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For Those Who Desperately Need Organ Donations

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Michael Novak

Within the next month or so, Senator Arlen Specter (R-PA) will introduce a bill in the Senate that does two things: (1) Closes off a loophole in the existing law that permitted "transplant tourism"—desperate Americans seeking transplants overseas in often substandard medical conditions; and (2) distinguishes between "buying and selling organs," which is a felony, and the non-transferable "benefits" under the legislative authority of the individual states. (The federal government had never intended to criminalize non-transferable benefits.)

In 1994 the Pennsylvania legislature voted a bill into law, signed by Governor Casey that would enable the state to offer a funeral benefit; that is, an in-kind reward not transferable to anybody but the donor. It permitted donors to receive burial benefits; that is, an in-kind incentive not transferable to anybody but the donor. It is not a commercial transaction, but it does provide a modest incentive for potential donors.

Other nations such as Israel have permitted non-transferable benefits, so that donors can choose from tax credit/deductions, comprehensive health care for life, life insurance policies, and free admission to natural parks for life. This law too bans the buying, selling, and bartering of organs.

Why do I judge Senator Specter's carefully crafted bill a major step forward for "the culture of life"? Let me tell the story.

A colleague of mine, whom I admire very much, faced a harrowing challenge a few years ago when she learned she had kidney failure. Her options were to get a transplant or go on dialysis—an often debilitating treatment with a guarantee of premature death. Even when she learned of potential donors, and her hopes rose, medical incompatibilities (or simply cold feet) ruled them out.

My colleague, a medical doctor herself, was one of the lucky ones. Another scholar, activist, and writer volunteered one of her kidneys. That transplant has been a complete success, thanks to the donor's amazing generosity.

The wider problem is that now over 100,000 Americans need an organ transplant just to stay alive. Of those, 6,000 died last year awaiting a new liver, heart, lung, or kidney. The arithmetic is deadly. Those whose lives could have been saved have perished, often in a sort of despair as possibility dies out. Fifty-three percent of those in need are racial or ethnic minorities.

Pope Benedict XVI made note of this very problem in his 2008 address to participants at an international congress organized by the Pontifical Academy for Life:

The problem of the availability of vital organs to transplant, unfortunately, is not theoretic, but dramatically practical; it is shown by the long waiting lists of many sick people whose sole possibility for survival is linked to meager offers that do not correspond to the objective need.

Just a year or so ago, I took part in a debate at the American Enterprise Institute on the morality of offering incentives to help hesitating volunteers to come forward. I pointed out what everybody already knew: that such a straight cash system could lead to awful abuses—a market for organs in which the poor and vulnerable would be victimized by "harvesters," who would make money by using intimidating techniques. Impoverished people might also feel driven to sell their organs for money. Further, I argued that the voluntary sector—the churches, benevolent societies, and the like—had not yet given enough attention to this matter. We who

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favor that sector have not really done our best to encourage donors to come forward. We have not taught that such generous giving is an exercise in love—a principle that Jews, Christians, and humanists recognize as the central ethical reality.

The more I faced the facts, however, the clearer it has become to me that voluntarism is not meeting the desperate need. Today, almost 80,000 need a new kidney. In 2007, only about 6,000 volunteers stepped forward to offer a healthy kidney to a loved one; about 7,000 donated their own kidneys after death. In other words, fewer than one in six who needed a kidney got one that year. In major cities the waiting list is as long as five to eight years. Scores of thousands of the needy count the minutes and days, as the clock ticks inexorably.

It is shameful that people whose lives could be resumed in their fullness stare for months into the eyes of death—hoping, waiting, mostly in vain. The Roman Catholic Church has deservedly won a reputation for careful thinking about these matters. Attentive to new technologies and new possibilities, it is also unblinking about the moral hazards and weaknesses of humanity. Slippery slopes await us all around. An intellectual error made early becomes all too soon a monstrous practice; and the logic of that error is applied to other matters (e.g., the logic of ending life through abortion has applications in ending life through euthanasia).

In the matter of organ transplants, the Church tenaciously rejects complicity in making a market in organs, of a sort that could be easily abused—at the expense of the vulnerable, and to the profit of the cynical. But the Church has also become aware through empirical evidence that while its teaching finds the voluntary and freely considered donation of human organs admirable, and highly approves of it when appropriate, the number of needy patients far outstrips the current levels of donors.

Pope John Paul II made a point of writing a few years back that finding ways to invent incentives that might raise the frequency of donations is a worthy step, provided that potential abuses are detected and blocked in advance. Transplants are "a great step forward" he said, "in science's service of man." He added:

It must first be emphasized, as I observed on another occasion, that every organ transplant has its source in a decision of great ethical value: "the decision to offer without reward a part of one's own body for the health and well-being of another person." Here precisely lies the nobility of the gesture, a gesture which is a genuine act of love.

The Pope then warned against a potential for abuse:

Any procedure which tends to commercialize human organs or to consider them as items of exchange or trade must be considered morally unacceptable, because to use the body as an "object" is to violate the dignity of the human person.

A key aspect of ensuring dignity, he says, is

the need for informed consent . . . the human "authenticity" of such a decisive gesture requires that individuals be properly informed about the processes involved, in order to be in a position to consent or decline in a free and conscientious manner.

In this light, Senator Specter's legislative action does two necessary things: (a) it blocks potential abuses by commercialization and international (or even intra-national) trafficking; and (b) it allows individual states to make concrete judgments about non-transferable, non-cash benefits to potential donors, providing these incentives fall within moral guidelines. Senator Specter's legislation establishes that the 1984 federal law prohibiting the commercialization of organs (that is, a sale between individuals or through a broker) does not apply to state governments, when they encourage organ donation through non-transferable incentives. These incentives are not "compensation," and they are not tradable.

Senator Specter's legislation is a limited step forward; it commands nothing, it finances nothing. Essentially it clarifies the legal situation of voluntary donation, and it adds new heft to legal obstacles to trafficking. It calls for legitimate, constitutional experiments in the invention of donor benefits, in order to narrow the gap between the large number of those in need, and those who freely rescue them by giving of themselves.

We need to change our mindset. What Specter's bill does is frame government benefits for donors as what they really are: gifts from the government in appreciation for the generosity of the donor. They are not intended inducements to donate. For John Paul II and Benedict XVI, the invention of appropriate incentives for more frequent donations of organs is a noble endeavor. The U.S. Congress and the several states should take thought about this important task.

*Michael Novak holds the George Frederick Jewett Chair in Religion and Public Policy at the American Enterprise Institute.*

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