

An Ethical and Practical Dilemma: Legalizing the Sale of Human Organs

Alana Oppermann^{1,*}

¹University of Maryland

Abstract

There are over 100,000 people waiting for life saving organ transplants in the United States. To put this in perspective, even the largest football stadium in the U.S. could not fit this number of people. In 2021 alone, 6,000 people died while waiting for a transplant. Every day, 17 people die waiting, and every 10 minutes, another person is added to the waiting list (“Organ Donation Statistics,” 2023). These numbers are expected to rise due to the lack of organs available, and the increasing need for organs, especially kidneys.

Introduction

There are over 100,000 people waiting for life saving organ transplants in the United States. To put this in perspective, even the largest football stadium in the U.S. could not fit this number of people. In 2021 alone, 6,000 people died while waiting for a transplant. Every day, 17 people die waiting, and every 10 minutes, another person is added to the waiting list (“Organ Donation Statistics,” 2023). These numbers are expected to rise due to the lack of organs available, and the increasing need for organs, especially kidneys.

Kidney disease prevalence in the United States is increasing at an alarming rate.

According to the American Kidney Fund, kidney disease affects approximately 15% of adults which is equivalent to 1 in 7 people (2023). This means 37 million Americans are living with Kidney Disease. The most common form of treatment is dialysis, which only extends life expectancy by 5-10 years. With a kidney transplant, life expectancy increases to 15-20 years from a deceased donor, and increases even further to 20-25 years from a living donor (“Kidney Transplant FAQs,” 2022). However, the current system in the U.S. for organ transplantation relies on only altruistic donations, and most of these donations are from deceased donors. This current system has been insufficient in supplying the demand for organs and this issue is now referred to as the organ shortage crisis.

As of 2023, the Organ Procurement and Transplantation Network began working on simulated models for policies for allocating kidneys and pancreas which has brought more attention to current issues regarding the organ transplantation system [13]. An obvious answer to alleviating the organ shortage is to increase the number of organs available, but the methods in doing so are highly debated. A possible solution that has been increasing in popularity and discussion is legalizing the sale of organs. This has sparked an ethical debate among those who

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Corresponding author:

Alana Oppermann, University of Maryland

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support legalization, and those who do not. This paper presents an argument for legalizing organ sales, specifically for kidneys because they are the most needed and have the highest success rates in transplantation. There is insufficient evidence and research to argue for the legalization of other organs. In the argument for legalizing organ sales, suggestions for regulations in an ideal market will be outlined throughout this paper. A well-regulated kidney market could increase organ supply, protect donor and recipient rights, and eliminate the dangerous black-market organ trade, all while addressing ethical concerns by ensuring safety, fairness, and respecting autonomy.

Argument against: Inevitable Exploitation

In order to propose a solution that involves legalizing organ sales, it is important to understand and address the concerns of those who are against it. A recurring argument among opponents for organ selling is that an organ market would unavoidably exploit the poor. In a market without proper regulation, it is true that poorer individuals would feel disproportionately greater pressure to sell their organs than would the wealthy. Individuals seeking to alleviate financial hardships would likely donate out of desperation, without fully understanding the long term consequences or their rights. Researchers of transplantation surgery have expressed their concern of what this would look like in America. Anya Adair questioned “how would our society view individuals in our own country driven to donate a kidney to pay off credit card debt, college fees or to satisfy a drug problem?” [1] When payment becomes an option in transplantation, it is possible that it will do disproportionately more harm to the poor.

However, there are regulations and policies that can be put in place that can prevent exploitative transactions. Exploitation of the donor can be avoided if selling the organ is equally beneficial for both the donor and the recipient. Since the recipient will be prolonging their life, the donor should receive life long full coverage health insurance to compensate for any complications. For those in poverty, this would be offering a benefit that they would not have had otherwise, which means an ideal market could be more helpful than harmful for the poor. According to the Kaiser Family Foundation, “In 2021, 64% of uninsured adults said that they were uninsured because the cost of coverage was too high” [16]. An ideal organ market with this regulation could reduce this percentage. Selling an organ could be a way to alleviate financial hardships for the poor which is ethically permissible. Bioethicist Samia Hurst expands on this, she states “What if we have a duty to alleviate poverty: would offering money for organs not really be extorting organs against something—a way out of poverty—which we ought to be giving anyway to those in such dire straits that they would sell a body part” [6]?

An additional safeguard to promote fairness among different socioeconomic groups is to have a set price that is equal for all organs, and the amount paid for the organ would be determined by the recipient's income. To ensure quality and protect both the donor and recipient, the organ donor and organ itself would have to pass a standard for viability. Physicians and facilities will also be required to fully inform the donor and recipient of any possible risk, and a social worker will be involved to discern any coercion and confirm the decision is autonomous. Furthermore, this is a relatively low risk procedure and kidney transplants are one of the more common procedures performed. Those living with one kidney live normal, perfectly healthy lives and experience very few health problems. Testing has even shown that one kidney can function as well as two (“Living with One Kidney,” 2017). As reported in the NHS annual 2021-2022 report on Kidney Transplantation, short term survival is nearly 100% and long term survival has steadily increased to around 90% (“Kidney Transplant FAQs,” 2022).

Argument against: Threatens dignity

Another recurring argument against legalization is that organ sales threaten self worth and dignity. It is argued that the “practice of organ selling inherently runs the risk of promoting the notion that some persons have less worth than others and that persons have a price, which is incompatible with dignity” [2]. As mentioned before, in this market the price for all kidneys would be equal so no individual would be less worthy than another, unless they do not meet the viable standard. This standard is ethically permissible to protect the health of the recipient and the donor.

Furthermore, dignity can actually be enforced in an organ market by upholding bodily autonomy which is the right to make decisions about one’s body. A legal market does not take away the choice to donate, it just adds another choice that involves payment. Americans should have the right to make that choice as long as they are fully informed about the decision they are making. Those who study at the Seton Hall University School of Law explain that a market model is permissible under Nozick’s theory of entitlement. “From this perspective, individuals should be able to sell their organs provided the transaction is consensual and, like Mill’s harm principle, does not harm others” [11]. As mentioned already, the procedure is relatively harmless and the donor and recipient will be fully informed of the risk they are undertaking. Enabling individuals to make choices about their bodies to improve their lives and others is dignifiable. Another thing to consider in this argument is that the U.S. has legalized the sale of other body parts such as blood plasma, eggs, and sperm. As a society we have accepted payments for these parts, so how is payment for a kidney any different or less dignified?

Argument against: Devalues altruism and ruins human relationships

The last argument that is commonly mentioned against the legalization of organ sales is that it may devalue altruism and ruin human relationships. In many countries, the notion of organ donation as a ‘gift’ is highly valued and the difference between a gift and a commodity is clearly understood [1]. The act of donating an organ without an incentive shows that the donor is making a decision purely out of the goodness of their heart. The recipient would express significantly more gratitude towards the donor if it was donated rather than paid for. It is true that organ donation versus payment has greater potential to benefit relationships, but its failure to improve the organ shortage is evident. Living liver transplant recipient Dr. Phil Berry Jr states “In a perfect world, altruism would be all that would be needed. The fact is that we’re losing the battle” (Meran, 2002). To ban organ sales is to ban any hope of saving the lives of millions of Americans in need of a transplant. Since the current system that relies on altruism has failed, it cannot be argued that a legal market is not better, or not a possible solution.

Argument for: Existence of current markets and illegal black markets

In addition to addressing the arguments against legalization, there are other benefits of a well regulated organ market that should be mentioned as well. One benefit is that it would reduce the use of illegal black markets, as well as exploitation. As mentioned earlier, regulations are necessary to prevent exploitation and these do not exist in these illegal markets. Without a regulated market, exploitation persists when it could be prevented or controlled. Dr. De Castro states “If we are alarmed by the possible exploitation in a world where organ payments are legalized, we ought to be more alarmed by the exploitation that is already going on where organ purchases are illegal but are flourishing anyway. The reality is that, in many developing countries, transplantable organs are bought and sold without the benefit of adequate safety nets for organ donors.” (2023) The current ban on the sale of organs has driven donors and recipients to use these markets when they are unable to receive donations. In the current system, it is unlikely that those on the waiting list will ever receive an organ, and for many of us, it would be extremely difficult to find a living person who would be willing to donate their organ

without any compensation. According to The Exodus Road, organ trafficking is a \$1.7 billion industry and about 10% of all transplants are believed to be illegal [17]. These markets are unsafe and unregulated creating a wide range of issues that could be avoided in a regulated market. Researchers have found that “vendors regularly receive less for their kidneys than they agree to sell them for. They fail to receive the postoperative care that they were promised, and are often deceived about the medical risks that they run in selling a kidney. We have also found well-documented cases of people being coerced into selling their kidneys by their family members” [14]. Creating a regulated market in the U.S. would deter people from using these markets and the safety and quality of the transaction can be monitored.

The Existing Legal Organ Market in Iran

The last topic of discussion in this debate is the existence of other legal organ markets and its success. Both the strengths and weaknesses of this market should be considered when creating a legal market in the United States. The Iranian organ market allows for compensated kidney donation and was effective in alleviating their organ shortage. Iran is evidence that a market is in fact a solution to the organ shortage crisis. According to the Centre For Public Impact, “the number of renal transplants performed substantially increased such that in 1999, the renal transplant waiting list was completely eliminated” [10].

However, there are some faults in its implementation. Iran requires that donors are healthy and have written consent from a parent. Donors receive a fixed payment of about \$4,400 from the government and one year of free health insurance with the right to a preoperative assessment, medical consent, and an introduction of donor and recipient [4]. As you can see, some components of this market overlap with an ideal market. There is a standard for healthy donors, health insurance is provided, and a level of informed consent but it is not nearly as extensive as the ideal policies outlined which are necessary to address ethical concerns such exploitation. Benefits for the donor and recipient are not necessarily equal with only one year of healthcare and just written consent. Moreover, there is a general lack of human resources, infrastructure, and information that makes it difficult for Iran to implement their policies properly. According to an article found in the Journal of Clinical Medicine “the increasing need of patients for this healthcare service will require the training of adequate human resources in various fields related to it, in particular physicians, nurses, social workers, and so forth.

Unfortunately, there is currently insufficient planning and infrastructure in this area” [7]. In the ideal market for the United States, there would need to be sectors at every level of the healthcare system dedicated to organ transplantation. Organ transplantation would have to operate using a top down approach from legislators to clinicians and the community. In the ideal market, policies would be regulated federally instead of at the local level to ensure fairness across the country. In order for an organ market to be successful in the United States, the government has to be fully prepared to enforce proper laws which will be difficult, but not impossible.

Conclusion

Evidently, the argument for legalizing organ sales by creating an ideal organ market will continue to require a great deal of thought. But beginning to think about how to create this market brings the United States a few steps closer to alleviating the organ shortage. Turning down the possibility of a market will leave the U.S. with its current system, which results in the deaths of thousands of possible transplant recipients every year.

The arguments against legalizing the sale of organs are strong, but can be countered with proper regulations. The most popular argument against the legalization of organ sales is the potential for exploitation and coercion of poor individuals. In an ideal market, life long health insurance, a set price for kidneys, income based payment would promote a viable standard of health, and detailed informed consent would ensure that exploitation and coercion are avoided. Additional arguments against legalization include probable high risk for both the donor and recipient of a transplant and how payment for organs threatens the basic principles of self worth, dignity, altruism, and human relationships. However, an ideal market would uphold self worth and dignity by providing the freedom to choose what to do with one's body. Additionally, the benefits of altruism and human relationships are outweighed by the harms of the altruistic system.

Still there are other details of this market that should be taken into consideration. With the existence of other markets such as Iran it is clear that a regulated organ market requires work in all sectors of the healthcare system. At the end of the day, the suggestions for this ideal market are only ideas that require additional input from professionals and ongoing research. If more people choose to support the legalization of organ sales, further steps can be taken to create a market that will save the United States from the organ shortage crisis.

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