigation; however, it is first important to understand in deep detail the background behind this particular group and what has led to the persecution and ban of this practice. I will examine this particular group as a case study to support this thesis.
CHAPTER III

FALUN GONG: FREEDOM UNDER ATTACK

A Falun Gong Experience

The most brutally persecuted and tortured group in China is known as “Falun Gong” or “Falun Dafa,” which is a cultivation practice that was introduced in 1992 by Li Hongzhi, a “spiritual teacher.” “Falun” actually means “Law” and Dafa means “Wheel.” In western terms, this is known as the “Moral Law.” Essentially, Falun Dafa is an “ethical code of conduct” on how one should live one’s life. It is not a religion, it is not a philosophy, however; it is considered a “science” or “metaphysics.” The essence of the teachings talks about “xingxing” which means heart/mind nature. When practitioners are confronted with conflicts, they do their best to respond with the principles of Truthfulness, Compassion, and Forbearance (Zhen Shan Ren). Although the practice of Falun Dafa does incorporate physical exercises and meditation, the most important part of the practice is cultivating the mind. Although the concept of “cultivating” may not be familiar to many Westerners, looking through the definitions of “cultivate” in any dictionary, one will find that it relates to growth, development, improvement, and refinement of something. Prior to joining, many Falun Dafa practitioners had hardships in life or were unable to change their lives on their own, hence they begin practicing. There are many practitioners who have written stories about how significantly their lives changed when they began practicing Falun Dafa. Many claim to have illnesses healed and conflicts resolved with their family, friends,
job, and marriage. Many claim that the teachings have completely changed their lives and cured their illnesses. There are also many stories about how job performance changed when followers began practicing. This particular meditation and cultivation system has been the basis of numerous reports from individuals claiming that the practice improves their lives and has made them healthier. While working hard to improve their moral character, many also work hard to stop the persecution, and both these roles give their lives new meaning. Falun Gong practitioners continue to rise in numbers internationally. Many have fled China in order to continue practicing Falun Dafa, and it has been reported that there are now over a 100 million practitioners worldwide, including the United States. The spiritual teacher, Li Hongzhi, travels around the world and gives lectures. The teachings have been translated into 40 languages. “As a testament to its superior benefits, Falun Gong has become a global phenomenon of over 100 million practitioners across more than 40 countries by 1999, just seven years since its introduction to the public.”

Persecution of Falun Gong

The overall improved morality and health of this practice is what initially made the Chinese Communist Party (CCP) actually support Falun Dafa in 1992, however, after seven years the practice spread into the millions. Practitioners were engineers, scholars, students, doctors, and artists who held good jobs at universities and even government officials in China were members prior to the persecution. “Falun Gong practitioners were from all walks of life and many were senior and mid-level political
leaders, party members, People’s Liberation Army officers and civil servants. They have spent their lives working for the government and they were not the kind of people who were inclined to rebel against the government.”² Despite this phenomenon, the rapid increase in the practice threatened the stability of the CCP and the government feared that there would be more members loyal to Falun Gong than the Communist Party. As a result, Zhang Zemin, the president of China, pronounced Falun Gong as “subversion of the state” and pronounced the practice illegal and began a horrific persecution in 1999. President Zhang Zemin banned anyone from practicing Falun Gong, pronounced the group as an evil “cult,” and began spreading false propaganda regarding the teachings. The Propaganda Department released false reports stating that practitioners are suicidal, set themselves on fire, and are subject to “self-immolation.” However, these reports are inaccurate as harming oneself or others contradicts the principles of the teaching entirely. The CCP even set up a new branch in the government specifically for police officers, known as “610 officers” who are mainly responsible for cracking down on Falun Gong practitioners. These officers enter the homes of anyone associated with this group, burn their books, separate them from their families, and send them off to “Reeducation through Labor Camps” (RTL) where they face torture and execution. These camps are well hidden in China and kept top secret by officials. Prior to being arrested and sent to camps, many Falun Gong practitioners began peaceful protests to end the new ban on the practice.
In 1999, a physicist who was assisting government officials to ban the spiritual group published false information in an article regarding the practice and the teachings; slandering its members in a popular magazine in China. Many Falun Gong members went to talk to the physicist and the editors of the magazine, to tell them their personal experience of the practice and truth regarding the teachings and asked the editors to “retract” the erroneous article. As a consequence, on April 22 and 23rd of the year 1999, the police violently assaulted the practitioners and arrested forty-five practitioners. The police told the practitioners to go to the central government in order to resolve the problem. As a result, two days later, over 10,000 Falun Gong practitioners gathered together and surrounded the Zhongnanhai leadership compound, peacefully protesting the release of the practitioners arrested and the lifting of the ban on Falun Gong. “The protestors, mostly middle-aged, white-collar professionals, quite a few of them Communist Party members and government officials, had mysteriously appeared overnight without any fore-warning from the police or internal security agencies.” This demonstration had been the largest “protest” since Tiananmen Square, and CCP members were shocked at the ability of practitioners to organize and mobilize so quickly. The government compared this group to the 1989 demonstrators and this further shook the political and social stability of the Communist Party. Zhang Zemin quickly disagreed with the reports given by Premier Zhu Rangji that the Falun Gong practice was safe and immediately labeled the group as a “counter-revolutionary cult.”
At the first meeting of the Party’s Standing Committee of the Political Bureau in April 1999, after Premier Zhu told Party members they should allow members to practice, Jiang told him he was foolish and that this would lead to the destruction of the Communist Party. He then legalized the persecution of Falun Gong and the use of torture to force practitioners to sign statements stating that they will stop practicing their belief and only be loyal to the Chinese Communist Party. However, many refuse to sign these statements either because they go against their teachings or because they fear revealing their names in order to protect family members and friends from also being arrested and tortured simply by association. As a result, most Falun Gong members are marked as “unclaimed or unidentified,” after execution, making this group the primary target for organ procurement in China. “Official statistics in China say 500,000 were held in 310 “reeducation-through-labor” camps in 2005 and 350,000 were held in special administrative detention facilities in 2004.”^3 Falun Gong practitioners represent a significant part of the detained population in these facilities. The Chinese government’s belief that Falun Gong is an “evil cult” does not morally justify the extreme torture and persecution of this group. Does it make sense to persecute individuals who are trying hard to improve their moral character in a world gone awry? Despite severe forms of torture, Falun Gong practitioners remain non-violent during the entire process. One severe component to the physical persecution against Falun Gong practitioners is organ procurement or “harvesting.” It has been reported that 66% of organs from prisoners in China come directly from Falun Gong practitioners against their will. “Several recent
studies identified Falun Gong practitioners, figuring in the millions before their persecution in 1999, as the principal source of organ harvesting and transplantation in China since 1999. The Matas-Kilgour study, in particular, concluded that detained Falun Gong practitioners are systematically targeted for involuntary blood testing and large-scale organ removal.

Mounting Evidence: Organ Harvesting

The Matas-Kilgour Report is an independent study and investigation into the allegations of organ harvesting of Falun Gong practitioners compiled in 2006. “Matas and I looked at every avenue of proof and disproof available to us. All the evidence pointed in the same direction as our ultimate conclusion: the government of China in its hospitals, detention centers and other agencies in numerous parts of the country has over the past half decade put to death a large but unknown number of Falun Gong prisoners of conscience. Most of the victims were convicted of nothing; they were murdered by medical professionals for their vital organs.”

Good health makes practitioners the primary group for involuntary organ donation in China. In fact, no other group is systematically targeted for blood testing and organ examination than the Falun Gong. “This differential treatment serves no plausible administrative or health purposes, but it is a necessary procedure of organ transplantation. Prospective organ suppliers must be blood tested and examined in order to: “1) determine whether the organ is healthy and possesses medical value; and 2) match organ suppliers and recipients with compatible blood groups.” The Matas-Kilgour investigation included evidence from interviews of
witnesses and telephone calls to medical institutions and doctors in China inquiring about the source of their organs for transplantation. In addition, transplantation websites can guarantee a kidney in one week. “This time frame requires a large pool of donors pre-typed for blood group and HLA matching. Systematic blood-testing of arrested Falun Gong practitioners is known. Given a 12-24 hour window for kidney transplantation, and a 12 hour window for a liver, scheduled matching cannot be assured on a random-death basis.”⁷ One such website, http://en.zoukiishoku.com/, is geared towards foreigners and guarantees to match an organ in as little as one to three weeks. Thus, harvesting is done against the will for the mere purpose of providing organ transplants that take place domestically and internationally. The investigation reveals that the number of organ transplants increased dramatically since the persecution began in 1999. Prior to the persecution, there were only 22 liver transplant centers and now there are over 500. The investigation reveals detailed reports from various eyewitnesses and participants in the crime against the harvesting of Falun Gong organs. U.S. Congress also held a special hearing in response to this report. The thought of this occurring today is alarming as many more come forth to testify and bear witness to their involvement.

**Witnesses Come Forth**

One of the first witnesses ever to come forth to testify was a woman by the pseudonym “Annie” who stated that her ex-husband, a surgeon, was involved in the removal of over 2,000 corneas from Falun Gong practitioners in the actual Liaoning
Provincial Thrombosis Hospital of Integrated Chinese and Western Medicine, located in Sujiatun, Shenyang City. “Annie” herself worked in the statistics department at the same hospital while her ex-husband was a surgeon. She said that her ex-husband confessed that other surgeons removed vital organs, such as hearts, kidneys, corneas and skin harvested from these practitioners, and then their bodies were cremated. She also stated that her husband suffered psychological problems because of his participation and secrecy of his medical work. Annie is the first witness who had contact with a direct participant in the Falun Gong organ harvesting. She goes on to explain that the Falun Gong practitioners were transferred from Dabei Prison, Masanjia Forced Labor Camp and other prisons in Shenyang. She describes how the government authorizes killing of Falun Gong practitioners without any legal consequences. “During its killing of Falun Gong, the Chinese Communist Party told the involved hospital staff members that these Falun Gong practitioners were on the brink of death because they were assaulted, they were executed for criminal offenses or they became insane from practicing Falun Gong.”

What is most shocking is when Annie revealed that 6,000 Falun Gong prisoners were being held in a secret basement in the actual hospital, which is not allowed to be discussed by medical staff. “Some of the staff in this hospital knew about, but they... many surgeons participated in such organ removal surgeries secretly. Some other staff members dared not reveal the secret even when they knew about it. They avoided talking about it because they didn’t want to be killed.”

Another important witness who supported the statements made by “Annie” is a
reporter and journalist who goes by the pseudonym Jin Zhong. In his interview, he revealed that a few years ago, while investigating the situation of SARS, he discovered that several thousands of Falun Gong practitioners were in fact being stored underground at Liaoning Provincial Thrombosis Hospital of Integrated Chinese and Western Medicine. He stated that many people knew that there were prisoners imprisoned in the hospital. He claims that at the rear side of the hospital is strictly guarded. “Basically when I was there to do the reporter's job, it was impossible for me to take any photos. I had no way to approach the rear yard, as there were plainclothes policeman to intercept you and not let you pass through. I am now still not sure if those were security guards or plainclothes police.”

He claims there are “intermediary companies” in Liaoning that make arrangements for organ transplantation. “Generally speaking, one needs to wait a long time for an organ to become available--at least a few months. However, arranged by those intermediary companies, you wouldn't need to wait for two or three months. They said two or three months were too long and a big burden for patients who needed the kidney transplant operation. You can come anytime and they can arrange to do the transplant operation when you come. Then you could recover and leave the hospital in two or three weeks.”

What is most horrifying is that Jin Zhong supports “Annie’s” allegation that underneath Sujiatun hospital is a “concentration camp” where Falun Gong practitioner’s organs are harvested and their bodies cremated on a daily basis. In fact, he claims that the Sujiatun hospital is only one out of 36 similar concentration camps throughout China. The majority of detained Falun
Gong practitioners, however, are in prisons, forced labor camps and detention centers. They are then transferred elsewhere on a large scale only when needed, such as Sujiatun. Jin Zhong states that Heilongjiang, Jilin and Liaoning provinces imprison the largest number of Falun Gong practitioners. “The concentration camp in Jiutai Area, Jilin Province is the 5th largest camp imprisoning Falun Gong practitioners in China. This camp alone detains over 14,000 Falun Gong practitioners.”

Another witness is Dr. Yan Jun, who was Chief of the Director’s Office at Nudanjiang Cardiovascular Hospital in China and later testified in front of U.S. Congress and admitted to assisting in the actual execution and heart transplantation of death row prisoners. “An entourage of court personnel from Judanjiang City Intermediate People’s Court and Mudanjiang City People’s Procuratorate escorted a prisoner, bound with handcuffs and leg irons, into the hospital. The Judicial personnel were served tea while the hospital prepared two teams---one to ready the patient for surgery and one to extract the heart from the condemned criminal. First, surgeons removed the heart from the waiting recipient and established external circulation through a bypass machine, and then the execution process began. The prisoner, who had been injected with tranquilizers making him unable to walk, was dragged to the hospital morgue. Officials read his sentence and forced him to face down on the morgue floor. An executioner then shot him point blank in the back of the head. The dying prisoner received injections of medications that temporarily restored heart function and respiration. The hospital director removed the prisoner’s heart and then scrubbed in
preparation for the transplant surgery, which was to take place in the next room. Court
and Procuratorate enjoyed dinner while watching the transplant operation on closed
circuit television.”¹³ Three days later, all of the involved judicial personnel received
sealed envelopes containing 300 to 1,000 RMB. Dr. Yang Jun also testified that when
one prisoner requested to see his sister for one last time the Vice President of the
Executive court mocked him saying, “Why do you want to see your relatives? I am your
relative; the Communist party is your relative.”¹⁴ The prisoner was immediately
executed and organs procured. His body then was sent to the crematorium and no
evidence remained.

Another gruesome statement is from former doctor Wang Guoqi, who worked in
the Chinese People’s Liberation Army Hospital where he worked at execution sites over
a dozen times and removed skin from over 100 prisoners. “Whatever impact I have
made in the lives of burn victims and transplant patients do not excuse the unethical and
immoral manner of extracting organs.”¹⁵ He said at one particular site he was
responsible primarily for carrying the stretcher. “At the site the execution commander
gave the order, “Go,” and the prisoner was shot to the ground. Either because the
executioner was nervous, aimed poorly or intentionally misfired to keep the organs
intact, the prisoner had not yet died, but instead lay convulsing on the ground.”¹⁶ Wang
had 15 seconds to bring the executee to the waiting ambulance, where highly skilled
surgeons extracted both kidneys and then rushed them back to the hospital to transplant
them into the waiting recipient. “When they finished, the prisoner was still breathing,
and his heart continued to beat. The execution commander asked if they might fire a second shot to finish him off, to which the county court staff replied, “Save that shot. With both kidneys out, there is no way he can survive.” Dr. Wang and other burn surgeons remained inside the ambulance to remove the skin from the executed prisoner. He mentioned that none of the prisoners where aware that their organs would be removed or skin harvested prior to execution. After this experience, Dr. Wang decided that he no longer wanted to participate in the organ business and wrote a report to the hospital requesting a reassignment and another job in which he was denied and told no other job would match his skills. In response, Dr. Wang refused to take part at the execution sites and the hospital criticized his decision. “I was forced to submit a pledge that I would never expose their practices of procuring organs and the process by which the organs and skin were preserved and sold for huge profits. They threatened me with severe consequences and began to train my replacement. Until the day I left China in the spring of 2000, they were still harvesting organs from execution sites.” Since Dr. Wang left China in April 2001 to testify, his family has been threatened and he is seeking asylum. In fact, all witnesses above have had to disguise themselves for safety reasons and are seeking political asylum in the United States. “The complicity of Chinese doctors in these highly medicalized executions whereby the condemned prisoner is carefully examined, incubated, and “prepped” for organ harvesting minutes before he is executed by a bullet to his head, is reminiscent of Nazi Medicine as practiced in the death camps. Since executed prisoners are not asked for their consent,
the harvesting of their organs can be seen as a form of body theft. The feelings of revulsion toward the practice that some medical human rights activists express are understandable.”

**United States Investigation**

As a result of these allegations, on September 29, 2006, there was a hearing and investigation by the “Committee on International Relations of the House of Representatives.” The hearing was led by Hon. Dana Rohrabacher, Congressmen from California, which focused specifically on reports into the allegations of organ harvesting of Falun Gong Practitioners in China. The reports were submitted by David Kilgour and David Matas, the two distinguished witnesses from Canada who provided findings of their investigation to Congress. Kilgour testified that they have met with a number of government branches in New Zealand, Norway, Finland, Germany, United Kingdom, and Belgium informing them of their findings. Mr. Rohrabacher repeatedly questioned whether the United States Embassy in China or the State Department had done anything regarding these allegations. Erping Zhang, a Falun Gong representative reported that two weeks after the news of organ harvesting from Falun Gong practitioners broke out, United States diplomats were invited by the hospital facility in China to inspect the facility. “Of course, they didn’t find anything,” reported Mr. Zhang. “The tour that was provided by the hospital was a “guided tour,” and officials were not allowed to lead the tour, therefore, they were not able to truly investigate the scene.” Congressmen Rohrabacher continued to ask if the U.S. Embassy has taken any steps to try and confirm
the documentation provided by the witnesses. Dave Matas claimed that there was an official who went to Sujiatun from the U.S. Embassy but couldn’t find anything. Matas claims that he is concerned about that visit and is convinced that the underground facility exists but is highly covered up. Again, at least 6,000 Falun Gong practitioners have been reported in Sujiatun. In addition, he claims that in the Tianjin Daily, a Chinese newspaper, the Communist Party openly admitted that the underground camp was there. Congressman Rohrabacher was disappointed with the results and the fact that a State Department representative did not show up to the hearing to add to the investigation. “But the fact that they are not here would lend a credence to your position today that the United States Government is not doing what it should do, or at least we should be doing more than we are.”

**China Admits to Allegations**

The Chinese regime has historically denied the practice of harvesting organs from executed prisoners, despite increasing evidence. On March, 2006, the spokesperson for China’s Ministry of Foreign Affairs, Qin Gang said at a press conference, “It is a complete lie that China harvests organs from executed prisoners for transplants. Some foreign media fabricate fake news when reporting on organ transplants in China to attack China's legal system.” Why would anyone want to make up such a claim and how could someone possibly make up something so horrific such as organ procurement from prisoners without consent? And how can the CCP ignore and deny the witnesses and increasing evidence? Regardless, one month later, on
April 10, Mao Qunan, another spokesperson for the Ministry of Public Health, also
denied that China harvests the organs of executed prisoners for transplants and stated
that people are just trying to smear China’s image. He stated that organs for
transplantation purposes come only from voluntary donations from Chinese citizens.
However, in January of 2007, Mao Qunan changed his account and openly admitted that
the majority of organs used for transplantation do come from executed prisoners, despite
his previous denial. As a response to Mao's statement, Dr. Wenyi Wang, an Epoch
Times reporter and Falun Gong practitioner stated, “Under pressure from international
societies, the regime admitted to harvesting organs from executed prisoners in order to
shift attention away from the harvesting of organs from Falun Gong practitioners. The
regime continues to cover up the truth, because Mao's admission to harvesting organs
from executed prisoners does not explain the widespread and unusual expediency of
organ matching for transplants in Mainland hospitals.”

Perhaps China fears that if the truth regarding the use of Falun Gong
practitioners for organ transplantation is released, then it would have a social impact on
the image of the nation and create a public uproar. Information that could provoke
“mass incidents” and political unrest is suppressed and denied. While China was
denying the allegations of the use of executed prisoners in July, 2006, they
simultaneously developed new provisions stating that medical institutions must prove
that they have written consent of the organ donor and must guarantee they come from
legal sources. The new rules, however, fail to provide guidance on organs harvested
from executed in military hospitals, which is where most organ transplantations occur, yet they are not protected by these laws. In other words, military hospitals conduct the majority of organ transplantations yet they are not under the jurisdiction of the Chinese State Council and Health Ministry. These hospitals are managed by the People's Liberation Army General Logistics Department not the State Council, and thus, the new provision or law does not apply to military hospitals. In addition, new regulations are not always upheld, if at all, in China. “There is no national law governing organ donation, but a Ministry of Health directive explicitly states that buying and selling of human organs and tissues is not allowed.”24 Although the CCP responded by enacting a new law, there is no guarantee it is actually being implemented. “They (the CCP) tell the world all the time that they are reforming, they will pass a new law. And people do tend to take it seriously, even some people involved with the protest against organ harvesting have sort of said, “Well we are making progress, they passed this new law against organ harvesting, but there is no record of the conforming to their laws.”25

Although the Chinese government passed a new law prohibiting the use of organs from unwilling executed prisoners, there is no mention of protecting Falun Gong practitioners who are currently denied any protection from laws in China. In addition, the provisions do not address the executed prisoners that were used prior to the new law and the past is often ignored. With over 100,000 Falun Gong practitioners detained in the Chinese penal system since 1999, the increase in organ transplants in China parallels the number of those persecuted. For example, the number of liver transplant operations
in China increased from 135 in 1998 to 4000 in 2005 alone. The increased number of transplantations from 1998 to 2005 parallels the dates of the persecution. The pattern is similar for kidneys, as in the year 1998 there were only 3,596 kidney transplants and in 2005 there were nearly 10,000. According to the Matas-Kilgore investigation, these organs from Falun Gong practitioners were seized for international sale. “In effect, the Falun Gong persecution has been industrialized and institutionalized under the systematic directive of the Communist Party, creating a political sub economy that is sustained by a billion-dollar national criminal enterprise.”26 The National Kidney Foundation responded on August 15, 2006 to the Kilgour-Matas report stating they were concerned that transplant tourism (traveling to another country for the sole purpose of transplantation) can lead to exploitation or coercion of potential donors. The “Report into the Allegations of Organ Harvesting of Falun Practitioners in China, from Canadian human rights attorney David Matas and former Canadian Minister of State David Kilgour, alleges that large numbers of Falun Gong practitioners in China are being imprisoned and executed for the purposes of organ or tissue donation. “The National Kidney Foundation (NKF) is opposed to any persecution of individuals because of their religious or political beliefs. The NKF also remains committed to the principles of informed consent and free choice with regard to the decision about whether to be an organ or tissue donor.” They state that any act or person which calls the ethical practice of donation and transplantation into question should be condemned by the worldwide transplantation community. “The NFK remains opposed to any system of
reimbursement for deceased or living donation, which may create an added financial incentive for abuses in donation and transplantation.”

Despite the fact that China has adopted a new law prohibiting the selling of organs for transplantation; which has not yet been monitored, there are no laws that address the use of prisoners bodies for plastination. In fact, there is compelling evidence that China is selling plastinated bodies and organs internationally. Currently, China is working hand in hand with international companies, such as a U.S. company called Premier Exhibition, Inc., selling “whole entire” bodies and cadavers for “educational display.” The result has created uproar in the United States because organizers of the exhibit are unable to disprove that they are using executed prisoners from China. “The company will continue to investigate and review the new regulations disclosed in a recent press release made by the Chinese Government however, the Company believes the recently announced and pending changes in Chinese regulations are designed to address the wide spread illegal trade of body organs used for transplant, and should not be confused with the educational programs that have been developed utilizing polymer preserved specimens as a result of the extraordinary dissection work being done in China.” But exactly where does Premier receive its “polymer preserved specimens?”
CHAPTER VI
THE BODIES EXHIBIT CONTROVERSY

Background

Perhaps one of the most controversial exhibits now touring internationally is known as Bodies...the Exhibit. The exhibit features real human bodies and cadavers from China preserved in polymer for “educational display.” The exhibit is organized and directed by Dr. Sui Hongjin, a professor at Dalian Medical University. Dr. Sui learned the technique to preserve bodies in polymer from Gunthor Von Hagen’s, the lead scientist who invented a technique called “plastination” used currently in his exhibits. The process he created involves putting a body in formaldehyde solution, and then it is placed in a bath of acetone, then in another bath of liquid polymer, and finally must be cured, either with gas or heat in order for it to be hardened or “plastinated.” Dr. Sui eventually went into business with Von Hagen’s while studying his technique and opened his own plastination laboratory in China. However, while Dr. Sui was working with Von Hagen’s, he was accused of using executed prisoners by the scientist and was fired. “Dr. Von Hagen’s contends that while serving as his general manager, Dr. Sui secretly ran his own body operation in Dalian. Dr. Von Hagen’s then fired Dr. Sui.”¹ In fact, one of Dr. Sui's employees came forth and reported that the doctor was in fact using “fresh specimens” of executed prisoners and that she had examined two of these bodies. “Both of their abdominal walls had been crosswise slit open and most of their inner organs were missing. In addition there was “a bullet hole in the head”
remarked this employee.” As a result, Von Hagen’s was forced to return seven corpses to China in 2004. Despite these reports, Von Hagen’s still continues to do business at Dalian Medical University. “Dr. Von Hagen’s then came to China, where he said he found cheap labor, eager students, few government restrictions and easy access to Chinese bodies.” Premier has not yet responded to this fact and continues to claim that all of their bodies were obtained legally. When I called the organizers myself in September of 2006, a manager of the exhibit stated, “They are unclaimed or unidentified prisoners from China that died of “natural causes.” However, one month later, the response changed and they stated that they do not use any prisoners at all and that their bodies were “donated” to Dalian Medical University for research. Although their statements shifted, the organizers are still unable to provide sufficient proof that they do not use executed prisoners from China and there is very strong evidence suggesting the contrary. In addition, even medical professionals have commented that the bodies on display are way too healthy to have died of “natural causes.” As a result of these allegations and of new compelling evidence, an investigation was lead in the United States regarding the origin of the bodies used in this exhibit.

**The Bodies Exhibit Investigation**

An actual participant, who was involved in the illegal black market of bodies in China, provided a photo to ABC news and described how he was involved with “body runs” and the selling executed prisoners. “This image, according to a self-admitted participant in the bodies black market, was taken four years ago at a place where the
bodies of executed prisoners and others are essentially sold for about $200 to $300. He later purchased bodies from this facility, some of which went to medical schools in China, and some of them, he says, to the Dalian company that supplies bodies for display in the United States. The Atlanta based company; Premier Exhibitions; purchased their bodies for their exhibit from this same company, “Dalian Medical University Plastination Labs” in China. However, when investigators contacted Dalian Medical University to inquire exactly how they received their bodies, the president denied that the university provided any bodies to Premier Exhibition. Dr. Tang Jianwu stated that “his university does not supply bodies to Premier or any company for public display.” In fact, the actual source of where the bodies came from is a Plastination Lab 30 miles away, which is no longer associated with Dalian University, despite the name. “The supplier for Premier’s “Bodies…the Exhibition” is a actually a private, for profit-company called the Dalian Medi-Uni Plastination Lab located 30 miles away from the Dalian Medical University.” The university actually once owned 70 percent of the Plastination Laboratory that provided the bodies to Premier, but stopped doing business when it received bad publicity. “The full body cadavers and body parts currently on display in New York were originally obtained from China in 2004 by a company called Exhibitions International LLC (“EI”) in 2004. EI leased all of the full body cadavers and body part(s) from Dalian Medical University Plastination Co., Ltd., a corporation incorporated in the People’s Republic of China with its principal place of business at No. 465 Zhongshan Road, Shahekou district Dalian, 116027, Peoples Republic of China
At that time 70% of DMUP was owned by the Dalian Medical University in Dalian, China. The remaining 30% of DMUP was owned by Dr. Hong Jin Sui a professor of anatomy at Dalian Medical University, and his partners.® Regardless of this investigation, the exhibit continues to tour and remains popular in the United States because of its “educational value,” and both Chinese and U.S. companies are making millions of dollars from the display of plastinated dead bodies.

**No Bodies Business**

Despite the evidence, the director of Premier Exhibition responded by saying that they were “guaranteed” that the bodies they received were legal prior to his resignation. But exactly how were they “guaranteed?” In fact, the only proof the exhibit has been able to provide is a written letter from Dr. Sui Hongjin himself, the director who was once fired for running a secret body operation. The letter, which Premier does not show the public, is backed by the Chinese government and contains an official seal. This letter, which I was able to obtain, is very disturbing. Dr. Sui writes in poor English, “It is severely guaranteed that none of them are come from prison or mental Institute in China. They are collected legally to the medical schools and known only by the person in charge of the medical school.” However, when investigators contacted the “person in charge of the medical school,” that is Dalian University; the president denied that they provided any bodies to Premier. Therefore, the only person in charge of this operation is Dr. Sui Hongjin, who now owns 100% of the Laboratory, as his facility is no longer associated with Dalian Medical University as he claims in his
letter. In addition, the photo currently revealed by the participant ought to make Premier question the authenticity of Dr. Sui’s letter.

Perhaps the reason why the Atlanta based company does not respond is because the company has already made millions of dollars for displaying these bodies around the world. There is no doubt the money from these exhibits goes directly into the hands of Dr. Sui Hongjin and the investors of Premier Exhibitions, a fortune 500 company. In addition, the fact that the nation has recently admitted that most of their bodies and organs donated to medical universities, such as Dalian Medical School, have come from executed prisoners; ought to make any U.S. company hesitant to continue purchasing bodies and organs from China for any purpose. Although, Premier continues to deny that the bodies on display in their exhibit come from executed prisoners, New York Attorney General, Andrew M. Cuomo, decided to lead his own investigation and discovered that the Company could not support their claim and thus, issued an “Assurance of Discontinuance” for the New York City exhibit.

**Assurance of Discontinuance**

Premier Exhibition tours and exhibits preserved human bodies, organs, fetuses, and embryos all belonging from citizens of China. In a statement, the Office of the New York Attorney General stated that it was investigating whether representations about the origins of the bodies and cadavers in the exhibit made to the public in the United States were false. “At various times, Premier and/or its independent contractors have made numerous affirmative representations regarding the provenance of the full
body cadavers and body parts in its human anatomy exhibitions. In short, as to its exhibitions, Premier and/or its independent contractors that they could not assert that: (a) the full body cadavers and body parts exhibited by Premier were not, or did not belong to, Chinese prisoners; and (b) the full body cadavers or body parts exhibited by Premier were not, or did not belong to, Chinese prisoners who were subjected to execution, torture or other forms of physical abuse.”

Premier claims that it has relied solely on the letter provided by Dr. Sui Hongjin, which has been stamped by the Chinese Communist Party, stating that none of the bodies belonged to Chinese prisoners. Premier however cannot independently confirm the origin of the full body cadavers it displays.

Further investigation reveals that Dalian Medical University Plastination Co., Ltd., (DUMP) dissected and plastinated their bodies years before they leased them to Exhibitions International (EI). “There is no written record that any of the persons consented to the plastination and exhibition of their bodies and/or its parts. Rather, these bodies were unclaimed at death, collected by the Chinese Bureau of Police, and delivered to the Dalian Medical University and other universities in China for education and research. The universities then provide DUMP with the cadavers for plastination and, ultimately, lease to EI.”

Premier then purchased EI and at that time Dalian Medical University began selling all 70% of its interest in DUMP and the company took on a new name “Dalian Hoffen Bio Technique Company Limited (“DHBTC”)” was then purchased by Dr. Sui Hongjin. “Since then, Dr. Sui and other private investors own
100% of DHBTC. DHBTC has continued to obtain unclaimed cadavers from China, which it dissects, plastinates and leases to Premier for Premier to display in its for-profits exhibits.” Premier responded that it conducted its own independent analyses of the specimens when they received them from DMUP, however, they could not independently confirm they were not taken from Chinese people who were executed or tortured. “The Attorney General finds that, given the sensitive and controversial nature of Premier’s Bodies Exhibits, including the one in New York, and particularly given the history of human rights violations in China, the above-referenced representations made by or on behalf of Premier were overstated.”10 As a result of this investigation and these findings, the Attorney General issued an “Assurance of Discontinuance” for the New York City Exhibit. Premier is required to publicly state on their website that they are not able to prove that the bodies on display did not come from executed prisoners in China who may have been tortured. Here is what the website is now required to state, “This exhibit displays human remains of Chinese citizens or residents which were originally received by the Chinese Bureau of Police. The Chinese Bureau of Police may receive bodies from Chinese prisoners. Premier cannot independently verify that the human remains you are viewing are not those of persons who were incarcerated in Chinese prisons.”11

Despite the Attorney General’s investigation, the exhibit in New York has not been shut down; rather it has settled with an agreement given by the Attorney General. Premier Exhibition has agreed to give a full refund to any customer who visited the
exhibit prior to the disclaimer. “In consultation with the independent monitor, Premier shall set aside sufficient funds, to be held by the independent monitors in an escrow account, of no less than $50,000 to be used to prove refunds to eligible consumers. Failure to abide by the terms in this paragraph shall result in $50,000 being forfeited to the Attorney General.”

12 Regardless of these provisions, the exhibit still tours in the United States and Premier Exhibition has made millions of dollars doing business with China and its plastinated bodies. “Results were even better in the 2007 fiscal year that ended in February, with net income reaching $7.4 million on revenue of $30.1 million, more than 70 percent of which came from traveling exhibits of corpses and body parts.”

13 Many critics question the aim of the exhibition and believe that profit and entertainment are the actual aim rather than “education.” Perhaps this business may be proving to be more lucrative for China than the actual profits gained from the organ transplantation industry. In addition, many of these prisoners did not voluntarily consent to become participants in plastination research or to be put on display for “educational purposes.” The exhibit still continues to tour in the United States because there are no laws yet established that prohibit the selling and buying of human bodies that have been plastinated abroad, however, the United States does has very specific guidelines regarding the use of executed prisoners for research and organ transplantation.
The National Commission: Protection of Prisoners

When the National Research Act was signed into law on July 12, 1974, the National Commission on the Protection of Human Subjects of Biomedical and Behavioral Research was established to protect prisoners who were participants of research yet had diminished capacity to provide informed consent, if any at all. This committee was the first to begin designing policy in the area of bioethics in the United States. “The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was established under the National Research Act (Pub. L. 93-348) to develop ethical guidelines for the conduct of research involving human subjects and to make recommendations for the applications of such guidelines to research conducted and supported by the department of Health, Education, and Welfare (DHEW).” The Commission focused attention on vulnerable groups, such as prisoners. The particular section regarding the protection of research involving prisoners questions whether or not prisoners are able to truly voluntarily consent to research considering the condition of incarceration itself. Reports and research indicated that prisoners who participate in research are coerced or bribed into “volunteering” because of harsh social and economic conditions that compromise the prisoner’s ability to freely consent.

The very fact that prisoners are kept in closed and coercive conditions contravenes the principle of respect and justice and the Commission believes that conditions such as inadequate diet, the lack of materials for personal hygiene, the lack
of medical attention and income all influence the prisoner’s decision. “Reflection upon these principles and upon the actual conditions of imprisonment in our society has led the commission to believe that prisoners are, as a consequence of being prisoners, more subject to coerced choice and more readily available for the imposition of burdens which others will not willingly bear.”

Dr. Wartofsky’s gives a philosophical testimony to members of the Commission. He states that research on prisoners demonizes the group and reduces one’s self to the selling of services which is similar to other forms of wage-labor. “His position is that whereas one may not sell one’s body, as such, nevertheless one may sell the disposition over the use of ones body.” As asserted; prisoners become a primary commodity and the relationship between the self and the well-being of the self make the exchange disturbing and fundamental aspects of humanity are translated into economic exchange. “The pragmatic solution which he recommends, therefore, is to minimize the exploitive elements which “commodity” the situation.

**The Belmont Report**

After the National Commission on the Protection of Human Subjects of Biomedical Research published its report on prisoners, the Committee sought sound ethical principles that would form the basis of their future reports. They joined with the United States Department of Health, Education, and Welfare (DHEW), now called the Department of Health and Human Services (DHHW), to create a document entitled “Ethical Principles and Guidelines for the Protection of Human Subjects of Research”
which established a framework of ethical principles for researchers. On April 18, 1979, in a conference at the “Belmont Conference Center, the “Belmont Report” was created as an attempt to summarize the basic ethical principles identified by the Commission. “One of the charges to the Commission was to identify the basic ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects and to develop guidelines which should be followed to assure that such research is conducted in accordance with those principles.”

Prior to 1979, there was not a firm ethical theory that could take root in such reports. At that time, Tom Beauchamp and James Childress, professors and scholars in philosophy and bioethics, published a famous book entitled the “Principles of Biomedical Ethics,” and later discussed the centrality of the common morality. “The common morality is applicable to all persons in all places, and all human conduct is rightly judged by its standards.”

The three main principles used in the Belmont report are: “1) respect for persons: protecting the autonomy of all people and treating them with courtesy and respect and allowing for informed consent; 2) beneficence: maximizing benefits for the research project while minimizing risks to the research subjects; and 3) justice: ensuring reasonable, non-exploitative, and well-considered procedures are administered fairly (the fair distribution of costs and benefits to potential research subjects.)” These principles remain the basis for the human subject protection programs, such as Institutional Review Boards (IRB) and are used as a reference when confronted with practical problems and moral disagreements in the United States.
Ethical propriety, however, regarding the involvement of prisoners in research is not only questioned and regulated in the United States; but has become an international phenomenon. In fact, after World War II, when the Nazi Regime participated in horrific experiments with prisoners, most nations ceased to permit the participation of prisoners in research and transplantation. Despite cultural differences and concepts of human rights, the international community has come together to define ethical standards and guiding principles regarding the use of prisoners for organ transplantation.
CHAPTER V

BEYOND EAST AND WEST

The Nuremberg Code: Guiding Principles

The Nuremberg Code was developed after a set of trials, or tribunals, took place in 1945 and 1946 in response to the criminal behavior of political, medical, and military leaders. The Schutzstaffel also known as the SS, was a criminal organization run by Adolph Hitler and was responsible for initiating the majority of these crimes. The trials took place after the war because of numerous reports of the use of prisoners without consent. The prisoners involved were held in concentration camps and were coerced, usually through torture, into volunteering. The majority of German leaders involved were medical doctors, and the abuse of their practice led to the development of the Nuremburg Code, the adoption of its principles, and medial ethics. The Nuremberg Code specifically states that voluntary consent is essential and that all subjects can not do so unless they have a legal capacity to give consent. Therefore, prisoners, or anyone detained would not be considered eligible to consent for organ transplantation because of their environment. These principles later influenced development of the international criminal law, however, in order for these laws to be practiced as a matter of “international law” there must already be a conviction that such principles are being violated by a state or nation and the international community must agree. In fact; in 1950, the United Nations International Law Commission adopted the Nuremberg Principles and established seven guiding principles:
1) Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment;

2) The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

3) The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

4) The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him;

5) Any person charged with a crime under international law has the right to a fair trial on the facts and law;

6) The crimes hereinafter set out are punishable as crimes under international law: Crimes against peace, War Crimes, Crimes against Humanity;

7) Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.¹

Although the adoption of the Nuremberg Code by the UN International Law Commission was the first time all nations were required to uphold the same standards regarding the use of prisoners, other international organizations were developed to create specific ethical guidelines for organ transplantation.
The World Health Organization (WHO) was established in 1948, which works with the United Nations and acts as an international authority over medical health. Currently, WHO’s primary concerns is the protection of vulnerable persons from coercion and improper inducement to donate organs. In resolution WHA40.13, adopted in May 1987, the Fortieth World Health Assembly requested the Director-General “to study, in collaboration with other organizations concerned, the possibility of developing appropriate guiding principles for human organ transplants.” These guiding principles are essential and organs from individuals may only be removed from the bodies of deceased and living persons for the purpose of transplantation if they are in accordance with these guiding principles. I am only going to discuss the principles relevant to the case. The second principle states, “Physicians determining that the death of a potential donor has occurred should not be directly involved in organ removal from the donor and subsequent transplantation procedures, or be responsible for the care of potential recipients of such organs.” The third principles states, “An organ may be removed from the body of an adult living donor for the purpose of transplantation if the donor gives free consent. The donor should be free of any undue influence and pressure and sufficiently informed to be able to understand and weigh the risks, benefits and consequences of consent.” The fifth states, “The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited.”
seventh guiding principles states, “It should be prohibited for physicians and other health professionals to engage in organ transplantation procedures if they have reason to believe that the organs concerned have been the subject of commercial transactions.”6

And finally, the ninth states, “It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered.”7 All of these principles are essential and are relevant to prevent abuse in organ transplantation.

**The World Medical Association (WMA)**

In 1949, a group of medical doctors and physicians from all over the world gathered together in a general assembly to create what is known as the “World Medical Association (WMA).” The goal of the association is to create, develop, and enforce the highest international standards regarding medical health care ethics and transplantation. The World Medical Association declares that the human body and its parts should not be bought and sold into commercial transactions and that the giving and receiving of payment for organs should be prohibited. The World Medical Association urges all nations to protect vulnerable groups from transplant tourism and the sale of tissues and organs. “Evidence of the free and informed decision of the potential donor, or, where legally relevant, of the appropriate substitute decision-maker, must be ascertained before organ procurement can begin.” When developing their statement WMA stated that consideration should be given to human rights, ethical principles and medical ethics. “Ethical, cultural and societal issues arising in connection with such a strategy, and with
the subject of donation and transplantation in general, should be resolved, wherever possible, in an open process involving public dialogue and debate informed by sound evidence.” The WMA also states that it is essential that those who decided to consent be given the chance to withdraw their decision of organ donation.

When the WMA was recently informed about the organ procurement and the abuse of prisoners in China, they responded by creating, “The World Medical Association Council Resolution on Organ Donation in China,” which was adopted in May, 2006. Below is an extract from the document:

**Whereas**, the WMA Statement on Human Organ and Tissue Donation and Transplantation stresses the importance of free and informed choice in organ donation; and

**Whereas**, the statement explicitly states that prisoners and other individuals in custody are not in a position to give consent freely, and therefore their organs must not be used for transplantation; and

**Whereas**, there have been reports of Chinese prisoners being executed and their organs harvested for donation;

**Therefore**, the WMA reiterates its position that organ donation be achieved through the free and informed consent of the potential donor.

The WMA demands that the Chinese Medical Association condemn any practice in violation of these ethical principles and basic human rights and ensure that Chinese doctors are not involved in the removal or transplantation of organs from executed Chinese prisoners.

The WMA demands that China immediately cease the practice of using prisoners as organ donors.

8
The Transplantation Society (TTS)

The Council of The Transplantation Society (TTS) is primarily concerned with developing guiding principles specifically to promote ethical standards in the organ transplantation community on making these standards legally binding. “The ethics of a continuing practice of live organ transplantation demands an international recognition that prioritizes a sustained well being of the donor despite the life saving transplant that may be provided by the donor for the recipient. The person who gives consent to be a live organ donor should be competent, willing to donate, free of coercion, medically and psychosocially suitable, fully informed of the risks and benefits as a donor, and fully informed of risks, benefits, and alternative treatment available to the recipient.”9 The TTS agrees with the WMA that transplantable organs should not be bought or sold in order to ensure that the less privileged are not exploited to improve the health more privileged. “No transplant surgeon/team shall be involved directly or indirectly in the buying or selling of organs/tissues. Organs and tissues should be freely given without commercial consideration or financial profit.”10 The society warns against tourism stating that those who travel outside their country to purchase an organ may be participating in exploitative practices. The TTS’s fundamental principle is that organs and tissues should be given freely, as a form of altruism, not through coercion as this takes away the personal value of giving another human being a part of oneself.

“Because of the restrictions in liberty in a prison environment it is unlikely that prisoners are truly free to make independent decisions and thus an autonomous informed
consent for donation cannot be obtained. Further, the financial incentive for recovering organs from executed prisoners may become an incentive to increase the number of such organs available for transplantation.” As a result, the TTS is working hand in hand with the WHO and governed agencies to develop a “legal” framework for their practices.

Currently, the TTS is primarily concerned about accomplishing change in China and is working with the Vice Ministry of Health because the nation stands alone in the legality of organ procurement from executed prisoners for transplant surgery. “As a professional society, TTS cannot dictate to China that its practice regarding capital punishment is unethical. However, TTS should express concern that the recovery of organs from executed prisoners has resulted in rampant commercialism and transplant tourism.” The society is concerned that China performed over 11,000 transplants in 2005. In fact, it was pressure from TTS and WHO that pressured the Vice-Minister in China to change the current legal framework to ban the purchase and sale of human organs. However, the nation has not created a legal framework for oversight, or a national registry for potential donors, nor has it yet prevented the trafficking of organs and tourism or the use of prisoners bodies. TTS does not permit doctors from China or any nation to join for membership unless they develop a written ethical policy on the type of transplantation system they have. The Transplantation Society has been one of the first International organizations to face China on the ethical practice regarding executed prisoners for organ transplantation.
**United Nations (UN): Principles on Ethics**

On December 18, 1982, the United Nations (UN) printed its “Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” which was adopted by the General Assembly. These principles are applicable to all nations and should be legally enforced.

**Principle 1:** Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

**Principle 2:** It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

**Principle 3:** It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

**Principle 4:** It is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.
Principle 5: It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Principle 6: There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.\textsuperscript{13}

When the UN received evidence regarding the use of prisoners and Falun Gong practitioners in China, the Special Rapporteur and the UN Committee against Torture responded and published their concluding observations on November 21, 2008. The UN demanded that China explain the dramatic increase in organs for transplantation from the years 2000 to 2005. “The Chinese government responded that they have no statistics on the number of transplants between 2000 and 2005.”\textsuperscript{14} Although the Committee applauds China’s efforts in creating new legislation that prohibits the banning and selling of organs internationally, the Committee is concerned about the nation’s lack of information regarding the source of their organs and the consistent use of prisoner’s bodies for transplantation. “The United Nations officials pointed out that the persecution against Falun Gong practitioners was the most brutal between 2000 and 2005. This time period coincided with the surge in organ transplantation in China. A Canada-based special investigation group said that of the 60,000 transplants taken place between 2000 and 2005, at least 40,000 could not be attributed to known sources.”\textsuperscript{15} The Chinese government still has not yet responded to the UN’s report on torture.
**Deontological Vs. Teleological Ethics**

All of the documents drafted by the international community have concluded that voluntary consent is a universal principle applicable to all nations. Organ procurement from prisoners violates autonomy because the individual is not in a position to volunteer to “consent.” The global community agrees that in order for prisoners to donate their organs for medical transplantation they mush have the *legal* capacity to consent. Prisoners are considered a vulnerable and organ procurement of this population violates their “autonomy.” Autonomy derives from the deontological perspective that the “will” of a person should not be violated. It is important to note that this system is accredited to a famous German philosopher, Immanuel Kant who established a foundation or “grounding” for the metaphysics of morals. Kant discusses that the most important concept of morality is called the “good will.” In addition to having a good will, Kant discusses that if a person had a good will, and then their actions will not depend on bringing about any ends, purposes, or goals. The individual must be moved solely from the principle *itself* in order for it to be good. In fact, a person is not “free” unless they act on this will.

Kant suggests that we all have rules that bind human beings in their actions that he calls the “categorical imperative.” Autonomous agents are not “free” to do whatever they want; they are bound by morals rules that direct their behavior despite their inclinations, desires, and self-interests. An individual acts on “maxims” or principles, which any rational being could prescribe as a rule for every other person to act on. “I
ought never to act except in such a way that I can also will that my maxim should become a universal law.” In other words, when confronted with a particular case or situation, such as organ procurement from prisoners, we ought to act in a way that is universally applicable to all people if they were in the same situation or circumstance. However, the maxim itself must act as “a priori” for the action to be morally sound. This means that we should act purely for the principle in itself not for the attainment of some goal or end. “For a rule to be a moral rule, it must be capable of being self-imposed by the will of each person when he is universally legislating.” In other words, the rule, precept, or maxim can not be imposed or coerced by another individual, system of law, or any moral code, but can only be imposed by the individuals own will and volition, assuming they are rational. This ethical system is important because it can guide us in any particular case and help solve moral dilemmas.

For example, it cannot be acceptable that medical doctors be allowed to surgically remove organs from prisoners because this action violates a range of rules of conduct that are universal. “The scope of rule is its range of application, as defined by the class of persons who are bound by the rule and the kinds of actions of such persons that it specifically requires, permits, or forbids.” So we must examine the rules of conduct that apply to all person regardless of their “social position, his role in a particular organization or his citizenship in a certain nation, his choosing to participate in rule-governed practices like games, regardless of whatever ends he is pursuing.” If this is the case, then regardless what the rules are for some doctors in one country as
opposed to another, there must be a range of rules in which they are all responsible for. We must examine the rules of conduct that are unlimited or universal in their application regardless of the society’s laws. “What we are interested in examining here is that there are, indeed, such universally applicable rules of conduct, and that they are, by definition, the rules of morality.”

China openly objects to the universal standards and international concepts of “human rights.” The root of the problem lies in how the Chinese Communist Party (CCP) defines “Human Rights.” China claims that these ideas of human rights are western rather than global. The nation rejects the idea of human rights, and has publicly stated its citizens are not allotted these rights, only the right to economic prosperity. “In fact, China’s, “Information Office of the State Council” made available a document claiming that the “primary human right is the right to subsistence’s and economic development.” Deng Xiaoping has been a catalyst in establishing this new definition and declared “state rights” are much more important than “human rights.” Regardless, all international countries disagree with China’s definition and claim that a human has a right not just to economic prosperity, but they also have a right not to be violated, imprisoned, tortured, and executed simply because they have different political, religious, or intellectual views than the government. China disregards this consensus and uses a utilitarian model to justify and avoid addressing its human rights abuses. Utilitarianism is accredited to a famous British philosopher by the name John Stuart Mill, who has a teleological argument that “the means justify the end.”
The teleological argument of “utilitarianism” does not define actions right or wrong in themselves; they are only right or wrong if they “maximize utility.” In other words, it does not make sense to develop a rule that does not benefit human society or make humans “happy.” Therefore, Chinese medical doctors might argue that surgically removing organs from prisoners is morally permissible because this would save lives; therefore the overall net effect would maximize utility at some equilibrium point. However, Kant would defend himself by saying that the consequences of an action, be it happiness or any other state, are not what determines if an action is just. Although organ procurement from prisoners brings “overall benefits” to the community of neighbors and doctors, this does not mean that the action is morally permissible. Nor does this mean that surgeons have the right to remove these organs merely because the consequence would bring “overall happiness.” According to Kant’s deontological theory, the consequences should not be important when determining an action. For Kant, just because and act does or does not bring us happiness does not justify the act. The principle of utility, in short, is built into the very conception of a rational ground for rules of conduct. The ethical dilemma here is that there is a scarcity of organs needed for transplantation; however, the means used to obtain the organs are questionable.

This utilitarian belief system creates economic incentives for the Chinese government to refrain from abolishing the practice of using executed prisoners organs and bodies for transplantation or other purposes. “Markets are by nature indiscriminate and inclined to reduce everything—including human beings, their labor and their
reproductive capacity—to the status of commodities, things that can be bought, sold, traded, and stolen. Again, nowhere is this more dramatically illustrated than in the current markets for human organs and tissues to supply a medical business driven by “supply and demand.” Exploitative organs and tissue procurement practices rely on organ suppliers and organ donor—whether dead or alive. These practices are protected by market forces and thus, vulnerable populations are at risk. In fact, it is known throughout the world by many people that they can always rely on the nation of China for organs as many people are willing to travel and pay thousands of dollars. “More than 40 wealthy individuals in need of transplants reportedly traveled to a hospital in Guangzhou and paid up to $300,000 (RMB) each from livers harvested from executed prisoners.”²² Although the price of an organ has been more affordable for foreigners, the Chinese people pay a heavier burden. In China, an individual may pay between 40,000 Yuan (U.S. $4,800) to 60,000 Yuan (U.S. $7,200) depending on the organ. According the China International Organ Transplant Center organs are $62,000 for a kidney, $98,000 to $130,000 for a liver, $150,000 to $170,000 for a lung, and $30,000 for a cornea. “China’s practice of taking organs from prisoners creates powerful economic incentives to sentence and execute individuals. It is possible that many prisoners are executed precisely because of the financial benefits that flow to court officials, police officers, prison guards, doctors and hospital administrators as a result of commercial organ transplantation.”²³ In this new market, the body is reduced to a commodity. With this kind of lucrative market it is no wonder that the crimes defined
punishable by death and execution in China are increasing. This practice creates incentives to increase the number of executions holding the Chinese prison system open to extortion. “Even if these abuses were corrected, however, and the full requirements of due legal process were observed, the use of condemned prisoners organs for transplant purposes would still, on account of flaws inherent in the whole concept of prisoner “consent” in this issue, be unacceptable for human rights reasons.”^24
CONCLUSION

This thesis concludes that prisoners in China are in fact being abused, denied proper legal representation, tortured and procured for organ transplantation against their will and then sold for profit. The use of torture to extract confessions should not be used as a sufficient form of “evidence” for prosecution. The government should be required to protect the rights of defendants, including the right to a lawyer and family visits. However many are sent off to execution and then have their organs sold for transplantation, which in turn, brings in billions of dollars to China’s new rising economy. China’s practice of taking organs from prisoners creates powerful economic incentives to sentence and execute its citizens, thus, increasing the number of wrongful convictions. Organ procurement or harvesting of prisoners treats persons and their parts as mere commodities and reduces them to some market. Many prisoners are executed precisely because of the financial benefits that come from commercial organ transplantation. The issue is that organ procurement of these prisoners either with or without consent is unethical, because the atmosphere of incarceration includes extreme methods of torture and coercion making them unable to freely consent. “The more developed and prosperous the country becomes, the more insecure and threatened they feel. The PRC today is a brittle, authoritarian regime that fears its own citizens and can only bend so far to accommodate the demands of foreign governments.”

We can also conclude that the organs from Falun Gong practitioners are indeed being systematically harvested and that this group is the primary source for organ
transplants. Unlike any other nation, China is able to provide a supply of organs to meet the growing international demand where it has been reported 66% of the organs come directly from Falun Gong practitioners since the beginning of it’s persecution in 1999. This group is often targeted because of their good health due to their practice. However, most of these prisoners were convicted for doing nothing except for believing in their spiritual beliefs; yet they remain the primary group of involuntary organ donation in China. The number of organ transplants from 1999-2006 parallels the beginning of the persecution, whereas before there were only 22 liver transplant centers and now there over 500. Although, the United States Congress has responded, China has not been required to uphold new changes to its laws regarding organ transplantation. Matas and Kilgour stated in their investigation that the practice of selling organs was not banned in China until the nation received international pressure in 2006, however, the new law banning the selling of organs does not apply to military hospitals, which is where most organ transplantations actually occur. “Donor recipients whom we have interviewed tell us about the secrecy with which transplant surgery is undertaken and the heavy involvement of the military. Information given to patients is kept to a minimum. Transplants are performed in military hospitals, and even in civilian hospitals, by military personnel.” China should be required to develop a governing body separate from its laws and establish transplant ethics for their transplant professionals. “The combination of deprivation of liberty as a sanction for the peaceful exercise of freedom of expression, assembly and religion, with measures of re-
education through coercion, humiliation, and punishment aimed at admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment which is incompatible with the core values of any democratic society based upon a culture of human rights.”

This case raises questions regarding the limitations as to the moral justification of organ procurement from vulnerable populations and the ethical issue of consent. This thesis concludes that consent from prisoners is not voluntary because of the very nature of the Chinese prison system. However, even if prisoners in China do consent, they are still are not in a position to freely voluntarily choose to donate their organs or to participate in plastination research or educational display. Although required by law, the consent of prisoners for the use of their bodies and organs is rarely sought in China. “But even in the apparent minority of cases where the consent of prisoners is sought as required by law, the abusive circumstances of detention and incarceration in China, from the time a person is first accused of a capital offense until the moment of his or her execution, are such as to render absurd any notion of free and voluntary consent.” The coercive pre-execution procedures preclude any meaningful possibility of “free consent” to be given. The notion that someone on death row in the shadow of an execution chamber can actually give meaningful consent is indeed quite ethically questionable. China’s laws permit the use of prisoners bodies and organs because they know their citizens would not be wiling to “volunteer” otherwise. Donating ones organs
goes against the traditional Chinese belief system that the body must be buried in its entirety in order to ascend to the “heavens.” Regardless, the nation should be required to develop a legal framework for oversight, or a national registry for potential donors, in order to prevent the illegal black market or trafficking of organs and tourism from Chinese prisoners. In addition, international companies, such as Premier Exhibition, who purchase human bodies and cadavers from China, should realize that the although they are not restricted by the new laws concerning organ transplantation, they should examine the compelling evidence that prisoners are also used against their will for plastination purposes, which are then sold for profit to their company. They should cease purchasing any human bodies or organs from China until evidence of the abuse of prisoners has ceased.

This thesis also concludes that the presence of medical professionals at the execution ground violates the primary duty of the physician which is to safeguard human life and health. The medical practice of organ procurement from prisoners violates international medical ethics. “This widespread involvement of medical professionals in the judicial execution and transplantation process represents a grave violation of internationally accepted standards of medical behavior. According to the United Nations, it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.”⁴ Medical doctors in China should not be allowed to perform blood tests
to determine if the prisoner is suitable for organ donation prior to their execution. These medical professionals do not realize that if they provide a match, then the execution date of the prisoner becomes scheduled much sooner than later. In this way there is no doubt that the “killing” and “saving” of lives become intermingled. The entire medical field turns into a gruesome medial operation when doctors are involved with the removal of organs from prisoners on death row. It is true that medical doctors are necessary for the removal of an organ from one person to another; however, they should not be allowed to remove organs from Chinese prisoners and then hide behind a cloak of secrecy in a form of deception. “He defines a lie as merely an intentional untruthful declaration to another person and dismisses the idea that we owe the duty of speaking the truth only to those who have a right to the truth.”

In essence, the use of prisoner’s bodies for transplantation or plastination violates universal human rights and international medical ethics. As a result, this thesis concludes that the voluntary consent is essential and ought to be a universal principle applicable to all nations. China should immediately cease the use of prisoners organs and be required to uphold the current international standards. Violations of international medical ethics should be monitored and enforced to ensure abuses of prisoners cease to exist. In addition, the fact that China has openly acknowledged that many of the human organs used in transplantation are taken from executed prisoners and the very fact that many witnesses, including medical doctors have testified against his practice, ought to concern the global community. “It also calls on foreign
governments, especially in the Asian region, to discourage or bar their citizens from obtaining organ transplants in China and on foreign funding agencies to adopt a policy of non-participation in all Chinese government-sponsored organ transplant-related research programs. It also calls on foreign medical and pharmaceutical companies which supply goods or services to China's transplant program to cease such activity until the Chinese authorities can demonstrate that executed prisoners organs are no longer being used for transplant purposes. In addition, although international organizations like the World Medical Association (WMA) have developed guiding principles on organ transplantation and has condemned China for the use of prisoners for organ transplantation, the Chinese Medical Association still remains a member of the WMA. China’s abuse of prisoners and procurement of bodies and organs violates the United Nations International Law Commission and the government should be held responsible. This may be one of the worst medical atrocities to exist since the Nazi Regime; yet the world remains silent. We must not remain silent as the global community has a moral obligation to end this horrific abuse of prisoners. As Kant suggests, we must ensure universal freedom and create laws that are applicable to all people based on the notion of justice rather than happiness.
ENDNOTES

Introduction


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Chapter 1


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**Chapter 2**


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Chapter 4


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Chapter 4


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Chapter 5


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**Conclusion**


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