The Market for Body Parts

The federal government currently prohibits the sale (as opposed to the donation) of human organs. Under the National Organ Transplant Act (NOTA) of 1984, it is a felony to give or receive compensation for them. Legalizing sales has been discussed in some circles, but proposals to let people sell their own organs as they see fit do not appear at the top of the list of most discussed issues, or anywhere close to the top.

Yet the issue of organ sales (sales of body parts, sperm and ova, bone, skin and tissues of any sort) is becoming ever more urgent. One reason has been noted by Laura Meckler (2007, A1): for many years, organ transplants were rare, dangerous, and costly, and the supply of donated organs from the deceased was enough to cover demand. But now that organ transplants are relatively routine, relatively safe, and covered by many insurance plans, the number of organs available from donor corpses is insufficient. Patients either have to wait or turn to living relatives for donations.

The problem will become more dramatically evident over the next decade, when for the first time in our history elderly people will be upwards of a third of our population. And the Baby Boomers—notoriously narcissistic (if I may be so bold in characterizing my own generation)—will hardly be squeamish about replacing their faulty organs. Look how many have embraced Botox injections and cosmetic surgery, procedures that have nothing to do with keeping you alive.

So the proposal to legalize organ sales is well worth discussing--but with some care.

Certainly, from the libertarian perspective, there is a compelling moral case for it. Being a free agent means that I control my own body. If my body isn’t my property, what is? The idea goes back to one of the founding documents of libertarianism, John Locke’s Second Treatise on Government. Even if you draw the line at suicide, as Locke did, selling a kidney won’t kill you, at least in normal cases. This is all the more true if we are talking about my agreeing *while alive* to sell my kidneys *after I am dead*. Another idea that has been influential on libertarianism, the harm principle, enunciated very clearly by John Stuart Mill, tells us that rational people ought to be allowed to do whatever they please, so long as it doesn’t harm anyone else. Well, what harm is done to anyone else if I decide to sell Fred one of my kidneys? *Prima facie*, there doesn’t seem to be any—indeed, it will likely save Fred’s life.

Utilitarian ideas also seem favorable. If I benefit from the money Fred pays me for my kidney, and he is better off, then everyone directly affected by my action benefits. As a rule, allowing organ sales would increase the wealth of the poorer and the longevity of the wealthier. It would obviously encourage more donations of life-giving organs. Consider how many more people would put codicils in their wills allowing the extraction of their body parts upon their demise if the sales money could be passed along to surviving spouses and other heirs.

If the philosophical case seems defensible, add to it a reason drawn from precedent and current practice. People are currently free to sell their blood, and many regularly supplement their income by doing so. And people are currently free to *donate* their body parts. If people are rationally capable of and morally entitled to give away their body parts, why can’t they profit by the transaction? That is, if my autonomy as a thinking, choosing human being allows me to grasp the risk and pain of an operation to give a kidney to my child because I love her, then why not allow me to sell my kidney to a stranger, for love of money? Remember that money is typically desired instrumentally, as a tool to get other things; it is seldom loved intrinsically, for itself. Suppose that the money I get from selling my kidney will be used to help my family—say, give them better food, or a better house, or a better education. Is that not also a case of giving my kidney to save my family, albeit indirectly?

Now consider the practical benefits of organ sales. One of the most important of them is that it addresses the shortage of organs available for transplant. Meckler puts the number of living donors (usually kidney donors) at about 7,000 a year. Most of them are people who give organs to keep family members alive. Those willing to donate to strangers is much more limited. Several internet sites have been developed to make it easy for willing donors to connect with those who need organs; MatchingDonors.com is one example. But the last I checked, there were fewer than 4,000 such persons. This is woefully inadequate. One recent estimate is that there are over 90,000 Americans already waiting for body parts. Other estimates are of 70,000 waiting for kidney transplants alone. The shortage has several consequences.

To begin with: simply put, it lets people die. A few years ago, Brian Doherty (a senior editor of Reason magazine) estimated that every day, 17 Americans die waiting for organs. No doubt the figure is much higher now. The shortage has also created a black market, with all the unpleasant side effects that brings. There have been cases in which people have purchased organs of uncertain provenance, only to find out that they were taken from people who died of syphilis or hepatitis B. Finally, the shortage has produced the bizarre result, nicely explored by Karen Howley (2007), that in this black market, everyone pockets good money except the donors. This is extremely unfair compensation.

Why, then, would anyone object to organ sales? There are three broad reasons: first, worries by medical ethicists about the nature of the choice; second, concerns about the potential for abuse, as suggested by some recent horrific headlines; and third, concerns raised by some religious ethicists about the sanctity of the human body. Let me briefly examine these areas of concern.

You can get an idea of what troubles medical ethicists by looking at Papadimos and Papadimos (2004), an article that opposes allowing women to sell their ova to pay their college tuition. The Papadimos paper raises a number of objections to the practice, objections that apply equally well if not more forcefully to organ sales in general. Ironically, all the objections are considerations of autonomy.

The authors view autonomy as involving “voluntariness, competence, capacity, understanding, and disclosure…” (1). And they feel that decisions to sell ova fail to meet the standards of real autonomy. One of their arguments is that, since college students need the money, they are under the influence of the buyers. They are being exploited. Another argument is that the age of the students (typically, 20-25) makes their mental capacity questionable, and renders suspect their ability to understand risks. As the authors put it, “Persons may comprehend information, but do not or cannot accept the information. For example, if a twenty year old female is told she has a 1% chance of hemorrhaging, a 1% chance of having a post operative infection, and a remote chance of death with an egg donation procedure; can she accept this? Can she understand the long-term risk of fertility drugs, including the risk of cancer? This young woman may very well understand these risks, but can she actually accept the fact that she has a remote, yet possible chance of getting cancer or dying?” (5).

These theoretical worries strike me as hyperbolic. Again, look at actual practice. We allow young women to take birth control pills and elect for surgery of all sorts, from abortion to cosmetic surgery. All involve significant risk. We allow young men and women to drive cars, not to mention volunteering for combat; this also involves significant risk, and with far less disclosure required. As to the idea that the need for money invalidates a person’s autonomy, that would seem to disallow any trade of any sort in any economic realm.

Turning next to the potential for abuse of a free market in organs, recent horrific headlines suggest major problems. There have been cases of sophisticated grave robbing. A recent New York case is illustrative (Hays 2006). Seven funeral home directors pleaded guilty to plundering corpses for body parts. They removed bone, skin and organs from literally hundreds of corpses, pocketing millions by selling the tissues to bio-med companies. A recent AP report announced the apprehension of a former director of UCLA’s Willed Body Program. He was arrested for appropriating parts of the bodies donated for research and selling them to an outside company for tens of thousands of dollars. The owner of the company was also arrested; he had made over a million dollars by reselling those body parts to various hospitals and medical research companies.

News stories have also been generated by the apparent aggressive harvesting of organs by certain authoritarian regimes, most notoriously China. Recent stories—see, for example, Coonan and McNeill (2006)—indicate that the Chinese are systematically harvesting organs from executed prisoners and selling them to rich Japanese and Americans, who pay about $50,000 per kidney and $110,000 per liver. This is a significant inflow of foreign currency to a country that executes 8,000 people yearly, more than all other countries combined. Even more ominous are recent reports that China now targets groups it dislikes, such as political dissidents and Falun Gong, for arrest and execution, in part because the trade in human organs is so lucrative. Even more alarming are reports that the organs are being harvested from prisoners while still alive (Cooper 2006).

The Chinese government heatedly denies these various reports. Their foreign ministry has conceded using some organs from prisoners, but only with prior permission. Their spokesman, Qin Gang, said, “It is a complete falsification, a lie or slander to say that China forcibly takes organs from the people convicted of the death penalty for the purpose of transplanting them.” Still, China has announced it will start requiring donors to give permission in writing before allowing transplants. And this is the same government that denies any military build-up, that Tibet was ever an independent nation, and that anyone died at Tiananmen Square, so its credibility is hardly compelling. In any case, the danger is clear: allowing an unrestricted market in organs runs the risk of giving incentives to totalitarian regimes to violate people’s rights in the most horrible ways. From a tyrannical government’s psychopathic point of view, it’s a perfect “two-fer”: it gets rid of annoying groups *and* makes a ton of money.

But it is easy to over-react to such dangers. I would argue that what is driving people to go to totalitarian regimes or other black markets is precisely the growing unmet demand for organs by people who face certain death if they don’t get them. If you don’t let these people obtain what they need legally, don’t be surprised that they do so illegally.

The third set of concerns—those of religious ethicists—centers on feelings that the body is sacred, not to be tampered with lightly or for base motives. Some people suspect that legalizing organ sales will somehow be like legalizing abortions; it will (they feel) cheapen life and encourage an ungodly practice.

Again, I find such worries understandable but overblown. There is little comparison between abortion, the killing of a new life form, and selling an organ, which is someone’s existing tissue, and moving it to another’s body. While many religions hold that the fetus has a soul (at some point in its development), no religion of which I have ever heard views my liver as having a soul. Moreover, abortion is not generally done to save someone’s life, whereas that is the whole point of organ transplants.

In any event, why would giving some of your body to save someone else’s life defile your body? And if giving it wouldn’t defile your body, why would selling it? Even if one believes that giving tissues defiles his body, what gives him the right to impose that view on others who don’t share it--and in so doing, condemn many others to early death?

So, while I find the three broad types of concern generally unpersuasive, and the theoretical, practical, and moral case for allowing a free market in organs compelling, there are some legitimate issues that must be addressed—in other words, real, practical problems that must be addressed by some legal mechanism.

One set of problems involves fraud and misrepresentation. If we are going to allow rational people to sell parts of their bodies, there has to be genuinely informed consent. Downplaying the risk and pain would be an attractive ploy for any sales agent: “Look, kid, what’s your worry? You have two kidneys, so you won’t even miss one of them. We’ll pop it out of you-- no hassle! Just think of all the cool stuff you can buy with the ten grand we’re giving you!”

Another set of problems involves the limits of people’s rationality. The reason we wouldn’t want to allow a twelve-year-old to sell one of her kidneys is the same reason we don’t allow her to drink or have sex: young teens are not fully capable of making such choices. But what about cases that aren’t so clear? What about drug addicts, or the clinically depressed, or people with early Alzheimer’s? We need more than a simple age limit here.

Even more worrisome, in my view, are problems of coercion, problems involving people who are executed to harvest their organs, or have their organs stolen after death. Of course, as I said earlier, it seems likely that if we were to allow *legal* sales of body parts, the illegal sales would be less attractive, since the price would drop. But we still need appropriate safeguards to minimize the chances of theft, fraud, manipulation and coercion.

My proposal is to allow free trade in organs, within tight restrictions. We should begin by requiring that all purchases of body parts be from sellers who are United States citizens. The market could be expanded to sellers from other countries, but only on a case by case basis, and only when we can assure ourselves that the country in which the sellers live is free and has the same controls on the organ trade that we do. And in exchange for seeing legal organ sales within this country, citizens ought to be willing to prohibit fellow citizens from buying transplants from abroad. That would help stop the kind of abuse going on now, with growing numbers of Americans buying organs from corrupt, totalitarian regimes, where organs are obtained at the cost of liberty.

Second, an organ sale must be accompanied by a contract between the buyer and a named seller, be it an individual or a hospital. This contract would have to be drawn up to legal standards, just like an incorporation or will, by a licensed legal practitioner. And it would have to be accompanied by a sworn affidavit by an independent, licensed medical professional that the seller of the body parts was apparently of sound mind, an adult, and provided with blood tests showing him or her to be free of the influence of drugs or alcohol at the time of signing. At the time of transplantation, the DNA of any purchased body parts should be verified against the DNA of the seller, as listed on the contract.

Third, the contract would have to be accompanied by a signed statement of disclosure, in which the known risks and health consequences of the procedure, as stated by the AMA, would be listed fully and clearly. The statement would have to be signed by a neutral medical professional, not someone who was a party to the financial transaction. I envision doctors and nurses working *pro bono*, or being paid by charitable organizations, to apprise sellers of all the consequences of their decisions, without any manipulative sales pitches.

Fourth, when setting age requirements we should distinguish between sales of organs while the seller is still alive from sales of organs after death. Put the minimum age at 18 for the latter, but 21 for the former.

Fifth, there should be a requirement that any organ available for purchase be checked by a lab for the presence of HIV, hepatitis viruses, or other dangerous substances.

Sixth, the sales of all body parts must be completely recorded and available for inspection on the internet, so that the market will be transparent to all interested parties—potential sellers and potential buyers, as well as journalists and other investigators. In this way, sellers and buyers will know the going market price for various body parts, and investigators can monitor sales for patterns of abuse. This will make it less likely that a naïve or ignorant person can be tricked into selling his organs at some absurdly low price. We require such transparency for other markets, such as real estate, and the organ market would need it even more.

There is a clear and growing need for organs and other tissues. Now, there are occasional stories about “cloning organs,” i.e., taking a stem cell from a person and growing (say) a replacement liver from it. Of course, were such a procedure to exist, the whole issue of whether we should permit organ sales would be rendered moot—nobody would pay to buy another’s organs if he could get new ones based on his own DNA, which would eliminate the problem of tissue rejection and the need for immunosuppressant medications. But no such procedure seems even remotely close to becoming available, so our choices remain either keeping organ sales illegal, or making them legal under practical regulation. I think the case for the second option is far stronger than for the first.

I think there is a growing recognition in Washington that something needs to be done soon to solve the shortage of organs created by an ill-considered law passed in Washington—Lord, how often do we see the government working at a given time to clean up the damage it caused by its stupid laws of a prior time? Recently, the U.S. House of Representatives passed the Charlie W. Norwood Living Organ Donation Act, which aims to make it easier for donors of kidneys to switch recipients with other donors in cases of biological incompatibility. That is, if I want to donate a kidney to X, and Fred wants to donate a kidney to Y, and my tissue is incompatible with X, but not Y (and vice versa for Fred), the law would allow us to switch recipients. That should result in a fair rise in the number of available kidneys, but it will still be way short of what is needed. We need to open up the process fully and make it transparent, by repealing the NOTA and crafting more reality-based and less idealistic laws.

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