

The case for a regulated system of living kidney sales

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Let me establish where I stand on this complex issue by first answering a few questions. Am I in favor of justifying or encouraging immoral practices? Of unfettered buying and selling of kidneys for transplantation? Of undermining altruistic donation of cadaveric organs? Of commodification of the human body? Of exploitation of the poor by the rich? Of erosion of important societal values? The answer is 'no' in all cases. There is, however, another equally important set of questions related to what is happening in the real world. Am I in favor of encouraging black markets? Of exploitation of kidney donors by unscrupulous middlemen? Of endangering the lives of donors undergoing nephrectomy in poor, unregulated conditions? Of transplant tourism? Of ignoring evidence of the unrelenting increase in commercial transplantation and the failure of legislation—for example, in India—to eliminate this practice? Again, the answer to all these questions is 'no'. Our current approach, however, of expressing revulsion at the sale of organs while ignoring the realities, condones all these eventualities.

Transplantation is a victim of its own success. The shortage of organs and the number of patients awaiting transplants is growing. In the US, 90,000 patients are on the waiting list, of whom 6,000 die every year; in cities, there is a 5–7-year wait for a cadaveric organ, and some patients take matters into their own hands by advertizing for a donor on highway billboards, by consulting websites, by making personal pleas in the media, by listing themselves in multiple registries and by relocating. As a result, monetary incentives have been seriously considered. In 2002, the American Medical Association voted to endorse pilot projects to give families financial rewards for donation of deceased relatives' organs and some states do now offer such tax incentives. Recipients can legally reimburse living donors for medical bills and other expenses, blurring the line between this and "payment" for organs, which is forbidden by the 1984 National Organ Transplant Act as "valuable consideration". Even the issue of revulsion is

turned on its head by 'freakonomists' advocating a market approach.¹ It is not surprising that there is talk of organ sales from living donors taking place on the quiet in the US.^{2,3} All this happens in a wealthy country where dialysis is funded by the federal government.

In the developing world, however, there is usually neither cadaveric donation nor dialysis. Living donation is the only recourse, and often has to be paid for by the recipient. As I have predicted, the numbers of commercial transplantations and centers involved is increasing.⁴ Transplant tourism is growing: Overseas Medical Services in Calgary will organize a transplantation from a living donor in Pakistan for CAD\$32,000.⁵ Paid organ procurement has been documented in the Philippines, Iraq, China, India, South Africa, Turkey, Eastern Europe and elsewhere.³ The situation is very easy to understand: an unquenchable demand meets a supply that can save lives. If misguided policies force this meeting underground, a black market is created. Middlemen exploit the situation and organized crime moves in. The rich exploit the poor; donors and recipients suffer. Legislation fails to check the problem, or transfers it elsewhere. All this is fact, not speculation, and it will continue to happen if we don't change our approach.

Paid transplants are currently available only to those who can afford them—except in Iran. The Iranian model of state-sponsored, transparent, noncommercial, middleman-free kidney transplantation, whereby donors are paid by a government-sponsored agency, has eliminated the waiting list completely—making Iran the only country in the world to have done so. All patients—rich, poor, educated, uneducated—receive transplants in well-run, scrutinized hospitals. The results are known; the system is transparent, discussed and continuously improved. Iranian transplant surgeons, who would have been ostracized a few years ago, are now invited to major international conferences and their findings are published in peer-reviewed journals.⁶ Israel has also

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considered paying people to donate organs,⁷ and there is currently a bill before the Knesset that would regulate compensation for kidney donation. I have little doubt that variations of such models will be adopted elsewhere.

Having studied this issue for nearly two decades, I know that the subject is very complex, and of course there are opposing viewpoints.⁸ I believe, however, that merely expressing revulsion or legislating against the problem does not and will not work. The most ethical approach might well start by asking: which response will minimize harm to donors, recipients, families and society? Well-meaning thinkers have examined ethically acceptable ways to address the question of payments or compensation for organs.⁹ Ethical and philosophical arguments against the sale of organs are difficult to sustain when scrutinized closely. I and other members of The International Forum for Transplant Ethics concluded that “we are not arguing for the positive conclusion that organ sales must always be acceptable, let alone that there should be an unfettered market. Our claim is that none of the familiar arguments against organ selling work, and this allows for the possibility that better arguments may be found.”¹⁰ A similar point was made by the eminent bioethicist Robert Veatch, who wrote “I am in no way suggesting that a market in organs—particularly a market in organs procured from the living—is a prudent policy, merely that the traditional moral arguments about discrimination and coercion against the poor may not stand up to moral scrutiny.”¹¹

The progress of transplantation has been slow and deliberate, characterized by gradual innovation. Consider the list of what was once unacceptable or strange and is now mainstream or heading that way: use of brain-dead or non-heart-beating donors, donation after cardiac death, use of marginal living donors (including those aged up to 90 years, alcoholics, drug addicts and diabetics); directed donation; elaborate exchanges; and altruistic donation.¹²

Recognizing that the world is complex and varied, the Munich Congress on the Ethics of Organ Transplantation passed the following resolution in December 2002: “The well-established position of transplantation societies against commerce in organs has not been effective in stopping the rapid growth of such transplants around the world. Individual countries will need to study alternative, locally relevant models,

considered ethical in their societies, which would increase the number of transplants, protect and respect the donor, and reduce the likelihood of rampant, unregulated commerce.”³

In summary, if the buying and selling of organs is as unstoppable as it appears to be, then leaving it totally unregulated causes more harm than good, which is arguably unethical—especially as it encourages only the rich to benefit. Regulating the practice will very likely minimize harm by opening it to scrutiny, enforcing compliance with standards to protect donors, recipients and society, removing rapacious middlemen, and enabling the poor to receive transplants on an equal footing with the rich. What could be a more obvious step if we want to improve the situation?

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