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Revising the National Organ Transplant Act (Word Count: 1198)

(Audience: Those of any age and profession among the general public who are either uneducated about the current organ shortage or oppose the use of the market system to remedy the problem.)

In 1986, Congress passed the National Organ Transplant Act (NOTA), which prohibits the sale of human organs. Since then, the law has been lauded as well as criticized. Since its passing, the supply of transplantable organs has diminished, while the need for these organs rises. The situation has become an organ shortage crisis, and it is responsible for thousands of deaths each year. Today, as waiting lists grow and black markets flourish, many are calling for reform. Potential solutions often focus on NOTA and its effect on the current organ procurement system. Unfortunately, the altruistic system used in the U.S. is not sufficient. Modifying NOTA to allow a hybrid market/donation system would rectify the current organ shortage by forming a larger pool of organs, making more cadaveric organs available, and decreasing reliance on illegal black markets.

According to economist David Kaserman, there are sound economic reasons that monetary compensation would increase the organ supply. From a supply-and-demand perspective, all organ transactions must, by law, take place at a price of zero. In the typical free market, for this price to be realistic, there must be little demand and a large supply. In fact, the opposite is true. Transplants have become more successful with medical advances, causing

greater demand for transplant organs (Kaserman 30). Meanwhile, the supply began to plateau in 1988, according to law professor Michele Goodwin (37). Goodwin notes that, in 2004, 12,974 kidneys were donated, while over 50,000 people needed kidney transplants (40). Were the U.S. government to provide a fixed amount of money to donors or hospital procurement systems, the increased incentive would increase supply.

An entirely laissez-faire organ market is no fairer than the current system and is reminiscent of the currently existing black markets. It would be preferable to constrict monetary payment to institutions. Today, hospitals have “little or no financial incentive to request organ donation from the families of recently deceased patients, because such organs cannot be resold” (Kaserman 29). Kaserman states that in many cases, the family of a deceased organ donor will not be asked to give consent, since there is no pressing reason to do so. Allowing the dispersion of set funds per organ could change this. In addition, an offer of monetary compensation to those who agree to donate their organs after death would increase the procurement of cadaveric organs. This was proposed to a sample of college students in a survey conducted by Kaserman, and yielded positive results:

“...These preliminary data suggest that... the market-clearing supply price for donors would have been less than \$1000. Because a single cadaveric donor typically yields several transplantable organs, a price of \$1000 per donor would suggest a genuinely trivial price per organ procured, particularly in comparison with the overall cost of a transplant operation.” (114)

Of course no individual should be required to accept such an incentive. In Kaserman’s survey, 2% of respondents indicated they would only be willing to donate for no payment (113).

Goodwin believes maintaining some of the altruistic system would, in fact, be best:

“One need not promote the eradication of altruistic donations as a resource, as those most in need of organ transplantation with very limited resources should have primary access to that system. Other alternatives should be available for those with greater resources... thereby freeing altruism to work for those who are truly the most vulnerable”... (40)

Supplementing paid transfers with the altruistic method would increase procurement and create a fairer system.

The benefits of this system would extend even beyond the saving of thousands of lives a year. The cost of dialysis and medications for a pre-transplant patient is far beyond the cost of the operation itself. Medicare’s End Stage Renal Disease Program, for example, requires the government to pay 80% of treatment costs for kidney failure patients until the operation. Over six billion dollars were spent on this program in 1998 (Kaserman 30). Needless to say, the waiting time has increased over the past decades. Todd Zwillich, a medical reporter, states that, in 2006, “...would-be recipients often wait 5 years or more for a match... Already average wait times for kidneys outlast median survival for patients with type O or B blood” (567). Patients on waiting lists not only suffer through dialysis and rigorous courses of medicine, but the likelihood they will survive the operation (if a matching donor is found) is greatly decreased over time (Kaserman 33). In addition, were the waiting time to be reduced, some of the billions of dollars that are now being used to fund treatment could be put toward awareness education and preventative medicine, thus further reducing the demand for organs.

Despite its potential, the idea of an organ market – even under a strictly regulated system – elicits strong opposition from many. In his article “The Body for Charity, Profit and Holiness,”

Mark Cherry, a professor of philosophy, explains one viewpoint:

“...Many view an organ market with deep moral repugnance. The concern is that it is precisely because of their general significance and intimate connection with persons that organs ought not to be sold. The body is part of the basic dignity of the human person”... (132)

There is much to contradict this belief in today’s society. Eli Friedman, a professor of medicine, points out that “We already market our bodies in various ways. A woman can sell her eggs... and rent her uterus. Men regularly sell their semen, and it is possible to sell one’s blood” (11). These practices seem to be ethically acceptable. In addition, one must question which is more morally reprehensible: setting a price on cadaveric organs, or allowing transplant patients to die while waiting for an organ that will never be procured.

In his book on organ procurement, Mark Cherry summarizes another concern, that allowing payment will lead to exploitation: “The concern is that... the poor [will] sacrifice their bodies for the health of the rich, while the rich gain unequal, and therefore unfair, access to a scarce public medical resource” (13). Not only would such a system be grossly unjust, but, as editor Alastair Campbell notes, this would damage the U.S. medical system’s reputation (“No Such Thing”). In any situation involving money, exploitation can never be entirely avoided. However, regulations can be applied to those who agree to donate their organs in exchange for money. In 2002, the U.S. Advisory Committee on Organ Transplantation (ACOT) mandated that living donors must be “competent... willing to donate, free from coercion, medically and psychosocially suitable” and “fully informed of the risks and benefits” (Committee on Energy and Commerce). Such restrictions should apply to those donating for monetary compensation.

This would also prevent what some people see as economic coercion – poor individuals being financially forced into becoming organ donors against their will.

The state of the organ procurement system in the U.S. is unacceptable, and many attempts to improve it have already failed, including dangerous options such as relaxing organ quality standards and lowering the minimum age to donate. The time has come to alter NOTA and experiment with a regulated market. No ethical difficulty involved can surpass that of allowing thousands to die when there is still an untried possibility that could save them.

Works Cited

Campbell, Alastair. "No Such Thing as Ethical Organ Market." *The Straits Times* [Singapore] 9 July 2008, Review sec. *LexisNexis Academic*. Web. 2 Nov. 2009.

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United States. Cong. House. Committee on Energy and Commerce. *Assessing Initiatives to Increase Organ Donations*. 108th Cong., 1st sess. H. Rept. U.S. Government Printing Office, 2003. Web. 31 Oct. 2009.

Zwillich, Todd. "USA Confronts Looming Organ-Shortage Crisis." *The Lancet* 368 (2006): 567-68. *LexisNexis Academic*. Web. 2 Nov. 2009.

## Annotated Bibliography

Campbell, Alastair. "No Such Thing as Ethical Organ Market." *The Straits Times* [Singapore] 9 July 2008, Review sec. *LexisNexis Academic*. Web. 2 Nov. 2009. The article expresses the view that commodifying organs is akin to treating the human body as a material possession, something to which the author is clearly opposed. The author fears that such a system would exploit the poor and purports that the poor would certainly make up the majority of the vendors due to their need for financial aid. His argument contains little fact to support it. The article can be used to define the concerns of those who oppose organ markets.

Cherry, Mark J. *Kidney for Sale by Owner: Human Organs, Transplantation, and the Market*. Washington, D.C: Georgetown UP, 2005. Print. The author, a professor of philosophy, provides an in-depth discussion on the moral issues surrounding the idea of monetary compensation for usable human organs. He examines in detail the arguments both for and against a market system within the contexts of philosophy, economics, and religion, but does not provide his own opinion on the matter. He quotes many authorities in various fields to explain in detail the viewpoints discussed. All statistics presented are well-documented. His book provides a background on the history of the issue.

Goodwin, Michele. *Black Markets: The Supply and Demand of Body Parts*. New York: Cambridge UP, 2006. Print. The author, a professor of law, details the current system of organ allocation, noting its failures and connecting it to the rise of black markets dealing in human organs, blood, and tissue. She provides a number of potential solutions, including legalizing collection of cadaveric organs without express permission (presumed

consent) and the commodification of organs. She herself proposes a hybrid system in which the current method of altruistic donation coexists with a regulated market.

Goodwin clearly defines the legal issues involved, but does not address the economic aspects of her proposal in detail. However, her argument is well-documented. It can be used to define a pro-revision view of the National Organ Transplant Act.

United States. Cong. House. Committee on Energy and Commerce. *Assessing Initiatives to Increase Organ Donations*. 108th Cong., 1st sess. H. Rept. U.S. Government Printing Office, 2003. Web. 31 Oct. 2009. An excerpt from a Congressional hearing, this report gives recommendations decided upon by the House of Representatives to attempt to increase the supply of organs. These recommendations include the addition of organ and tissue donation science to the curricula of public schools and the maximization of efforts to secure cadaveric donations. This hearing provides several potential solutions to the organ shortage that do not involve revision of the National Organ Transplant Act.

Zwillich, Todd. "USA Confronts Looming Organ-Shortage Crisis." *The Lancet* 368 (2006): 567-68. *LexisNexis Academic*. Web. 2 Nov. 2009. Zwillich, a health care reporter, discusses recent suggestions made by United States medical organizations to increase organ donations, including relaxing restrictions on who may or may not donate and redefining the moment a person may be considered dead. The author cites arguments from those who believe a regulated organ market is the only solution and those who believe it would be far worse than the current system. He does not provide his own opinion, but presents the pro-market position in a more plausible light. His article can be used to describe a pro-market viewpoint.

