

CONTROVERSY

Commodification and exploitation: arguments in favour of compensated organ donation

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This paper takes the view that compensated donation and altruism are not incompatible. In particular, it holds that the arguments against giving compensation stand on weak rational grounds: (1) the charge that compensation fosters “commodification” has neither been specific enough to account for different types of monetary transactions nor sufficiently grounded in reality to be rationally convincing; (2) although altruism is commendable, organ donors should not be compelled to act purely on the basis of altruistic motivations, especially if there are good reasons to believe that significantly more lives can be saved and enhanced if incentives are put in place, and (3) offering compensation for organs does not necessarily lead to exploitation—on the contrary, it may be regarded as a necessity in efforts to minimise the level of exploitation that already exists in current organ procurement systems.

Most organ procurement programmes appeal to the altruistic motivations of probable donors. The results obtained from such programmes indicate, however, that they have not been successful enough to make more organs available for transplants and thereby to shorten waiting periods and waiting lists. They are unable to meet the requirements of all patients in need. Given this inadequacy, and the significant number of lives that could otherwise be saved or qualitatively enhanced, it has become necessary to take a more serious look at—and entertain a more sympathetic attitude towards—alternative procurement proposals, including those that seek to provide compensation to organ donors.

Contrary to a seemingly widely held view, compensated donation and altruism are not incompatible. Arguments against giving compensation stand on weak rational grounds: (1) the charge that compensation fosters “commodification” has neither been specific enough nor sufficiently grounded in reality to be rationally convincing; (2) although altruism is commendable, organ donors should not be compelled to act purely on the basis of altruistic motivations, especially if there are good reasons to believe that significantly more lives can be saved and enhanced if incentives are put in place, and (3) offering compensation for organs does not necessarily lead to exploitation—on the contrary, it may be regarded as a necessity in efforts to minimise the level of exploitation that already exists in current organ procurement systems.

The context for the arguments presented here is a far from ideal situation where health care coverage leaves plenty of gaps. Many poor patients are either untreated or undertreated. In many developing countries, a black market for organs has thrived, notwithstanding the legal prohibition on organ sales. Unregulated trade has been conducted internationally with donors and recipients crossing national borders as necessary.

In the Philippines, public outcry and official investigations have hardly changed the overall picture. Clearly, it is difficult to go against market sentiments. The law of supply and demand is not something that can be silenced by legislation. Although it is not advisable that we stand idly by and let market forces operate freely, it is time for national authorities to reconsider policies banning the sale of human organs and the granting of compensation to organ donors completely. Policies that result in failure to save and enrich lives have to be more

adequately justified. On the other hand, measures to improve organ donation rates have to be explored in response to important sentiments expressed in the already extant organ market. Policies providing for culturally appropriate forms of compensation ought to be seriously considered.

COMMERCIALIZATION AND THE FORM OF MONETARY EXCHANGE

The most noteworthy arguments against giving compensation to organ donors revolve around the notion of commodification.

The idea is that there are limits to what can be bought or sold as commodities. Some things are so valuable, priceless, or sacred that they should never be allowed into the marketplace. Selling human organs offends common notions of decency.

These views are reflective of the raw sentiments held by many regarding the commercialisation of (or trade in, or sale of) human organs. This paper holds that although human organs are indeed valuable and even priceless or sacred, there are good justifications for a policy of compensated donation. If we are to retain a system of organ procurement that is unable to cope with the requirements for survival of thousands of people we have to be more specific in providing a justification.¹ We have to be able to articulate justifications for our moral sentiments.

One account of the argument from commodification is presented as follows by Radin:

A fungible object can pass in and out of a person's possession without effect on the person as long as its market equivalent is given in exchange. ... To speak of personal attributes as fungible objects—alienable “goods”—is intuitively wrong. ... We feel discomfort or even insult, and we fear degradation or even loss of the value involved when bodily integrity is conceived of as a fungible object.

Systematically conceiving of personal attributes as fungible objects is threatening to personhood, because it detaches ... that which is integral to the person ... if my bodily integrity is an integral personal attribute, not a

detachable object, then hypothetically valuing my bodily integrity in money is not far removed from valuing *me* in money ... that is inappropriate treatment of a person.²

Similarly, Cohen puts forward the following interpretation of a Kantian position:

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.³

Both accounts are premised on the life sustaining characteristics of human organs:

Human kidneys are qualitatively different sorts of human bits and pieces from human hair, for they sustain life. ... Kidneys, consequently, are more ethically significant to us than human hair.⁴

People freely and openly buy and sell many things or services that sustain life, however, without having to deal with any moral objections. Thus, it is not the mere ability to sustain life that makes buying or selling a human organ morally wrong. Cohen clarifies:

The reason we are reluctant to exchange money for human kidneys is that this would deny something distinctly valuable about human beings—their dignity and worth.⁴

Dignity and worth are properties of kidneys, livers, brains, hearts, and eyes because they are integral to the functioning of human beings. These integral body parts should not be sold:

When we or our integral body parts are sold, our dignity as human beings is denied. ... Indeed, we feel so strongly that organs integral to human functioning have a certain dignity that we are reluctant to sell them even after we have died and no longer need them.⁵

People's reluctance, however, (if it does exist) by itself does not constitute proof that selling denies human dignity. Although most people would be reluctant to part with integral parts of their body, the attitude does not necessarily have to do with taking money for the donation. Moreover, even if the reluctance has to do with taking money, it does not mean that ordinary persons develop these strong feelings because they have a very specific awareness that "organs integral to human functioning have a certain dignity". This is an empirical matter that has to be established before it can serve as evidence in support of the charge of commodification.

How does the exchange of money for human kidneys deny the dignity and worth of human beings? To be able to answer this question clearly and unambiguously, one has to sort out many factors bearing on the moral regard that we have for various acts and practices. Prominent among these factors are the different forms that monetary exchange could take. For example, we ordinarily take the following to be different from one another:

(A1) providing/accepting money as a payment for goods and/or services in accordance with some predetermined agreement;

(A2) providing/accepting money as a kind of gift that represents a beneficiary's appreciation for a very important donation, service or assistance earlier received, and

(A3) providing/accepting money or goods as compensation for time lost or for expenses incurred.

In (A1), it is likely that payment is a condition for the transfer of the commodity or the rendering of service. The idea of a predetermined agreement indicates that the seller most probably would not have transferred the commodity or rendered the service without the assurance of being paid. In (A2), it is likely that the money is not a condition (although we can imagine situations when it is) for the offer of the initial donation, service, or assistance. The donor would probably have offered the donation, service, or assistance even without the assurance of being rewarded. In (A3), the assurance of receiving compensation may be present or not. It may or may not be part of a predetermined agreement or policy.

It makes a lot of difference for people's understanding of, and attitudes toward, a particular monetary transaction whether it takes place in accordance with (A1), (A2), (A3), or some other conditions that vary from these. For example, the difference between (A1) and (A2) can set apart a praiseworthy hero from a shameful mercenary. In a given situation, a person who takes great risks in rendering services in exchange for a guaranteed sum of money may be regarded as a mercenary whereas a person who renders the same risky services without any assurance of monetary compensation may be regarded as a hero. The latter can be given recognition as a hero even if he subsequently accepts a monetary reward. It is not unusual for certain societies to have a standing policy of rewarding heroes not only with medals but also with some form of monetary gift.

Indeed, there are many occasions when we give rewards or incentives—in cash or in kind—to members of our community. We give monetary rewards to outstanding citizens for noteworthy accomplishments. We offer monetary incentives to those who can contribute information leading to the arrest of criminals. We give monetary rewards to outstanding and dedicated teachers. We also give special monetary benefits to family members left behind by soldiers killed in battle. It does not usually cross our minds that the giving or acceptance of the reward may commodify the recipient or diminish the value of his or her contribution to society.

There are many other situations when money is given to others without suggesting that the monetary exchange causes loss of dignity. We give money as a present to people celebrating their birthday. We give money as a baptismal gift. We give money to convey our condolences to the bereaved. We pin paper bills on the wedding attire of the bride or groom to symbolise our support for their partnership. The point is that there is nothing inherently suspicious about money changing hands. On the contrary, money has important symbolisms for various practices and traditions.

DONOR MOTIVATION

The motivations of organ donors and their relatives also have substantial implications for the manner in which we regard the act of donation. For example, we would not have the same moral regard for the donors in all of the following cases:

(B1) a person who offers kidneys and other organs to a future pool for transplant upon his death in exchange for a guarantee that all of his children will be entitled to private health care insurance upon reaching a certain age;

(B2) a person who offers the organs of his brain dead wife so he can use the money for burial expenses, and

(B3) a person who offers the organs of his brain dead wife in order to gain money to build an expensive mausoleum for her.

In (B1), the person making the future donation is obviously doing something out of a concern for the future of his children. Even so, one can imagine different circumstances surrounding the decision to donate. It would be pertinent to

know how likely or unlikely the children are to have health care coverage other than the coverage acquired through this controversial means. Someone who has enough experience in a poor country will easily understand how difficult it could be for a poverty stricken family to provide for their health care needs. In some cases, the task could be so difficult that giving up an integral body part for transplant would not be regarded as a means that is disproportionate to the desired end.

One can understand the motivation for the person in (B2): if burial expenses can be a problem for an ordinary family in a developed country, they can more easily be problematic for a poor family in a developing country. In the Philippines, some families occasionally have been constrained to defer the burial of a dead relative indefinitely so that the prolonged wake could provide an opportunity to collect more contributions for burial expenses.

The prospective organ donor in (B3) may appear also to have burial expenses and his wife's dignity in mind. Detractors might, however, be more concerned about the place of vanity in justifying organ compensation.

In any case, the variability in motivations that people have for accepting payment for organ donation cannot be ignored. Taken in conjunction with cultural beliefs and practices, they affect our notions of what are acceptable or unacceptable actions or practices. They have a bearing on what we regard as dignified or as humiliating.

COMMODIFICATION AND THE RELATIONSHIP BETWEEN DONOR AND RECIPIENT

To a large extent, the relationship that exists between donor and recipient—whether there is some kind of concomitant compensation or not—determines the nature of their transaction. Thus, in many countries, the laws on organ donation already distinguish transactions involving relatives from transactions involving non-relatives. The distinctions that are enshrined in pertinent legislation are, however, still not fine enough to accommodate many differences that we would consider relevant to the acceptability of certain types of transactions involving the grant of compensation for the transplant of human organs. For instance, we would probably have varying moral assessments of the following cases:

(C1) a rich person from a highly developed country offering cash payment for the kidney of an unrelated poor person from a developing country;

(C2) a poor housemaid offering a kidney of her brain dead husband for transplant to her ailing employer, and

(C3) a Muslim offering a kidney from her brain dead child to a Christian neighbour in a community where religious tensions have been prevalent.

(C1) may be seen as an illustration of exploitation perpetrated by people from developed countries upon poor people from developing countries. Considering the wide disparity that already exists in the amount of resources that are available to people from developed countries as opposed to that which is available to people from developing countries, this example can easily symbolise another form of injustice. A domestic version of this type of exploitation can be seen in (C2). Some domestic helpers have insisted, however, on donating organs (even as living donors) to their employers because of the closeness of their relationship. This suggests a different interpretation of the action, especially because of the phenomenon of the extended family in Philippine society where domestic helpers have a strategic role and position characterised by strong emotional ties in many households. The case of (C3) presents a very different picture, that anyone will probably sympathise with more easily. But what if the prospective donor is asking for a "charitable" contribution as a condition for the donation? Will the situation be any differ-

ent if the donor does not ask for, but accepts, a substantial contribution anyway?

What one should see here is the great variability in factors and conditions that affect the way in which we regard actions or practices involving monetary—or even non-monetary—rewards, incentives, or other forms of compensation. It does not do justice to the richness of our moral apparatus to restrict the manner in which we classify actions in order to fit predetermined categories of right and wrong or preconceived notions of human dignity.

The variability, as pointed out above, extends to the type of monetary transaction that takes place. The fact that money changes hands in a transaction does not mean that a sale takes place. The fact that an organ has changed bodily location does not mean that it has been alienated from its integral function with respect to human life. Our moral regard for the transactions that take place with respect to organ transplantation and compensation must be sensitive to the many factors and combinations of factors that inform the whole procedure. We cannot be unduly arbitrary in selecting the proper description of the acts under consideration.

COMMODIFICATION AND THE PRICELESSNESS OF HUMAN ORGANS

Contrary to the above, Cohen holds that the specific purpose behind selling an organ is immaterial:

Even when that organ would save a life or would buy a precious gift and food enough for two years, it would be wrong to sell it. Donating it would seem the only ethical way in which to provide it to another.⁶

A person may part with an integral bodily organ if he donates it to somebody else without financial consideration because donating is "a gesture of altruism and of solidarity with other human beings".⁷ Selling alienates human dignity because it involves the consideration of "human beings as of calculable worth".⁶

Thus, the selling of an integral body part constitutes commodification because it makes calculable the value of the organ and the whole human being to which it is integral. Selling sets a price on the organ and thereby commodifies it. With the price tag, it is no longer priceless.

There are a number of problems with this articulation of the commodification argument:

1. It is not sensitive to different types of transactions involving money or other means of exchange. As pointed out above, money changing hands is not always equivalent to selling. We get into many different types of transactions and it is not fair to lump everything under the category of selling. Sale, commercialisation, trade, and commodification in relation to human body parts are words that tend to evoke negative sentiments even before the actual nature of a transaction can be sufficiently clarified. To promote greater understanding and minimise misdirected sentiments, we have a responsibility to adopt a finely tuned rhetoric that is more reflective of the specific nature of particular transactions involving organ donors and recipients.

Moreover, even selling itself can take place under various circumstances and for diverse reasons. Selling a human organ for the purpose of providing for the health care of one's children is very different from selling a human organ for the purpose of funding an expensive wedding reception. Selling a human kidney for US\$20 000 to an unknown rich person from a foreign country is very different from selling a human kidney for US\$2000 to a friendly neighbour whose progress and future life one can observe and relate to in a continuing fashion. The money/exchange feature cannot solely determine the characterisation of the act in question. If we select

arbitrarily the feature of the donation/sale that is to be highlighted we cannot, for instance, set the self sacrificing hero apart from the adventurous mercenary. To allow the money/exchange feature solely to determine how the act is to be characterised is to suppress unjustifiably the richness of our moral apparatus

2. The argument is not sufficiently grounded in reality. The “commodification” of human organs is not something that is still waiting to happen. As things stand, human organs are regarded already as commodities. It is a fact that a black market for human organs already exists. Compensated organ transfers have taken place beyond the reach of the law in many countries. Donors and recipients have been negotiating terms of organ transfers with or without the sanction of legal authorities.

Although the underground economy is illegitimate, the demand that drives the market underground is founded on the legitimate hopes and aspirations of patients needing replacement organs. In addition, the lack of basic necessities that drives poor people to offer ways to supply the organ requirements is widespread.

Thus the need for organs is great and the response to that need could be much greater than it has been. Is it being suppressed unnecessarily? The existence of a thriving black market seems to show that it is. The proverbial “long arm of the law” is finding it difficult to deal with the law of supply and demand. In a way, it is the undeniable existence of the demand and the corresponding supply that commodifies human organs even before anybody tries to put a price tag on them.

We cannot hope to improve the situation as regards the objectionable commodification of organs unless we recognise the ways in which human organs have already become commodities. If we do not come to terms with this reality we will find it difficult to institute safeguards that will protect black market donors from exploitation.

3. The argument takes the notion of being priceless too literally. When something is given a price tag it does not mean that it thereby loses its infinite value. It simply means that there is an attempt to quantify some aspects of usage but not the whole of that “thing”. For instance, as a means of dealing with some practical issues it is occasionally necessary to put a price tag on something in order to capture a part of that thing’s infinite value. Thus, there are accepted mechanisms for calculating the amount of damages that a murderer needs to pay the family of his victim. We do not, however, think that the mechanisms capture the full value that we ascribe to human life.

The point is that we cannot reduce the value of a person’s life to the amount of money that he—or his body—could have generated. The amount set in such cases is always finite. But, setting a finite amount of damages or indebtedness does not constitute a negation of the infinite value of human life.

On the other hand, the absence of a price tag on human organs does not mean they are truly being given up without any cost. This cost is reflected indirectly in the higher fees paid to doctors and hospitals for transplant procedures. Implicit in the pricing mechanisms is the high value that people generally give to their organs, based on common knowledge of their utility and indispensability. In other words, the transplant of a human organ has a cost to a number of people even when there is no price tag to declare what it is.

Moreover, the existence of an irrepressible black market is a clear indication of a price tag that is merely being suppressed. The parallel—albeit underground—market proves to us that even when donors are not being paid for their organs there are actual costs that society merely continues to ignore. Some of these costs are being passed on to the organ donors themselves in a manner that perpetrates injustice and exploitation.

EXPLOITATION

The exploitation that could be generated by a system of compensated organ donation raises serious concerns that need to be addressed. The concerns are weighty and valid, but not insurmountable. The possible disadvantages of compensated organ giving are not greater than the possible benefits, and these can be minimised through the implementation of safeguards. Moreover, the prevailing system of uncompensated donation fosters even greater exploitation of the donors.

In a community that compensates donors, the most probable sources of transplantable organs are encumbered by vulnerabilities that make them liable to exploitation. Whatever the vulnerabilities, the exploitation to which they could give rise should be taken into account by any system of procuring human organs, whether compensated or otherwise. The mere possibility of exploitation does not, however, outweigh the gains sought by a compensated human organ procurement programme. For, as long as we can anticipate the possible negative effects and put safety nets in place, society is not necessarily worse off. On the contrary, humanity is more likely to be better off because of the greater number of lives that could be saved and enriched.

What should be more worrying is the exploitation that is being perpetrated on organ donors while payment is against the law. If we are alarmed by the possible exploitation in a world where organ payments are legalised, we ought to be more alarmed by the exploitation that is already going on where organ purchases are illegal but are flourishing anyway.

The black market in human organs will not stop or diminish just because we ignore it. The reality is that, in many developing countries, transplantable organs are bought and sold without the benefit of adequate safety nets for organ donors.⁸⁻¹⁰ Being underground, the market is not subjected to institutional regulation that could ensure proper pretransplant and post-transplant care for the donors. Thus, the donors are exploited because they are enticed to assume the risks and burdens associated with the donation without being assured of proper care. Moreover, since the terms of the illegal arrangements cannot be regulated, donors are not given adequate compensation for the risks, inconveniences, and burdens that they or their relatives assume.

Where compensation is not allowed at all, organ donors are exploited in that, among all the parties that play a part in organ donation, they are the only ones who are prevented from recovering the cost of their participation. And yet, they are the ones whose participation has the greatest value. An organ donor gives much more than the physical organ that is transplanted to another body. The cost of the donor’s participation far exceeds the cost that may be imputed to the physical body part. For this reason, it makes sense to talk about organ donation and altruism even if the donor is given some form of compensation.

Prohibiting compensation requires a paternalistic end for justification but it has not been shown that there are real and sufficient levels of risk and harm from which the donors need to be protected.

When people are not compensated for donating organs to unrelated recipients, they are, as it were, forced to be altruistic. But, altruism cannot be compelled. While pure altruism is commendable, a democratic government exceeds its authority when it compels, rather than merely encourages, its citizens to become altruistic.¹¹ Altruism should not be demanded to the point that it deters people from behaving in a manner that saves and enhances lives.

MINIMISING COMMODIFICATION AND EXPLOITATION

Taking a position against arguments based on commodification and exploitation does not entail a preference for a

completely open and unregulated market for human organs. The possibility of exploitation arising from such a market dictates that a compensation based scheme of organ procurement be fitted with safety nets to ensure that gains in the number of donated transplantable organs are not cancelled out by injustices in the allocation of organs or violations of the requirement for free and informed donor consent.

Although there is economic value in allowing the market to freely determine the price of human organs in a market economy, there are reasons in favour of regulation that would enable authorities, among other things, to (1) monitor developments and react efficiently when the need arises; (2) prevent indecent price escalation that would put organ donors at the mercy of affluent buyers; (3) protect donors from unscrupulous middlemen whose sole interest is profit making; (4) ensure that the organs are sourced legitimately, and (5) introduce guidelines that would offset inequalities and injustices in procurement and allocation.

The first step in the implementation of any such programme should include an experimental phase to collect baseline data and empirically verify the assumptions behind various types of compensation proposals. Many disagreements concerning compensated organ donation revolve around empirical assumptions that need to be verified. Sound ethical decisions require valid empirical assumptions.

The details of a good compensated organ procurement programme can be established on the basis of empirical research. A “futures” type of compensation seems to be well indicated because it allows for ample time to review arrangements and ensure that the motivation driving a person to donate is more than a transient emotion. A compensation scheme that allows

only transplant centres or their authorised professional procurement teams to deal directly with prospective donors seems attractive as it serves the purpose of screening out people who do not realise the full impact of their possible donation or profit seeking middlemen who are the most dangerous exponents of commodification and exploitation.

Just as health care systems worldwide make use of institutional ethics committees to review research involving human subjects, organ transplantation stands to gain a lot from the contribution of ethics committees in sorting out the variable arrangements that can be proposed for the donation of transplantable organs. Clearly, it will require a huge amount of effort to guard against oppressive commodification and exploitation. Considering the great number of lives that can be saved and enhanced, the effort is not likely to go to waste.

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