

2010-11

Big Sky Debate



April Public Forum: Organ Transplantation

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META

CURRENT WAIT FOR ORGANS IS SUBSTANTIAL

CURRENT WAIT FOR CRITICAL ORGANS IS AN AVERAGE OF 2 TO 4 YEARS-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

There were about 50,000 persons on the waiting list for kidney transplants in the United States in the year 2000, but only about 15,000 kidney transplant operations were performed. This implies an average wait of almost four years before a person on the waiting list could receive a kidney transplant. The cumulative gap between demand and supply for livers was over 10,000, which implies an average wait for a liver transplant of a couple of years.

WAIT TIMES FOR ORGANS ARE INCREASING DRAMATICALLY-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 134]

The growing pool of potential transplant candidates is exacerbating waiting times. The median waiting time for a kidney transplant was 400 days for patients registered in 1988 compared to 1,121 days for patients registered in 1999, with 1,778 days for blood type B patients. The median waiting time for patients listed for repeat kidney transplants in 1996 was 1,629 days. Generally, patients with panel reactive antibodies (PRAs) of 10-79 percent waited longer (1,631 days for patients registered in 1999) than patients with PRAs under 10 percent (1,107 days for patients registered in 1999; 1,295 days in 2001). Median liver waiting time increased from 43 days for patients registered in 1990 to 767 days for patients registered in 2000; the mean time was 412 days in 2002. Patients with blood type 0 experienced the longest wait for livers: 1,120 days for patients listed in 1999-2000. Patients are experiencing similarly increasing wait times for other organs. Table 1.2 summarizes the median waiting times for various organ types.⁷ The goal of matching organ supply with demand has not been achieved.

NUMBER OF THOSE WAITING FOR ORGANS IS GROWING SIGNIFICANTLY IN THE UNITED STATES-Coleman '10

[Gerald; Vice President for Corporate Ethics for the Daughters of Charity Health System; Charity, Not Money, Should Guide Kidney Transplantation; 2010; Gale Group Databases]

The Organ Procurement and Transplantation Network estimates that there are currently more than 89,000 potential organ candidates on waiting lists. In the past decade, the number of persons nationwide waiting for kidneys has more than doubled to at least 65,500 and could reach 100,000 by 2010. This growing number is being driven by older patients between 50 and 65 years old. Depending on geographic location, the average wait is from three to nine years.

KIDNEY WAITLIST HAS DOUBLED IN THE LAST TEN YEARS-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

The kidney waitlist more than doubled over the past ten yearsⁿ⁴⁶ and nearly tripled in the last thirteen years. In 1994, 25,827 persons were waiting for kidneys; by the close of 2003, that number had doubled to 54,231.ⁿ⁴⁷ The median number of waiting days also increased substantially.ⁿ⁴⁸ In 1994, the wait for a kidney was 836 days. By 2001-2002, it increased nearly fifty percent to 1,288 days for whites and, unexplainably, to 1,861 days (nearly two years longer) for African-Americans.ⁿ⁴⁹ Nearing the end of the 1990s, so few kidney transplantations had occurred compared to need that the Organ Procurement Transplantation Network (OPTN)-which coordinates and collects data on organ transplants for the federal government-found it "'impossible . . . to calculate an overall median waiting time for 1996 and 1997 registrants'" in its 1998 report.^{N50} [*1230]

100,000 PEOPLE ARE CURRENTLY WAITING FOR AN ORGAN-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Over 102,000 people in the United States nervously wait for a call from a transplant center.ⁿ²¹ Like the lottery, they hope that their blood type and HLA factors will match some stranger's and they might become the winner of an organ. Organ transplantation represents their last hope and the U.S. transplant system is usually either the last step before giving up to death or the first step before heading to the black market for an organ.ⁿ²² Some try to cheat death by undergoing dialysis treatments several days per week. These treatments can last several hours and leave the already weary patients exhausted and nauseous. But dialysis is only a temporary treatment and not a solution. Without an organ transplant, death is imminent after dialysis begins.

ORGAN SUPPLY-DEMAND GAP INCREASES YEARLY-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

As shown in figure three, the gap between organ demand and supply is persistent. The gap between the number of transplants performed and the number of patients registered to receive organs expands yearly. Despite creative procurement campaigns framing organ donation as the best gift one can offer, too few people are motivated, committed to altruism, or convinced to sign on.ⁿ⁵¹

THOUSANDS DIE EACH YEAR WAITING FOR ORGANS

3,000 PEOPLE DIE A YEAR WAITING FOR KIDNEY TRANSPLANTS; 1,500 DIE WAITING FOR LIVER TRANSPLANTS-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

In 2000, almost 3,000 persons died while waiting for a kidney transplant, and half that number died while waiting for a liver transplant. Many also died in other countries while on the queue waiting for an organ transplant. Some of these people would have died anyway from other causes, but there is little doubt that most died too early because they were unable to replace their defective organs quickly enough.

DEMAND FOR ORGANS GREATLY OUTPACES SUPPLY-Baginski '09

[Wojciech; Attorney and Counselor at Law; Hastening Death: Dying, Dignity and the Organ Shortage Gap; American Journal of Law & Medicine; 2009; 35 Am. J. L. and Med. 562]

America experiences a shortage of organs for transplantation. n3 According to data gathered by the Organ Procurement and Transplantation Network ("OPTN") n4 as of August 4, 2009 there are 102,985 candidates waiting for transplantation. n5 Yet, as of July 31, 2009, only 6,004 donations had been made in the previous seven months. n6 As demonstrated by this disparity, the demand for organs in 2009 will greatly outweigh the supply.

7,000 PEOPLE DIE A YEAR WAITING FOR ORGANS-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

As of March 22, 2008, 98,531 people waited for organs in the U.S. n18 More than 7,000 of those patients died within the year and those deaths did not include patients removed from transplant waitlists because they [*1225] became too old or too sick. Only twenty percent were transplanted and 90,000 patients rolled over to the 2009 waitlist. Most scholars treat this tension as a question for altruism to answer. n19 The limited scholarship that develops an incentive approach is mostly limited to cadaveric procurement. n20

6,000 PEOPLE DIE IN THE UNITED STATES EACH YEAR WAITING FOR AN ORGAN-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

Few ordeals could be more distressing than waiting for a replacement kidney, lung or even heart, knowing that your life depends on receiving one. In the US alone, more than 6,000 people die every year while waiting for an organ transplant, and in the UK [in 2004] the figure was over 400. Many others endure great pain and distress, often in hospital on life support, while queuing for available organs. In 2003 in the US, only around 20,000 out of the 83,000 waiting for transplants received them—a tragedy by anyone's standards.

17 PEOPLE DIE EACH DAY DIE WAITING FOR A VITAL ORGAN-Coleman '10

[Gerald; Vice President for Corporate Ethics for the Daughters of Charity Health System; Charity, Not Money, Should Guide Kidney Transplantation; 2010; Gale Group Databases]

The United Network for Organ Sharing (UNOS), which oversees transplantation for the federal government, calculates that every day 17 people die while waiting for a vital organ. Living kidney donations represent 94 percent of all living donations. Organ donation between living persons has now surpassed that of donations from deceased persons; adults account for 95 percent of transplants using kidneys from cadavers.

SUBSTANTIAL NUMBERS DIE WAITING FOR DONATED ORGANS-Cherry '05

[Mark J.; Bioethicist; *Kidney for Sale by Owner: Human Organs, Transplantation, and the Market*; 2005; Kindle Edition, Location 128]

Consider the extent of the medical challenges facing the transplantation field. In 1996, in the United States, 4,022 patients died while waiting for suitable organs; as noted, in 2002 this incidence had increased to 6,385. While there were 61,766 registrants for kidney transplants in August of 2004, only 15,123 renal transplants were performed in 2003. Similarly, there were 17,857 registrants for a liver transplant, but only 5,671 were performed during 2003. The data regarding pancreas and heart transplants are similar: there were 1,636 patients registered for a pancreas and 3,523 for a heart, with 502 pancreas transplants and 2,057 heart transplants performed in 2003. Table 1.1 summarizes this comparison with regard to various organs.

DEATH ON ORGAN WAITING LISTS IS A COMMON OCCURRENCE-Palmer '98

[Alasdair; Columnist and Health Writer; *Selling Organs for Transplants Is Unethical*; 1998; Gale Group Databases]

For those waiting on the long and continually growing list for kidney transplants in Britain, the option of an instant operation can be tempting. Anyone on the list knows that here demand exceeds supply by around four to one. Death on the NHS [National Health Service] waiting list is a regular occurrence. Whether you live or die can come down to a question of luck— and whether you can survive years undergoing the considerable pain and boredom of life on dialysis. Small wonder, then, that some find it impossible to resist the quick way out: a trip to Bombay to take advantage of the bargain prices and purchase a new kidney there.

MUST NOT TREAT ALL BODY PARTS THE SAME**MUST NOT TREAT ALL BODY PARTS THE SAME-Cherry '05**

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 1139]

Not all body parts are created equal: Some parts are necessary for embodiment/existence (e.g., higher brain), others are necessary for adequate human functioning (e.g., heart, cornea), others are neither (e.g., appendix); some parts are experienced (e.g., hands), while others are not (e.g., hair). Like other types of things that are intimately associated with persons, many body parts, which are not necessary conditions for embodiment/existence, can be replaced at will without thereby harming the living experiential nature of the person. Those who object to markets in human body parts will need to provide grounds that focus on the particular body parts at issue. For example, selling one's redundant kidney is not equivalent to selling one's higher brain. Objections that do not meet this condition will fail to be telling at best, or will beg the question outright.

PRO

ALTRUISM MODEL FAILS

CURRENT SYSTEM IS SIMPLY NOT WORKING-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

It is time to stop the hand-wringing and consider the facts: the current system of organ transplants is not working, and a market for donors and recipients could help save lives and considerably reduce suffering. Proper regulation would be essential to ensure that the system benefited all those in need, regardless of their income, and that it did not exploit the poor. If we fail to take this opportunity, patients will continue to languish on waiting lists until they run out of time.

SUPPLY AND DEMAND LAWS MAKE IT CLEAR WHY THE CURRENT SYSTEM CAUSES ORGAN SHORTAGES-Croughs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

This is not rocket science; the harmful consequences of the introduction of a maximum price for goods and services is part of Economics 101. The price mechanism sees to it that supply and demand are in equilibrium. When there is a shortage of a certain product, the price will go up; the higher price makes it more profitable to make the product, which will increase the supply of the product. If the government prohibits the rise of the price of a certain product, thus artificially keeping the price below the market price, the incentive to increase production disappears, and a permanent shortage of the product ensues. For organs a de facto maximum price of \$0 has been introduced, with predictable results.

ALTRUISTIC ORGAN DONATION HAS HIT A PLATEAU-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Much can be gleaned from the increase in living donations. First, doctors increasingly urge that the healthiest of organs, especially kidneys, come from living donors. n32 Second, with the advent of minimally invasive techniques, including laparoscopic nephrectomy, a technique to remove whole kidneys with narrow incisions, health risks are minimized, which may assuage donors' fears about recovery time and pain. n33 Third, we know from this data that altruistic organ donation has hit a plateau. Without the participation of living donors, only 5,418 donors would have been available in 1996 and ten years later, only 8,019 in 2006. n34 Most striking is the near doubling of living organ donor participation in the past ten years. In 1995, there were 3,495 living donors, and by 2005, there were 6,902 participating in the transplantation process. n35

Identical patterns emerge in the kidney transplant realm. Living kidney donors represent the most significant increase of all "donor types," which includes all organs. Between 2000 and 2004, living kidney donations surpassed cadaveric donations. n36 In 2000, for example, cadaver and living kidney donations ran constant at 5,499 kidneys from living donors and [*1228] 5,489 from cadavers. n37 By 2003, over 700 more kidneys were made available from living donors than cadaveric.

VOLUNTARY DONOR SYSTEM CONTRIBUTES TO AN ENVIRONMENT THAT DECREASES THE NUMBER OF POSSIBLE DONORS-Baginski '09

[Wojciech; Attorney and Counselor at Law; Hastening Death: Dying, Dignity and the Organ Shortage Gap; American Journal of Law & Medicine; 2009; 35 Am. J. L. and Med. 562]

The common emphasis in media and scholarly work on the shortage of organs creates pressures on individuals to donate and on physicians to encourage patient donations and to make the "best use" of organs and donors available. These pressures generate a conflict of interest between the physician's duty to his present patient and the duty to the anonymous individual who needs an organ.

It is difficult, if not impossible, to determine how many donations were abandoned due to the donors' concerns about the possibility of their deaths being hastened, but it is likely that more than a few refused to consent for just such a reason. These fears influence the number of organs available for donation, n7 and arguably the number of organs that might be donated if proper checks and balances or other means explored infra were in place. In the pursuit of more organs we cannot forget about the dignity of the donor who agrees to transplantation upon his death.

CURRENT POLICIES WILL DO ABSOLUTELY NOTHING TO GET ENOUGH ORGANS FOR THE SYSTEM TO WORK-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

Yet, even with this entire network formulated to increase public [*45] donation, the problem of organ shortage continues. n37 Currently, the U.S. still tries to procure transplant organs by merely urging people to register as organ donors. n38 A recent report by the Institute of Medicine ("IOM") on the severe shortage of transplant organs proposed "more of the same medicine," suggesting that coordinators simply need to ask more ardently. n39 However, activists argue that "continuing this policy, no matter how fervently we solicit would-be donors, will only fail to prevent more unnecessary deaths and more reports on the chronic organ shortage." n40

NO GLOBAL CONSENSUS EXISTS AGAINST FINANCIAL INCENTIVES FOR ORGAN DONATION-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 109]

Whereas one might hope that legal and moral prohibition of commercialization is the result of sound rational moral argument, adequate scientific and medical data, and careful consideration of the likely costs and benefits, this study provides significant grounds for concluding that the global "consensus" proscribing organ sales fails to take adequate account of many of the issues central to the debate. Closer examination reveals significant grounds for concluding that a market would likely be more successful in preventing exploitation, preserving human dignity, and reducing needless human suffering than current governmental bureaucratic procedures for procuring and allocating organs for transplantation.

CURRENT SYSTEM FOR ORGAN TRANSPLANTATION IS INEFFECTIVE-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

The current legal and institutional framework governing the transplantation of human bodily organs is ineffective. "Patients who die waiting for a transplant do so not because of a shortage produced by natural limits or human indifference, but rather due to an inefficiency of existing organ procurement policies." n181 It is well understood that a change in social norms must precede a change in the legal rule, but the legislature has the potential to save lives and lessen suffering. The initial legislative intent was to alleviate the organ shortage in America, and this national crisis should be resolved in a manner that furthers achievement of this primary objective.

Any revised procurement scheme will be met by controversy and skepticism. Nevertheless, it is apparent that the system needs transformation. The federal government has assumed responsibility for increasing the organ supply by regulating the practice of organ donation. To maintain the status quo or to adopt a presumed consent policy are both morally unacceptable. Allowing donor compensation would protect the dignity of donors and would reduce the suffering and death of the many people waiting for transplant organs.

ALTRUISM IS NOT SUFFICIENT TO PROVIDING ENOUGH ORGANS FOR DEMAND-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

As the progressive field of biotechnology n1 promises advancements in human health, it produces new ways of valuing the human body. While the organs and tissues of the human body have a recognized intrinsic worth, the advancements in medical transplant technology continue to redefine this value. Today, the transplantation of a kidney or heart in a dying patient can mean the promise of prolonged life. Unfortunately, not every person who needs an organ transplant will receive one. According to the United Network for Organ Sharing, as of October 24, 2007, there were 97,910 patients waiting for transplants, and only 14,225 organs donated. n2 Until [*40] recently, the legislative solution had been to advance funding for organizations and marketing directed at motivating the public to become organ donors. n3 However, the simple truth is that altruism is not a motivator sufficient to produce the number of organ donors necessary to keep pace with the ever increasing number of recipients, many of whom will die while waiting. Consequently, this disparity between organ donors and recipients has become a national concern.

CURRENT SYSTEM DOES MORE TO DISCOURAGE ORGAN DONATION THAN AN ORGAN MARKET WOULD-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

Another concern is that an organs market would eliminate the voluntary donation of organs during life or upon death. n178 However, denying a property interest in cadaveric organs will only promote the psychological barriers to donor consent as the courts continue to refuse to grant legal recourse for fraud and conversion claims against the current organ sharing network. n179 Also, recognizing such a right will hopefully not automatically remove the inherent nature of altruism and generosity amongst people in society because "it is only a certain type of person who will donate an organ and another who will sell it." n180

THE GLOBAL "CONSENSUS" AGAINST ORGAN MARKETS ISN'T BASED ON REALITY-Cherry '05

[Mark J.; Bioethicist; *Kidney for Sale by Owner: Human Organs, Transplantation, and the Market*; 2005; Kindle Edition, Location 2374]

The results of this study suggest that there are significant grounds for suspicion that such a "consensus," while pervasive, fails either to be universal or sufficiently justified. For example, it does not adequately consider basic foundational concerns regarding those factors that shift who shoulders the burden of proof as well as which reasons are relevant for meeting that burden. These include physiological and phenomenological distinctions among body parts (i.e., not all parts are necessary for embodiment or continued existence or even for adequate human functioning, nor are all parts experienced as part of oneself); the ontology of personhood (i.e., replacing body parts that are distinguishable and separable from the existence and embodiment of persons is compatible with the full continued functioning of persons as rational moral agents); and the closeness of the analogy between ownership of one's body and ownership of other types of things (e.g., it is implausible simply to presuppose without significant further argument that human organs are a social or governmental, rather than private, resource). Moreover, the "consensus" tends to gloss over distinctions between future and present markets and the fact that many organs are harvested from cadaveric sources (i.e., former persons, who cannot be physically harmed by procurement) and that certain organs are more central to the existence of persons (e.g., the higher brain versus a redundant kidney). Often disregarded, as well, are the ways in which the burden of proof shifts with assumptions regarding the nature and ground of morally justified political authority.

ALTRUISM MODEL FAILS: IF IT WORKED, THERE WOULD BE NO WAIT

IF ALTRUISM WAS ENOUGH, THERE WOULD BE NO WAIT FOR ORGANS IN THE UNITED STATES-Becker '09
[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

If altruism were sufficiently powerful, the supply of organs would be large enough to satisfy demand, and there would be no need to change the present system. But this is not the case in any country that does a significant number of transplants. While the per capita number of organs donated has grown over time, demand has grown even faster. As a result, the length of the queue for organ transplants has grown significantly over time in most countries, despite exhortations and other attempts to encourage greater giving of organs.

MAJOR REASON FOR ORGAN IMBALANCE IN THE UNITED STATES IS THE LACK OF METHOD OF SALE OF ORGANS-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

To an economist, the major reason for the imbalance between demand and supply of organs is that the United States and practically all other countries forbid the purchase and sale of organs. This means that under present laws, people give their organs to be used after they die, or with kidneys and livers also while they are alive, only out of altruism and similar motives. In fact, practically all transplants of kidneys and livers with live donors are from one family member to another member. With live liver transplants, only a portion of the liver of a donor is used, and this grows over time in the donee, while the remaining portion regenerates over time in the donor.

CURRENT ALTRUISTIC MODEL DOESN'T PROVIDE ENOUGH INCENTIVE FOR ORGAN DONATION-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

Currently, the system of organ donation expressly forbids the offer of direct "valuable consideration" for a human organ. The government and most of the public believe that human body parts should not be viewed as commodities and individuals or organizations should not profit by the sale of human organs for transplantation.
n49

However, theorists and economists suggest that this altruistic model does not provide sufficient motivation for organ donation. n50 They have proffered that monetary payments would create the incentives necessary to increase the supply of organs for transplantation. n51 While this may be the unfortunate reality of our capitalistic society, it is true that for the past forty [*47] years there has been a shortage of organ donors. A market-based approach would permit the buying and selling of human organs and tissue for financial gain, which theorists and economists project would motivate the public to increase the number of willing donors. n52

ALTRUISM IS NOT ENOUGH TO CREATE ENOUGH ORGANS-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Tissue n16 and organ scandals n17 expose the fault lines in human biological supply and demand in the United States. Insufficient supply is a persistent problem in both spheres. For this reason, scholars are wise to consider whether government intervention should occur to alleviate the tremendous demand, and if so, what that intervention should look like. Is altruism enough? Clearly it is not. But other potential solutions to our biological supply problem, including payments and presumed consent, are not without controversy. This Essay, in part, addresses what those obstacles look like for T&O procurement and, in the case of payments, offers how objections might be overcome.

CURRENT SYSTEM IS RESPONSIBLE FOR DRAMATIC ORGAN SHORTAGE-Croughs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

The problem of organ shortage for transplants is well-known. In the United States alone, over 80,000 people are on the waiting list for an organ transplant. Every year, thousands of patients die while waiting for their transplant.

What is the cause of this persistent shortage?

How many TV sets would reach the market if television manufacturers were not allowed to ask for money for their product? One does not need to be an economist to understand what the consequences of such a policy would be.

Yet this is exactly the policy that exists today with regard to organs: it is illegal to pay or receive money for organs.

ALTRUISM MODEL FAILS: REFORM MOVEMENTS TO THIS POINT NOT ENOUGH**RECENT REFORMS IN THE UNITED STATES TO CHANGE THE PRIORITY SYSTEM FOR ORGANS HAS NOT BEEN ENOUGH TO FIX THE GROWING LISTS OF NEEDED PATIENTS-Becker '09**

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

In recent years the US [United States] has taken several steps to improve the allocation of available organs among those needing them, such as giving greater priority to those who could benefit the most. These steps have helped, but they have not stopped the queues from growing, nor prevented large numbers of persons from dying while waiting for transplants. Some countries use an "opt out" system for organs, which means that cadaveric organs can be used for transplants unless persons who died had indicated that they did not want their organs to be so used. A PhD thesis in progress by Sebastien Gay at [the University of] Chicago shows that opt out systems may yield somewhat more organs for transplants than the "opt in" systems used by the US and many other nations, but they do not eliminate the long queues for transplants.

ALTRUISM MODEL FAILS: PEOPLE REGULARLY IGNORE/SKIRT THE SYSTEM

THOSE IN THE CURRENT SYSTEM REGULARLY SKIRT THE SYSTEM-Coleman '10

[Gerald; Vice President for Corporate Ethics for the Daughters of Charity Health System; Charity, Not Money, Should Guide Kidney Transplantation; 2010; Gale Group Databases]

In another case, Herbert Davis, a 65-year-old physicist from Menlo Park, Calif., needed a new kidney. He had lived with damaged kidneys for decades as a result of a childhood infection. After four years of dialysis, he received his first kidney transplant in 1995. This transplanted kidney failed nine years later. His wife was not a compatible kidney match and sent an emotional letter to 140 friends and relatives pleading for a donation. One of them knew Matt Thompson.

Matt Thompson read the letter and felt that the plea was addressed to him. "I felt that God was compelling me to help out," he said. Thompson is a born-again Christian and has done missionary work in Brazil. He is married and has an infant daughter. Davis and Thompson had never met nor did they know each other. When Thompson contacted Davis's transplant program, he was turned down flat. He was not permitted to donate an organ to a stranger because of the medical risks involved. This is a regulation in many U.S. transplantation programs. Hospitals also worry that a donation from a stranger may involve undisclosed financial incentives.

Davis and Thompson then forged a friendship around the kidney transplant, however, and the situation changed. The hospital relented. "We started off as strangers, we moved to friends, and after the surgery, we're now a family," Thompson explained. The surgery successfully took place on November 14, 2006, at the University of California, San Francisco Medical Center.

In this case, the moral issue was rooted in medicine's "do no harm" principle that requires physicians to justify performing risky surgery on a healthy donor. Noted bioethicist Arthur Caplan has explained that principle: "The closer the relationship, the more medicine feels comfortable saying, 'We'll subject you to risk.'" He argues that there is a scientific consensus that "ethically, you don't force relationships."

Dr. John Scandling, medical director of the adult kidney and pancreas transplant program at Stanford University, stresses the risk involved: "It's major surgery. You can die." Stanford bioethicist David Magnus adds that the process whereby Herbert Davis attained the kidney donated by Matt Thompson is "inappropriate, absolutely." Says Magnus, "Living donor programs aren't intended to find ways for people to artificially become friends, but to allow people who are close friends to donate." He characterized the Davis-Thompson arrangement as "just a way of skirting the system." Stanford restricts organ donations to friends and family.

RULES ON ORGAN DONATION ARE BENT OR IGNORED ALL THE TIME-Saletan '07

[William; Shopped Liver: The worldwide market in human organs; Slate; 17 April 2007; <http://www.slate.com/id/2164177/>; retrieved 8 March 2011]

Politicians have tried to rein in this market. The United States banned organ sales two decades ago. India did the same in 1994, and China followed last year. But when lives are at stake, rules get bent. To procure more organs, doctors have discarded brain-death standards, donor age limits, and recipient health requirements. States have let transplant agencies put patients on life support, contrary to their living wills, to preserve their organs. If Congress revises its ban on organ sales, as some advocates hope, lawmakers in South Carolina plan to offer prisoners reduced jail time in exchange for organs or marrow.

If national governments can't control wages or prices in a global economy, they certainly can't control the purchase of extended life. In the last two years, Israeli organ brokers shifted their business from Colombia to

CURRENT SYSTEM INVOLVES PROFIT AT EVERY STATE OF UTILIZATION OF DONATED TISSUE-Oberman '06
[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS:
WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review;
Spring 2006; 55 DePaul L. Rev. 903]

Others have written extensively about the debate over whether to compensate the donors of human tissue or their survivors. n130 In perhaps the most powerful critique of those who oppose such compensation, Professor Julia Mahoney noted that the system we presently have is not at all gratuitous, but rather permits compensation - and indeed profit - at every stage of utilization of donated tissue. Thus, she concluded:

The eradication of commerce in human biological materials would require the total abandonment of the price system as a vehicle for allocating rights to human components. In place of the price system, rights associated with human biological materials would have to be gratuitously transferred at every stage of distribution, with the forces of generosity (or a governmental entity) guiding tissue from its original human source to its ultimate consumer.

ALTRUISM MODEL FAILS: CURRENT BAD HEALTH OUTCOMES JUSTIFY CHANGES

WITH THOSE IN NEED OF ORGANS, WE MUST PROVIDE FINANCIAL INCENTIVES FOR THOSE THAT HAVE ORGANS-Jefferson '10

[Cord, Writer and Columnist; The Sale of Kidneys for Transplantation Is Ethical; 2010; Gale Group Databases]

When patients waiting in an endless line for a kidney transplant are relegated to making on-air pleas for help, something's seriously wrong with the system.

See, like many in the creative underclass of New York, I was gainfully employed, yet still without health insurance. When my father's illness got gradually worse, I eagerly volunteered to donate. But because kidney donation in America is a nonprofit enterprise, the myriad expenses associated with the operation and the years of aftercare fell beyond my ability to pay. Before I could even broach this dilemma with my dad, he wired me thousands of dollars to pay for insurance and initial testing. Would I have gone through with the donation without the money? Probably—only because he was my father. The point is that the offer of money made me absolutely certain I wanted to donate.

To make such a sacrifice for a stranger, I'd almost definitely require some similar monetary encouragement. And with 83,000 Americans desperately waiting at least five years for a donated kidney—thousands of whom will die before they get it—the U.S. government has a responsibility to provide that encouragement.

THE SHORTAGE OF ORGANS DEMANDS THAT ORGAN MARKETS BE CONSIDERED-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 56]

Consider, for example, that the American Medical Association's Council on Ethical and Judicial Affairs adjusted its policy against all financial incentives, arguing that it is permissible for competent adults to enter into a futures contract, in which one agrees to the harvesting of organs after death, with one's family or estate receiving financial remuneration only once the organs are retrieved and judged medically suitable for transplant.¹³ In 2002, the American Medical Association voted to promote studies to assess whether financial incentives would likely increase the pool of cadaver organ donors.¹⁴ Insofar as a market system demonstrates significant potential to alleviate organ shortages and to decrease the time patients spend on waiting lists, thereby significantly reducing human suffering, *prima facie* more attention should be paid to its promise.

CHANGING CIRCUMSTANCES DEMAND THAT WE EXAMINE BANS AGAINST LOOKING AT ORGANS AS PROPERTY-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; *Annals of Health Law*; Winter 2008; 17 *Ann. Health L.* 39]

"While the body may once have lacked the commercial characteristics often associated with property, changing circumstances are emphasizing these very characteristics." n130 One commentator has argued that "the very existence of a law forbidding commercial alienation of organs paradoxically portrays the human body as an 'article of commerce' that lies within the purview of congressional power and would otherwise be subject to sale on the market." n131

ALTRUISM MODEL FAILS: SHOULDN'T TREAT BODY PARTS ANY DIFFERENTLY THAN ANY OTHER HUMAN CHARACTERISTICS

SHOULDN'T TREAT BODY PARTS ANY DIFFERENTLY THAN OTHER HUMAN CHARACTERISTICS-Cherry '05
[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 630]

Insofar as a person's character, native endowments, talents, and family are seen as arbitrary from a moral point of view, so much so are his body's physical characteristics, such as properly functioning eyes, ears, lungs, kidneys, liver, and so forth. Among the most prevalent and pervasive inequalities, which lead inevitably to social and economic inequalities, are those created by the differences in the health status of one's body parts. The aim of health care is to restore individuals so that they return to being fully cooperating members of society.⁴¹ In this view, body parts are simply another natural resource to be distributed so as to promote the favored understanding of the good; in Rawlsian terms, to maximize the welfare of the worst-off members of society. Indeed, such considerations refocus concern away from whether to commodify internal redundant organs to accounts of (1) the fair distribution of body parts (e.g., redistributive justice of natural physical resources) and (2) the fair distribution of economic and social burdens to pay for acquisition, allocation, and transplantation (e.g., redistributive justice of social and economic resources). Such considerations implicitly commit these theories to a market, albeit governmentally controlled, in body parts.

ALTRUISM MODEL FAILS: DECREASES INDIVIDUAL LIBERTY**LIMITING ORGAN MARKETS LIMITS INDIVIDUAL LIBERTY-Cherry '05**

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 1431]

Forbidding an organ market straightforwardly limits the liberty of vendors and recipients who are inclined to interact with each other in the profitable exchange of goods and services. It limits personal freedoms of choice, privacy, and association, as well as the freedom of physicians to acquire organs to assist their patients. Those in need of organs for transplant are prohibited from advertising for potential vendors, which straightforwardly also limits patients' freedoms of speech, association, and contract. Prohibition thereby imposes constraints and limits liberties to choose and venture with others. Given that potential recipients are often dying of organ failure, the loss of these freedoms is likely significant. Prohibition will also stifle the realization of market-based abilities and choices, as well as those preferences, which while not directly market based, rely on the availability of private funds. Moreover, prohibition overlooks opportunities for the poor to raise resources to better their prospects, as well as for the state to encourage organ availability, through tax credits and deductions, thereby addressing both income and health inequalities. Even if some consider certain aspects of commercial trade in human organs to be intrinsically unsavory, forbidding such a market may cause worse moral harms to equality and liberty.

ALTRUISM MODEL FAILS: CREATES DANGEROUS BLACK MARKET

A SIGNIFICANT BLACK MARKET FOR ORGANS EXISTS IN THE UNITED STATES-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

From California to New York, procurement specialists, coroners, and body-part brokers have been linked to the robust black market in body parts. In California, the Los Angeles coroner's office was caught in 1997 selling the corneas of Black and Latino homicide victims for about \$ 340 per pair. The corneas were later resold by the Doheny Eye and Tissue Bank for more than \$ 3,400 per pair. n11 In 2004, the University of California-Los Angeles Medical School was embroiled in a scandal wherein mid [*1224] dleman Ernest Nelson chopped up bodies donated to the medical school and sold them to tissue banks and parent companies like Johnson & Johnson. n12 Lawsuits are currently being settled regarding that and other medical school body-part-selling scandals.

One significant problem is that body-part scandals are treated as episodic rather than systemic of a renegade, unregulated industry. Tissue banks trade on the global stock exchanges. Their websites boast that one cadaver reaps over \$ 200,000 in profit. n13 Yet, buying and selling body parts is illegal according to the 1984 National Organ Transplant Act (NOTA). n14 Despite this federal statute, which imposes a \$ 50,000 fine and five years imprisonment, n15 law enforcement has been lax at best.

CURRENT RULES AREN'T ENFORCED, CREATING AN ANYTHING GOES BLACK MARKET-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Now imagine that most of the inventory is stolen or acquired through fraudulent means. Tissue banking is complicated. The National Organ Transplant Act (NOTA) prohibits the buying and selling of body parts, including human tissue. n70 Nevertheless, a robust industry has emerged, which passes off payments as processing fees and transportation costs (for moving the tissue from one place to another). NOTA makes clear that providing "consideration" for any body part is a felony, punishable by a fine of \$ 50,000 and/or five years incarceration. n71 However, enforcement is lacking, thereby impliedly creating a default rule that organ buying and selling may be illegal but not punishable.

BLACK MARKET ORGAN TRADE EXPLOITS AND IS DANGEROUS-Palmer '98

[Alasdair; Columnist and Health Writer; Selling Organs for Transplants Is Unethical; 1998; Gale Group Databases]

The Humana Hospital scandal was, however, very tame stuff by comparison with what goes on routinely in India. Kidneys bought there come steeped in human misery, as Dr Odum reminds anyone who thinks of nipping off for a transplant. One Indian woman, for example, was forced by her brutish husband to give up one of her kidneys. She was given an alarm clock and a battery for her transistor radio for her pains. He received the money, which he proceeded to gamble away almost instantly. Anyone who investigates kidney transplantation in India comes back with dozens of stories like that. They don't move the blindly self-interested, but there are drawbacks to purchasing a kidney even for them. A study of 130 patients from the United Arab Emirates and Oman who had purchased new kidneys in India showed that four tested positive after the transplant for HIV (having tested negative before it); three were infected with hepatitis.

'But the trouble is,' sighs Dr Odum, 'none of the patients who has come back to this country has been infected. It makes it much more difficult to persuade people of the risks they are running.' Those risks are nonetheless very real. Blood is still not routinely tested for infections in many Indian hospitals, leaving aside the dubious qualifications of many of the surgeons.

THE CURRENT SYSTEM CREATE GROUND FOR A SIGNIFICANT BLACK MARKET-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

The challenge in parsing out the trade in body parts is that it is wedged between two legal processes, altruistic organ donation and legalized tissue implantation. In between is the black market industry that practically receives bodies and parts for the tiniest fraction of their profit and exploits that advantage through huge mark-ups to doctors and hospitals. Estimates range, but prosecutors speculate that 10,000 people throughout the United States and abroad received tissue from Mastromarino's dealings. n5

ORGAN MARKETS SOLVE: WOULD INCREASE AVAILABILITY OF ORGANS

ORGAN MARKETS WOULD RESULT IN AN INCREASE IN THE AVAILABILITY OR ORGANS-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

If laws were changed so that organs could be purchased and sold, some people would give not out of altruism, but for the financial gain. The result would be an increased supply of organs. In a free market, the prices of organs for transplants would settle at the levels that would eliminate the excess demand for each type of organ. In a paper on the potential of markets for live organ donations, Julio Elias of the University of Buffalo and I estimate that the going price for live transplants would be about \$15,000 for kidneys and about \$35,000 for livers. We recognize, however, that the data are too limited to be confident that these numbers would be close to equilibrium prices that equate supply and demand—they may be too high or too low. But even if our estimates were only half the actual equilibrium prices, the effect on the total cost of transplants would not be huge since current costs for live transplants in the US are in the range of \$100,000 for kidney transplants and \$175,000 for liver transplants.

ORGAN MARKETS WILL INCREASE THE NUMBER OF AVAILABLE ORGANS-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 1307]

With the creation of an organ market, one is likely to see an increase in the number of living persons willing to sell organs to recipients who are neither family members nor close friends. Market incentives will likely also lead to the willingness of more families to have the organs of their loved ones harvested upon death. Even if harvested organs only directly benefit members of a particular racial group, such activity will reduce the number of patients on the general waiting lists, thus reducing waiting time for others. Such a policy would thereby incur health benefits for all those in need of a transplant.

FINANCIAL INCENTIVES WILL WORK TO INCREASE DONORS FOR KIDNEYS-Palmer '98

[Alasdair; Columnist and Health Writer; Selling Organs for Transplants Is Unethical; 1998; Gale Group Databases]

Apart from corpses, the other source of kidneys is donation by live adults. Mr Bewick has some radical ideas here as well. Evolution has oversupplied humans with kidneys. We all have two, but each of us only needs one. Having the operation to remove one need not cause any health problems at all. 'There are thousands of usable kidneys out there, if only people could be persuaded to give them up,' he enthused. Money is the most effective incentive, and Mr Bewick suggests offering a financial reward for anyone willing to donate his kidney. He knows it can work. He has personal experience of it. He was the surgeon involved with Dr Crockett in the notorious kidneys-for-cash case in 1989.

ORGAN MARKETS COULD FIX CURRENT PROBLEMS IN THE ORGAN DONATION SYSTEM-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

In truth, offering compensation for organs will not necessarily lead to exploitation--on the contrary, it may be regarded as necessary to minimize the level of inequities that exists in current organ procurement systems. n139 Furthermore, "[a] market in body parts and products [is needed] ... to ensure that patients are protected from coercion and given the chance to be paid fairly for their contributions." n140 Therefore, federal and state [*59] legislatures need to reconsider policies banning the sale of human cadaveric organs, and permit a commercial market in organs to resolve the shortage.

MARKET SYSTEM = BETTER HEALTH OUTCOMES-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 2421]

With regard to health care outcomes, it is plausible that a market would fare better than current systems of donation. Commercial incentives have the promise of leading to greater organ availability, with organs of better quality, and more efficient organ procurement for transplantation. Legal safeguards from tort liability, which are unavailable under donation, gear in with market-based organ procurement, transplantation, and scientific research. Torts predicated on warranty or strict liability are only possible if the transplanted organ is understood as a good that is being sold to the recipient. Organs removed from living persons are also more likely to be of significant use to recipients. They have greater vitality and can be screened in advance for defects, disease, or other negative transplant indicators. If organs are primarily procured from the recently deceased, such as accident victims, one loses both vitality and, in the press of time, some screening opportunities. Organ quality may be problematic precisely because of insufficient commercialization. In addition, as has been explored, indirect health benefits and life expectancy associated with increases in income, or resources to support educational training, are advantages in favor of permitting such a market. Insofar as there exists a social commitment to provide all with access to adequate health care, including organ transplantation, this commitment will very likely be more effectively achieved with a market rather than through prohibition.

ORGAN MARKETS WOULD ALLOW THOSE IN NEED TO GET ORGANS MORE QUICKLY-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

My conclusion is that markets in organs are the best available way to enable persons with defective organs to get transplants much more quickly than under the present system. I do not find compelling the arguments against allowing the sale of organs, especially when weighed against the number of lives that would be saved by the increased supply stimulated by financial incentives.

IRAN PROVES: CREATING A KIDNEY MARKET SOLVES WAITING LIST PROBLEMS-Jefferson '10

[Cord, Writer and Columnist; The Sale of Kidneys for Transplantation Is Ethical; 2010; Gale Group Databases]

Were the U.S. to create a cash-for-kidneys market, we wouldn't be the first. Currently the only nation in the world that allows the buying and selling of living donors' organs is Iran, which adopted the practice in 1988 when it could no longer ignore the rate at which patients with end-stage renal disease were outpacing willing kidney donors. Whatever you might think of Iran's politics, the results have been noteworthy. According to an article published in the Clinical Journal of the American Society of Nephrology in 2006, in the years since Iran started the nationally regulated and funded program, the wait for a renal transplant has vanished. In Iran, the kidney waits for you.

ORGAN MARKETS WOULD LEAD TO BETTER HEALTH OUTCOMES-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Third, incentives will likely promote better health outcomes for potential sharers and recipients. Those interested in receiving a payment for sharing T&O will have an incentive to stay healthy during their lives so that their organs will be "picked" for transplantation. Likewise, because their organs have a real value, there is an incentive in maintaining their health. The benefits of healthier living are well-documented in scientific and medical literature. Beyond reducing medical costs, healthier eating and living increases life span, vitality, and productivity. Healthier people are less likely to become obese and suffer the secondary stresses of diabetes, hypertension, high blood pressure, chronic fatigue, alcoholism, and drug abuse. The benefits here inure not simply to the individual, but extend also to families' and sharers' communities.

Fourth, economically disadvantaged individuals might receive better screening for illnesses. Currently, participants in reproductive markets incorporate medical care, psychological evaluations, and sometimes therapy into their negotiation processes. Medical screening and support has evolved into a standard benefit associated with the adoption and surrogacy processes. Similarly, in the context of organ selling, medical screenings to determine the health and vitality of the sellers will likely be a health benefit to participants and not simply a moment of objectification.

AN ORGAN MARKET WOULD SUBSTANTIALLY INCREASE THE NUMBER OF POTENTIAL ORGAN DONORS-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

What makes this suffering all the more tragic is that much of it could be prevented, and many more lives saved, by changing the way organs are donated. The change is controversial, but it is simple enough: make it legal to buy and sell organs on the open market. At a stroke this could significantly increase the number and quality of available organs, and so reduce suffering and save lives. This, surely, is the bottom line.

How would it help? For a start, it would allow families to sell the organs of a deceased loved one rather than just donate them. The knowledge that their families would benefit could persuade many more people to become organ donors. But it would also open up more intriguing possibilities. For example, some people might consider a contract in which they agreed to give up their usable organs on their death to a particular buyer and have the money paid to their descendants.

ORGAN MARKETS WOULD MAKE THE CURRENT SYSTEM MORE RELIABLE-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Second, a more reliable system emerges with the use of incentives. Currently, the altruistic procurement system is mired by delays, deaths, unpredictability, and unreliability. By introducing a market-based system to coexist with altruistic donation, greater reliability is introduced to the larger complex of organ procurement and distribution. Greater reliability is likely to inspire greater confidence, trust, and respect for the organ procurement system.

ORGAN MARKETS SOLVE: WOULD DIMINISH THE BLACK MARKET

ORGAN MARKETS WOULD DECREASE THE TRADING OF ORGANS ON THE BLACK MARKET-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

An open market in organs would sharply curtail the present black market where some persons in need of transplants have them in poorer countries like Turkey where enforcement against selling organs is slack. Since the quality of the surgeons and hospitals in these countries is much lower than in advanced countries, this often greatly reduces the quality of the organs used and how well they are matched to the organ types of recipients.

LEGAL TRADE OF ORGANS WOULD ACTUALLY DISCOURAGE UNSCRUPULOUS PRACTICES-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

Another reason why a legal trade would discourage unscrupulous practices is that in legitimate markets, kindness and personal recognition are often crucial for business, allowing partners to build up trust. Customer satisfaction and professionalism lead to profits. Transplantation needs skilled services; hospitals, as providers of highly qualified surgical teams, a suitably sterile environment and medical follow-up, have professional incentives to encourage virtuous tendencies in the market. Surgeons would be unlikely to put their reputation at risk by dealing with black-market traders or con-artists.

ORGAN MARKETS WILL DECREASE THE USE OF THE BLACK MARKET-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Beyond increasing the supply of organs, incentives for organ sharing will likely benefit society in several meaningful ways. First, there is an incentive to avoid buying organs on the black market. Black market organ shopping has the advantage of a reduced wait time but exposes the purchasers and sellers to numerous health and social risks. In black markets, the risks are high. Too many variables remain irresolvable; the sellers' health histories cannot be confirmed, unfavorable past social conduct (that can impact the quality of an organ) is unlikely to be disclosed, and there is no medical follow-up. Nor can the purchaser be sure that the seller is a voluntary participant in the transplant transaction. For black market sellers, the future is equally bleak. Because of their complicity in an illegal act-selling an organ-there is a disincentive to report any abuses experienced in the process. After the transaction, follow-up care is unlikely to be available.

ORGAN MARKETS SOLVE: PROVIDE INCENTIVE FOR TOUGH SURGERY**GIVING AN ORGAN IS TOUGH; MUST PROVIDE INCENTIVES FOR THOSE TO GO THROUGH THIS PAINFUL ORDEAL-Jefferson '10**

[Cord, Writer and Columnist; The Sale of Kidneys for Transplantation Is Ethical; 2010; Gale Group Databases]

Because although one can live without two kidneys, the process of extracting one is hell. Before the operation, when I wasn't in the hospital giving blood or getting weighed, I was at home, collecting my urine in a big plastic bottle for testing. After the surgery, I would sleep half the day away, partly because I was on heavy medication and partly because it hurt to be awake. Sneezing and laughing were agony; simple things like rolling over in bed required yoga training. Even six months later, my surgeon told me not to jog or play tennis. I'm completely fine now, but the fact remains that unless you're Natalie Cole, it would probably be next to impossible to get a stranger to make such a sacrifice for nothing more than good karma.

ORGAN MARKETS SOLVE: OLD BLOOD MARKET ARGUMENTS OFFER NO COMPARISON

HISTORICAL BLOOD MARKETS OFFER NO COMPARISON BECAUSE TECHNOLOGY HAS IMPROVED SUBSTANTIALLY-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

Many of the arguments against the sale of organs indirectly stem from an influential book in 1971 by the British social scientist Richard Titmuss, *The Gift Relationship: From Human Blood to Social Policy*. He argues against allowing blood to be sold for transfusions, and compares the British system, which did not allow the purchase of blood, with the American system, which did allow its purchase. Titmuss basically ignored that the American system in fact was getting more blood per capita than the British system. Instead, he concentrated on the quality of the blood. Since a significant fraction of the American blood came from individuals with hepatitis and other diseases that could not be screened out, the blood given under the British system tended to be healthier. In the absence of effective screening techniques, perhaps shutting down the commercial market was an effective way then to improve blood quality.

But that is no longer the case as highly effective methods have since been developed to determine whether blood is contaminated with various types of hepatitis, the HIV virus, and other transmittable diseases. Under present screening technology, a market in blood yields much more blood, and with enough diligence its quality can be maintained at a high level.

ORGAN MARKETS SOLVE: CAN SUBSTANTIALLY IMPROVE THE LIFE OF DONORS

ORGAN MARKETS CAN BENEFIT INDIVIDUALS FINANCIALLY-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

Others might wish to sell a redundant internal organ, such as a kidney, while they were still living. This could be seen as a valuable way of improving their life circumstances; indeed, some might view it as heroic—saving the life of another, at some risk to themselves. Each of these cases is little different to the current system of organ donation apart from the financial compensation that donors and families would receive. And it could go further: you could have a barter market in which people could trade in redundant internal organs—a slice of healthy liver for a healthy kidney, for example.

THE EXISTENCE OF POVERTY IS A GOOD REASON TO ALLOW FOR ORGAN TRADE-Crouchs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

In fact, the "forced by poverty" argument can be reversed: the more someone is "forced by poverty" to sell a kidney, the more important it is that organ trade is not prohibited. In the most extreme poverty, when the choice is between selling a kidney and starving to death, it is most in the interest of the poor that organ trade is legal. The whole idea that actions that are risky should be forbidden is ridiculous anyway. It would mean that working as a taxi driver in New York should be prohibited, just like Formula 1 racing, taming lions, having sex without a condom with homosexual junkies, etc.

ORGAN MARKETS SOLVE: WOULDN'T EXCLUDE THE POOR FROM ORGAN TRANSPLANTATION

POOR WOULD STILL BE ABLE TO AFFORD ORGANS UNDER AN ORGAN MARKET SCENARIO-Cherry '08
[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

Critics of organ trading may claim that only the rich would be able to afford organs, and that the poor would have to wait in line for state-funded transplants. But this is unlikely for several reasons. First, since the market would increase the number of organs, making transplantation more readily available, it would reduce queuing time. As it is usually the poor who wait longest for scarce medical resources, it would benefit them most of all. Second, meeting the medical needs of patients who are waiting for transplants is very costly. By reducing waiting times, the market would also very likely save money for public health insurance programmes. Third, even within a market, private individuals could still donate organs for free out of charity to family members or others in need.

ARGUMENTS THAT ORGAN MARKETS EXCLUDE THE POOR FROM SERVICES AREN'T FAIRLY APPLIED TO THE REAL ISSUE: HEALTH CARE-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 218]

If one assumes that organ donation is a gift to society and that the state has moral political authority to regulate procurement and distribution, it is plausible to raise concerns on grounds of equality that "it seems unfair and even exploitative for society to ask people to donate organs if these organs will be distributed on the basis of the ability to pay." If rich and poor alike donate, but only the rich receive transplants, a significant social class of those who donate will not benefit from transplantation. Thus, opponents conclude, donated organs should be distributed to medically eligible recipients regardless of their ability to pay for the transplant⁸³: on these grounds, a for-profit market is argued to lead to unequal health care outcomes and, therefore, is unfair and unjust⁴ Medical suitability and severity of illness are viewed as consisting of more objective data appropriately weighed in allocation of goods and services. They appear to satisfy the requirement that "criteria for organ placement must be objective, medically sound, and publicly stated."¹⁵ However, no one has seemed to notice that the argument as structured is less critical of a market in human organs per se than of (1) selling organs that were donated and (2) charging for health care services that utilize donated organs.

ORGAN MARKETS WOULD NOT EXCLUDE THE POOR-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Some scholars perceive organ markets to necessarily exclude the poor. In this they are mistaken. For example, the cost of kidney dialysis averages \$ 66,000 per year, per individual.ⁿ¹⁰⁸ This figure represents only the financial costs, as the quality of life and independence of dialysis patients are severely compromised.ⁿ¹⁰⁹ The costs never recede. Over the course of seven years, an average life span of a patient on dialysis, the costs are at least \$ 450,000 per patient. For the economically indigent, these costs are absorbed by the state and federal governments. Compare those costs with the payment to a kidney provider at ten or fifteen thousand dollars. The estimated cost of a kidney transplant is \$ 90,000 and drug therapies to avoid rejection will cost nearly \$ 16,000.ⁿ¹¹⁰ Financially, it becomes clear; providing incentives for organ donation costs far less than dialysis-the expensive, slow death alternative.ⁿ¹¹¹

ORGAN MARKETS SOLVE: CAN REGULATE AWAY ABUSE

AN ORGAN MARKET WOULD BE SUBSTANTIALLY REGULATED BY THE GOVERNMENT, ABSOLUTELY CURBING ABUSE-Jefferson '10

[Cord, Writer and Columnist; The Sale of Kidneys for Transplantation Is Ethical; 2010; Gale Group Databases]

Her first argument doesn't hold water. Every reputable proponent of legalized organ sales (which, by the way, includes both Dr. Arthur Matas, former president of the American Society of Transplant Surgeons, and Dr. Benjamin Hippen, transplant nephrologist at the Carolinas Medical Center) says they envision a market that's strictly regulated by government bodies, preventing donors from getting hustled and left to fall ill. As it stands now, the criminality of the organ trade is what's dangerous. My father recalled asking his surgeons if buying a kidney in the black market was safe. "They couldn't give me an answer because there are no records kept in the black market," he said. "But what they could do was tell me about all the people they saw who were now sick and dying because the black market is unregulated."

Dr. Michael Friedlaender, head of the kidney transplant follow-up unit at Hadassah Medical Center in Jerusalem, has likened the black market organ trade to abortions in years past: "Though I hate to compare it, because this saves lives, it's like abortions, where the illegal state of abortion caused terrible things to happen to young women," he says. "[With organs], we have no control over standards, over payments, over follow-up health care. You can make standards only for things that are legal."

OVERSIGHT IS CRITICAL IN ANY ORGAN MARKET SCENARIO-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Finally, oversight and information-sharing must be an essential component of a viable market model. The FDA performs a vital role in monitoring the health and safety of biological, pharmaceutical, and medical devices introduced to the market. However, that agency's demonstrated weaknesses and past reputation for political capture might indicate the need to look beyond the FDA as the ideal agency to respond or give oversight to these issues.

A better model will emerge from the development of special state offices to address organ and tissue oversight with a federal arm contracting to gather and disseminate information on T&O procurement and donation. This model would be a departure from the current system, which is replete with gaps and holes.

CURRENT BANS DON'T TAKE INTO ACCOUNT THE REGULATION THAT COULD BE PUT IN PLACE TO PROTECT HUMANS IN AN ORGAN MARKET-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39] These views are reflective of the raw sentiments held by many regarding the commercialization, trade, or sale of the human body. n137 However, Gregory Crespi notes that in enacting the prohibition on the sale of organs, "Congress appears to have assumed without reflection that allowing any form of compensation to be paid to organ donors would violate fundamental social norms. There was no attempt made to examine alternative regulatory frameworks that might harness financial incentives to enhance organ availability without transgressing those norms." n138

ORGAN MARKETS SOLVE: DECREASE THE COST OF TRANSPLANTATION

ORGAN MARKETS COULD DECREASE THE COST OF TRANSPLANTATION-Cherry '05

[Mark J.; Bioethicist; *Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark*; 2005; Kindle Edition, Location 1321]

Commercialization may lead to other more indirect health care benefits. Such a market, for example, may decrease the long-term financial cost of organ transplantation. While historically organ procurement has not been without significant financial expenditure, the organ itself has typically been donated. In the United States, for example, average one-year billed charges, including evaluation, procurement, hospital, physician follow-up, and immunosuppressants, ranged from \$143,300 to \$814,500 in 2002, with no payments to the donor or donor's family. In 2002, U.S. patients, or their insurance companies, paid on average \$391,800 for a heart transplant and a year's worth of follow-up care, \$313,600 for a liver transplant, \$143,300 for a kidney transplant, and \$814,500 for an intestine transplant.²⁷ Surgeons do not generally provide operative services free of charge; hospitals do not provide space, immunosuppressive drugs, and other operative personnel resources without fees. Nor are all organ procurement agencies supported solely through charitable donations. Each of these products and services adds to the high cost of organ transplantation. The concern is that the additional funds expended procuring organs may reduce the overall funds available to purchase other types of health care. Such costs might further stress a single-tier, government-controlled health care system with a fixed global budget for health care expenditures. Within the private insurance market, providers may raise premiums to meet the additional costs.

MARKETS WOULD SERVE TO DECREASE COSTS OF ORGAN TRANSPLANTATION-Cherry '05

[Mark J.; Bioethicist; *Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark*; 2005; Kindle Edition, Location 1329]

These potential drawbacks, though, might be blunted in several ways. First, the availability of more organs may lead to reduced overall costs, because timely receipt of a healthy organ may reduce or obviate the need for other types of treatment, such as dialysis.²⁸ Second, the current costs (in time and money) involved in determining to whom particular organs should be allocated (e.g., setting "match" standards and debating which social and political concerns such as the potential for quality and quantity of life, time spent on waiting lists, and national versus local distribution, ought to play a role in the calculation) could be reallocated to purchasing organs for persons in need." Third, the market would likely reduce the hidden charges generated by current "altruistic" policies. For example, one study, which calculated the financial costs of potential solid organ donors who fail to donate due to medical complications after consent has been obtained, found that additional costs ranged as high as \$33,997 per potential donor.³⁰ Such costs are ultimately passed on to patients' families and third-party payers. Insofar as the market decreased such costs, through an increased number of healthy living vendors, for example, who are less likely to experience these complications, it would liberate resources. Fourth, if private persons sell organs, this may make available more funds to purchase health care or more extensive insurance. That is, in the private sphere, health care is not a zero-sum game: total expenditures are not fixed. Fifth, since an organ market would allow vendors and recipients to seek more precise tissue matches, it would likely lower the long-term financial expenditures associated with transplantation. For example, Schnitzler et al. calculated that follow-up treatment in the three years following transplant was 34 percent less expensive for patients with fully HLA-matched kidneys than for patients with as many as six HLA mismatches.'

A/T: MARKET FORCES BAD IN ORGAN TRANSPLANTATION**ANY PRESSURES THAT EXIST IN AN ORGAN MARKET ALSO EXIST IN THE ALTRUISM SYSTEM-Cherry '05**

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 2383]

The preceding chapters have argued that the global "consensus" appears in many areas to be not only unfounded but also misguided. While opponents argue that consent to organ sales is not fully voluntary, it is unlikely that barriers to autonomous consent respect the distinction between altruistic donation and commercial sale. It may be true that for consent to organ donation to be morally effective it must be informed and free of coercion; however, concerns to provide adequate information regarding the risks of surgery or of the potential for serious complications apply to both donation and sale. Such concerns can be ameliorated in each case in the light of further analysis. Moreover, offers to purchase organs cannot easily be understood as coercing the poor into selling. Such offers do not situate potential vendors in unjustified disadvantaged circumstances, nor do they deprive vendors of any preexisting options. Regardless of whether organs are donated or sold, it is impossible fully to insulate patients and family members from external social and institutional pressures. In either circumstance, incentives are strongest if the medical or financial resources are needed to avoid the suffering and death of a loved one. While offers to purchase organs may be seductive, they are not necessarily coercive. Indeed, they propose to advantage vendors in ways to which they have no prior entitlement. Moreover, autonomous rational choice among the available options remains possible.

A/T: ORGAN MARKETS DECREASE ALTRUISTIC DONATIONS

SCENARIO IN WHICH ORGAN MARKETS DECREASE OVERALL DONATION IS HIGHLY UNLIKELY-Becker '09
[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

Still, despite these strong arguments in favor of allowing commercial markets in organs, I do not expect such markets to be permitted any time in the near future because the opposition is fierce. Some critics simply dismiss organ markets as immoral "commodification" of body parts. More thoughtful critics suggest that allowing organs to be bought and sold might actually reduce the total number of organs available for transplants because they claim it would sufficiently lower the number of organs donated from altruistic motives to dominate the increase due to those sold commercially. That scenario, however, is extremely unlikely since presently only a small fraction of potentially useable organs are available for transplants. Compensating persons either for allowing their organs to be used after their death, or for kidneys and livers to be used while they are alive, would enormously widen the scope of the potential organ market.

ORGAN MARKETS ARE UNLIKELY TO CHANGE THE NATURE OF ORGANS DONATED FOR ALTRUISM-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 1255]

Grounds for such health-related concerns, though, are unlikely to be justified. Presuming that the willingness to donate body parts is motivated by actual rather than coerced altruism, those who are willing to donate ought to continue to be willing regardless of the existence of a for-profit market. Though the United States has a market-oriented economy, individual Americans donate over 184 billion dollars annually to charitable and nonprofit organizations.' Regardless, most organ donations from living persons are to family members or close friends. The motivations supporting such donations are likely to maintain the same force regardless of the existence of a for-profit market: love, beneficence, loyalty, gratitude, guilt, or avoidance of the shame of failing to donate. These are not donors whose altruism extends to all possible recipients; rather, willingness stems from their relationship with a particular patient. Such transfers are unlikely to change either in general character (i.e., from donation to sale) or in relative number (i.e., become other than driven by the need of a specific friend or relative-e.g., sibling? or spouses). Potentially, however, when someone needs a family member to donate a kidney, it may already have been sold. Also, if organs become perceived as the kind of things that people have to purchase, like cars, they may no longer be considered the kind of good that one can acquire through donation. Note, though, that the motivations that currently support organ donations to family members are also likely to support family pooling of resources to purchase a replacement organ. Indeed, many may find the pooling of financial resources preferable.

MARKETS DON'T STOP FAMILIES FROM CONSIDERING TONATIONS-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 1263]

Furthermore, the development of such a market provides no reason to stop asking patients or their families to consider donation. Additional strategies designed to increase organ availability, such as required request or directed donation, ought not to be seen as exclusive alternatives to the market. Pursuing multiple parallel strategies may lead to the greatest organ availability. It may be, however, that the goal of increasing organ availability, and thus reducing human suffering, would be more effectively and honestly secured with the existence of an organ market. For example, the concern that an organ market would disproportionately adversely affect health care for the poor, the uninsured, or the underinsured ignores numerous possibilities for influencing the market. Various state incentives could be utilized to avoid the need for direct payments from recipients to donors. Here one might consider allowing donors, or their families, to take tax deductions for the fair market value of the organs. In addition, one might utilize a system of tax credits against income or inheritance taxes owed for the organ's value. These would be governmentally managed systems for the purchase and supply of organs. Both policies would ensure that donors were compensated for the market value of their body parts, while actively encouraging an increase in available organs without raising direct health care costs. Many aspects of such a system could be supported through religious and other charitable organizations. There could, for example, be organ drives supported by particular religious groups or corporations.

A/T: ORGAN MARKETS EXPLOIT THE POOR

BARING THE POOR FROM SELLING ORGANS DOES NOTHING TO ACTUALLY HELP THE POOR-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

Another set of critics agree with me that the effect on the total supply of organs from allowing them to be purchased and sold would be large and positive, but they object to markets because of a belief that the commercially-motivated part of the organ supply would mainly come from the poor. In effect, they believe the poor would be induced to sell their organs to the middle classes and the rich. It is hard to see any reasons to complain if organs of poor persons were sold with their permission after they died, and the proceeds went as bequests to their parents or children. The complaints would be louder if, for example, mainly poor persons sold one of their kidneys for live kidney transplants, but why would poor donors be better off if this option were taken away from them? If so desired, a quota could be placed on the fraction of organs that could be supplied by persons with incomes below a certain level, but would that improve the welfare of poor persons?

ONE COULD CREATE ORGAN VOUCHERS AS AN ENTITLEMENT IN AN ORGAN MARKET-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location]

Here also, one might consider a system of organ vouchers, which would create certain welfare entitlements. Vouchers might function as straightforward health care entitlements, where the state, or national health insurance, would purchase needed organs utilizing tax dollars for the poor. Alternatively, such vouchers might create a system of entitlements contingent upon personal or family in-kind trade. In an English case, a father, who was not a good tissue match to donate to his son, offered one of his kidneys to the British cadaveric donor pool in exchange for placing his son on the national cadaveric waiting list for a kidney. He offered a cost-neutral option for an in-kind trade. Other market possibilities include the trading of redundant organs (e.g., a barter system in which the families of those in need of transplant trade with each other for the necessary healthy organs). At Johns Hopkins University Hospital, for example, in July 2003, surgeons performed a "triple swap" kidney transplant operation, in which three patients, who were not tissue compatible with their own willing donors, exchanged the donor's kidney for a kidney from another of the three donors. Each donor provided a kidney to one of the three transplant patients.¹² Similarly, a system of incentives, not unlike those utilized to encourage blood donation, could give organ entitlements, or higher priority on the waiting queue, to those families whose member(s) donated organs.

SAYING THAT THE POOR WOULD BE EXPLOITED BY ORGAN SALES IS SILLY-Croughs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

One of the reasons to prohibit organ trade is, as bioethicist and CNN's private philosopher Jeffrey Kahn puts it, that organ trade "could exploit people who need money and wouldn't donate except for payment."

The reasoning is that people should decide to donate voluntarily; when a poor man proceeds to donate out of a desire to be better off financially, it is no longer a matter of voluntariness but of coercion—the poor man is "forced by poverty." The Bellagio Task Force, a collection of scientists who have taken a stand against organ trade, put it as follows: the poverty and deprivation of organ donors can be "so extreme, that the voluntary character of a sale of an organ remains in doubt."

This argument proves far too much. If the poor should not be allowed to sell a kidney because transactions that are motivated by poverty are a matter of "coercion," then they should not be allowed to take a job at a factory either, or to shine shoes, etc. The poor agree to do any of these only because they are "forced by poverty" to do so. Why should someone be allowed to improve his financial position in one manner but not in another? This question is not answered.

ORGAN MARKETS WON'T NECESSARILY HURT THE POOR AS SUGGESTED BY CRITICS-Cherry '08

[Mark; Bioethicist; The Regulated Sale of Organs for Transplant Is Ethical; 2008; Gale Group Databases]

Many people may consider such proposals morally repugnant, but I believe such feelings are misplaced. Let's look at some specific criticisms. A common challenge is that an open market would exploit the poor; that it would coerce poor people into selling their organs, something that in better circumstances they would not consider. But why would the market necessarily be exploitative? People would be free to negotiate a bargain in which both parties win: on the one side a life is saved, on the other a family is lifted from poverty.

The fear that unscrupulous entrepreneurs would convince people to part with organs for less than the market price is, I believe, also misplaced. Unlike illicit trading, a legally regulated market should not suffer from such behaviour. For example, it should be possible to set minimum legal prices for organs to ensure that sellers are properly compensated. Countries would have to decide how best to regulate the international organ trade, but this shouldn't be a huge challenge since they already regulate international organ donations.

IN A FREE MARKET, THERE IS NO GUARANTEE THAT ORGANS WOULD COME PREDOMINATELY FROM THE POOR-Becker '09

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

Moreover, it is far from certain that a dominant fraction of the organs would come from the poor in a free market. Many of the organs used for live liver or kidney transplants are still likely to be supplied by relatives. In addition, many middle class persons would be willing to have their organs sold after they died if the proceeds went to children, parents, and other relatives. Although this is not an exact analogy, predictions that a voluntary army would be filled mainly with poor persons have turned out to be wrong. Many of the poor do not have the education and other qualifications to be acceptable to the armed forces. In the same way, many poor persons in the US would have organs that would not be acceptable in a market system because of organ damage due to drug use or various diseases.

NON-PROFITS COULD HELP THE POOR IN AN ORGAN MARKET-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 1282]

Churches and other charitable organizations could play a significant role in creating health care resources for the poor. One might envision individuals donating rights in organs directly to local churches, which would guarantee high-quality health care for surgery and minimize other risks associated with donation. The organs could then be sold to the rich to raise funds to purchase health care, food, and medicine, or be made available for transplantation to the poor. Imagine a group such as "Mother Teresa's Organs for the Poor" generating resources to provide organs for the impecunious. Such organizations could raise money to provide organs to those who could not otherwise purchase them. One might think of creating "Catholic Kidneys International" to raise funds to purchase specific organs, like kidneys, for the poor, or act as organ brokers for the poor in developing countries to advantage those poor and provide these regions with other important resources. The market creates social and political space to explore additional opportunities and incentives for organ procurement and allocation, without thereby forbidding other types of incentives and opportunities.

A/T: RELIGIOUS VIEWS BAR ORGAN DONATION

ORGAN TRANSPLANTATION IS NOT FORBIDDEN BUT NEARLY ALL MAJOR RELIGIONS-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

Beliefs about the body are often formed through religious tradition. [*46] Some religious texts and teachings regard the body as intact, in some form, after death. n43 Nevertheless, almost all religious traditions support the gift of an organ when it will make the difference between life and death. n44 However, most religious followers believe it is against their religion to donate their organs, or the organs of their loved ones, upon death. n45 This ignorance has become a barrier to obtaining consent, as most potential donors, or their next of kin, are unwilling to donate based on their faith. n46

SHOULDN'T LET RELIGIOUS VIEWS ON ORGAN MARKETS STOP THE GOVERNMENT FOR CREATING ORGAN MARKETS FOR OTHERS-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

The philosophical underpinnings of the current restrictive policies seem closely related to the religious and cultural perspectives on the issue of organ procurement. Commentators argue that commodifying the human body would violate religious and cultural perspectives of how the body should be respected in our society. n47 Robert Veatch notes: "The body is affirmed to be a central part of the total spiritual being. Any scheme that abandons the mode of donation in favor of viewing the cadaver as a social resource to be mined for worthwhile social purposes will directly violate central tenets of [religious] thought." n48 Nevertheless, these perspectives should not preclude the government from removing such prohibitions on the sale of organs. Religious intolerance and misconception, which already pose barriers to the current altruistic system, cannot direct public health.

A/T: BUT WHAT ABOUT HUMAN DIGNITY??!**SAYING THAT MARKETS DECREASE DIGNITY IS LIKELY OUTWEIGHED BY THE SIGNIFICANT HEALTH BENEFIT OF ORGAN MARKETS-Goodwin '09**

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

The best way to approach thinking about this policy issue is to examine what is lost and what is gained under an incentive system and whether the gains will outweigh the losses. To the extent that what scholars indicate is a loss of personhood or human dignity, we should acknowledge the difficulty in quantifying that possible result. We would, however, be able to balance the perception of lost dignity against the restoration of health and the restoration of families made whole again through T&O transplantation. Organ and tissue transplantations produce third-party benefits, including restoring family relationships, allowing parents to re-engage in their children's lives, returning dialysis patients to the workforce, and bringing people who were once sick back in full health to their communities. If the concerns were reframed we might wonder whether incentive-based donations might create equilibrium between demand and supply. Thus, even if a few less altruists entered the supply pool, if more organ "sharers" willing to receive compensation emerged, then the loss of altruists might be absorbed with fewer transactional costs than imagined.

A/T: MARKETS CREATE INCENTIVES FOR THE SICK TO DONATE ORGANS**CAN EVALUATE ORGANS TO MAKE SURE THEY ARE NOT POOR ORGANS-Cherry '05**

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Market; 2005; Kindle Edition, Location 1316]

While some may be concerned that individuals will sell poor-quality or diseased organs for private gain, such concerns are only valid if an independent method to monitor the quality of organs is unavailable. In general, the health advantages of transplants from living donors are great. An organ market would allow potential vendors and recipients to "shop" for precise tissue matches. Since vendors can be evaluated with regard to health in advance, the organ can be stored in the donor with few or no concerns about degeneration of tissue. Organs procured from living individuals are more viable than cadaveric organs and are more likely to function well once transplanted. In addition, the transplant can be planned so that both parties are in the same hospital, or in the same operating room, to allow the quick transfer of the organ. This is the same procedure that is utilized for living donative transplants.⁶ Greater likelihood of transplant success equates to more efficient and effective use of the available organ pool and other medical resources.

A/T: SELLER'S REMORSE HURTS MARKET TRANSACTIONS

WAITING PERIODS CAN BE BUILT INTO MARKETS IN ORDER TO DECREASE SELLER'S REMORSE-Becker '09
[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

A criticism particularly of a commercial market for live transplants is that some persons would act impulsively out of short run financial needs, and that they would regret their decision to sell a kidney or allow their liver to be used for a transplant if they had taken more time. I do not know how important such impulsive behavior would be, but it could be sharply reduced by having a month or longer cooling off waiting period between the time someone agrees to supply an organ and the time it can be used. They would be allowed to change their mind during the interim.

A/T: DONATION IS TOO RISKY FOR DONORS**RISK TO PATIENTS IS THE SAME FOR THOSE THAT DONATE ORGANS FOR PAY OR THOSE THAT DONATE FOR ALTRUISM-Croughs '10**

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

Of course, there is a substantial difference between factory work and the sale of one's organs: selling an organ entails more risk than working at a factory or shining shoes. In the words of the Bellagio Task Force, the removal of an organ poses a "threat to [the donor's] physical health and bodily integrity." (They also note that "the risk to health in selling one kidney is truly minimal ... at least in developed countries.") The risk is greater that one will come to regret the donation; because of that, the poor should be protected from themselves, to prevent them from making the wrong decision.

But the argument that the removal of an organ is not without risk also applies to organ donations motivated by altruism—they have exactly the same risks. There is no reason to assume that the risk of regretting an organ donation is greater when you are left with a large sum of money after the transaction, than when you are left with nothing except the satisfaction of having helped someone. (The opposite is more likely: there is a real possibility that the transplanted kidney will be rejected. The person who only donated out of altruism has lost his kidney for nothing; this is not the case for the person who gave up his kidney for financial gain.)

A/T: ORGAN MARKETS COMMODIFY THE HUMAN BODY

THERE IS NO UNIQUE RISK IN ORGAN MARKETS FOR COMMODIFYING THE HUMAN BODY-Jefferson '10
[Cord, Writer and Columnist; The Sale of Kidneys for Transplantation Is Ethical; 2010; Gale Group Databases]

As for Scheper-Hughes' point about commodifying the body, since when is that new? There are countless instances in which America allows the poor to do dangerous things with their bodies for money. Working-class people shoulder the burden of war; they risk their lungs and limbs in mine shafts, factories, slaughterhouses, and fishing boats. And it remains perfectly legal for a surrogate mother to sell her womb—also no small physical burden. What makes a kidney so special?

THE SELLING OF AN ORGAN IS NO DIFFERENT THAN SELLING ONE'S WORK FOR PAY-Croughs '10
[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

The world's poor should not be prohibited from selling their organs. Doing so results in the deaths of patients in need of transplants and continued poverty for people who are willing to give. Although opponents of a legal organ trade argue that buying organs from the poor is simply exploitation, exchanging organs for money is not much different than working for a paycheck. Ultimately, the decision to sell body parts should be left up to each individual. Legalizing the organ trade can not only save the lives of dying patients, it can also improve the standard of living of thousands of others.

EVEN DONATION COMMODIFYS ORGAN TRANPLANTATION-Cherry '05
[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 2394]

All systems of organ procurement and allocation objectify and commodify human body parts, even donation. Incentives and policies to increase organ availability, whether through donation or sale, evoke an industry designed to procure, allocate, and transplant human organs. This industry, whether for-profit or nonprofit, recasts organs as a scarce medical resource and "product" of exchange. In each case, one has specified a market for human organs, albeit a heavily regulated market, with carefully stipulated conditions regarding who bears the costs and benefits of procurement, distribution, and transplantation. It is inadequate to criticize commercial markets as improperly commodifying human organs without also addressing this critique to systems of donation. In short, while at times couched in terms of improper commodification, the debate is less about commodification than about who should receive the medical resources and who should bear the costs of appropriation and transfer.

CLAIMS THAT ORGAN MARKETS “COMMODIFY” ORGANS ARE SILLY-Croughs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

Another argument against organ trade that is often used is that it is reprehensible to "commodify" parts of the human body—i.e., to use them as objects. Nancy Scheper-Hughes denounces the markets: "By their very nature markets are indiscriminate, promiscuous and inclined to reduce everything—including human beings, their labor and even their reproductive capacity—to the status of commodities.... [and] nowhere is this more dramatically illustrated than in the booming market in human organs from both living and dead donors."

First of all, it is not markets that tend to reduce organs to the status of objects, but people. The reason for that is simple: both buyer and seller expect to gain and there is no third party involved. So what is the problem? This seems to be a primitive way of thinking: organs are (unconsciously) considered as beings who can think and feel, and should therefore be treated "with respect."

But even if you assume that "commodification" of organs is wrong, it is still unclear why this objection should only apply to organ trade and not to organ donations. Why is an organ that is sold being "treated as an object" and an organ that is given as a present not? Objects such as chairs and tables can both be traded and be given as presents; their status as "object" does not depend on whether anything is exchanged for them. It is hard to see why, when it concerns organs, their status as "objects" should suddenly be dependent on whether money is asked in return. In short, if organ trade should be prohibited because "commodification" of organs is reprehensible, then organ donations should be prohibited as well.

A/T: ORGAN MARKETS WOULD DO X BAD THING**WILD SCENARIOS WOULD OCCUR IN ORGAN MARKETS, BUT ONLY AT A VERY LOW LEVEL-Becker '09**

[Gary; Professor of Economics at the University of Chicago; Allowing the Sale of Organs Will Increase the Number of Donations; 2009; Gale Group Databases]

Still another criticism of markets in organs is that people would be kidnapped for their organs, and that totalitarian governments would sell organs of prisoners. This would happen, but not likely on a significant scale since the source of organs offered for sale could be determined in most cases without great difficulty.

A/T: XENOTRANSPLANTATION IS A VIABLE ALTERNATIVE

POTENTIAL UNKNOWN AGENTS SHOULD SLOW ANY EFFORT TO PUSH WIDESPREAD XENOTRANSPLANTATION-Fung '04

[John J.; Chief of Transplantation at the University of Pittsburgh medical Center; Animal-to-Human Organ Transplants Could Benefit Humans; 2004; Gale Group Databases]

What about the controversies surrounding the field of xenotransplantation? These are extensions of debates regarding broader issues of health care, biomedical research, organ transplantation, and human experimentation. The most recent discussions have focused on the possibility that infections from the donor would be transmitted to the human species. In the broadest sense, concern has been raised for society as a whole. It is the limited availability of data on the transfer of animal-derived, infectious pathogens to humans via xenotransplantation that has endangered the debate among scientists, physicians, regulatory agencies, and public representatives. The scenario of unleashing a "doomsday" infectious agent on the human species has been forwarded by those who have urged a moratorium on xenotransplantation. The possibility of transmission of infectious agents following xenotransplantation certainly exists, since animals harbor infectious agents—such as bacteria, fungus, and parasites—that are known pathogens. These agents can be screened for, and, in most situations, effective therapy is available. Much less is known about the natural behavior of many human and animal viruses, let alone their singular or coexistent behavior in an organ recipient whose immune system is suppressed by the drugs needed to prevent organ rejection. Nevertheless, it is somewhat comforting that studies of diabetic patients who received pig pancreatic islet cells between four and seven years ago have had no evidence of pig-derived retroviruses, suggesting that the risk of this type of infection in these patients is small. Nevertheless, it is the "unknown" agent that imparts caution in these trials. These unknown agents are either those that have not yet been identified or more hypothetically (and thus even scarier) "mutant" pathogens that might result from genetic recombination of human and animal viruses. This issue has been especially highlighted, in light of the putative origin of the human immunodeficiency virus (HIV), thought to arise from non-human primate cells.

IF ANIMAL ORGANS ARE ALRIGHT, SO SHOULD HUMAN ORGANS BE FOR SALE-Cherry '05

[Mark J.; Bioethicist; Kidney for Sale by Owner: Human Organs, Transplantation, and the Mark; 2005; Kindle Edition, Location 484]

Similar considerations apply to xenograftic organs. Genetic engineers are attempting to bioengineer pigs to grow internal organs that have sufficiently close DNA for the organs to be transplantable into humans. The hope is that such organs could be harvested and sold to persons in medical need of a transplant.²⁴ The new organ would replace the defective human part, eventually incorporating into and sustaining the biological life of a person. Is there a significant moral difference between the xenograftic organ and the cybernetic hand? Each is engineered, artificial, and nonhuman in material. Both are things that we can use to replace parts of our bodies at will. Presuming adequate functioning, the organ, much like the hand, will be experienced as me once it is implanted. What ground could one advance as an in-principle objection to a market in fully transplantable xenograftic organs? Given sufficient precautions to prevent interspecies disease transmission, the sale of such organs ought to be no more controversial than the sale of any other animal product.²⁵ What is the moral difference, if any, between the harvesting and selling of xenograftic organs and human organs?

A/T: IMPLIED CONSENT IF A VIABLE ALTERNATIVE

IMPLIED CONSENT IS A POTENTIAL PUBLIC RELATIONS NIGHTMARE-Palmer '98

[Alasdair; Columnist and Health Writer; Selling Organs for Transplants Is Unethical; 1998; Gale Group Databases]

This is one NHS shortage which cannot be blamed on Mrs Virginia Bottomley, secretary of state for health. No amount of increased government spending is going to eliminate the waiting list for transplantable organs. Increasing road accidents would help, but even the most enthusiastic 'cutters' (apparently a term of endearment for transplant surgeons) will admit that it is not a feasible alternative. Changing the law to allow the use of organs unless an individual has specifically drawn up a document forbidding it whilst alive is one possibility, but not one that surgeons favour. Ignoring relatives' wishes is a recipe for a public relations disaster, even supposing there were no independent moral objections against changing the system of organ donation from a voluntary to an essentially coercive one. It's anyway unlikely that a switch of that kind would increase the supply significantly. At present, around 20 per cent of relatives refuse permission for the removal of organs from suitable victims. The majority of those are thought to be hard-core opponents of organ removal, who would stay that way however the law was changed.

RISKS EXIST WITH PRESUMED CONSENT REGIMES-Goodwin '09

[Michele; Professor of Law and Professor of Medicine at the University of Minnesota; Meador Lecture Series 2007-2008: Empire: Empires of the Flesh: Tissue and Organ Taboos; Alabama Law review; 2009; 60 Ala. L. Rev. 1219]

Yet, there are risks and externalities associated with presumed consent. Let us consider what presumed consent might mean domestically. Presumed consent acknowledges that the body has value as a source of transplantable goods. However, that value is gifted to the state absent failure to notify the state that the gift is revoked. n87 State legislatures have experimented with presumed consent default rules in the past. [*1237] Medical examiner laws were ratified in over two dozen states, and most were enacted during the mid-1980s, a time marked by gang violence and death in minority-majority urban communities. n88 Some eye bank officials, including those from California and Alabama, credit presumed consent laws with an increase in corneal tissues available for transplantation in their states. n89 Indeed, data from these states indicates that corneas available for transplantation increased, particularly as more tissues were available from victims of trauma and homicides. n90 In some instances, surpluses were created which allowed tissue banks to sell "left-over" tissues to medical research laboratories, sometimes at tremendous profit. n91

A/T: INTERNET CAN CONNECT POTENTIAL DONORS TO THOSE IN NEED**INTERNET-BASED ORGAN EXCHANGE CAN HAVE ETHICAL PROBLEMS-Kelogjera '09**

[Liliana; Staff Attorney at the US Department of Veterans Affairs Office of Regional Counsel in Milwaukee, Wisconsin; The Internet and Transplant Tourism Are Questionable Sources for Organs; 2009; Gale Group Databases]

Critics do highlight various characteristics of the Internet forum of sites such as MatchingDonors.com as ethically problematic. First, on the Internet there may be an increased risk of recipient selection based on superficial or undesirable criteria, in a manner akin to a popularity or beauty contest or on the basis of racial or other prejudices. While this may be true, these concerns would apply to any directed donation arrangements in which the persons are not related; people are free to pick their friends on any basis they wish, superficial or not, and organ donation among friends does not appear to be as ethically controversial. Second, heightened concerns exist about the veracity of potential recipients' profiles. Because of the lack of legal and other safeguards of these Internet communities and the desperation of potential recipients, donors may participate under false pretenses. While this sort of deception is commonly accepted in other contexts—such as in the marketplace under the doctrine of caveat emptor (i.e., let the buyer beware)—the prohibition on organ sales suggests that the market perspective may be inappropriate for organs. This argument is particularly compelling because of the health and other risks that potential recipients face.

A/T: ON NOES! ORGAN THIEVES!

CLAIMS THAT ORGAN MARKETS MEAN MASSIVE NUMBERS OF ORGAN THIEVES ARE UNREALISTIC-Croughs '10

[Bart; International Social Issue Writer and Columnist; The Selling of Body Parts Can Benefit the Poor; 2010; Gale Group Databases]

Another practical objection that is often used, as pointed out by the Bellagio Task Force: there are allegations of "babies and children kidnapped and murdered for their organs. Many journalists as well as individuals are convinced that the ready market for organs has stimulated these abuses."

The objections against organ trade do not make sense.

There is not much reason to assume that the risk of organ theft will increase when organ trade is legalized. The present shortage of organs for transplant is the product, at least in part, of the prohibition of organ trade; the supply of organs is low, so the price of an organ is high when a black market develops. When organ trade is legalized, the supply of organs will increase, which will make the price of organs drop. That will make stealing organs less profitable, so criminals will have fewer reasons to do so. And, of course, it's easier for organ traders to defraud organ donors (accepting the organs, but not paying the price that was agreed upon) when organ trade is prohibited. When selling organs is illegal, the victims of fraud are less inclined to go to the police. So rather than an argument against legalizing organ trade, the risk of people being robbed or defrauded of their organs is really an argument in favor of legalizing organ trade.

Even if it were true that the risk of crime would increase if organ trade were legalized, there would still be no reason to prohibit organ trade. People are killed to collect their life insurance; should life insurance therefore be prohibited? People are killed so others can quickly receive their inheritance; should the laws of inheritance therefore be abolished?

EXISTING PROTECTIONS AGAINST MURDER AND VIOLENCE WOULD BE ENOUGH TO PROTECT INDIVIDUALS IN AN ORGAN MARKET SITUATION-Dunham '09

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

The commodification of cadaveric organs opens the door to placing a price tag on a person's body parts. It is not improbable to consider that in desperate times a person or his family may need money so badly that an individual would commit suicide, or be killed by another, for the anticipated sale price. These potential situations are disheartening to say the least. However, the intentional infliction of harm upon another person is specifically addressed by criminal and civil statutes, which prohibit and punish such conduct. These protections are already in place to regulate this type of conduct, and therefore, such potential conduct should not deter the recognition of a market-based approach.

CON

PRO JUSTIFICATIONS AREN'T ENOUGH TO JUSTIFY ORGAN MARKETS

THE LACK OF AVAILABLE ORGANS AND DEATHS IS NOT JUSTIFICATION ENOUGH TO CONSIDER A MARKET SYSTEM-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The “Trojan Horse” of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

One of the arguments that repeatedly is made in favor of a vending system is that the current altruism-based system has stagnated and is impotent to address the burgeoning shortage of kidneys. We share the legitimate concern that lives are being lost while patients wait for a kidney (16). That concern in itself does not represent an argument in favor of vending, because it is quite unclear that a vending-based system would be effective and it could well be destructive (14). It is no longer true that the rates of deceased donor organ donation are static. To the contrary, the 3-mo average deceased kidney donation rate has risen 29% since January 1, 2001, and these increases have largely reflected increases in recovery of kidneys from standard criteria donors. Matas quotes Sheehy et al. (17) to contend that “even if every potential donor in the United States became an actual donor, there still would be a shortage of kidneys.” This analysis, however, was limited to candidates for donation after brain death. It did not take into account multiple innovative endeavors to increase other sources of donor organs. These include living donor exchange (18), intended candidate donation (19), desensitization protocols for positive cross-match—and blood group—incompatible pairs (18), increased use of donors after circulatory determination of death (20), and increased use of extended-criteria donor kidneys (21). In the United States, perhaps the most promising endeavor of all is the so-called “Organ Donation Breakthrough Collaborative,” whereby the best practices of the most successful organ procurement organizations are disseminated to less effective ones. An unprecedented impact on rates of deceased donation, from both extended- and standard-criteria donors, already can be recognized following the effort of the collaborative (22), and wait-list mortality rates seem to be falling. In 2004 alone, there was an increase in the number of deceased donors by 11% (23), and this trend is continuing (22). It is not “pie in the sky” to look forward to a reduction in the waiting list to acceptable levels if we continue to invest our best efforts, resources, and ingenuity. All of these new endeavors expand and exploit the altruism that has been the driving force of our success to date. They build on what we know rather than endanger what we have achieved. They do not reflect “lack of imagination” (2) or “doing nothing more productive than complaining” (3) as some eminent critics of our current system have suggested. We are unconvinced by Matas’s somewhat blithe contention that they could flourish simultaneously with a vending system.

SHOULDN'T MODEL OUR POLICY ON THE DEVELOPING WORLD MODEL

INDUSTRIALIZED COUNTRIES SHOULD BE HELPING DEVELOPING NATIONS ADOPT OUR POLICIES, NOT THE REVERSE-Chapman '10

[Jeremy; Professor of Bioethics; Is it ever right to buy or sell human organs?; The New Internationalist; October 2010; <http://www.newint.org/argument/2010/10/01/human-organ-trade-debate/>; retrieved 4 March 2011]

In Australia, by getting organized nationally, we are witnessing a 30 per cent rise in deceased organ donation this year and a rise in living kidney donation. The Transplantation Society, working with the Spanish National Transplant Organization and World Health Organization has derived a programme to achieve the changes you ask for. I cannot give you the recipe in a simple email, but if you visit these shores I can show you or you could look on www.donatelife.gov.au

Our job now is to assist the emerging economies of the world to do the same and not to rely on solutions that further entrench the disadvantages of poverty.

ORGAN MARKETS BAD: PRACTICAL CONCERNS ARE PARAMOUNT OVER ETHICS

PRACTICAL CONCERNS HAVE THE STRONGEST IMPACT ON ORGAN MARKETS OVER ETHICS-Oberman '06
[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

Assuming that principled objections to paying for human tissue are resolved and that the law comes to permit payment of some sort in exchange for human tissue, there remain a host of logistical problems. Ironically, these practical concerns may prove to be at least as tenacious as the problem of compensation itself.

ACTUAL TRANSPLANT DOCTORS ARE SKEPTICAL OF THE BROAD CLAIMS MADE BY THOSE ADVOCATING FOR ORGAN MARKETS-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

There is a lot at stake. The altruistic impulses of living donors and of the families of deceased donors are on the auction block and risk being displaced by the uncertainties of an unfamiliar market place. Matas seems unconcerned by this possibility, and to some proponents of organ vending, the anticipated demise of altruism in organ donation even comes as a blessing (2). To the detractors of our current altruism-based system, the acceptance by the general public of the difficult concepts (brain death, donation after cardiac death, living donation, etc.) that are at the core of our work is taken for granted, because the supply of donors has been inadequate for the need. Dollars will solve our problem: Put kidneys up for sale (valued at approximately \$90,000 by Matas's estimate [8]) and there will be enough organs for everyone. Imagine: No more waiting lists. And it all will be "above board" and run by regional organ procurement organizations and professional panels that will vet donors, protect their health, allocate the kidneys, and administer the finances (1)—all done in a manner that is beyond reproach. We are skeptical.

ORGAN MARKETS BAD: THE EXISTENCE OF MARKETS INTERNATIONALLY ISN'T JUSTIFICATION FOR ONE IN THE US

BANS AGAINST THE SALE OF ORGANS MUST ABSOLUTELY BE MAINTAINED, EVEN IF OTHER COUNTRIES ALLOW IT-Coleman '10

[Gerald; Vice President for Corporate Ethics for the Daughters of Charity Health System; Charity, Not Money, Should Guide Kidney Transplantation; 2010; Gale Group Databases]

Total brain death must be maintained as a criterion before organ transplantation is ethical. In the case of an anencephalic [an absence of most or all of the brain] infant, for instance, it is not permissible to remove organs because the child's cerebral cortex has not developed. Yet the absence of the higher brain does not alone constitute death. At the same time, it is permissible to place an adult or infant on a respirator to ensure that blood will continue permeating the organs so that they could be suitable for transplant after clinical signs have certified that total brain death has occurred.

While the sale of organs by living donors is common practice in some countries, it is always unethical and should be made illegal.

In sum, the following ethical norms should inform organ transplantations:

A patient's general health condition and age should be a consideration.

Unless the donation is anonymous, some level of authentic connection must be present between the donor and the patient.

Such a level of connection establishes a reason to justify proportionately the risk to the donor.

The functional integrity of a donor must never be impaired, even though the donor's anatomical integrity is compromised.

Stewardship of one's body demands that we have a serious reason for harming the health and anatomical integrity of our body.

Fraternal love must justify all organ transplantations. This principle negates any monetary gain. Selling one's organs is intrinsically reprehensible. "Cash for flesh" must never be tolerated.

The donor's consent must be fully informed and freely given.

ORGAN MARKETS BAD: LEAD TO EXPLOITATION OF VULNERABLE POPULATIONS

CURRENT MARKET SYSTEMS ABROAD HAVE LED TO ABUSE OF PRISONERS AND OTHER VULNERABLE POPULATIONS FOR ORGAN SALE-Kelogjera '09

[Liliana; Staff Attorney at the US Department of Veterans Affairs Office of Regional Counsel in Milwaukee, Wisconsin; The Internet and Transplant Tourism Are Questionable Sources for Organs; 2009; Gale Group Databases]

From an ethical perspective, transplant tourism raises concerns about the potential exploitation of organ donors, which UNOS [United Network for Organ Sharing] and the World Health Organization [WHO] have highlighted in numerous statements denouncing transplant tourism. For example, the government of China, a transplant tourism destination, has admitted that executed prisoners have served as the primary organ source for its transplant program. The use of prisoners as donors contradicts ethical mandates that organ donation occur voluntarily, based on the autonomous choice of the donor or next of kin. Some news sources allege that these donors have not always been dead when the organ harvesting process began. Such a practice goes far beyond the realm of individual autonomy concerns and into the realms of torture and human rights abuses. Although the Chinese government claims to be developing a legal framework with safeguards, such as prohibitions on the sale of organs and organ trafficking, the results of these efforts remain to be seen.

ORGAN MARKETS BAD: DECREASE ALTRUISTIC DONATION

IT WOULD BE VERY DIFFICULT TO ALLOW A COMMERCIAL AND ALTRUISTIC TISSUE MARKET TO COEXIST- Oberman '06

[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

One problem triggered by permitting payment for human tissue is the issue of whether payment would then have to be offered for all human tissue, and perhaps also for organs. n140 At first blush, it might seem that the commercial market in human tissue could coexist with the altruistic market. The tissue industry might offer prospective donors of tissue, whether patients or their surviving families, the opportunity to donate to a charitable cause or to sell their tissue to a commercial venture.

What complicates the prospect of permitting the altruistic market to coexist with a commercial market in human tissue is the fact that, as of today, the nonprofit industry does all of the soliciting and recovery of tissue. n141 Thus, one assumes that the agents for the nonprofit industry would have both the task of soliciting donations of tissue and organs for nonprofit uses and also the task of offering compensation for tissue on behalf of for-profit corporations. This relegates to the OPO agents a task rife with conflicts of interest, as one assumes that agents' primary allegiance will be to their employers, which will require tissue donations in order to maintain their enterprises. At the same time, it may be too much to expect altruism from family members who would be asked to choose between making a gift of tissue or being paid for it. The direct juxtaposition of these options may spell the demise of the altruistic system of organ and tissue donations. Furthermore, the most readily apparent solution to this problem - to encourage the for-profit industry to engage agents to solicit on its own behalf (a practice that would be legal under current law) - raises the disturbing scenario of multiple bedside solicitations.

ORGAN SALES DESTROY DONATION-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Organ sales also destroy donation. In countries where paid organ transplants occur, such as Iran, there is little or no donation. In the countries where many, most, or all transplant recipients travel overseas for an organ, the domestic transplant programmes are underfunded and failing.

MUST LOOK TO FOSTER ALTRUISM, NOT STIFLE IT-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

The general public is rightfully sensitive to any hint of injustice or malfeasance in our national transplant system. They are entitled to be, because they are not only the recipients of organs but also the source. The past two decades have seen organ transplantation become one of the great medical benefits to humankind. For this to happen, an extraordinary degree of trust has developed between the public and their transplant teams that must not be taken for granted. Kidney vending might seem like a tempting solution to the organ shortage, but like the Trojan horse of old, once we permit it within our gates, we may find that it brings destruction and not relief. We believe strongly that a bright future for organ transplantation requires that we foster altruism and not stifle it.

ORGAN MARKETS REDUCE THE INCENTIVES TO DONATE-Saletan '07

[William; Shopped Liver: The worldwide market in human organs; Slate; 17 April 2007; <http://www.slate.com/id/2164177/>; retrieved 8 March 2011]

It's true that payments would elicit more "donations." But studies reviewed at the meetings in Europe show that flooding the market with purchased organs reduces the incentive to donate.

ORGAN MARKETS WOULD UNDERMINE THE SYSTEM OF ALTRUISM IN ORGAN TRANSPLANTATION IN THE UNITED STATES-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

Our greatest concern is that kidney selling would distort and undermine the altruism and common citizenship on which our whole organ donation system currently relies. The term "crowding out" describes the hypothesis that the moral commitment to do one's duty can be weakened by financial compensation and monetary reward (14). It is not easy for parents to accept kidneys from their children; or to watch their children donate to each other; or for patients to approach their family, spouses, or friends. If kidneys could be bought, particularly if the government or an insurance entity was paying, then the temptation or even demand not to expose the potential altruistic donor to the risk that is intrinsic to the process could be overwhelming; and it is not only altruistic living kidney donation that could suffer. The approach to recently bereaved family members, an already extraordinarily difficult and profoundly sensitive task, could be made considerably more difficult by their knowledge that organs could be purchased for large sums of money and the bodies of their loved ones left undisturbed. Deceased donation is the source not only of kidneys but also of hearts, livers, lungs, and pancreata. Displacement of altruistic deceased kidney donation by vending has the very real potential of endangering precious opportunities for life-saving and life-enhancing extrarenal donation.

CHINESE/HONG KONG EXPERIENCE PROVES THAT ALTRUISM WOULD DECREASE IN AN ORGAN MARKET-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

These considerations are not merely theoretical, and two "natural experiments" provide some insight as to the forces at play. Before 1997, when the British transferred sovereignty to mainland China, living donors were the source of nearly 50% of all kidney transplants in Hong Kong. Since 1997, transplant candidates have traveled to China to purchase kidneys, and the number of living donor transplants in Hong Kong has fallen to only 15 to 20% of all kidney transplants performed there (H.K. Chan, Hong Kong Transplant Registry, personal communication, September 4, 2006). The relative ease with which Israeli kidney transplant candidates, until recently, traveled abroad to purchase kidneys has been accompanied by a reduction in living-related donation in Israel itself (T. Ashkenazi, Israeli Ministry of Health, personal communication, May 7, 2006).

MARKETS DECREASE INCENTIVES TO USE FAMILY MEMBERS-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Wealthy people are also placed in jeopardy by legalised organ sales. Every patient able to pay will be faced with the question, "Should I wait for deceased organ donation, seek a family donor, or simply buy one?" The allure of using money leaves the individual ever in doubt, many preferring that a stranger rather than a family member takes risks on their behalf.

ORGAN MARKETS BAD: CREATE BAD INCENTIVES FOR DOCTORS

FINANCIAL CONSIDERATIONS WOULD IMPACT THE MEDICAL JUDGEMENT OF TRANSPLANT DOCTORS- Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

As nephrologists, we do not savor the impact that a vending system could have on our work and our relationship with our donor patients. The evaluation of donors, both medical and surgical, is replete with clinical nuances. Careful assessment of risk and donor education are at the core of donor evaluation (15). The decision to progress with donation, although often clearcut, may require refined clinical judgment by the medical team and critical thinking by the donor. The inclusion of major financial rewards for donation could well place tremendous pressure on transplant doctors to act against their best medical judgment. It is not difficult to imagine such scenarios: Might a donor surgeon, faced with a kidney with multiple vessels, elect to perform nephrectomy when he or she might otherwise have declined to do so because of the knowledge that the donor desperately needs the vending money? Might a nephrologist feel similarly pressured to approve a donor with mild hypertension, borderline proteinuria, or a history of kidney stones? Medical decision making is already difficult enough without its distortion by large financial rewards.

ORGAN MARKETS BAD: DONORS FACE HARM FROM DONATION

DONORS IN FINANCIAL ARRANGEMENTS SYSTEMS FOR ORGANS FACE PSYCHOLOGICAL HARM AND SOCIAL STIGMA-Kelogjera '09

[Liliana; Staff Attorney at the US Department of Veterans Affairs Office of Regional Counsel in Milwaukee, Wisconsin; The Internet and Transplant Tourism Are Questionable Sources for Organs; 2009; Gale Group Databases]

Also ethically problematic are concerns about exploitation and coercion of donors through financial payments for organs. The living donors and families of deceased donors who supply organs for transplant tourism are often impoverished, and their recruitment process often lacks the disclosure and understanding of a truly informed consent process and the psychological screening process for living donors. A medical anthropological study concluded that, in addition to facing health problems due to insufficient follow-up care, many donors encounter psychological harm and social stigma due to their participation in the organ donation process. An individual interviewed in this study stated, "They call us prostitutes.... Actually, we are worse than prostitutes because we have sold something we can never get back. We are a disgrace to ourselves and to our country." Whether the donors are prisoners or impoverished people, it is ethically troublesome for people from the United States and other countries to bypass the ethical safeguards in their own countries in order to take advantage of lax laws and practices abroad.

MEDICAL RISKS FROM VENDOR ORGANS ARE HIGH-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Some recipients of vendor organs die and do not return home, making it impossible to ascertain the true outcomes of purchased organ transplants. Those that arrive home require care immediately, with many going straight from airport to hospital, since the transplant units aim to discharge patients and get them out of the country before problems arise. The risks of vendor transmitted viral diseases such as hepatitis and HIV are high,^{3 4} and heavy induction over-immunosuppression results in high rates of infection and malignancy. It is hardly surprising that payment is required on arrival and not on departure.

ORGAN MARKETS BAD: EXPLOITS THE POOR

DUE TO THE ALMOST CERTAIN EXPLOITATION OF THE POOR, THE BETTER POLICY IS INFORMED PRESUMED CONSENT-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

Rich patients in need of organs take advantage of the world's poor. Promises of cash rewards for donations are sometimes not kept and when they are kept, they can be far less than agreed upon. Given these disparities, legal organ trade will always lead to the exploitation of impoverished donors. A better solution to the global shortage of organs might be to adopt a policy of "informed presumed consent" so that when people die their organs can be used unless the deceased had requested otherwise.

IN ORGAN TRADE AROUND THE WORLD, THOSE BENEFITING ARE RICH MEN, NEVER THE POOR AND NEVER WOMEN-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

As a commodity, the kidney has emerged as the gold standard in this new trade, representing the ultimate collateral against hunger, poverty, and debt. In general, the circulation of kidneys follows the routes of traditional colonialism: from South to North, East to West, poorer to more affluent bodies, black and brown bodies to white ones, female to male, or poor, low-status men to more affluent men. Women are almost never the recipients of purchased organs.

IF THERE WERE NO POOR PEOPLE IN COUNTRIES WITH ORGAN MARKETS, THERE WOULD NOBODY WANTING TO SELL THEIR ORGANS-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Sale of organs is advocated by the rich as a fundamental human freedom, but this right is exclusively exercised by the poor. Solving poverty is unachievable, but if there were no poor people in the Philippines or indentured "workers" in Pakistan sales of their organs would be unlikely to continue.²

THE RISK OF THE RICH ABUSING THE POOR IS VERY REAL IN AN ORGAN MARKET SYSTEM-Chapman '10

[Jeremy; Professor of Bioethics; Is it ever right to buy or sell human organs?; The New Internationalist; October 2010; <http://www.newint.org/argument/2010/10/01/human-organ-trade-debate/>; retrieved 4 March 2011]

Many ethical and trusting individuals like you, who advocate for buying organs, resolve the undoubted reality of abuse of the poor by the rich by using the reassuring words 'safe and legal'. It is easy to minimize the conceptual consequences using words but so much harder in reality.

Let us take the example of the Philippines – here the trade in organs flourished until 2008. The vendors were poor people living in the slums and making a living off the waste tips of Manila and Quezon City. The kidney broker lives in the only brick home in the slum from which he extorts the kidneys, for a sum of money similar to his fee. The then president of the Philippines decreed the purchase of organs illegal. This led to a drop in the number of transplant tourists.

ORGANS MARKETS CREATE THE PERCEPTION THAT POOR PEOPLE ARE JUST BAGS FULL OF ORGANS-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

Da Silva and her physician were convinced that her kidney had been stolen for transplant to another, wealthier patient in the hospital. "When rich people look at poor people like us," Da Silva said angrily, "all they can see is a bag of parts."

ORGAN TRADE IS BASICALLY AN EXTENSION OF COLONIAL EXPLOITATION-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

Instead of searching for the best way to assure that the benefits of organ transplantation are shared equitably, however, it's business as usual. Organs needed for the well-being of the rich are harvested from the poor, just as, under traditional colonialism, commodities like sugar, coffee, ivory, and diamonds are harvested in Third World countries and exported to developed nations. The organ trade is the "logical" 21st-century extension of hundreds of years of colonial exploitation. First appropriate labor and its fruits, then the body itself.

ORGAN MARKETS BAD: PROBABLY DO NOT HELP THE POOR

INTERNATIONALLY, THERE IS NO BENEFIT FROM ORGAN MARKETS; MANY DONORS GET NO PAYMENT AT ALL-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

The donor usually doesn't get much out of the sale, and sometimes there is no payment at all. Nancy Scheper-Hughes, professor of anthropology at UC [University of California] Berkeley and director of Organs Watch, describes the harrowing experience of a young mother and office clerk in São Paulo, Brazil. Laudiceia Da Silva entered a large public hospital there for a routine operation to remove an ovarian cyst. She emerged from the anesthesia in great pain with a 17-inch scar across her side. Her left kidney had been removed.

When Da Silva tried to sue, hospital officials responded that her "missing kidney" was embedded in the tissue around the cyst. But the explanation was highly improbable. They claimed that the diseased ovary had been "discarded" and furthermore, that crucial medical records had been "misplaced." Yet, the state Medical Ethics Board refused to review the case.

SELLING ORGANS DOESN'T SOLVE POVERTY-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Selling organs does not help people lift themselves from destitution. In the bazaars of India and Pakistan, people sell kidneys to pay off debts, but average family income declines by a third, more live below the poverty line, and 86% report deterioration in their health.^{2 6} The only people who clearly benefit are the intermediaries who take money as the kidney transits from the vendor to the recipient: organ brokers, transplant surgeons, hospitals, government officials, and the wealthy health insurance companies of the West and the Middle East.⁷

ORGAN MARKETS BAD: WOULDN'T BE ABLE TO ENFORCE INEXPENSIVE ORGAN TRANSACTIONS

MARKETS WON'T BE ABLE TO FIXES ORGAN PRICES IN AN ORGAN MARKET SYSTEM-Saletan '07

[William; Shopped Liver: The worldwide market in human organs; Slate; 17 April 2007;

<http://www.slate.com/id/2164177/>; retrieved 8 March 2011]

Some reformers think they can solve the organ shortage and tame the market by legalizing sales. Their latest proposal, presented at one of the European meetings last week by Dr. Arthur Matas of the University of Minnesota, is a single-payer system for organs. It's half libertarian and half socialist. On the one hand, Matas says markets for eggs and sperm are harmless, kidney purchases can save countries money, and offering poor people cash for organs is no more coercive than offering them money to work in mines or join the army. On the other hand, he thinks the government can fix kidney prices and determine who gets them.

Good luck. As any country with national health insurance knows, people find ways to buy more than they're allotted. Ration medical care abroad, and affluent foreigners will come here. Ration organs here, and affluent Americans will go abroad, as they're already doing.

ORGAN MARKETS BAD: COERCIVE

COMMODIFICATION HAS THE POTENTIAL TO COERCE THOSE THAT MIGHT OFFER ORGANS-Oberman '06
[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

Even if NOTA were amended to permit families to be compensated for permitting OPOs to recover their loved ones' tissue, this practice would trigger several complicated and related problems. First, an offer to pay families for permitting the retrieval of their loved ones' tissue would trigger the broader controversy associated with treating body parts as market commodities, specifically the concern that such commodification might be both degrading and potentially coercive. n133 Second, there is the practical problem of the effect of offering compensation for tissue on the ability of the nonprofit sector to encourage altruistic donations of tissue and organs. In this subsection, I will discuss the pricing problem, reserving discussion of the logistical problems for the subsection that follows.

FAMILY VULNERABILITY AFTER DEATH COMPLICATES AN ORGAN MARKET DRAMATICALLY-Oberman '06
[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

It is hard to imagine a less auspicious moment for negotiating a transaction than the first twenty-four hours after the death of a loved one. This time frame, so far removed from the state of mind one associates with an ideal arm's length transaction, or even with a charitable donation, is precisely the time during which families are asked to donate their loved ones' tissue. The family's vulnerability raises troubling legal problems in the event that the law permits payment for tissue. Indeed, some of these legal concerns are present even if payment remains illegal.

ORGAN MARKETS WILL PRAY ON THOSE DOWN ON THEIR LUCK-Saletan '07
[William; Shopped Liver: The worldwide market in human organs; Slate; 17 April 2007;
<http://www.slate.com/id/2164177/>; retrieved 8 March 2011]

They're right. Somebody else will supply the organs. But that somebody won't be a corpse. He'll be a fisherman or an out-of-work laborer who needs cash and can't find another way to get it. The middlemen will open him up, take his kidney, pay him a fraction of the proceeds, and abandon him, because follow-up care is just another expense. If he recovers well enough to keep working, he'll be lucky.

The surest way to stop him from selling his kidney is to make it worthless, by flooding the market with free organs. If you haven't filled out a donor card, do it now. Because if the dying can't get organs from the dead, they'll buy them from the living.

ORGAN MARKETS BAD: RELATIONSHIP BETWEEN BUYER AND SELLER UNEQUAL

ORGAN TRADE WOULD OPEN AN INCREDIBLY UNEQUAL RELATIONSHIP BETWEEN BUYER AND SELLER-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

In a world where the wealthy set the rules of trade, it was only a matter of time until parts of the human body became a hot cash crop. Not only can the rich afford to buy organs from the desperately poor, they also can use "free market" logic to defend the purchases as ethical. From this perspective, it's a win-win situation in which allegedly equal participants come together. The buyer gets a healthy organ, the seller some needed cash. The roles of the organ brokers and the surgeons are defined as benign, if not downright humane. The real dynamic is very different. As the trade in organs burgeons, concerned medical anthropologists have set up an independent research and medical human rights project, Organs Watch, which does fieldwork in many countries around the world. Its investigations reveal that while buyers and sellers may be about equal in their desperation, they are dramatically unequal in all other respects. The buyers are obviously well-off; the sellers, most economically marginal, include the hungry and homeless, debtors, refugees, undocumented workers, and prisoners. The buyers have access to the best modern medical technology; the sellers usually have no access to medical treatment or follow-up care.

THE VULNERABILITY OF A GRIEVING FAMILY PLACE AN ODD IMBALANCE BETWEEN PARTIES IN ORGAN MARKETS-Oberman '06

[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

In considering the scenario of solicitations for tissue, one cannot help but call to mind the leading case on unconscionability, *Williams v. Walker-Thomas Furniture Co.* n142 That case embraced the doctrine of "unconscionability" in describing deals marked by "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." n143 Commentators have noted discomfort with the fact that the company used door-to-door salesmen, whose contracts contained complicated, one-sided legal terms and who approached their impoverished "buyers" on the day the buyers received their monthly support allowance from the government. n144

In the case of tissue solicitation, these same concerns are present, and perhaps even heightened. There is the bedside or in-home solicitation of grieving family members, who do not seek out an opportunity to make a deal, and may not even know that they are being asked to negotiate. Add to this the imbalance of information, the time-pressured nature of the decision families are asked to make, and the fact that they are not in a position to investigate the meaning or validity of the OPO agent's disclosure of the possible end uses of the tissue, and it is hard to imagine that the resulting deals would withstand legal scrutiny.

[*935] This latter concern about the fairness of the solicitation process is properly viewed as a subset of the larger set of considerations regarding the timing and nature of the solicitation of human tissue. As these concerns exist regardless of whether families are offered compensation or simply are being asked to donate tissue, I will discuss them together in the following subsection.

MUST PROTECT FAMILIES FROM COMMERCIAL TISSUE SOLICITATIONS AFTER THE DEATH OF A LOVED ONE-Oberman '06

[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

One might argue that the ambulance chasing laws are permissible because the solicitation of clients by attorneys involves "pure commercial speech," and thus is entitled to less constitutional protection than the speech of those soliciting on behalf of nonprofit charities. My point here is not that the state can or should limit OPO agents from soliciting families of the deceased, but rather that the law commonly recognizes that bereaved individuals are so vulnerable to exploitation that they should be protected from those who would seek to turn a profit from their tragedy. Surely it cannot be the case that newly bereaved families need thirty days after a tragedy before they are able to protect themselves from solicitations by a plaintiff's attorney, but do not require any time at all before they can think critically about whether to give away their loved ones' tissue to a company. It is quite possible that the success of the OPO agents who solicit on behalf of both nonprofit and for-profit users of human tissue will be a [*937] reflection of the fact that the donors' families simply were not emotionally capable of behaving in a self-maximizing, or even a minimally self-protective manner.

ORGAN MARKETS BAD: WOULD STRONGLY IMPACT SCIENTIFIC RESEARCH

COURTS HAVE HELD ALLOWING HUMAN TISSUE TO BE A COMMODITY WOULD HAVE DRAMATIC IMPACTS TO SCIENTIFIC RESEARCH-Oberman '06

[Michele; Professor of Law at Santa Clara; PRECIOUS COMMODITIES: THE SUPPLY & DEMAND OF BODY PARTS: WHEN THE TRUTH IS NOT ENOUGH: TISSUE DONATION, ALTRUISM, AND THE MARKET; DePaul Law Review; Spring 2006; 55 DePaul L. Rev. 903]

The problem of treating human tissue as a commodity was first raised by the landmark case of Moore v. The Regents of the University of California. n134 In that case, researchers took cells from John Moore, a leukemia patient, and used them to develop a cell line that had numerous commercial applications. When Moore learned of this "theft," he sued the doctors and researchers for a range of civil harms, including not only their failure to obtain informed consent, but also conversion. The California Supreme Court agreed that Moore had a legitimate complaint for negligence due to the doctors' apparent failure to disclose their conflicts of interest. n135

The court declined, however, to recognize Moore's claim for conversion, finding that no case to date had recognized a property right in human cells and worrying that doing so would "impose a tort duty on scientists [This duty] would affect medical research of importance to all of society, implicating policy concerns far removed from [*932] the traditional, two-party ownership disputes in which the law of conversion arose." n136 The court acknowledged that Moore had been harmed, but they viewed the harm as dignitary in nature. In short, he should have had the right to refuse to give his tissue away. The court rejected Moore's claim that he was owed money by those who had profited by taking his cells and using them to make a patented cell line, stating: "The theory of liability that Moore urges us to endorse threatens to destroy the economic incentive to conduct important medical research. If the use of cells in research is a conversion, then with every cell sample a researcher purchases a ticket in a litigation lottery." n137

ORGAN MARKETS BAD: HURT HUMAN DIGNITY**SELLING ANY PART OF THE HUMAN BODY CORRUPTS THE VERY MEANING OF HUMAN DIGNITY-Dunham '09**

[Charles C.; Juris Doctor Candidate at Albany Law School; "Body Property": Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy; Annals of Health Law; Winter 2008; 17 Ann. Health L. 39]

The truth is that granting an individual, or the next of kin, property rights in cadaveric organs would be a step toward opening the door to the sale of the human body, and this concept arguably "offends common notions of decency." n135 Cohen states:

Human beings ... are of incomparable ethical worth and admit of no equivalent. Each has value that is beyond the contingencies of supply and demand or of any other relative estimation. They are priceless. Consequently, to sell an integral human body part is to corrupt the very meaning of human dignity.

ORGAN MARKETS INTRODUCE FACTORS INTO THE DEBATE THAT ARE DEVOID OF HUMANITY-Chapman '10

[Jeremy; Professor of Bioethics; Is it ever right to buy or sell human organs?; The New Internationalist; October 2010; <http://www.newint.org/argument/2010/10/01/human-organ-trade-debate/>; retrieved 4 March 2011]

So we start on common ground: illegal and unregulated organ markets are reprehensible consequences of individuals driven to seek transplantation therapy. The tragedy has played out across the world. The drive for survival is a very strong human instinct and one that overcomes feelings and common bonds between people. It overthrows decency and humanity and it requires consequentially strong and united laws and regulations. 'I must leave the country tonight because they are shooting my donor tomorrow,' was said by a patient to one of my colleagues recently. Such opportunistic human cannibalism has no place in healthcare. Organ donation after death is the only practicable solution for heart, lung, pancreas, intestine, composite tissue and most liver recipients. There can be no solution that ignores the reality of people with these needs. By focusing on kidneys alone, where the solutions must embrace both the deceased and the living donor, you seem to have discarded the broader needs for transplantation. I thus seek more from you than a throw-away line on 'the need to make the most use of posthumous donation'.

ORGAN MARKETS BAD: = INCREASE IN ORGAN THEFT**“LEGITIMATE” ORGAN MARKETS ARE ABOUT AS EXPLOITATIVE AS THIRD WORLD ORGAN THIEVES-Huebner '10**

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

While outright theft occurs throughout the Third World, the "legitimate" selling of body parts is more widespread and just about as exploitative. The sellers are often tricked or coerced by brokers, they don't always get the promised payment, and even when they are paid, that rarely solves whatever problem prompted them to sell the organ. In fact, the "solution" usually makes matters much worse. After giving up an organ under conditions that may be reminiscent of a back-alley abortion, the seller frequently experiences complications including pain, depression, weakness, and the inability to work, usually with no hope of treatment.

ORGAN MARKETS WOULD INCREASE THE AMOUNT OF THUGS AND THIEVES STEALING KIDNEYS-Palmer '98

[Alasdair; Columnist and Health Writer; Selling Organs for Transplants Is Unethical; 1998; Gale Group Databases]

And legalisation might have exactly the opposite effect. Making it acceptable for hospitals to purchase organs would immediately encourage the thugs already in the market to step up their work-rate. Criminal gangs are already known to have kidnapped children for their organs in Russia and South America. Dr Jean-Claude Alt, one of the main campaigners against the trade, says brokers are regular visitors at one particular children's home in St Petersburg. They arrive saying they'll adopt any child, with any disability, no matter how severe—providing the child has no heart trouble. 'There's only one conclusion you can draw from that,' Dr Alt adds ominously. 'They want to transplant the child's heart.'...

ORGAN SALES LEAD TO HORRIBLE ACTS IN COUNTRIES TO GET ORGANS-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Organ sales distort the vendor country. Sales of kidneys and livers boomed in China between 2004 and 2006. Executions also boomed and were measured with precision since each execution meant one liver transplant. China has recognised the grotesque nature of this trade, which was highlighted by the criminal who murdered a vagrant and forced a surgeon (who later informed the police) to remove the organs for sale. The changes brought about by the Chinese government have yet to fully curtail this business, but the number of executions and liver transplants fell from 3500 in 2006 to around 2000 in 2007.

LEGALIZING ORGAN MARKETS IN THE UNITED STATES WOULD INCREASE THE ABUSE OF ORGAN DONORS IN THE DEVELOPING WORLD-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The “Trojan Horse” of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

We are confident that Matas and other proponents of a kidney vending system in the United States do not want to see the abuse of kidney sellers that is so common in the third world. But who would the donors be if not the disadvantaged and the vulnerable among us? How could we be sure that paid donors were not being manipulated or even blackmailed? To avoid the evils of “transplant tourism,” Matas and others have suggested that in a “regulated” vending system, the market would be confined to self-governing geopolitical areas such as nation states or the European Union (11). In the United States, would paid donors have to be citizens? Could legal residents or even illegal ones be permitted to sell their organs? We live in a world where many industrialized nations struggle, often unsuccessfully, to protect their own borders against illegal entry. With so much money at stake, how would these activities be policed? Other countries learn from the sophisticated organ transplant system that we enjoy in the United States. What example would we be setting if we permitted vending? Representatives of developing countries have repeatedly expressed well-grounded fear that such a change in policy would make it even more difficult for them to control corruption and criminal exploitation of donors (12,13).

ORGAN MARKETS BAD: THOSE SELLING LIE AND DONATE BAD ORGANS

IN INTERNATIONAL ORGAN MARKETS, DONORS WITH DISEASES LIE ABOUT THEIR AGE AND MEDICAL CIRCUMSTANCES-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

Selling kidneys doesn't carry the same stigma in the Philippines. Some males lie about their age, and boast about selling a kidney when they are as young as 16. "No one at the hospital asks us for any documents," they told a monitor from Organs Watch. They also admitted to lying about other things, including their medical histories and exposure to tuberculosis, AIDS, dengue, and hepatitis.

ORGAN MARKETS WOULD DECREASE THE QUALITY OF ORGANS AVAILABLE AS THERE WOULD BE AN INCENTIVE TO LIE ABOUT MEDICAL HISTORY-Danovitch and Leichtman '06

[Gabriel, UCLA Medical School and Alan B., University of Michigan Division of Nephrology; Kidney Vending: The "Trojan Horse" of Organ Transplantation; Clinical Journal of the American Society of Nephrology; October 2006; <http://cjasn.asnjournals.org/content/1/6/1133.full>; retrieved 10 March 2011]

Those who are opposed to organ vending have been described as being "timid" (6), as if they lived in some ivory tower divorced from the "real world," but it is that real world that is the source of our concern. Living kidney donation is a safe procedure, but even in the most experienced hands, it is never risk-free. Safe donation, both for the donor and the recipient, requires honesty and openness about the potential donor's health, high-risk activities, and family history. Although it never can be taken for granted, in our current altruism-based system, openness generally can be presumed, and donors are compensated for the risk that they take by seeing the blossoming health of those they love or care for. In a vending system, in which regard for the recipient is divorced from the motivation for donation, powerful financial incentives for a donor not to be forthcoming about critical information could affect both their own health and that of the recipient (e.g., a distant history of a melanoma; an uncle on dialysis; high-risk sexual behavior, perhaps). Recipients of vended kidneys have been reported to suffer a high rate of infectious complications, not all of which could have been prevented easily by routine evaluation (9). Would specially trained investigators need to be included in the transplant team to ensure the accuracy of the paid donor's history and to ensure public safety? Because the risk that the kidney sellers would take is compensated only by dollars, how are they likely to feel about themselves when those dollars run out? Available studies from countries that sanction or do not control kidney selling suggest that the lump sum that the sellers receive has little impact on their long-term financial security, and many end up worse off, financially and otherwise (10). There is no reason to believe that kidney venders in the developed world would be protected from this outcome.

A/T: PRO WILL REGULATE

ANY ATTEMPT TO “REGULATE” ORGAN TRADE WOULD BE A MISERABLE FAILURE DUE TO THE INTERNATIONAL NATURE OF ORGAN DONATION-Huebner '10

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

Embracing a supply and demand perspective, transplant specialists and health agencies increasingly view the buying and selling as a satisfying solution to the global scarcity of human organs. They are simply treated as commodities, and the traditional barriers against their trade are being replaced by "regulation." Unfortunately, this doesn't protect the sellers from brutal exploitation.

When Dr. Scheper-Hughes visited the secretary of health for the Philippines, Manuel Dayrit, he was leaning toward two regulatory programs. One allowed the poor to sell a kidney to an organ bank, which would make organs available to any Philippine citizen who needed one. Dayrit was understandably reluctant to discuss just how the government would set a price. The circulation of kidneys goes beyond borders, so any national regulatory program has to compete with a thriving international black market. No matter how benign the regulatory effort, it is doomed to fail under the present barbarous conditions.

“REGULATED MARKETS” IN AN ORGAN MARKET ARE A MYTH-Chapman '08

[Jeremy; Bioethicist and Physician; Should we pay donors to increase the supply of organs for transplantation? No; British Journal of Medicine; 12 June 2008; <http://www.bmj.com/content/336/7657/1343.full>; retrieved 6 March 2011]

Ethical proponents of organ sales advocate a regulated market, managed by government to buy kidneys on behalf of the community. The last vestige of human altruism is at stake. Apart from the devastating consequences of American or European adoption of organ sales on less easily regulated environments in Asia or Africa, the consequences at home destroy the proposition. Which family member will donate if the government will pay someone else \$100 000 (£50 000; €63 000) to provide a kidney?8 Which recipient will risk a family member's health when government will pay? And if a kidney is worth money before death, families or individuals will demand money for consent to retrieval of organs after death. Surely the payment must be higher after death because you can use organs that cannot be retrieved from live people?

The consequences of regulated organ purchase will be an implosion in organ donation, reduction in kidney transplantations and destruction of heart, lung, liver, and pancreas transplantation. Purchase of organs is not the answer.

ALTERNATIVE: XENOTRANSPLANTATION

XENOTRANSPLANTATION HOLDS PROMISE TO END THE SUFFERING OF THOSE WAITING FOR ORGAN TRANSPLANTATION-Fung '04

[John J.; Chief of Transplantation at the University of Pittsburgh medical Center; Animal-to-Human Organ Transplants Could Benefit Humans; 2004; Gale Group Databases]

With the success of human-to-human transplantation, the need for organ replacement has grown to critical levels. (An estimated 65,000 Americans suffering from end-stage organ failure currently are awaiting organ transplantation and the number is growing each year.) The demand for organs has inspired concerted research efforts in the field of xenotransplantation—the use of animal organs as replacements for human organs. Nearly 5,000 people die each year because suitable donors are not found in time, so any progress toward expanding the pool of organs—including the use of animal organs—has implications that literally translate into human lives. Despite heightened public awareness to address the need for organ donation, there appears to be little prospect of increasing supplies to meet current shortages satisfactorily. The ability to use animal organs successfully as permanent replacements for failing human organs would end the suffering and death of patients awaiting transplantation. (More than 10% of patients awaiting transplantation die each year because of lack of human organs.) While artificial organs may become a reality with future developments, their ability to replace complex organs, such as the liver, is likely to be years away. Recent developments in understanding the barriers to successful xenotransplantation, along with access to novel drugs and approaches to manipulate the immune system, are making xenotransplantation more clinically feasible and bringing it much closer to reality.

CRITICISM AGAINST XENOTRANSPLANTATION MIMICS THE SAME CRITICISM OF HUMAN-TO-HUMAN TRANSPLANTS YEARS AGO-Fung '04

[John J.; Chief of Transplantation at the University of Pittsburgh medical Center; Animal-to-Human Organ Transplants Could Benefit Humans; 2004; Gale Group Databases]

The criticism surrounding xenotransplantation is strongly reminiscent of that leveled against human-to-human transplantation in the late 1960s and early 1970s. Yet, with persistence, the field of human-to-human transplantation has proven highly successful. This was the result of stepwise increases in understanding of the biology of rejection, improvements in drug management, and experience. Despite the resources that have been expended in efforts to promote human organ donations and given the unlikelihood of societal acceptance of mandated donation, the rationale for pursuing xenotransplantation as a solution to the organ shortage is compelling.

ALTERNATIVE: USE THE INTERNETS

THE INTERNET HAS TURNED INTO A LEGITIMATE WAY FOR DONORS AND RECIPIENTS TO FIND EACH OTHER-Kelogjera '09

[Liliana; Staff Attorney at the US Department of Veterans Affairs Office of Regional Counsel in Milwaukee, Wisconsin; The Internet and Transplant Tourism Are Questionable Sources for Organs; 2009; Gale Group Databases]

Whereas transplant tourists travel the globe to obtain life-saving organs, others find their match in a virtual community, such as MatchingDonors.com. Internet solicitation involves a potential recipient and potential living donor finding each other on a Web site. At MatchingDonors.com, potential recipients pay a membership fee to post their photos and personal stories describing their transplant organ needs. Potential donors pay no fee and are able to browse the profiles of over 4,000 potential recipients. If a potential donor is interested in a potential recipient, the potential donor can contact the potential recipient to begin a dialogue and, if both agree, to proceed with the organ donation process. State and federal law in the United States permit directed living donation, although it has predominantly occurred between people who have a preexisting special relationship—such as family members or friends—not between people who met solely for the purpose of an organ exchange.

Proponents portray Internet solicitation as a "win-win" approach that provides a valuable public service by helping to match people in dire need for organs with altruistic potential donors in a manner that is safe, ethical, and legal. MatchingDonors.com displays numerous success stories in which a potential recipient and potential donor who met at the site exchanged a life-saving organ, and proponents point to MatchingDonors.com's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code as general evidence of its ethically desirable nonprofit mission.

In terms of safeguards, to the extent organ transplants facilitated by Internet solicitation sites are performed in the United States, the transplant process benefits from the numerous medical and ethical protections implemented at hospitals nationwide. Because of the high quality of care at hospitals in the United States, donors and recipients—whether they meet through Internet solicitation or other means—are less vulnerable to the health and safety risks found in transplant tourism. In addition, many hospitals require psychological screening of live organ donors. This requirement provides an additional level of protection for donors and recipients and helps to balance out concerns about the lack of regulation of the Internet. Due to ethical or legal concerns, however, some hospitals have refused to perform transplants in which the donor and recipient met through Internet solicitation; this raises potential patient abandonment issues.

INTERNET BASED ORGAN EXCHANGE SKIRTS ETHICAL CONCERNS OF MARKETS-Kelogjera '09

[Liliana; Staff Attorney at the US Department of Veterans Affairs Office of Regional Counsel in Milwaukee, Wisconsin; The Internet and Transplant Tourism Are Questionable Sources for Organs; 2009; Gale Group Databases]

From an ethical perspective, Internet solicitation can help to promote individual autonomy and may be desirable on utilitarian grounds. Internet solicitation respects potential donors' rights to use their bodies as they see fit, to participate in charitable giving, and to receive emotional or psychological benefits from this gift. Internet solicitation also promotes the individual autonomy of potential recipients by providing them with a legal alternative to the waiting list. In particular, Internet solicitation gives potential recipients who lack willing or medically compatible family members or friends the opportunity to find a living donor. In addition, proponents set forth the utilitarian claim that Internet solicitation helps to increase the total number of organs, which helps the patients on the waiting list to advance faster up the list than they would in the absence of this alternative.

ALTERNATIVE: INFORMED CONSENT**INFORMED PRESUMED CONSENT IS BETTER-Huebner '10**

[Albert; Science Writer and Columnist; The Selling of Body Parts Exploits the Poor; 2010; Gale Group Databases]

In the last few years, steady improvement of transplant technology has made it possible to genuinely improve the quality of a life inhibited or endangered by a failing organ. Due to a shortfall in replacement organs, however, a complete solution may never be possible. One mark of a decent society would be a serious effort to find a compassionate and just solution to the problem. A possible way to reduce, if not completely eliminate, this limitation is "informed presumed consent." This means that all citizens would be considered organ donors at brain death, unless they stipulated their refusal beforehand. This preserves the value of transplantation as a social good, with no one included or excluded on the basis of financial status.

ALTERNATIVE: FOCUS ON DONATION FROM UNINTENDED MORTALITY**UTILIZING EXISTING UNAVOIDABLE MORTALITY IS SUFFICIENT TO PROVIDE FOR ORGAN NEEDS WITHOUT AN ORGAN MARKET-Chapman '10**

[Jeremy; Professor of Bioethics; Is it ever right to buy or sell human organs?; The New Internationalist; October 2010; <http://www.newint.org/argument/2010/10/01/human-organ-trade-debate/>; retrieved 4 March 2011]

Deceased donor programmes are the central issue for organ donation. In your country [the US] deaths on the roads alone are capable of meeting the needs of your population; in China there are 79,000 deaths each year on the roads. Harnessing the existing unavoidable mortality is sufficient to meet the needs if the scientific and social requirements to retrieve those organs are resolved. The system of both blood and organ donation that provides the best protection for both the donor and the recipient is altruistic gifting. The moment that money is introduced to buy a kidney from a vendor, the nature of the exchange and the motivation changes, and with that change come dangerous consequences for both parties. The donor changes, since those driven by money are the poor and the vulnerable in the community. The altruistic, related living-donor evaporates since the recipient can simply buy a kidney and recipients would rather put someone else at risk than their own family. The deceased donors evaporate, since there is no government drive for deceased donation; and the liver, heart and lung recipients simply die. I have just described [the situation in Iran] – the only country in which there is regulated organ sale. This is not a hypothesis, but a proven fact.

2,700 KIDNEYS WERE DISCARDED IN THE US LAST YEAR; SHOULD START THERE FIRST BEFORE MOVING TOWARDS A MARKET-Chapman '10

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You should take a long hard look at those 85,000 people who are registered in the US organ transplant system – a large number are never deemed fit enough actually to be transplanted by the listing transplant programme. Some 2,700 kidneys were discarded in the US last year – so the first place to make changes is in the efficiency of US systems.