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Question: Should kidney sales be legalized and arranged by a national regulatory body, or should stronger enforcement of existing laws and renewed organ donation campaigns be pursued instead?

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The World Can Benefit From Legalization of Kidney Sales

Cambridge, M.A. — Every year, thousands of lives around the world are lost because of a lack of kidneys available for transplants. If kidney sales in the United States were legalized and arranged by a national regulatory body, countless lives would be saved and the international community could see the benefits of organ sale legalization. Many arguments against the legalization of kidney sales are not justified and are not sufficient enough to outweigh the benefits.

The sale of human organs is already against the law in nearly every country, but it would be naïve to think an active black market does not exist. Illegal transplants are conducted regularly in countries such as Israel, India, Turkey, China, Russia, and Iraq. In some cases, the system is highly organized and information is spread by word of mouth. Iraq seems to be the nation with the highest success rate of kidney transplants, with affordable prices and reliable surgeries (Finkel:28). It is proof that organized and legalized kidney sales could result in hope for thousands of patients.

Of course, there are problems that stem from the black market in kidneys. That is the reason to push for legalization, since the outlawing of kidney sales is what leads to a black market and a lack of regulation. This in turn causes people like Moshe Tati, whose case is described in a *New York Times Magazine* article (Finkel:28), to undergo botched surgeries and then be left with minimal options. In other words, Tati was ripped off.

Because he had suffered a heart attack, there was virtually no chance he would receive an organ through donation – he was at the bottom of the waiting list. His only choice was to buy a kidney. Unfortunately, his surgery was unsuccessful and an artery or vein in his body was probably accidentally pinched shut. He could not sue because there was no contract. The lack of proof and traceability that is inherent in a black market was what really hurt Tati, not the actual surgery. With a legalized and regulated system, the surgeon would have been held accountable, and Tati could have had more options and more hope. Instead, he was virtually forced to accept another deal from the broker, and trust him once again with his life.

This type of scenario is likely to continue occurring if kidney sales continue to be outlawed. Legalization of the process would help alleviate the crisis of organ transplants around the world. Right now, illegal transplants are taking place every day, but in a chaotic manner. As Dr. Michael Friedlaender, a nephrologist in Israel has said, “What’s happening now is absurd. Airplanes are leaving every week. I’ve seen 300 of my patients go abroad and come back with new kidneys... it’s a free-for-all (Finkel:28).” Order could be obtained through legalization, and patients would no longer be “exposed to unscrupulous treatment by uncontrolled free enterprise,” as Friedlaender put it.

So why is there any reason to oppose legalization? Some people oppose the practice of selling human organs on a moral basis. For some reason, medical associations around the world have chosen to decry the sale of organs. It has been deemed “morally and ethically irresponsible,” or “inhumane and unacceptable.” Even Pope John Paul II said that buying and selling organs violates “the dignity of the human person (Finkel:28).” But just why is it so ethically wrong? And how is it different, or any worse,

than selling one's sperm or egg cells? It is already legal to sell sperm and ova, often for very high prices. Advertisements seeking reproductive cells from healthy, intelligent college students can be seen in newspapers. There is no need to debate the sale of organs if it has already been deemed acceptable to sell sperm and egg cells. After all, both actions are almost the same thing – a person willingly chooses to give away a part of their body in exchange for monetary compensation. It is in now way undignified to help another human being while being paid – our society functions on this principle. If anything, the commercialization of semen and ova is more morally questionable than the sale of organs, because those cells have the potential to create entirely new human beings, while an organ does not. It does not make sense to be arguing against the sale of kidneys when semen and egg cells are currently being bought and sold.

Thus, the only valid reasons to oppose legalization would have to either be for medical considerations, social concerns, or the presence of a better alternative to solve the growing organ waiting list dilemma. There are some people who still feel the selling of a kidney is a risky move from a medical standpoint. Kidney removal can be a tricky surgical procedure, they say, and a minority of kidney donations results in short-term complications. At the same time though, many doctors assert that there is no evidence that kidney donation has any negative health effects, and insurance companies don't even raise rates for people who have donated kidneys (Finkel:28). In any case, something should not need to be absolutely risk-free in order to be legal. People should be allowed to pursue a course of action as long as they are making an informed decision and choose to accept the possible consequences. For example, the negative effects of tobacco use have long been known, but society has decided it should still be kept legal. We have

decided that the public is reasonable enough to judge for themselves how their actions will affect their bodies, so the same principle applies to organ donation or sale.

Concerns about legalization causing the exploitation of the poor are also not wholly justified. First of all, if the opportunity to sell kidneys in return for money would force the poor population to be treated as “bags of spare parts,” as Berkeley professor Nancy Scheper-Hughes has said, how would the legality of the practice make any difference? Whether or not the selling of kidneys is officially outlawed or not has not stopped the sales from occurring anyway. If kidneys are going to be sold, it might as well be under a regulated and controllable system. This would increase the protection of all patients and reduce the number of people who are haphazardly operated on and then left to die. I believe it is wrong to make the decision for anyone wanting to sell a kidney, even if they are poor, in an attempt to “protect” them from exploitation. We should not have the ability to decide on the property rights of other people’s bodies.

Scheper-Hughes argues that “turning one person’s poverty into an opportunity for someone else is a violation of the most basic standards of human ethics. Doctors should not be involved in transactions that pit one social class against another (Finkel:28).” However, it is not simply a matter of the poor giving an opportunity to the rich. A nationally-encompassing legalized process could potentially eliminate the need for buyers to pay large sums of money. Even if we assumed that kidney sales and kidney purchases would be lopsided in terms of social class, both sides are given an opportunity to benefit. The person receiving the kidney obviously benefits from it; his or her life may be saved. But the person who sells the kidney is receiving money, which could make a huge difference in their life. It could bring them out of poverty, or allow them to afford

medical care which could save even more lives. It is not as simple a picture as Scheper-Hughes paints of one side of society gaining from another.

Scheper-Hughes also says that the ethical justification for legalization allows “one relatively privileged population [to] claim property rights over the bodies of the disadvantaged.” Giving the opportunity to sell a kidney to an entire population is not nearly equivalent to claiming “property rights” over a certain group of people. Because the kidneys would be bought and sold at will, everybody still would have control over their own “property,” that is, their own bodies. People are not being exploited if they are simply given an extra option that they never had in the first place, at least not legally. Also, Scheper-Hughes is clearly categorizing the rich population as “advantaged” and the poor people as the “disadvantaged”. That distinction is not, and should not, always be based on money. If one were to consider the situation from a health perspective, aren't the kidney sellers advantaged, while those in need of kidney transplants are medically disadvantaged? One could turn the argument around and say the system would be oppressing those that are waiting for kidney transplants, by forcing them to whip out their money. The population of people with healthy kidneys would be benefiting at the expense of those unfortunate enough to need a transplant.

Now, the alternatives to legalization, besides doing nothing, would be to try to enforce the laws more effectively, or pursue more aggressive organ donation campaigns. The enforcement of a ban on organ sales is obviously not easy, or it would not be occurring so rampantly in the first place. Scheper-Hughes says that we should strive toward a firmer enforcement of the law rather than consider legalization. She also notes that almost no one in the world has ever been found guilty of taking part in the organ

black market. However, is this simply because of lax enforcement in the status quo, or is it due to the difficulty in getting evidence and proving the guilt of suspected wrongdoers? If it could be proven that increased efforts to enforce the law would actually make a difference, then we could consider the option. However, I suspect that the difficulty in tracing and convicting every person who decides to buy or sell a kidney is, and always will be, inherent in the black market. The lack of convictions that has occurred so far is in no way an indicator that stronger enforcement is needed. Rather, it represents the difficulty of such an endeavor and points toward other alternatives. It is also likely that a stricter enforcement would lead to efforts to create a more covert black market. This would only cause the surgeries performed to become even more unprofessional and secretive. Surgeons who were involved in the market would fear being caught and would probably take extra precautions to hide their identity. Even the brokers would probably wish to remain anonymous, and people like Moshe Tati could not be given a second chance, because they would not know who to contact or who they had arranged the deal with.

Organ donation would be a viable alternative if the public were more willing to *donate* their organs. However, as much as we would like to believe in altruism, the number of human organ donors is simply not nearly enough. Without compensation, the majority of people are not very willing to part with their body parts. The many campaigns and marketing efforts to increase the number of organ donors over the past decade were not successful. While the amount of organs donated did increase, the waiting lists for them grew multiple times faster (Finkel:28). It is unlikely that any new efforts to augment organ donations would be successful, especially with the public

perception that cloning or xenotransplantation will someday solve the organ transplant problem. As the waiting lists continue to grow, it would also be unwise to rely on future developments to make xenotransplantation or genetically manufactured body parts available. The ethical dilemmas that arise in the use of such technologies would complicate matters even further.

More than 100,000 people die each year in the United States alone while waiting for an organ (Rifkin:21). At the turn of the century, more than 2,500 of those were Americans waiting for a kidney, and 50,000 people around the world died that year for the same reason (Finkel:28). This number will not decrease by itself. Obviously, the best, safest, and most natural solution is to perform organ transplants – in the case of kidneys – from one living donor to another. But since it is apparent that pure kidney donation will not be sufficient for the world, we must turn to the legalized sale of kidneys as the most sensible solution.

After legalization, kidney sales should be regulated and arranged by a national regulatory body in order to keep all transplants under control and accounted for. Illegal brokers would no longer be needed, and people in need of kidneys would simply need to contact the regulatory organization. Because the need for brokers would not longer exist, more money would end up going to the sellers (Finkel:28). In the ideal scenario, the money saved from the decreasing number of patients on dialysis would allow the people needing kidneys to receive the organ transplant for a small or nonexistent fee. After all, it is not realistic to assume that everybody who needed a kidney could afford the hefty fee. Moshi Tati was lucky enough to be able to work his job while on dialysis, and gathered almost \$100,000 from donations alone – a very unlikely scenario. With the appropriate

regulation, both the poor and the rich would benefit from the system, the overall safety of the procedures would be increased, and sellers would profit considerably.

This kind of legalized coordination has already been supported by many lawyers and doctors. Policy makers need to realize that the current laws do no good to prevent the sale of human kidneys around the world. It is time to understand why the sale of kidneys is not morally objectionable, and why a legalized and regulated market should be implemented to begin saving thousands of lives.

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