
A Catholic Perspective on Organ Sales

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ABSTRACT

In this article, I address the issue of the sale of human organs and the moral implications of a market in human organs under the aegis of *Christian Bioethics*. I argue that moral issues of this kind cannot be adequately addressed from the point of view of moral frameworks which point exclusively to procedural norms. Rather, a moral perspective must embody some substantive norms derived from a particular content-full moral or theological perspective. The substantive norms to which I appeal in this article are those of Roman Catholicism. The most important sources cited include the works of Pius XII (1956) and the works of John Paul II (1985 and 1991). The conclusion reached is that not only is it morally permissible for Catholics to participate in a market in organ sales but it may also be prudent public policy.

Key words: altruism, capitalism, Catholicism, human organ sales

I. THE CHURCH'S POSITION ON TRANSPLANTATION AND THE SALE OF HUMAN ORGANS

The position of the Church on the transplantation of body organs has both positive and negative dimensions. The positive dimension may be summarized as follows.

1. Transplantation between species, from animal to human, in general, is not morally forbidden.
2. Transplantation from a corpse to a living being is permissible.

From the moral and religious aspect, there is no objection to the removal of a cornea from a corpse.... For the patient who receives them ... they represent a restoration and a correction of a defect, suffered from birth or brought on by accident.... As to the corpse from which the cornea is taken, nothing is done to affect either goods to which he has a right or his right to these goods. A corpse no longer is a subject of a right in the strict sense of the word ... (Pius XII, 1960, p. 379).¹

However, physicians

should not be permitted to undertake excisions or other operations on a corpse without the permission of those charged with its care, and perhaps even in the face of objections previously expressed by the person in question (Pius XII, 1960, p. 382).

3. Persons may choose in their wills to dispose of their bodies for legitimate medical purposes.

[M]edical science and the training of future physicians demand a detailed knowledge of the human body, and that cadavers are needed for study.... It also follows from this that a person may will to dispose of his body and to destine it to ends that are useful, morally irreproachable and even noble (among them the desire to aid the sick and the suffering) (Pius XII, 1960, p. 381).

As Pope Pius XII argues:

the public must be educated. It must be explained with intelligence and respect that to consent explicitly or tacitly to serious damage to the integrity of the corpse in the interest of those who are suffering, is not a violation of the reverence due to the dead since it is justified by valid reasons. In spite of everything, this consent can involve sadness and sacrifice for the near relatives, but this sacrifice is glorified by the aureole of merciful charity toward some suffering brothers (1960, p. 382).

4. Organ transplantation from a live donor is also permissible. Some had interpreted a 1930 remark by Pope Pius XI (*Casti Connubii*) to rule out this possibility.

[P]rivate individuals ... are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body.

However, everything turns upon how one understands the meaning of rendering oneself unfit for one's natural functions. Pope John Paul II makes clear that this obligation does not rule out live organ donation for transplantation, provided that one does not seriously endanger one's own health, identity, or adequate biological functioning.

Furthermore, a person can only donate that of which he can deprive himself without serious danger or harm to his own life or personal identity, and for a just and proportionate reason. It is [also] obvious that vital organs can only be donated after death (1991, pp. 12-13).

5. Organ donation is neither a duty nor an "obligatory act of charity" (Pius XII, 1960, p. 381).

6. Specifically regarding organ sales, compensation is not in principle ruled out.

[I]t would be going too far to declare immoral every acceptance or every demand of payment. The case is similar to blood transfusions.

It is commendable for the donor to refuse recompense; it is not necessarily a fault to accept it (Pius XII, 1960, pp. 381-382).

In short, Pius XII concludes that from the perspective of Roman Catholicism while organ donation is commendable, the for-profit sale of human organs for transplantation is permissible.

7. Although either the donor or the recipient may not share Catholic beliefs that the human being is formed “in the image and likeness” of God, it would seem important that Catholic medical personnel who participate in the transplantation of a “bought and sold” organ do; this follows from an analogy with blood transfusions, where one does not inquire into the religious beliefs of patients in order to determine if they are worthy of giving or receiving such a transfusion.
8. All other things being equal, potential recipients who share Christian beliefs about the dignity of the body might be preferred under conditions of scarcity in order to promote ends that are useful, morally irreproachable and even noble, such as the desire to aid the sick and suffering, while upholding the dignity and divine origin of life.

The negative dimension may be summarized as follows.

1. The following conditions would render the sale of human organs morally impermissible: (a) if the transaction were carried out in a manner that obfuscates, denies, or undermines the belief in the divine origin of human life or the dignity thereby due a corpse; or (b) if the transaction, and the compensation gained, is motivated by or used for illegal, immoral, or irreligious purposes.
2. Transplantation from a corpse requires that the corpse be treated with the respect due to “the abode of a spiritual and immortal soul, an essential constituent of a human person whose dignity it shared” (Pius XII, 1960, p. 380).
3. The transplantation of the sexual glands from animals to humans is to be rejected as immoral (Pius XII, 1960, p. 374), because to so transplant would straightforwardly deny the sacred element in humanity and the goods of human procreation.
4. As Pope John Paul II has expressed the concern, if a particular sale promotes a “reductive materialist” conception of human life, it is unacceptable:

The body cannot be treated as a merely physical or biological entity, nor can its organs and tissues ever be used as items for sale or exchange. Such a reductive materialist conception would lead to a merely instrumental use of the body, and therefore of the person. In such a perspective, organ transplantation and the grafting of tissue would no longer correspond to an act of donation but would amount to the dispossession or plundering of a body (1985, p. 221).

Yet, the for-profit sale of an organ or the acceptance of recompense does not of itself reduce organ donation to a mere instrumental use of the body; it thus does not in itself render the donation less morally praiseworthy.

5. Society, specifically in the form of its political organization, the State, may not commandeer the organs of one human being without the permission of that individual person. The relation of individual human beings to the larger body politics is moral, not organic.

[T]he total organism which is humanity has no right to impose on individuals demands in the domain of physical being on the grounds of any natural right of the 'whole' to dispose of the parts (Pius XII, 1960, p. 376).

Moreover,

[E]very moral association of men, if we look to its ultimate usefulness, is in the end directed towards the advancement of each and every single member, since they are all persons (1960, p. 377).

This circumstance rules out any form of coercive donation, including organ procurement strategies such as presumed consent, in which, absent specific refusal, one is presumed to have consented to donation.

II. THE IDEAL PUBLIC POLICY

From a Catholic perspective, the ideal public policy would be one in which everyone voluntarily donated their organs, especially to private medical-charitable agencies and preferably to those with a Christian commitment honoring the divine origin of human life.

It is important to spell out why there ought not to be a government agency involved in the process other than to prevent force or fraud. In a secular society, or a society not committed to the Judeo-Christian tradition, government neutrality cannot guarantee that transplantation will be conducted with larger moral and theological purposes in mind. Government sponsored and run programs are notoriously inefficient; they inevita-

bly undermine the independence and integrity of private, charitable intermediate institutions, especially those committed to religious values.

Government programs discourage private charity, partly because everyone assumes that someone else is responsible for taking care of the problem. Given such circumstances, the commendable aspects of charity evaporate. It is inherently impossible for the government or a governmental agency in a modern liberal culture, such as the United States, to formulate an objective policy to promote a canonical, content-full account of human good. One difference between the classical world (including medieval Christendom) and the modern or post-Renaissance/post-Reformation world is that the former believed in a collective good whereas we as moderns do not. A collective good, as opposed to a common good, is a larger holistic good that transcends and encompasses individual good. Modern liberal cultures, in large part because of the influence of Christianity, believe in the unique value of individuals whose personal autonomy cannot be overruled or “trumped” by any notion of a larger collective good. Moderns can and do subscribe to a notion of a common good understood as the background conditions which promote personal autonomy and integrity. This common good can never require, for example, the sacrifice of any individual or his organs for a larger good. The common good is negotiated in politics but always with the understanding that some things like individual autonomy cannot be negotiated away or contravened. This view is reflected in doctrines of rights, in the rule of law, and in the presence of a constitution. There is no organization that can either formulate or delegate to others the formulation of a policy of the collective good for such a good simply does not exist.

Governments and their agencies can arrive at political resolutions of largely economic conflicts; what governments cannot do is canonically resolve moral dilemmas. Attempts to establish government programs to resolve ethical issues involving organs or anything else (a) ignores the absolute inability of governments to perform this task, (b) abdicates responsibility for moral decisions, and (c) transfers such responsibility to a group which in the end can only voice its own private interests or mask those interests in the name of a mythical collective good.

For the same reason, namely the absence of any objective collective good, no other lay body, such as a group of physicians, has moral authority to determine and enforce a policy of organ donation/sales and transplantation. Training as a physician confers technical skill rather than moral expertise or moral authority. Technical scientific skills are necessary and important but they are never sufficient conditions for determining moral decisions. Physicians themselves often recognize this circumstance; this

explains, for example, why medical ethics has become such a large and autonomous discipline.

Catholic medical institutions, under this policy, should be more actively involved in promoting organ donation and in establishing elaborate protocols for guaranteeing the moral integrity of transplantation. Since there will be serious transaction costs involved in this process, such as significant overhead, some consideration must be given to how such costs will be covered.

III. A SECOND-BEST POLICY: TAX-REDUCTION OR TAX-CREDIT IN SUPPORT OF THE IDEAL PUBLIC POLICY

On the assumption that an ideal policy of voluntary donation will not produce the requisite supply of organs for transplantation, the need for a second best or supplementary policy is indicated. Such a policy might call for the creation of a limited market in human organs in which the government offered tax credits to those who donate. There are many advantages to such a program. First, the government would not be involved in administering the program of transplantation, so the disadvantages of government run programs are evaded. Second, many individuals would like to donate their organs but do not and cannot know the specific individuals who will benefit from the transplantation. They find it difficult to imagine a generalized beneficiary and hence the cultivation of the commendable aspect of donation for them is lost. In such circumstances, many individuals are less likely to donate. By having a system of tax credits for organ donation, individuals can at least imagine the benefits that will accrue to the heirs of their estate. Third, among the heirs one might count newly created Catholic centers for organ transplantation. Such centers might be the beneficiaries both of direct tax-credits and additional donations of those newly educated about the importance of organ transplantation.

At some point the question will be raised: how much of a tax credit? Economics will inevitably demonstrate that it should be equal to the market value of the organ. Without some sense of the market value of an organ, including the costs of transplantation, the amount set would be arbitrary and likely counter-productive. Something similar already operates with regard to the donation of works of art. That is, some knowledgeable person estimates the market worth of the charitable donation. In short, without some kind of market in human organs, a tax credit system that encourages organ donation, even for the right reasons, probably will not adequately function or even come into existence. It is commenda-

ble for the donor to refuse recompense; it is not necessarily a fault to accept it.

IV. A THIRD-BEST, BUT PRUDENTIAL, POLICY: CATHOLIC PARTICIPATION IN AN ORGAN MARKET

In an imperfect world one may use markets morally to promote noble ends. In fact, markets may be the best means for accomplishing such ends. The following argument moves through two stages: (a) establishing a market where none exists and (b) operating within a pre-existing market.

If there is to be a market, then for reasons already enumerated it should not be run by a government agency. In a private, that is non-government, market, sales of organs would originate with individuals selling organs either to other individuals, brokers, or quasi-charitable medical agencies operating within that market. Further sales or transactions would occur when organs are resold or transmitted from the agencies to individuals. There is no reason why any of the parties involved in these transactions need show disrespect for the divine origins of human life. The market can be viewed simply as a device for fostering noble ends in the most expeditious manner.

It may be objected that some individuals who sell their organs do so from either non-religious motives or even immoral motives. Aside from the difficulties of determining the motives of specific sellers, those agencies that buy the organs will have the right motives for so doing. In short, a quasi-charitable Catholic transplantation agency can help to render the process sacred by treating the organ in the right spirit despite the intentions of the original or even intermediate sellers. There seems to be no difference here from the purchase of blood supplies. One does not refuse to buy plasma without first investigating the motives of the original person who produced the blood.

Moreover, if the supply were large enough one would not refuse a transplant to someone who lacked faith in the divine origin of life anymore than one would refuse a transfusion to a non-believer. There is always the possibility that carrying out the transplant under religious auspices may have an effect on the recipient. On the other hand, given the finite supply, potential recipients who took the sacred nature of the process seriously would certainly seem entitled to some preference in keeping with the moral and theological dimensions of the process.

Finally, the existence of a market would allow such agencies to engage in differential pricing; that is, charging less to some and more to others

depending on any number of variables, including income status. Organs could then become available to many who would otherwise not be able to afford them or even have them in the first place. Agencies in a market could thereby add a noble dimension to the world of medicine that would otherwise not exist. Rather than favoring the rich, such a market would make treatments available to the poor that otherwise would likely not exist. This circumstance seems to be true of markets in general; namely, they expand the availability of services and commodities. There is nothing in the existence of a market that in itself undermines belief in the divine origin of human life and the respect due to the body.

This brings us to the second set of circumstances: namely, what should one do with a market that already exists. In large secular societies, there already exist and will continue to exist markets in health care resources and services. Everything that I have argued for so far applies to this market. We should lobby for tax incentives for organ donations and Catholic agencies should be organized and energized to see that the process remains as close as possible to its sacred intentions. As Pope John Paul II reminds us in his reference to the fourth century Doctor of the Church, Saint Basil the Great: “As regards medicine, it would not be right to reject a gift of God (that is, medical science), just because of the bad use that some people make of it; we should instead throw light on what they have corrupted” (*Great Rules*, 55:3; John Paul II, 1985, p. 221).

It is often argued, naively, that a market in organ sales adds additional expenses: acquisition costs (compensation to the original donor or “owner”) and transaction costs for administering the program. The reason such arguments are naïve is that without compensation there would be no market and the supply would be all too low. The analogue to this argument would be that paying farmers for producing food merely adds costs without off-setting benefits. Rather than simply adding costs, compensation creates the motivations which in turn tend towards the production of a much greater organ supply than would otherwise exist. Those who argue against a market in human organs presuppose that there are other ways to obtain organs, such as through government coercion or a state sponsored program of publicity; yet such programs also cost money. Moreover, any form of government coercion or enforced donation would violate Catholic teachings that organ donation must be voluntary; while commendable, organ donation is neither a duty nor an obligatory act of charity.

It is often assumed within the medical community and elsewhere that markets are immoral or amoral at best. By and large this reflects both ignorance of how markets operate and misconceptions about the alternatives to markets. While I do not have time here to dwell at length on

economics, I note in passing that markets always presuppose a larger cultural and moral context, that explanations of markets based upon human selfishness are just that, explanations, and that these latter explanations can and have been rejected as inadequate. The only alternative to a market is a system of centralized allocation. As I have already argued, centralized allocation presupposes a by now discredited mythical conception of a collective good.

A large part of our educational system, including the education of physicians, since the Enlightenment has focused on technical expertise. One of the great myths that has haunted us for the past two hundred years is the belief that there can be a social technology (including decisions about how to deal with organs) based upon science in the same way that there is physical technology based upon science. This myth is now largely discredited (see, for example, Capaldi, 1998). Any centralized system, as opposed to a market system, will invariably be governed by purely political considerations or the coercive imposition of a particular content-full moral code on everyone, whether individuals subscribe to that code or not.

Physicians and medical personnel, who resist this line of argument, should perhaps examine their own motives. How many medical personnel mistake their technical medical expertise for moral expertise? How many are motivated by the unfounded and highly questionable belief that their personal control of the transplantation process produces more good than a market system? Are these people assuming the same role that should be denied to governments? Perhaps such medical personnel would do well to consider that a market economy is the best foundation for the advancement of science and technology, that this point has been recognized about the economy in general, and that there is no reason to assume that it does not apply to medicine.

An additional common objection to a market in organs is concern about exploitation of those in poor countries selling their organs for the benefit of rich people in rich countries. Force, fraud, and medical misrepresentation aside, there are several responses to this legitimate concern. To begin with, there is a misuse here of the term 'exploitation'. To 'exploit' people is to use them for one's own selfish ends, that is, without consideration of their interests. It is not exploitation when people are given compensation for an organ. Perhaps what is meant is that the exchange is uneven in that the seller gets "less" from the exchange than the buyer or the intermediaries. This would be difficult if not impossible to determine because the value of income from the sale of a kidney might make an extraordinary difference in the lives of the seller and the seller's family.

Moreover, a market in organs may provide poor people with the resources to help their families and eventually even to climb out of poverty. Perhaps this is one of those occasions in which while it is commendable for the donor to refuse recompense, it is not necessarily a fault to accept it. As serious economic studies have shown (Berger, 1986), many third world countries began to climb out of poverty precisely this way; that is, by supplying something that wealthier economies needed. Again, there seem to be stages of economic growth in which development at first accentuates the gap between the rich and the poor but that gap later narrows. The system, moreover, does not work in just one direction. Poor countries are the recipients of benefits from technology largely developed and paid for by richer countries who absorb the costs of research and development. Start-up costs are also less when poorer countries borrow the latest technological advances. It is not capitalism or a global economy that causes poverty; rather the free market economy appears to be the only real hope of escaping mass poverty.

We must never forget that the question is not whether this is “fair” but whether given historical and empirical realities there is a better alternative. The only alternative to a market is a centrally controlled system of production and distribution and, as I have repeatedly stressed, such systems simply do not work and are frauds to boot. The issue is not whether it is fair, anymore than whether we are concerned with whether the genetic lottery is “fair”. The issue is how best to minimize suffering in a way that does not compromise our religious commitments. There is nothing in Christianity which entails or requires centralized governmental economic control.

There is an almost Alice in Wonderland quality about this objection. Is it really “fair” that those of us who grew up in the United States and who became professionals do not have to sell our organs to send our children to college? Should all Ph.D.s and M.D.s in the United States be forced to provide one kidney free of charge in order to make up for the unfair advantages they have enjoyed because of genetic or demographic lotteries? Where would this line of argument end?

What is being suggested by this line of objection is the following: we do not really want the government to supervise the process of organ transplantation. An alternative, which some people seem to want, is a body of professionals (presumably medical doctors) who have autonomous control of the organ transplantation process. And just how would that operate? Would the “professionals” determine cases based upon merit? Who ought to define “merit” or “desert” and on what grounds? Would the “professionals” determine cases based upon what would maximize benefits in the

long run? Who ought to determine long run “benefits” and given what criteria? As Hayek demonstrated, such calculations are beyond human capacity. Would the “professionals” strive for equality? If so, then either an equal redistribution would in a very short time progress to a market with unequal results or such equality would have to be maintained by a totalitarian despotism the likes of which we have never seen.

It is also sometimes claimed that the autonomy and dignity of being human is undermined by organ sales. Yet, it is difficult to see how rendering it illegal for someone to sell an organ constitutes respect for the denied seller as opposed to just being an example of outright paternalism. Note, however, that a significant percentage of those who object to organ “sales” are perfectly comfortable with “compensation” for donation. Objections based on supposed autonomy and dignity costs are thus likely in large measure rhetorical.

A similar objection concerns the notion that a market in organs constitutes commercialization and thereby denies the inherent dignity of the individuals involved. Sometimes this objection reflects a general repugnance about commerce. There are a number of bizarre aspects to this objection. When a kidney is donated and the recipient pays for the transplant (via insurance or other means) the hospital and physicians “profit” from performing the transplant. Does this sully the act of donation? Should all transplant operations be performed gratis? What about all other medical services? Why should physicians be compensated but not donors? Such an objection either displays ignorance of the importance of commerce for human societies or expresses preference for a feudal-hierarchical society. More serious is the assumption that “commercial” transactions are indifferent to any values other than material greed. Surely those committed to medical values in general and Catholic values in particular would rightly object to commerce in organs that ignored important moral and spiritual considerations. Indeed, there is nothing that precludes Catholic participation in an organ market for the express purpose of seeing to it that these moral and theological values and goals are given serious consideration.

Many are concerned that a market in organs would lead to a slippery slope in which some individuals would consider donating all of their organs (a form of suicide) under economic duress. Yet, the existence of such a market does not preclude outlawing some forms of commercial transaction. Similarly, others express concern that a market in organs would undermine or discourage those who wish simply to donate. Individual cases aside, this is an empirical question. The proponents of a market can fairly reply that a market would increase availability. In short, it provides

neither sound argument nor significant rationale for forbidding a market in human organs. Empirical questions should be settled empirically: let us try a market and see what happens to the organ supply.

Opponents of a market in organs are rightfully concerned about fraud and the raising of undue concerns in the minds of those who are terminally ill about the quality of care that they will receive. None of this precludes the usual legal safeguards and all of this seems to provide a space for injecting Catholic/Christian values into the market.

Markets introduce their own inherent positive values. A market will improve access because it permits demand to be equated with supply at equilibrium price levels. Considerations of profit also encourage management efficiency. In a modern liberal society that is religiously “neutral” and has a market economy, there will and ought to be a market in human organs. It is precisely such a larger context that permits and guarantees that Catholic institutions can participate and that Catholic values will be honored. This should be viewed as a great opportunity. By entering the market, Catholic medical institutions can within their own confines render the process sacred and, by example, help to promote the sacramentalization of the process. The presence of religious institutions within the larger market acting as non-profit commercial entities will lead to the establishment of standards in comparison to which we can make meaningful judgments about regulating the for-profit part of the market.

The existence of a market could conceivably raise additional funds that could be used to render Catholic medical institutions more solvent and thus more able both to promote Catholic medical values as well as to help many of those who cannot be adequately assisted under present financial circumstances. This argument can be broadened to encompass the notion of Catholic sponsored health insurance. The more Catholic institutions operate within a market context the more independent they can become of government intrusion and eventual secularization. Individuals who are either poor or who have limited resources have the most to gain from a large scale market in organs: they would have greater access to organs because there would likely be more organs available; moreover, they or their relatives or heirs would have access to financial resources that would otherwise not exist.

The following self-test² is suggested as a way for readers to locate their own position. The test provides a way of determining at what level some moral consensus can be formulated: 1. An adult donates a kidney for transplantation to a family member. 2. An adult, who cannot donate directly to a family member, engages in a tissue exchange with a tissue bank that can supply the needs of the sick family member. 3. An adult donates a

kidney in exchange for medical care for a seriously ill family member, care that could otherwise not be available for financial reasons. 4. An adult accepts compensation for a kidney donation and uses the compensation in order to provide other family members with substantial education or economic opportunities that would otherwise not be available. 5. An adult accepts compensation for a kidney donation [notice how I avoid the term 'sell'] in order to obtain substantial education or economic opportunities that would otherwise not be available for himself in order to support a family. 6. An adult accepts compensation for a kidney donation in order to buy lottery tickets.

Once the existence and moral legitimacy of the larger market in organ sales is recognized there will be additional ethical issues raised within Catholic Medical Transplantation Agencies. Such issues would form the substance of the next stage of this discussion.

NOTES

1. Pius XII's position has been reaffirmed by Pope John Paul II (1985).
2. Adopted from B.M. Dickens (1990, p. 905).

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