

The ethics of organ selling: a libertarian perspective

Harold Kyriazi

First principles

As a libertarian, I believe that people own themselves. Any alternative would involve some form of slavery. And as owners of themselves, individuals have the right to sell their organs, give them away, and even to allow themselves to be “harvested” of their organs in a productive form of suicide, for whatever reason they choose. (Of course, surgeons and hospitals would be free to denounce, and to refuse to perform, such macabre procedures, and medical societies would be free to expel members who assist in such suicides.) Having said that, I also wish to emphasise that I share the concerns expressed by bioethicist Stephen G Post, of the Case Western Reserve University School of Medicine’s Center for Biomedical Ethics:

...in India, where a huge black market in nonvital body parts provide kidneys for the wealthy, it is the poor who sell. Is this truly freedom, as the libertarian proclaims? Or is it a forced choice made in destitution and contrary to the seller’s true human nature? I see such a market as the most demeaning form of human oppression, as unworthy of any valid human freedom...(1)

But one could make the same argument for coal miners and others with dangerous jobs, who risk life and limb to support their families. Certainly such people are better off having these additional choices. But while it is a pernicious paternalism that would seek to deny the poor these choices, it is also a sterile libertarianism that would stop the inquiry here, hailing the enlarged freedom of the destitute, and looking no further.

Margaret Radin, professor at the University of Stanford Law School, reached a similar conclusion:

If people are so desperate for money that they are trying to sell things we think cannot be separated from them without significant injury to personhood, we do not cure the desperation by banning sales. ... Perhaps the desperation is the social problem we should be looking at, rather than the market ban. Perhaps worse injury to personhood is suffered from the desperation that caused the attempt to sell a kidney or cornea than would be suffered from actually selling it. The would-be sellers apparently think so. Then justice is not served by a ban on “desperate exchanges.” ... We must rethink the larger social context in which this dilemma is embedded. We must think about wealth and power distribution. (2) [p.125]

And so we are led to consider the larger societal question of basic economic justice.

But before discussing the world as it should be, I wish to make a few comments about the ethics of the world of organ transplantation as it is.

Comparing the Indian and US situations

Harold Kyriazi, PhD, Department of Neurobiology, University of Pittsburgh School of Medicine, Pittsburgh, PA, 15261, USA. E-mail: htk+@pitt.edu.

Both India (three of the key states in 1994, and others subsequently) and the US (nationally in 1984) have banned monetary compensation for human organs. The ban has been effective in the US, while it is routinely circumvented in India. But which system is the more ethical? In India, at least, those upper class Indians and wealthy foreigners who need organs are getting them, while some of the poor are afforded more financial opportunity than they would otherwise have. In the US, however, over 5,800 people — rich and poor alike — die every year while waiting for donor organs that never arrive. And with most such deaths are associated years of waiting, years of debilitating sickness, and years of mental anguish not only for the ill, but for their families and friends. Against this horrendous backdrop, is a ban on market activity ethically sound? Another professor of law, Lloyd R. Cohen, of the George Mason University School of Law, thought not:

People are dying while the organs that could restore them to life, and that a market (3) would provide, are being fed to worms. Were more to suffer and die for want of organs that a market would provide, the high minded pieties that support the prohibition would be revealed for the vacuous moral posturings that they are. (4)

Finally, on this issue, Professor Radin insightfully notes that the US position — that altruism shall be the only permitted motivation for organ donation — may simply be a convenient way of shutting its eyes to the desperation of its own poor. *“To preserve organ donation as an opportunity for altruism is also one way of keeping from our view the desperation of poor people.” [Radin, p.126]*

Let us now proceed to the heart of the matter — poverty and economic justice.

Economic justice

The essence of economic injustice, as it is currently instituted — essentially worldwide — is no longer chattel slavery, as it was in the 19th century and before, but wage slavery. And wage slavery is made possible by land policies that allow a small portion of mankind to monopolize the land on which and from which all must live. Said 19th century American economic and social philosopher Henry George, *“...the ‘iron law of wages,’...which determines wages to the minimum on which laborers will consent to live and reproduce...is manifestly an inevitable result of making the land from which all must live the exclusive property of some. The lord of the soil is necessarily lord of the men who live upon it. They are as truly and as fully his slaves as though his ownership in their flesh were acknowledged.” (5)*

I cannot here go into detail about economic justice, but I refer those interested to my recently published book on the subject (6). The short answer, however, is that those who “own” land and natural resources should pay to the community a yearly rental fee, based on the market value of their holdings (irrespective of buildings or other

improvements). Such a fund will guarantee landless citizens at least a minimal income, and also pay for the valid expenses of government. More importantly, the community's act of charging market prices for land and natural resources will help ensure that the latter are put to their highest and best use, generating more jobs and wealth for all. Additionally, no taxation should exist on productive human activity (such as working, via wage and income taxes; buying, via sales or value added taxes; saving and investing, via income and capital gains taxes; giving, via gift and inheritance taxes; etc.), as that punishes — and hence lessens — good behavior, while robbing people of the fruits of their labor.

From what I understand of recent Indian history, efforts at land reform in the various states have been economically counterproductive, aimed at forcibly subdividing the land itself (7) rather than merely its economic rent. My impression of the Indian economy in general is that central planning and control have effectively stymied individual initiative. But all that is necessary for people to thrive economically is for them to have free and equal access to the earth (or its equivalent in rent) and the rights to free action and free association (ie, to engage in entrepreneurial and free market activity), with the only proviso being that they do not violate the equal rights of others.

The US has, of course, long championed the latter freedoms, but has ignored the injustice inherent in its monopolistic system of land tenure. It was able to escape most of the harmful consequences of the latter for much of its history by virtue of its frontier, which provided a safety valve for oppressed laborers, who could escape wage slavery by homesteading frontier land, thus becoming their own masters. That avenue of escape was gradually eliminated, and the US then took the indirect route of wealth redistribution (via income, estate, and other forms of taxation) to attempt to redress the situation, rather than eliminating the injustice at its root.

As Winston Churchill said, "*land monopoly is not the only monopoly that exists, but it is by far the greatest of monopolies. It is a perpetual monopoly, and it is the mother of all other forms of monopoly.*" (8) Thus, while many forms of monopoly now exist, and many people make money in partly unfair ways in many fields other than real estate and natural resource utilisation, these other forms would not be possible without the primary monopoly of land and natural resources.

The US and most other countries have thus allowed the privileged to retain their immoral means of subjugating their fellow men. (Not that I believe the privileged are, in general, aware of the partly immoral nature of their means of attaining wealth. If they could perceive the basis of the injustice, so also would most others.) But perhaps the day is coming when the masses will understand the true nature of their plight, and will take proper remedial action.

A proper ethical focus

A primary ethical focus throughout the world must be the establishment of true economic justice, along the lines discussed above. Only in that way will the question of the

exploitation of the poor be properly addressed and satisfactorily answered — by the elimination of poverty.

Additionally, most of the world needs to adopt something like the *de facto* (but not *de jure*) system now in place in India, by permitting monetary compensation for organs. Said Henry Hansmann, of Yale Law School: "...*this prohibition may be overly broad... It appears possible to design suitably regulated market-type approaches to the acquisition and allocation of cadaveric organs (and perhaps of organs from living donors as well) that will be neither unduly offensive to ethical sensibilities nor easily abused...*" (9)

For most of the world, cadaver tissues and organs should be adequate to meet demand. This seems a reasonable assumption, given that Belgium — which has a policy of "presumed consent," in which people are presumed to be willing organ donors unless they have indicated otherwise — has such a surplus that it is able to supply many foreigners with needed organs (10). And data from the US on accidental deaths, where the death itself occurs in a hospital setting, suggest a potential surfeit of transplantable organs (11). The laws against monetary compensation thus need to be repealed, allowing organ procurement organisations the freedom to use whatever financial incentives are required to bring the supply up to meet demand. (From an ethical standpoint, it would be wrong to use live donors when cadaver organs are available, assuming that cadaver organs are equally as effective and safe as those from the living. If this is not the case, ie, if cadaver organs stand a greater chance of failing or infecting their recipients than those from living donors, it'd require careful consideration and balancing of the risks to donor and recipient to decide the proper course of action. Nevertheless, it is the individuals involved, and not legislators and bureaucrats, who should make such decisions.)

For most of the world, then, the question of the ethics of living donation will be a peripheral concern, arising only in cases of extreme time urgency, when one simply cannot wait for a cadaver with the proper tissue match to become available. In those cases, live donation, in which the pool of potential donors is much larger, will continue to be the only viable option. For India, however, for a variety of reasons, any large-scale use of cadaver organs is not currently feasible. Thus, for India, live donation will continue into the foreseeable future.

Summary

Given the above considerations, were I a transplant surgeon in India, I would have five relevant ethical concerns:

- 1. Economic justice:** support the establishment of genuine economic justice.
- 2. Cadaveric vs. living donors:** support a transition from a system emphasising living donors to one relying mostly on cadaver organs from those who have suffered brain death.
- 3. Fair compensation:** try to ensure that donors are paid as much as possible (since the current market contains some degree of exploitation, due to the entrenched

economic injustice). In practice, this would entail dealing only with organ brokers who treat donors fairly.

4. Do no harm: over and above the usual concerns expressed in the Hippocratic Oath, take all reasonable steps to ensure that patients have adequate follow-up care and legal options for redress of grievances.

5. Legalise organ selling: because the above-mentioned legal options are unlikely to be feasible under a black market system (lawbreakers rarely wish to attract legal attention to their own "criminal" behavior), one must seek to remove the laws banning organ selling. Their existence, in an atmosphere in which black market activity nevertheless thrives, not only places those involved outside the protection of the law, but engenders disrespect for law and law enforcement in general, to the detriment of society. More importantly from an immediate standpoint, removing the ban will free the operations from the clutches of organised crime, and make transplants less expensive for recipients, less exploitative of poor donors, and less dangerous for all involved. (12)

For anyone seeking further libertarian perspectives on this issue, especially as it relates to US policy, a good source is my website, at www.organselling.com.

References

1. Post, Stephen G. 'Organ volunteers serve body politic.' *Insight* magazine, 1995; January 9: 21-22.
2. Radin, Margaret Jane. *Contested Commodities*, Harvard University Press, Cambridge, Mass., 1996.
3. Cohen, Lloyd R. Increasing the supply of transplant organs: the virtues of an options market. R. G. Landes Co., Austin, Texas, 1995. (Professor Cohen's concern is the US situation, and the market he speaks of is designed to provide monetary incentives for cadaveric donation.)
4. Cohen, Lloyd R. 'What Can Be Done to Increase Organ Donation?' *LifeTIMES Magazine* (a publication of Stadlanders Lifetime Pharmacy Programme). 1993; 3 (2): 20.
5. George, Henry. *Social Problems*, Robert Schalkenbach Foundation (1882). [The quote is taken from Chapter 14, p.146. This and other writings of Henry George may be accessed at: www.schalkenbach.org/library/george.henry.]
6. Kyriazi, Harold. *Libertarian Party at Sea on Land*, Robert Schalkenbach Foundation, New York, NY, 2000 (for a review, see www.progress.org/books/libertarian).
7. *India: A Country Study*, ed. by James Heitzman and Robert L. Worden, US Library of Congress Federal Research Division (1996), pp. 386-391.
8. *Winston S. Churchill: His Complete Speeches, 1897-1963*. Edited by Robert Rhodes James, New York, Chelsea House Publishers (1974); speech of July 17, 1909, in Edinburgh, Scotland; quote taken from Volume 2, p. 1277.
9. Hansmann, Henry, 'The economics and ethics of markets for human organs,' from *Organ Transplantation Policy: Issues and Prospects*, ed. by James F. Blumstein and Frank A. Sloan, Duke University Press, Durham, NC, 1989, pp. 57-85. [This most excellent book also contain many other free market-oriented perspectives and solutions.]
10. Rothman, David J. The International Organ Traffic' *New York Review* 1998; March 26: 14-17. [also available at: www.nybooks.com/nyrev/WWWarchdisplay.cgi?19980326014F]
11. Epstein, Richard A. *Mortal peril: our inalienable right to health care?* Addison-Wesley Publishing Co., Reading, Mass., 1997, p.240. [this book has four chapters about organ transplantation]
12. Scheper-Hughes, Nancy, 'The Global Traffic in Human Organs' *Current Anthropology* 2000; 41: 191-224.

Calendar

October 3-7, 2001, New Delhi: 53rd World Medical Association General Assembly.

For further information, contact the WMA Secretariat at info@wma.net.

June 11-15, 2001, Boston, Mass., USA: **Ethical issues in international health research.**

Of interest to those who fund, approve, conduct or collaborate on health research.

Among the issues covered: current guidelines, approaches to controversial issues, research in resource-poor environments, cultural absolutism vs. cultural relativism.

Contact: 677 Huntington Ave., CCPE Dept A, Boston, Mass., 02115-6096., USA. Fax: +1 (617) 432 1969. Email: contedu@hsph.harvard.edu.

[http://www. hsph.harvard.edu](http://www.hsph.harvard.edu).