

A Free Market for Human Organs

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The authors draw attention to the shortage of human organs which, as surgical methods improve, can frequently be used to save the lives of the living after their owners are deprived of their use by death. They propose the legalization of the sale of body parts as a legitimate free market activity, and argue that in such conditions the price of human body parts would fall to a sufficiently low level to discourage the theft of human organs which the present laws are intended to prevent.

Key Words: Human organs, Organ donation, Medicare, Medicaid, free markets, legalization.

Every year thousands of men, women and children¹ needlessly suffer and die because of a law, a simple legislative enactment that could easily be changed². One may think that something like this could only happen in a third world country. Or believe that a responsible government would change the law that in effect if not by intention kills innocent people every day. Unfortunately, this is now happening in the United States.

It is currently illegal to buy or sell human organs. While roughly 80,000 people need organ transplants every year, only about 20,000 people receive them annually³. These 20,000 body parts come from people who donate their organs as a gift to humanity. They receive no remuneration for their acts of generosity. Because people do not have an economic incentive to donate their organs many people take them to

¹ According to Barnett and Saliba (forthcoming, p. 2), "Almost three thousand Americans die prematurely every year because they cannot get kidney transplants and more than forty thousand others suffer while waiting for kidney transplants." Two points must be made about this statistic. First, it involves only those in need of this particular body part; thus, the number underestimates the true problem. Second, roughly this number of people perished in the tragic events of 9/11/01. George W. Bush is moving heaven and earth in order to render less likely a reoccurrence of the World Trade Center murders. Yet, with a mere stroke of the pen, our government could save far more lives; all they need do is end the legislative enactments which prohibit markets from this sector of the economy.

² See on this Adams, Barnett, and Kaserman (1999), Anderson and Barnett (1999), Barnett, Beard and Kaserman (1993), Barnett, Blair, and Kaserman (1992), Barnett and Kaserman (1995), Barnett (1988), Barnett, Saliba and Walker (2001), Barnett and Saliba (forthcoming), Blair and D. L. Kaserman (1991), Block (1988), Block, Whitehead, Johnson, Davidson, White and Chandler (1999-2000), Kaserman and Barnett (1991), Rottenberg (1971), Schwindt and Vining (1986), Vining and Schwindt (1988).

³ In 2001, 24,076 received transplants in the US, see table #1; the waiting list consisted of 79,641 people; see table #2.

the grave where they will be of no use to anyone. The number of donated organs falls far short of meeting the demand. Consequently people die tragically and needlessly waiting for transplants.

Diagram #1 illustrates this situation. If a market clearing price were but allowed, supply and demand would intersect at point B, under which circumstance there would be no shortage of transplantable organs. However, at the governmentally mandated price of zero, demand at point D is in excess of A; hence, the shortage is brought about by unwise state policy.

This shortage has created numerous other problems. Doctors and medical professionals must choose who receives an organ and who will die waiting for one. They often base this decision on age, sex, health status, and a calculation of post operational life expectancy. For example a 60-year-old male, who would be expected to live five years after the operation, will be placed lower on the transplant list than a 10-year-old girl, who can be expected to live a full and normal life if she receives this operation.

At first glance this seems like a very equitable way of distributing the donated organs. But let us take a closer look. This practice requires fallible human beings to place more value on one life than another. The 60-year-old man did nothing of his own volition to be placed lower on the list. The 10-year-old girl did nothing to deserve the priority placement. This is hardly equitable. Rather, the current system enables medical bureaucrats to play god. Anyone who would take this role upon himself by that very fact establishes that he is not fit to do so.

The shortage has also created a black market for transplantable organs. There have been cases where body parts have been stolen from living people. Because it is illegal to buy and sell organs, their price is artificially high. This, in turn, encourages some people to engage in the mutilation of others for financial gain and others to enter into the black market. People are willing to pay these exorbitant costs to save their own life or that of a loved one.

Under the present system one can sign up to be a donor at the local department of motor vehicles while applying for or renewing a driver's license or state identification card. This process involves only one question: "Would you like to be an organ donor?" A mark to that effect is placed on the back of the donor's driver's license or state identification card. However, when the donor dies a medical professional must still seek the consent to the next of kin. This is difficult for the family member who is forced to make a decision during a time of emotional

distress.

For example, a ten-year-old boy dies in a car accident. The doctor breaks the news to the boy's mother and, because of the time constraints on transplantation, asks in virtually the same breath if she will sign a consent form so that he can transplant the boy's kidneys to a dying young girl. What would you say? To ask this question is almost to answer it.

A mother, who under normal circumstances be comforted in knowing that her son's organs will be used to save a life after he can no longer use them, all too often refuses to sign the form because she cannot bear the thought of someone cutting open her recently deceased son to take his organs.

These deaths and excruciating moral dilemmas could be avoided by interpreting the signing of these donor cards as legally binding. Then, no permission would have to be garnered from suffering family members at a time of great tragedy, when it is most likely not to be given. The problem would still remain that all too few people sign these donor cards in the first place, many less than the total needs of would be recipients. This problem can be addressed by allowing donors and their heirs to be financially compensated for their healthy organs after they die. The financial incentive will motivate more people to donate their organs, in one fell swoop eliminating the shortage of organs.

When signing up for the organ donation plan the donor will be tested and all of the pertinent medical information regarding the future transplantation will be recorded and sent to the organization that matches donors with donees. The donor and his next of kin will sign consent forms and receive a contract that states the amount that the donor's family will receive if the organs are transplanted after his death.

Upon the donor's demise, if his organs are eligible for transplant, his name along with a list of his viable organs will be sent to organizations that have already compiled a list of people in need. The organs are will then shipped for transplantation and the relatives of the deceased will receive a check for the agreed upon amount. Families will have more money to pay the final expenses of their loved ones. The Organ Donation Organization bills the recipient, or their insurance company.

Some may argue that a market for organs would make them too expensive. But transplantations are already very expensive procedures. Further, allowing profit motivations to come to bear would actually lower prices; this is because a greater supply of anything, organs

specifically included, tends to drive prices in a downward direction. Poor people receive organ transplants under the current system because insurance, either private or public (Medicare/Medicaid), pays for all medical expenses. Why should we assume that they would not or could not pay for the organ itself? This new system will reduce the waiting period for organs, which will decrease the overall period of time spent in the hospital, diminishing the overall cost of treating the patient.

Others say that it is "wrong" to buy and sell kidneys or other such body parts because it would be immoral for someone to make a profit from the commercialization of such items⁴. Their argument is that this violates "human flourishing."⁵ Tell that to the person on a kidney dialysis machine who is reduced to the position of looking forward, ghoul-like, to holidays such as Memorial Day or July 4 weekend, since this is when motor vehicle accidents peak, and hence when these body parts are more available. The only "human flourishing" that occurs from this inhumane system is that these personal tragedies serve as the focus for memorable movies and television dramas.

If this vitally important institution is turned over to the marketplace, that will solve all of the problems the current system faces. Through this self-regulating mechanism, organs will be bought and sold freely. Everyone in need of an organ transplant will receive one. It will alleviate suffering and the financial burdens now plaguing families during a very emotionally trying time. Changing this law will improve the lives of everyone involved.

There is another objection that has been leveled against this life-saving idea of applying the strictures of free enterprise to organ donation: that a free market in organs would exacerbate their theft; that is to say, legalization of this market would lead to murder, in that pretty much the only way to steal an organ is to commit bodily harm murder the present possessor of it., or to withhold medical assistance from a seriously ill unwilling donor. The purpose of the present law, under which it is illegal to charge for these items, is to prevent atrocities of this kind.. But if such organs were readily available the profit that could be made by such actions would presumably be sufficiently small to render them profitless. After all, no one can earn a profit from seizing products with zero value.

⁴ See on this Radin, 1987; Kronman, 1983. For rejoinders, see Block, 1999, 2001, forthcoming

⁵ Radin, 1987, p. 1849

But theft of organs already happens under the present system. In the black market people are presently stealing organs. In contrast, in the proposed free enterprise system the original owner of the organ (or his estate) will receive the profit from the sale. Owners of body parts are more justified in benefiting from them than thieves.

In the event, however, the very opposite is the case: legalization of markets in body parts will reduce robbery (and thus murder), not enhance it. We may indeed posit that the more money there is to be made from a product, the greater the danger of nefarious activity, other things equal. But this mitigates in favor of free enterprise, not against it. To see this, consider diagram #2. At present, society is at point A, where the supply curve intersects the Quantity axis. An amount A of bodily parts is forthcoming at the price zero. The market price would be B, if markets were but allowed to operate, because, at equilibrium, this is the point at which supply and demand would tend to be equated. The superficially correct point of this objection to free markets is that the price at B would serve as the gain to be made from pilfering an organ.

However, when price is kept down to zero (point A) by legislative fiat, that is not the end of the matter. Alternative costs, one of the determinants of prices, do not disappear. Instead, they arise, phantom like, in the form of black market prices. To wit, under the prohibition of purchases and sales, the illegal price will rise to C. This is the point at which the supply of organs intersects the demand curve. But note that at this point the profits to be made from theft, the distance between A and C, is in excess of the vertical distance from the Q axis to B. Thus, if a price of B can serve as an impetus for robbery, and it can, then so much more is this true of a price of C, since the latter is greater than the former. Far from creating body "snatching," then, the free enterprise system reduces the economic incentive for such dastardly activity.

We conclude that the case for repealing all laws that interfere with a free market in bodily organs is a strong one. That it will save numerous lives is a foregone conclusion. That present violations of this law are "victimless crimes," and ought to be legalized, is also suggested by our analysis.

Postscript

This is a highly charged issue. We do well, then, to risk repetitiveness and consider once again some reservations that many people will have to our

“modest proposal.” Here, in the words of a referee for this journal, is a report on one such set of objections:

“The prime objection to compensating relatives or other heirs for body parts, quite apart from the issue of murder by gangs (more likely in third world countries than inside the USA) is the concern that many relatives/heirs would be likely to hasten the death of the elderly and sick by deliberate lack of care, in order to sell the body parts after a “natural” death. Financial rewards for supplying body parts is regarded by a substantial and perhaps overwhelming proportion of the medical profession and general public, as highly inappropriate. Another difficulty is that no matter how low the price of used bodily organs falls, there are plenty of poor persons who would be eager to benefit from the sale of such parts, to their great detriment.

These objections stem from an almost visceral or instinctive revulsion at the idea of allowing prices, property rights, markets, and all the other accoutrements of modern economies to apply to so tender a product as parts of human beings. To bring the human body into the cash nexus is almost to deprecate its value; it is to treat something almost holy as one would a bushel of wheat or a slab of iron.

Nothing, however, could be further from the truth. To allow economic incentives to apply to so important and scarce a resource⁶ is to do no more than bring rationality to it, of the same sort as we as a society rely upon to obtain food, clothing, shelter and other products necessary to life. If parts of the human being are so important that nothing but the economic system of the Soviet Union is “pure” enough to apply to them, then this should hold true for other crucial items, such as the aforementioned food clothing and shelter. But to implement any such plan would be to place ourselves in the very conditions out from under which the USSR. has so mightily struggled, at the cost of millions of precious lives.

If “murder by gangs” is the reason we should not allow “capitalist acts between consenting adults” (Nozick, 1974, p. 163) with regard to human organs, then we must prohibit private property of all other things as well, for people kill for those as well. For example, houses, cars, jewelry, money, etc; all of them would have to be socialized. The only problem here is that people can commit murder for such items whether owned in common or individually. No, there is no way to banish murder, completely. But laws against this behavior work tolerably well with regard to every other item under the sun, and there is no reason this could not be also applied to human body parts. That is, here is an

⁶ This word is not used to denigrate the importance of the human person. The very opposite is the case. Thousands of people are now going to the grave before their time, or being consigned to lives of great discomfort (e.g., being strapped to a kidney dialysis machine for hours every day) all because market allocation is being dis-allowed. In striving to ameliorate this sad condition, we are acting in *accord* with the importance of the human person, not against it.

answer to the objection that we cannot legalize markets in organs because people will kill for them: let us more police, plenty of scrutiny for these contracts, etc. If there is any specific fear that more murders might be committed in this market than in others (e.g., drugs) then still more police should be assigned to this arena; no organ transplant contract could be consummated without documents attesting to the fact that the deal was completely voluntary and crime free, etc.

Nor can we acquiesce in the “concern that many relatives/heirs would be likely to hasten the death of the elderly and sick by deliberate lack of care, in order to sell the body parts after a ‘natural’ death.” First of all, no recipient really wants the body parts of an *older* person; they will wear out all too soon. But this is a minor difficulty, easily supplanted by the alternative fear that parents would withhold care from babies and children, whose organs would be in far greater demand, the better to kill them and reap the financial reward. However, this objection, too fails. Certainly, any young person who dies an otherwise inexplicable death (e.g., other, say, than by automobile accident) would be subjected to an autopsy. If the youngster’s body were then utilized for body parts, the scrutiny would be vastly intensified. Surely, laws against murder, already on the books, would put paid to all such schemes.

But the gravest objection to all such horror scenarios is that the supposed monetary incentives which give rise to them are *already* in existence. And not only that. The financial reasons for killing young people for their organs are *greater* at present than they would be under legalization (which all due safeguards) of this market. This point has been made above (see text discussion of diagram #2), but bears repeating. One, we assume that the inducement to commit such monstrous crimes is positively correlated with the amount of money to be garnered in this heinous fashion. Two, we note that there is a *greater* price, at present, now, for black market organs under present institutional arrangements, than there *would be*, under legalization (see text discussion of diagram #2). Third, we conclude that the temptation to brutalize children (or anyone else for that matter) if it exists in the face of laws and public sentiment to the contrary, would be *reduced* if we legalized markets of this sort. Q.E.D.

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DIAGRAM NO. 1

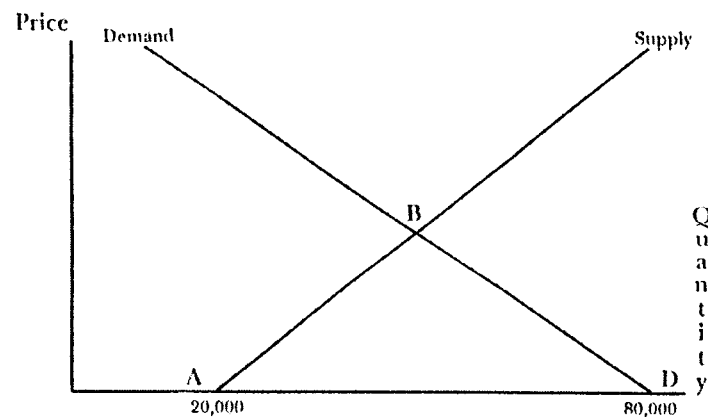


DIAGRAM NO. 2

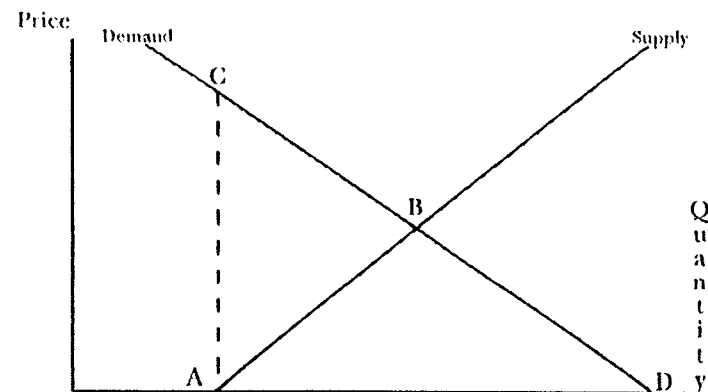


TABLE NO.1

Number of Transplants Performed in 2001

| Type of Transplant | Number |
|---|---------------|
| kidney alone transplants (5,949 were living donors) | 14,152 |
| liver transplants | 5,177 |
| pancreas alone transplants | 468 |
| kidney-pancreas transplants | 884 |
| intestine transplants | 112 |
| heart transplants | 2,202 |
| heart-lung transplants | 27 |
| lung transplants | 1,054 |
| Total | 24,076 |

Source: http://www.unos.org/Frame_default.asp?Category=Newsdata; accessed on 6/28/02

TABLE NO. 2

Estimated number of patients listed on the national transplant waiting list by organ and overall as of May 31, 2002

| Organ | Number of Patients |
|-----------------|--------------------|
| Kidney | 52,226 |
| Liver | 17,487 |
| Pancreas | 1,318 |
| Kidney-Pancreas | 2,526 |
| Intestine | 193 |
| Heart | 4,146 |
| Heart-Lung | 210 |
| Lung | 3,777 |
| *Overall | 79,641 |

Source: http://www.unos.org/Frame_default.asp?Category=Newsdata; accessed on 6/28/02