

# SCARCITY OF ORGANS AND REGULATORY ALTERNATIVES

*Written by Subha C C*

*PH. D SCHOLAR*

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The major sources of transplantable organs are donations made at the donor's death, consented to either by the donor or posthumously by the donor's family. The problem of scarcity has raised widespread debate on methods of increasing organ supply .The gap between the scarce supply and more demands in organ led to a situation, where market forces work with an eye on monetary inducement. Should the society permit such inducement and ensure a satisfactory supply of human organs is a question to be debated .

Many have argued that the most effective method is to create a commercial market in transplantable organs . These proposals include permitting organ sales in limited circumstances, supporting legalization to encourage their sale . Another proposal suggests that state law should establish a reciprocity proposal system of organ procurement. A final proposal would provide for future contracts in organ donation by requiring private and government health insurance agencies to pay to the closest relative of an organ donor .

## **The problem of scarcity**

The supply of donated organs has been inadequate for years. Current methods of obtaining organs and tissues have not provided an adequate supply of organs for use in transplantation . Obviously, the problem of scarcity is acute for the individuals who require organ transplants. Scarcity means long waiting lists, to some extent, often measured in years rather than in months .

The demand in recent years has risen significantly because improvements in tissue typing, surgical techniques, and transplant patient care have made transplantation an increasingly successful procedure. Unfortunately the supply of organs has not kept pace with the increased demand, resulting in greater shortages than ever before . The scarcity affects those transplants that are actually performed, because it hinders tissue matching. Finding a perfectly matched replacement organ for a recipient is very difficult without an extremely large pool of donors .Consequently, the recipient must settle for an imperfect organ match. This results in fewer successful transplants because rejection is more likely when the match is imperfect . Scarcity limits number of people who can receive transplants.

Second, it creates difficult ethical problems with regard to the allocation of available parts . The second serious side effect of the scarcity of human body parts is the enormous problem of allocating the few parts that are available among the many possible recipients. The selection of recipients raises profound ethical and moral questions, because non selection may mean death .

The selection procedure may vary according to the organ involved also . Unlike kidney dialysis, practical technology is not available to keep patients requiring liver, heart, or heart lung transplants alive. As a result many patients die awaiting transplants . In light of these difficulties, some government involvement in the allocation process is called for. At one extreme, the government could become the only purchaser and distributor of organs and setting prices so as to induce the proper supply and distributing the parts received body parts .

Another problem caused by scarcity is the need for family members to seek organs by appealing to the media . As a result, patients' private medical problems become public news events, that the patients and their families must make .Aside from the harm inflicted on transplant patients and their families, this media appeal is an unfair method of distributing organs because the success of the appeal depends on the family's ability to obtain media coverage . Though the number of living donors has increased in response to a growing number of patients in need of transplants, this response has been and will be inadequate to the current and future demand . This has spurred interest in novel strategies to increase the number of available organs, including market solutions.

### Market mechanism

In an open market the individual makes his selling and buying decisions freely. Reconciliation between buyers and sellers determines the quantities and the prices of the factors of production and the various goods and services . There is no explicit decision making process; rather they are decided, by many factors that collectively determine how resources will be allocated .

A market system assumes that a sufficient number of individuals, enticed by financial rewards will contract to sell their body parts and consequently the overall supply will be significantly increased. Optimally the supply would be self –regulating ;as the need for human tissues and organs increases the prices of the parts in short supply .

There are two possible methods of decision- making under a market system for organs .First ,the market system could be allowed to operate free of regulation ,and the use of organs could be determined simply by competitive forces .Second ,the legislature could govern the field of statutory regulation or the establishment of an administrative agency .

At least five kinds of sales transaction could take place in a market system .First is the present contract for the right to the body upon the death of the seller with remuneration to be paid upon death to named beneficiaries . The remuneration is not determined until the body is actually available for use and its value ascertained. The second is present contract for the right to the body upon the death of the seller with a definite remuneration guaranteed at death to a named beneficiary . This requires the buyer to accept an element of risk with respect to the value of the parts for which he has contracted. The third is the present contract for the rights to the body upon the death of the seller, with payment to be made at the time of contracting .Fourth is the transfer of nonvital organs and tissues from a living seller for present remuneration .Fifth is the sale by the next of the decedent's body parts after the decedent's death .

The first and second proposals provide ,in effect no-premium life insurance policies .Remuneration is paid upon the death of the seller to designated beneficiaries .In the first proposal the amount paid will be uncertain ,but it may have a bottom limit of the worth of the cadaver. In the second proposal, the beneficiaries receive an amount already set .

Since the first three proposals involve the sale of future right to cadaver parts, the contract rights may be repurchased if the seller changes his mind .If scarcity is alleviated by the market system and the organ is of normal type , the price of the contract right will not have changed .If the seller fears that the value of the contract will appreciate out of his price range , he can include a provision that will give him an option to repurchase under certain conditions and at a set price . The fourth suggestion, that present payment be made for the present transfer of non-vital organs ,has the disadvantage of permitting an individual to subject himself to health risk for a strictly financial return . The fifth alternative, the sale of a decedent's body by the next of kin, could be either subject to a decedent's right to object by express statement before his death or allowed regardless of the decedent's wishes .

### **WHAT IS WRONG WITH MARKET MECHANISM?**

Though supply of organs through the market may help the persons in need, it has certain demerits. Since prices may vary according to the demand, many poor people may not be able to afford to buy the organs. It is also possible that business people control the field which ultimately is based on only on profit.

One may approach the problem of organ sale from different positions. Jesse Dukeminier says that there are at least four positions from which the issue may be highlighted. These four positions are principle of preservation of life, the principle of free will, physician patient relationship and organ preservation. The first principle is founded upon an acceptance of the general ethical principle of preservation of life. To that principle an individual should not endanger his life except for the love of another or in a case such that the danger is an indirect consequence of the activity. The sole motivation for risking one's life by giving up an organ must be the love of one's fellow man, and a gift of a spare organ to a specific donee is permissible so long as such a motivation exists. Otherwise, allowing the removal of an organ for transplantation is condemned.

This position has deep roots in Judaeo-Christian, and even earlier, teachings that man should not seek his own destruction . Unlike the Eskimos, who encourage suicide by the elderly when they can no longer contribute to the family larder, most western societies have long condemned taking one's own life. In ancient Athens a man who unsuccessfully attempted suicide was punished by

the cutting off of his hand. In medieval England a stake was driven through the heart of a man who committed suicide and all his property was forfeited to the crown; Christians who committed suicide could not be buried in consecrated ground. Remnants of this attitude can still be found in laws against abetting and, in some places, attempting suicide. Yet if a charitable motive is so important in judging conduct in situations involving a risking of one's life, how can we permit men to risk their lives in driving racing cars, in entering boxing contests, and in pursuing all kinds of paid risky occupations and still object to the paid kidney donor? When confronted with this question many moral theologians draw a line between direct and indirect effects. For race car drivers and others in risky occupations, dying or being functionally impaired is an indirect consequence. In the transplantation case, they argue, removal of the organ from the donor is a life-risking procedure which is the necessary means to the end .

The 'free will' principle is based upon the principle that a person should be able to do whatever he chooses, so long as he does not harm another . As per this principle a person by harming himself may harm society also. Thus a person who gives or sells a kidney might, if his other kidney fails, have to be maintained by the government on an artificial kidney machine. If he gives or sells other spare organs, the risk that he will disable himself is greater and the resulting harm to society may be substantial .A variation of the free-will view is that free will, or informed consent as it is known in medico-legal terminology, should be the ethical criterion, but that a monetary payment for an organ would constitute economic coercion so that the consent would not really represent an act of free will .

The third way of evaluating the propriety of permitting organ sale is not to start from any general ethical rule of human conduct but to narrow the problem to the context of the physician patient relationship . Professor Paul Freund has pointed out that the great traditional safeguard in the field of medical experimentation is the disciplined fidelity of the physician to his patient: *primum non nocere*:. first of all, do not do injury. Here the basic question is not the donor's motivation or free will. The issue here is whether buying this particular organ from the donor is for the welfare of the donor. If the principle of totality permits sacrificing a part of the body for the good of the whole – which includes spiritual gain and the avoidance of psychological trauma



– it is not difficult to conceive of situations in which a physician could ethically conclude that the sale is for the patient’s welfare.

Under the principle of totality, the surgeon must conclude that the donor benefits by removal of organ. To arrive at that conclusion the surgeon may have to inquire as to how the donor proposes to use any monetary payment and may then have to decide for himself whether the donor will benefit physically or mentally from that particular use .

The viable preservation of whole organs and tissues is an essential component of any transplantation program that does not rely exclusively on living sources. An organ is deprived of normal oxygenation when it is removed from its physiological site at the death of the source. There follows, in rapid sequence, an exhaustion of the intracellular energy reserves, a slowdown or cessation of normal metabolic processes, and an accentuation of degenerative catabolic activities, all of which leads to progressive and ultimately irreversible damage. The problem is much more acute when whole organs, such as hearts or kidneys, are involved, but it is also present in the transplantation of tissues such as bone or skin . But the whole organ market will be geographically limited by the length of time that organ life can be sustained through short-term storage processes. A good deal of research is currently being undertaken on methods of organ preservation. However, although increases in short-term survival time are anticipated, long-term storage method for whole organs are not expected in the near future .

### **Regulatory alternatives to the wholesale prohibition of organ sales**

Commentators have posed a number of regulatory alternatives that include permitting individuals to sell organs without a broker, permitting the sale of cadaveric organs, providing non cash incentives to those who donate organs, and allowing monetary payments to family donors .

The first alternative to the wholesale prohibition of organ sales is to allow sales between the donor and recipient but to forbid organ ‘brokering’ by third parties. This regulation has the advantage of responding directly to the situation that legislatures apparently tried to prevent –the exploitive brokering of human organs . The limited prohibition eliminates the major problems of a commercial organ market, while allowing individuals to buy or to sell organs legally .

A second regulatory alternative is to allow only the sale of cadaveric organs . If this solution substantially increased the supply of organs ,it might eliminate the need for live donations .A cadaveric organ market would thus have several advantages .It would eliminate the risk ,however slight ,that accompanies the removal of kidneys from live donors .Moreover ,the market would avoid the coercion caused by family members and monetary inducement .This limited market is not permitted by any of the present statutes because the statutes are written broadly enough to prohibit organ sales from cadavers .

A third possible regulation would limit the compensation for an organ donation to specific noncash options .This regulation may be appropriate because nonpecuniary payment for an organ might be ethically justifiable even though a direct cash payment might not .

A system of organ trading is an additional form of noncash payment .Under this system, if a donor's organ is incompatible with the recipient, the donor could trade his organ for a suitable match. An opponent of organ sales has supported this trading system because if we permit a father to donate a kidney of his to his wife or child , it is difficult to justify not permitting him to at least trade his kidney for another in the event that his tissue is not a close enough match. An organ trading system is justified because the quality of consent, the risks undertaken, and the donor's motivation are the same as in a direct intrafamily condition .

A fourth alternative to a complete prohibition of sales is to allow the recipient to purchase an organ from a family member .A wealthy individual in need of a kidney might prefer to pay a relative for donating the organ needed. A donee should be allowed to express his appreciation by a monetary gift ,those not wanting to buy or sell an organ can engage in a purely donative transaction. This alternative of allowing intrafamily sales is consistent with the usual legal and medical views on intrafamily affairs .The law has traditionally respected private family decisions, and the medical profession has stopped long ago analyzing the motives behind intrafamily donations . It would be ethically acceptable to offer to make a charitable contribution on behalf of the deceased or to cover the funereal expenses of deceased organ donors. Payments of this kind can be given as a way of saying thanks for the sacrifice the family has made in service to the

community and would be similar to the death benefit offered to the families of servicemen who die in the line of duty.

### **Incentives for organ donation**

Incentives for organ donation can take a variety of forms. Financial compensation is the most discussed option but reciprocity proposals are another possibility. One popular suggestion is the use of a futures contract in which an individual sells the right to harvest his or her organs if they are suitable for transplant at the time of the individual's death.

Proposals involving financial incentives vary widely in their provisions for the use of living donors versus cadaveric donors, the size and type of financial incentive, and the recommended degree of market regulation. .

Some proposals favour an open, unregulated market governing both the supply and distribution of organs. In an open market, those in need of transplants would be able to buy organs directly from living donors or the families of cadaveric donors; the price would be determined by the law of supply and demand .

Others have suggested using financial incentives to encourage donations while outlawing the outright purchase of organs by needy individuals. In this scheme, the supply of organs would increase but transplant recipients would continue to be selected according to ethically appropriate criteria relating to medical need, not ability to pay .

The idea of any kind of incentive for donation is inherently unsavory and subject to serious ethical abuses. It is feared that financial incentives to donate would undermine altruism in society, be coercive to the poor, jeopardize the quality of the organ supply, and dehumanize society by viewing human beings and their parts as mere commodities . All of these concerns are important, but it is not clear whether they justify a ban on all forms of financial incentives. Many of the objections to a "market for organs" do not apply equally to all forms of financial incentives; some types of incentives could be effective and relatively free of risk. Some financial incentives, such as future contracts for cadaver donors, may be effective in saving lives while avoiding the ethical pitfalls of other forms of incentives.



### **Future contracts for cadaver donors**

Many are of the view that the most promising form of financial incentive for organ donation is a modest payment for cadaveric donation at the time the organs are retrieved.

Under an agreement, called a future contract, the financial benefit from donation would go to the family after the donor's death, when organs are retrieved, but the decision to donate would have been made by the competent donor while still living . Decisions to accept financial incentives could not be made by the decedent's family or other third party. In this plan, an adult could agree to donate his or her organs after death. In return, a state agency would agree to give some financial remuneration to the donor's family, estate, or designated beneficiary at the time of actual donation. The amount and form of valuable consideration in a system of future contracts could vary. Some suggest a government mandated price per usable organ while others favour a price set by market forces; and still others propose that payment be limited to burial or funeral expenses .Future contracts could be offered to individuals in a variety of ways: through their insurance companies, through the state (for example, when applying for or renewing a driver's license), or through independent companies. One point in favour of future contracts is that they address all of the usual actors involved in organ donation: the individual donor, the family, and the physicians and hospital personnel involved . Future contracts could overcome the psychic costs of agreeing to donate, reduce the need for requests to grieving families to consent to the harvesting of their loved one's organs, enhance donor autonomy, and meet the requirements of justice. Decisions to accept financial incentives could not be made by the decedent's family or other third party. Financial compensation for cadaveric donation, in other words, is a substitute for both paid and unpaid living donation .

### **Reciprocity proposal**

Compensation for organs can take many forms. The consideration can be appropriate to the risk and inconvenience, or it can be a sum providing an inducement either small or large. Remuneration can take the form of, free medical services, or organ priority if a surviving member of the family

later needs a transplant. It might even take the form of barter for another organ needed by the donor .

As in case of blood which can be bought by the non payment of money, remuneration could, however, take some other form in the case of live donors. Remuneration might like the form of a promise of free medical care for a period of years or for life, either for all diseases and disabilities or for those resulting from the removal of the organ. Sometimes, the remuneration might take the form of insurance on the donor's life. Either of these forms of remuneration might be tailored to provide a rough indemnification to compensate the donor for the possible consequences of removing the organ .

Other types of "valuable consideration" might include loan forgiveness programs, scheduled deposits in a tax-sheltered retirement account, etc . Alternatively, donors with less of a need or interest in personal enrichment can designate a beneficiary, such as a charitable or non-governmental organization. Part of a model donor contract might include a life/disability benefit in the event of a post-operative catastrophe, one that might be extended free of charge to altruistic donors as well.

Apart from this forward approaches involve offering some type of incentive for people to become part of an organ donor registry, their organs will be recovered if they die under circumstances where they can donate. An incentive to donate, for example, could be created by something as simple as offering a discount on driver's licenses to those who sign up to be an organ donor .

These new approaches would allow firms to buy the rights to organs in the event of the donor's death. Every potential donor would either be paid a small amount today to join the registry or they would register today in return for the possibility of much larger payments to their estates when they become actual donors . An options market, therefore, would work much like life insurance (which used to be called "death insurance"). The advantage of an options market, over an arbitrarily-chosen license fee discount or similar plan, is that firms would have an incentive to promote donation and the prices offered would automatically increase as shortages become more severe. Payments for the organs would ultimately be made by insurance companies and government just as for other medical services .

An advantage that all forward-looking approaches share is that the autonomy of the donor is maximized and the decision-making burden is taken off the family at that most difficult time, when they have just learned that their loved one is brain-dead. And, fortunately, experience shows that when families are informed of their loved one's wishes, they almost always assent to the donation.

### **Creating a market in organs**

The shortfall in organs could probably be eradicated at one stroke if we were prepared to sanction commercial dealings in them. However, such a possibility undoubtedly arouses widespread repugnance. Here it is discussed the arguments for and against permitting a market in organs .

There's plenty to be said in favour of permitting a trade in human organs. Most obviously, it would generate an increased supply of a scarce and life-saving resource, as well as providing some much needed income for those who have little else to sell .

The supporters of organ sales argue that if organs could be sold, more organs would become available for use in transplants. It is also asserted that people who do not want to donate their organs may be willing to sell them . Supporters respond that individuals may not be required to purchase an organ with their personal wealth. The government could subsidize the cost of organs, or medicare and private insurance companies could pay for the transplanted organ as a cost of surgery.

Individuals who 'voluntarily' donate a kidney to a relative may be subject to greater coercion than those who sell their organs .People often decide to donate a kidney to a needy relative before they have been informed of the potential risks. Donors often describe their choice as necessary and family members may even openly pressure them to donate. Because of this subtle coercion, doctors occasionally provide bogus medical excuses for reluctant potential donors. Thus a market system may actually be less coercive than the present voluntary system .

The market system has several advantages .First; it should significantly increase the supply of human body parts without sacrificing the individual's ability to control the disposition of his body . Under a market system consent to organ transfer would be paramount .Second the market system

would eliminate much donor –patient and donor –relative friction at the time of death, because the donor would be encouraged to contract in advance for the sale of his organs .The previously executed contract would enable the transfer to be accomplished at death with no further questioning of the patient or his relatives . Supporters of a market for human organs argue that the chronic shortage of organs for transplant could be reduced or eliminated if donors were paid for the use of their organs.

“Spirit of altruism” may be enough to encourage blood donations, but arguably a stronger incentive – money – is required to obtain body parts. Because blood can be regenerated, the health risk to the source is very small. If the donor of human body parts is living however, the gift may create a substantial health risk. A majority of donated parts are taken from cadavers, and gifts of this sort are discouraged by the spiritual and emotional associations with the body .

The advantage of the market approach lies in its continued reliance on individual consent. The individual’s ability to provide for or prohibit the use of his own or his relatives’ cadaver parts remains protected, but the incentive to transfer is increased .

In spite of these considerations, many still find the idea of paying a healthy person for one of her organs deeply repugnant. Given the apparent advantages of permitting organ sale, what justification might there be for this reaction is discussed below.

#### **Ethical pitfalls against proposals involving use of financial incentives for organs include**

in general, exploitation of the poor, black marketing, the dilution of altruism in society, decreasing the quality of donated organs, and the treatment of human beings and their parts as commodities. However, the implementation of the sales concept may encounter ethical objections.

According to the opponents of organ sales, a commercial market would wrongly discriminate against individuals who were unable to pay for the needed organ. One of the major concerns may be that only the poor and powerless will sell their parts and only the white upper class will be able to purchase them. This criticism has been raised against the present donative system. It is feared

that the ability to bury the body rather than have it carved up will become a luxury of wealthy. Opponents of market-based allocation systems argue that individual income and wealth would determine who receives and who supplies organs. They argue that decisions concerning the recipient of the organ should be based upon medical criteria rather than on income and wealth. Discrimination already exists in the present medical care system. The wealth discrimination argument logically applies to all medical care allocated by market forces and would thus prohibit any life-saving health care from being bought and sold.

The other worry is that the relationship between the buyer and seller is likely to be exploitative and to either cause or constitute an unacceptable commodification of the seller and/or her body.

A second objection to the market system may be raised by those who disapprove on moral grounds of any system that encourages the sale of human body parts. Trading in human organs can be considered as 'exploitation based on making a commodity of human beings'. Opponents of payments to organ sources or their survivors rely in large part on arguments that organs should not be commodified, expressing the strong conviction that there should be "a preference for gifts over markets in human organs. One of the most widespread objections to legalizing a market in human organs is that such legalization would stimulate the black market in human organs. Those countries that have a surplus of organs are generally those in which there are the least restrictions on trade in organs. Allegations of human rights violations associated with the acquisition of transplant organs in these countries are not uncommon.

The opponents of organ sales dispute a commercial market's ability to increase the supply of organs. They argue that commercial sales may lead to a collapse of the voluntary donation system and result in an overall decrease in available organs.

Our current organ procurement system relies solely on altruism to motivate donation.

People may withdraw from altruistic donation if a market is created. There are two versions of this criticism. The first is that altruistic donors will abandon living donation in response to the creation of an organ market due to popular revulsion, desire to avoid personal risk where other options are



available, resulting in fewer organs available for transplantation. The second version of this criticism is that an organ market might result in an increase in the net number of organs, but would reduce altruistic donation by replacing donors with paid organ vendors.

There are two more distinct worries with regard to free donation. If payment is allowed, virtually all donors will begin to expect payment and so voluntary donation will cease. The second is that allowing payment for organs would deprive people of an opportunity to participate in 'giving' relationships with one another: relationships which have some ethical or social value, independently of their practical consequences.

But, it is necessary to point out that the mere permissibility of sale doesn't itself prevent people from donating (although it might, of course, encourage them to sell rather than donate).

The primary assumption behind the use of a market system is that the offer of financial remuneration will sufficiently increase the incentive to supply parts. Classic economic theory states that the supply of goods usually increases directly with its price. Theoretically, then, an appropriate price level will guarantee that the organs and tissues needed to satisfy existing medical demand will be supplied.

The validity of that assumption is subject to serious question. First, the supply of human body parts may be highly inelastic – people may not be willing to part with body parts at any price.

The first criticism is based on the emotional and spiritual importance given to the dead body; our attitude towards a dead body very nearly resembles that of the savage. Most of us are greatly disturbed by the sight, or even the mere proximity, of a human cadaver. Skulls are commonly regarded with feelings of horror and repulsion. Many people are averse to handling, and still more to wearing, clothes or trinkets which were worn or carried by the deceased. Some religions have express mandates against the disfiguration of the dead body. Perhaps the most pervasive belief is that proper burial displays respect for the departed individual. This respect may be a remnant of primitive man's belief in a remaining spiritual presence in the cadaver.

Survivors, regardless of religious belief, may be reluctant to profit from the death of their relatives. Gifts may therefore remain the preferred alternative when the body of a relative is involved.

Another major argument against a market system is that the quality of the organs sold will be poor. The risk that the organ will transmit disease is inherent in the transplantation process. A good deal depends on the truthfulness of the source during the medical examination and the taking of medical history. A monetary incentive may lead to concealment by the source of past and present maladies. If a market system be promoted the body parts that are sold may be medically less fit than those now donated.

The incentive to conceal medical history for monetary gain would also exist when organs and tissues are involved. In fact, the incentive may be greater. More money will be involved, and trouble some medical history is arguably easier to conceal because it is often difficult to trace the cause of a transplant failure .

The other major argument in allowing the free market to make allocation decisions is the possibility that anticompetitive conditions may develop. If a few sellers control the supply, the reconciliation function of the market will be performed inefficiently – prices will be higher, output will be restricted, and monopolists will be able to reap abnormal profits over an extended period of time . The advantage of the market approach lies in its continued reliance on individual consent. The individual's ability to provide for or prohibit the use of his own or his relatives' cadaver parts remains protected, but the incentive to transfer is increased.

Sale of cadaveric organs by the next of kin appears to be more objectionable than sale by the person himself. Permitting sales by the next of kin may well result in great anxiety and fear on the part of a patient that his doctors and next of kin would not do everything possible to save him. It seems likely that such sales would lead to murder .

Organs will be useful only if they are removed immediately after death, and thus, as a practical matter, organs for transplantation can be removed only from persons who die in hospitals. Permitting sales by the next of kin would increase the possibility that the dead man's wishes would

not be carried out. The financial benefit from a sale might be irresistible to the next of kin, and even a statutory provision that the rights of the donee created by the gift of the dead donor are paramount to the rights of the next of kin will probably not be enforceable if the next of kin demands payment .

Moreover, if sales are permitted, donations by the next of kin will probably decline. If payment is made to the next of kin in one case, the next of kin may well demand it in the next, and that demand will usually have to be met so that consent can be obtained .

It may be contended that it is ethically permissible to offer the next of kin, as the consideration for removing the organs, payment for services that benefited the dead man during his life. This kind of remuneration would result in different valuations for each person's kidney in accordance with his hospital bill, but that is not the most disturbing element of such an approach. Rather, the primary difficulty in approving such a means of payment lies in the consequences. If the decedent may not wish his body cut open and may prefer that his estate pay the hospital bill; there is no guarantee that next of kin will fulfill his wish. . If human body parts are made saleable commodities it might lead to murders or illegal disinterment of corpses for sale .

The sale of body parts could also give rise to some queer issues like –can a donor mortgage his organ against a loan? Or can a person be forced to sell his organ to satisfy a debt recovery decree.

### **Legal regulation.**

In most cases legislative prohibitions relating to payment in market mechanism are in connection with parties, nature of organs and limited compensation.

### **Regulation of payment with respect to parties**

Argument against sale of organs is admittedly stronger when directed at living donors than cadaveric donors. Commerce in the context of organs obtained from cadavers is less morally problematic than in the case of living.

In most cases legislative prohibitions relating to payment are imposed on all the parties involved. However, in a few cases they appear only to affect the donor, such as Panama's law which states

that the donation of organs should in principle involve no remuneration and Lebanon's law which states that, 'no form of compensation shall be provided in relation to the donation of tissues and organs'. Algeria's law only prohibits financial transactions in relation to removal and transplantation.

The living donor case is mainly in contrast with deceased donors. In the latter case, the organs become available only when the person dies. There is no risk to the donor at that point, but a financial payment would not provide any direct benefit to the donor. In practice, the family of the donor often makes the donation decision, and market advocates usually assume that the payment would be made to the family. Essentially, this means that the family is selling a relative's body parts, which raises the issue of cultural norms surrounding the treatment of dead bodies.

### **Regulation of payment with respect to organs**

One of the main issues that arises is what types of payment laws are aiming to prohibit. The Council of Europe's Resolution prohibits parties from making profit in relation to organs and tissues. Belgium's law also takes this approach. Article 22 of the Council's Convention on Human Rights and Biomedicine is directed against commodification of body materials which is probably the same thing as profit. It states that 'the human body and its parts shall not, as such, give rise to financial gain'. Most transplant legislation takes a similar approach to this. For instance, Russian Federation law prohibits the buying and selling of organs. While Germany's law is against this trade. The law of Kuwait states that organs may not be sold or bought in any fashion nor any material benefit be obtained in relation to them; the law of Honduras prohibits all payments in respect of human organs and tissues. According to Sri Lanka's law no person can buy, sell or otherwise dispose of for valuable consideration any body or any tissue or part thereof; Iraq's law prohibits sale or purchase of materials. Any remuneration or compensation for organs and anatomical materials removed for therapeutic or research purposes' along with the procuring of organs with a view to financial gain is prohibited in Costa Rican; Brazil's law prohibits organs and other materials removed for transplantation, therapy or research from being the subject of commercial transactions.

### **Regulation of compensation**

Organs transplants involve two kinds of risks for the seller: Risk of death and risk of nonfatal injury. In addition, we consider the time lost during recovery since after surgery donors cannot work for a period of time. Under these assumptions, the price of an organ have three main additive components: A monetary compensation for the risk of death, a monetary compensation for the time lost during recovery, and a monetary compensation for the risk of reducing quality of life. But almost all the countries prohibit compensation.

Colombian law prohibits remuneration or compensation for those organs or anatomical parts which are intended to be transplanted ; Denmark's law makes it an offence to offer or receive payment or any other valuable consideration in respect of removal or transfer, or to knowingly collaborate in any such transaction ; Hungary's law states that donation of an organ may be made only in the absence of payment and no person may request or get any form of remuneration ; Poland has a similar provision and Malawi's law prohibits supply for gain or profit for any purpose .

Similarly, WHO Guiding Principle 5 appears to limit the donor to obtain payment for reasonable expenses incurred in donation. Article 22 of the Convention on Human Rights and Bioethics is only specifically directed at requiring parties to prohibit financial gain from the body material itself. The Explanatory Report to the Convention implies that those undertaking technical acts relating to the material (i.e. removal, transplantation etc.) can be reasonably remunerated but those donating are prohibited from doing so and instead limited to receiving, where applicable, compensation for loss of income and expenses incurred. Some legislation is also unequivocal in preventing the donor from getting anything but compensation for expenses or lost income, for example, Spanish law . Cuban law requires donation to be 'performed for humanitarian reasons' which would probably be interpreted as excluding the donor from being paid for labour . The same issue arises in Turkish law, which goes on to state that donation must be consistent with humane aspirations after stating that removal or purchase or sale of any organ or tissue for profit or any other kind of remuneration is prohibited .

### **CONSIDERING ORGAN ALLOCATION POLICY**



### **Who is to Receive the Donated Part?**

Any potentially life saving technique involving limited resources, such as the available number of donated parts, inevitably raises the question of which dying patient is to be treated. The problem of deciding who shall be helped to live also involves deciding who should be left to die. Prolonged life should be both meaningful and useful to be worthwhile, but the critical problem is twofold: what are the standards for making this assessment, and who is to make the final decision? It is understandable that specific suggestions for rules of guidance in deciding who is to receive a limited but life-saving treatment are infrequent .

When life itself is held in the balance, the principle of equality of worth as a human being must be strictly observed. Selection procedures which allow an omnipotent secret committee with no articulated standards to evaluate and compare the social value of other human beings in order to decide who is to be saved from among the dying may well not meet the equal protection and due process demands of the Constitution. The principle that man should not play God with human lives does not necessarily preclude basing such decisions upon rational and nondiscriminatory criteria which are announced in advance. But the sanctity of human life should not be violated by reliance upon nebulous concepts such as the “social worth” of one human being in comparison to another .

The problem of selecting those to receive a limited medical treatment may not be as acute in the transplant situation as with the use of artificial parts because of the importance of tissue typing in the preliminary determination of medical acceptability. If the determination cannot be made solely from medical considerations, a procedure must be chosen which does not permit hidden prejudices or preferences to influence the decision, such as random selection or first come, first served. Concededly, it is easier to assail a bad system than to choose a good one .

### **How should organs be allocated?**

How should transplantable organs be distributed? Who ought to decide how they are distributed? Should organ allocation policy be left to health care providers, or should the

distribution of organs be based on a consumer-driven market? What is the proper role of the government in organ allocation? .

Many factors can be should be considered in allocating scarce resources like transplant organs . Justice and fairness should be the primary consideration by calling for organ allocation based on the medical urgency of the patients. Yet, justice, and fairness would also seem to demand that the patient who has spent the longest time on a waiting list be given first priority. How does one reconcile these competing issues of fairness ?

Many others argue that medical utility should be the primary factor in organ allocation. This principle seems to be the guiding force behind the local-preference allocation policy followed. Fewer organs would be wasted if the organ spent as little time as possible outside a human body and without a blood supply. But other valid allocation methods based on medical utility also exist. Why not give the organ to the recipient with the best biological match? Indeed, cadaveric kidneys are allocated this way. Alternatively, organs could go to the healthiest patients first, rather than to the sickest, which could mean higher overall survival rates and less need for retransplantation later. Lastly, it has been argued that the recipient's willingness to comply with a prescribed treatment regimen after organ transplantation should also figure into the allocation decision .

Even more controversial are the subjective factors that could be used to select transplant recipients. Should the patient's social worth be considered in deciding whether to offer the organ transplant? Should we favor the thirty-eight-year-old patient with three young children over the seventy-year-old patient with no dependents ?. The plethora of potential factors in allocating organs ensures continued debate.

### **Conclusion**

It is the essence of a market economy that goods are transferred from those persons who have them to those who desire them by the medium of a sale. There is, however, nothing traditional about the sale of human organs and, indeed, the initial reaction to such a suggestion is likely to be extreme distaste. Understandably, the subject has not previously been given much analytical

attention. But remarkable advances in transplantation, and the consequent increase in the demand for organs, require an examination of the matter.

There are widespread unwillingness to acknowledge the essential role of commerce in the distribution and allocation of human biological materials. But the fact that human tissue is rarely advertised and is not traded on exchanges should not lead to the conclusion that commercial activity is absent. On the contrary, money changes hands at numerous points in the chain of distribution from tissue source to ultimate consumer: Transplant patients pay to receive organs, fertility patients purchase ova and sperm, and biotechnology firms sell products derived from human cells .

It is sometimes claimed, however, that there is an important difference between banning a proposed new practice and banning an established one, since banning an established one will be more disruptive, unpopular and costly. This might provide a reason for banning organ sale, even if it were morally no worse than other permitted exploitative practices. Though we should ban all exploitative practices, in the real world we must be ready for banning just those which we can ban, or can ban without excessive disruption and cost.