

ISSUE 8



Should Congress Allow the Buying and Selling of Human Organs?

YES: Lewis Burrows, from "Selling Organs for Transplantation," *The Mount Sinai Journal of Medicine* (September 2004)

NO: James F. Childress, from "Should Congress Allow the Buying and Selling of Human Organs? No," *Insight on the News* (May 7, 2001)

ISSUE SUMMARY

YES: Lewis Burrows, M.D., begins with the observation that the need for organs far outstrips the supply: each year, hundreds of patients die while waiting for transplants. Burrows argues that payment to the donor (or payment to the donor's family, in cases in which the donor is deceased) would increase the supply of organs, regulations could restrain possible abuses, and a payment-for-organs system could meet relevant medical ethical principles.

NO: James F. Childress, professor of ethics and professor of medical education, argues that a free market would cause the loss of important altruistic motivations and would turn organs into commodities; moreover, such an untried market might make fewer—not more—organs available.

Some facts are important for the proper appreciation of this issue. First, the supply of organs is vastly lower than the demand. This is so not only in the United States, but on a worldwide basis. In America, people who need a new kidney have to be put on a waiting list. In the meantime, they may be able to use a dialysis machine. Receiving dialysis is a noncurative procedure, which must be performed on a regular basis—often three times a week for several hours. Unless people who need new kidneys receive them, the dialysis machine must become a regular part of their lives—forever. Second, when an organ such as a kidney is transplanted into someone selected for transplantation, numerous parties receive compensation for the services they render. Thousands of dollars are paid to physicians and hospitals and others; but donors must be *donors*: they must *give* the organ and must not receive any compensation of any

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kind, except perhaps a small amount for their time or for their own expenses. (Since 1984 and the passage of the National Organ Transplant Act, it has been a federal offense to buy or sell organs.)

Many people think that there is something wrong, perhaps something distasteful, with buying or selling an organ. By contrast, *donating* an organ is often regarded as an extremely worthy—perhaps heroic—act. But also, to *receive* an organ through transplantation is thought to be extremely beneficial, not distasteful or shameful at all. A donor can give a kidney to a recipient, and both of them will be thought well of. But we tend to look askance at a situation in which money changes hands.

And yet, from one point of view, it seems only fair for the person who gives up a kidney to be compensated for doing so. Everyone else involved in the transplant situation seems to be benefited or compensated. But the donor is supposed to be motivated by pure altruism and not at all by money. This works well when the donor and the recipient are close relations. It is not infrequent for transplantations to occur between family members. (What parent would not give a kidney to a son or daughter who desperately needed one?) But there remains the problem of the general societal lack of organs for transplantation.

In the first of the two selections below, Dr. Lewis Burrows first argues that there should indeed be a (regulated) market for organs. (He speaks, first of all, about kidneys, but suggests that there may also be possibilities for liver, lung, and pancreas transplantation. And if the donor is deceased, the scope for transplantation of organs may be wider still.) This, he claims, would greatly increase the supply. Then, on the other side of the issue, James F. Childress argues against all forms of buying and selling organs; he emphasizes the values that would be lost if there were to be such a market, and he casts doubt on the idea that a market in human organs really would increase the supply. According to Childress, instead of establishing a market in organs—which would likely put a damper on donations—donations and the altruistic motivation that generally lies behind them should be actively encouraged.



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James F. Childress



Should Congress Allow the Buying and Selling of Human Organs?

A Free Market Would Reduce Donations and Would Commodify the Human Body

The number of patients awaiting an organ transplant exceeded 75,000 in late March [2001]. Yet in 1999, the last year for which there are complete figures, there only were 21,655 transplants with organs from 4,717 living donors and 5,859 from cadavers (many of which provided more than one organ). Organ donation continues to fall further and further behind the demand for organs, and new initiatives have failed to reduce the gap. In this situation, why shouldn't we turn to the free market to increase the supply of transplantable organs, which can save lives and improve the quality of life?

Buying or selling an organ isn't always morally wrong. We don't, and shouldn't, always condemn those who sell or purchase an organ. We can understand why someone might do so. But should we change our laws to permit sales of organs and even enforce contracts to sell organs? Should we turn away from a system of gifts to a market in organs?

Our society has very strong reasons not to allow the transfer of organs from the living or the dead for money. In presenting these reasons, it is useful to separate the acquisition of organs from their distribution. Normally, acquisition and distribution go together. However, if those who need organs had to purchase them directly, then the poor would end up selling organs to the rich—a distribution that would strike many as unfair. Thus, let's assume that the government or a private organization under government regulation will purchase organs and then distribute them in a fair and equitable way. I'll call this an "organ-procurement market."

Such a market could target living donors or cadaveric sources of organs. I use the term "sources" because those who sell their organs are not donors, they are sellers or vendors. Let's begin with cadaveric organs removed after an individual's death.

The main argument for rescinding the federal prohibition on the sale of organs is based on utility—allowing the sale of organs would increase their supply. But would a market actually increase the number of cadaveric organs for transplantation? Despite the claims of market fundamentalists, we simply

From *Insight on the News*, May 7, 2001, pp. 41, 43. Copyright © 2001. Reprinted by permission of The Washington Times.

do not know whether a market would reduce the scarcity of organs, in contrast to many other goods. And we have good reasons to be skeptical.

Indeed, I will argue, we shouldn't legalize a market in organ procurement because it probably would be ineffective, perhaps counterproductive (in reducing donations and possibly even the overall number of organs available for transplantation) and likely change our attitudes and practices by commodifying the human body and its parts. Furthermore, it is unnecessary to take this route, with all its problems, because we can make the system of donation effective without such ethical risks.

It would be unwise to move away from a system of donation unless we have good evidence that a market actually would increase the supply of organs. After all, organ donations provide a substantial (though insufficient) number of organs. Some evidence against a potential market's effectiveness in cadaveric organ procurement comes from the reasons people now give for not signing donor cards. One proponent of the market contends that people now fail to donate "because of inertia, mild doubts about their preferences, a slight distaste for considering the subject or the inconvenience involved in completing or carrying a donor card." If these reasons for nondonation were the only ones, a market in cadaveric organ procurement probably would work. In fact, however, opinion polls indicate that fears of being declared dead prematurely or having one's death hastened in order to provide organs seriously inhibit many from signing donor cards.

The fears and distrust that limit organ donation would render utterly ineffective a system of organ procurement based on sales. A futures market—whereby individuals contract now for delivery of organs upon their deaths—is the most defensible because people sell their own, not others', organs. However, if people at present are reluctant to sign donor cards because they fear they may not receive proper care in the hospital, imagine their fears about accepting money for the delivery of usable organs upon their deaths. Once they have signed the contract, all that remains for its fulfillment is their death. And a regulated market would not eliminate their fears. After all, such fears persist in our regulated system of organ donation.

Critics often contend that allowing sales of organs would turn bodies and parts into commodities. Such commodification could lead us to think about and treat dead bodies in merely instrumental terms, thereby damaging important social values. In addition, many claim, commodification could damage and even reduce altruism. A market in organs would drive out, or very substantially reduce, organ donations, in part because it would redefine acts of donating organs. No longer would donors provide the "gift of life"—they instead would donate the equivalent of the market value of the organs provided.

In short, market defenders have not proposed an effective system to obtain additional cadaveric organs. Not only would a procurement market probably be ineffective, it could be counterproductive and have other social costs. Its financial costs would not be negligible. Furthermore, the system of donation has features, including its connection with altruism, that make it ethically preferable, other things being equal. And we can make our system of express donation more effective.

It works fairly well now. For the acts of cadaveric-organ donation to patients who died in circumstances where transplantation (usually following brain death) is desirable, to expand the categories of people who can donate organs, to expand donor eligibility, we need to work to change the policy of required referral. This policy may be best left to a national organization that can then ask the family for consent.

Programs to educate the public about attitudes of distrust and mistrust, not merely about the facts of organ donation. It is difficult to alter those attitudes, but a policy of required referral certainly is one way to proceed.

The public's willingness to donate organs poses trust not only in the society's criteria for death, but in its criteria for fairly and equitably distributing organs as well. In addition, the provision of a regulated market would create a sense of solidarity that does not exist now, but that vision is a distant one.

I salute the decisions in some states that give donor cards priority over family objections, but I think we should treat individuals as members of families. They should be encouraged to discuss their families and consider their roles as donors and recipients of organs. Donor cards may be a useful mechanism for expressing intentions, but in and of themselves they are not sufficient. The process of intrafamilial consent is essential.

Society also provides various incentives for recognizing and honoring donors in various ways. Should we offer some financial incentives without conditions for organ procurement? Consider the following: A regulated market for organ donation, society could cover the cost of a certain amount, perhaps \$1,000 or more, to the donor or family. Society could recognize with gratitude the decedent's decision to donate and also pay respects to the donor or society for the disposition of his/her final remains.

Any proposal for such "rewarded gift" organ donation is such a highly complex set of beliefs, symbols, attitudes, sentiments, and religious in nature. But a carefully conceived system of organ donation benefits—as Pennsylvania has discussed—may infringe current laws. In any event, it is important to consider its risks. One risk is that it will be perceived as expressing gratitude and providing incentives for organ procurement.

I have focused on cadaveric organs, but what about procurement from living individuals? Such a regulated market in cadaveric organs probably would be willing to part with a kidney

It works fairly well now. For example, according to some estimates, the acts of cadaveric-organ donation in 1999 represented close to half of the patients who died in circumstances where their organs could be salvaged for transplantation (usually following brain death). It might be possible, and desirable, to expand the categories of potential donors to include many who die according to cardiopulmonary standards. Beyond expanding the criteria of donor eligibility, we need to work to make effective the recently adopted policy of required referral. This policy mandates referral to an organ-procurement organization that can then ask the family about organ donation.

Programs to educate the public about organ donation must attend to attitudes of distrust and mistrust, not merely to the tremendous need for organs. It is difficult to alter those attitudes, but increasing the public's understanding of brain death certainly is one way to proceed.

The public's willingness to donate cadaveric organs generally presupposes trust not only in the society's criteria and procedures for determining death, but in its criteria for fairly and effectively distributing donated organs as well. In addition, the provision of access to basic health care for everyone would create a sense of solidarity that dramatically could increase organ donation, but that vision is a distant one.

I salute the decisions in some states to give the decedent's signed donor card priority over family objections, but it is even more important to educate individuals as members of families. They need to share their decisions with their families and consider their roles as potential donors of a family member's organs. Donor cards may be a useful mechanism to stimulate such conversations, but in and of themselves they are too individualistic, legalistic and formalistic. The process of intrafamilial communication is more important.

Society also provides various incentives for organ donation, such as by recognizing and honoring donors in various ways. Would it be possible to offer some financial incentives without crossing over into a market for organ procurement? Consider the following: As a regular expression of its gratitude for organ donation, society could cover the decedent's funeral expenses up to a certain amount, perhaps \$1,000 or more. In this way, the community would recognize with gratitude the decedent's and/or the family's act of donation and also pay respects to the donor or source of the organs by sharing in the disposition of his/her final remains.

Any proposal for such "rewarded gifting" will require careful scrutiny, in part because organ donation is such a highly sensitive area, marked by complex beliefs, symbols, attitudes, sentiments and practices, some of them religious in nature. But a carefully conceived pilot experiment, such as providing death benefits—as Pennsylvania has discussed—may be justifiable. However, it may infringe current laws. In any event, it requires the utmost caution because of its risks. One risk is that it will be perceived as purchasing organs rather than as expressing gratitude and providing incentives for donation.

I have focused on cadaveric organs, but what about a market in organ procurement from living individuals? Such a market probably would be more effective than a futures market in cadaveric organs—more individuals probably would be willing to part with a kidney, especially with reduced risks

from kidney removal and with generous compensation. However, the social risk of commodification—of treating living human bodies and their parts as commodities—is very troubling. In addition, the risks of coercion and exploitation, especially of poor people, are substantial. The assertion of a moral right to sell a kidney against the legal prohibition of such a sale is not persuasive; we have good reasons, based on concerns about commodification, coercion and exploitation, to reject such sales as incompatible with our moral vision of the kind of society to which we aspire.

Vigorous efforts along the paths I have indicated should obviate the need to adopt a market in organ procurement, whether from living or cadaveric sources. We have little reason to believe that a futures market will be effective in obtaining cadaveric organs and considerable reason to worry about the risks and social costs of such a market, as well as a market for living organ procurement. We should just say “no” to both markets.



POSTSCR

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This is a difficult issue to discuss forward. We need to know the medical In the case of kidneys, we are born to survive. (And the form of survival Approximately 98 percent of life in premium for people with only one properly, and you are unable to receive sible to survive through the use of a attachment to such a machine for se The use of the machine does not cur your blood, removing some of the saving what's useful. However, since this way, you must return to the machine more purification—and the process of transplant, and your body didn't reject purifying, and you wouldn't have to the great need for a functioning kidney.

But at this point, we encounter an issue. There is a certain feeling of guilt and selling of human organs. It might family member to donate a kidney—but but the buying and selling of human mere commodities. Childrens even and sold, and have a market value, but would occur because what used to be superseded by the market; under a market tive wanted to help the person on the required is money or a loan. Children market. But as Burrows points out, short of the demand. And these are the solution.

Recent publications that address Gave Me a New Life: St. Charles Gyr tion from Her Co-Worker," *Daily Herald* James Stacey Taylor, *Stakes and Kidney Morally Imperative* (Ashgate, 2005); M *Human Organs, Transplantation, and*

POSTSCRIPT



Should Congress Allow the Buying and Selling of Human Organs?

This is a difficult issue to discuss. One of the difficulties is fairly straightforward. We need to know the medical facts about kidneys and other organs. In the case of kidneys, we are born with two, but we need only one kidney to survive. (And the form of survival here is not just marginal or borderline. Approximately 98 percent of life insurance companies do not charge a higher premium for people with only one kidney.) If your kidneys don't function properly, and you are unable to receive a transplanted kidney, it may be possible to survive through the use of a kidney dialysis machine—but this requires attachment to such a machine for several hours at a time, several times a week. The use of the machine does not *cure* or solve the problem; it merely “purifies” your blood, removing some of the unwanted products and chemicals, while saving what's useful. However, since the fundamental problem is never cured this way, you must return to the machine in about two days for several hours' more purification—and the process never ends. But if you could have a kidney transplant, and your body didn't reject it, then the kidney could do the blood purifying, and you wouldn't have to use the dialysis machine anymore. Hence, the great need for a functioning kidney.

But at this point, we encounter another problem in dealing with this issue. There is a certain feeling of ghoulishness associated with the buying and selling of human organs. It might be nice, we think, for a good friend or family member to *donate* a kidney—and perhaps it is even somewhat noble—but the buying and selling of human organs threatens to turn them into mere commodities. Childress even suggests that if kidneys can be bought and sold, and have a market value, then there will be fewer donations. This would occur because what used to be *donations* of kidneys would simply be superseded by the market; under a market system, if the good friend or relative wanted to help the person on the dialysis machine, all that would be required is money or a loan. Childress wants to encourage donation, not a market. But as Burrows points out, the supply of donated kidneys falls far short of the demand. And these are the conditions that most favor a market solution.

Recent publications that address this issue are Patrick Waldron, “You Gave Me a New Life: St. Charles Gymnastics Coach Receives Kidney Donation from Her Co-Worker,” *Daily Herald* (Arlington Heights, IL, July 2, 2004); James Stacey Taylor, *Stakes and Kidneys: Why Markets in Human Body Parts Are Morally Imperative* (Ashgate, 2005); Mark J. Cherry, *Kidney for Sale by Owner: Human Organs, Transplantation, and the Market* (Georgetown University

Press, 2005); Lesley A. Sharp, *Bodies, Commodities, and Biotechnologies: Death, Mourning, and Scientific Desire in the Realm of Human Organ Transfer* (Columbia University Press, 2006); Rohan J. Hardcastle, *Law and the Human Body: Property Rights, Ownership and Control* (Hart Publishing, 2007); and Donna Dickenson, *Body Shopping: The Economy Fuelled by Flesh and Blood* (Oneworld Publications, 2008).

ISSUE 9

Should Drug

YES: Meaghan Cussen and V
Now! An Analysis of the Benefi
Journal of Economics and Sociology (

NO: Theodore Dalrymple, from
The City Journal) (Spring 1997)

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YES: Meaghan Cussen (a student
(her economics professor) argue
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to pay for an unwinnable “war
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NO: Theodore Dalrymple stresses
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crack, and a host of other social ills.

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