

# Selling organs should be legal



*The current black market in kidneys hurts the poor and is killing people*

• By ROBERT BERMAN

It is hard to imagine something that seems more callous and abhorrent than legalizing the sale of human organs. Yet there is something worse – much worse – and it exists today: an illegal market in human organs, created by well-meaning attempts to ban the practice.

Historically, the public felt that to donate an organ is divine, but to sell an organ is sinful. The objections most often heard can be divided into two categories: ethical and pragmatic.

Selling a body part seems, at first blush, unethical. A closer look, however, reveals no bright line in the laws of most countries. It is legal for men to sell their sperm, for women to “rent” their wombs as surrogate mothers or sell their limited number of reproductive eggs, and for people to sell their blood and hair, all of which specifically render the body a commodity. It is not at all clear why the same standard should not be applied in the case of organ donations, such as of a kidney or part of a liver, that pose no significant health risk for the donor.

Such organ donations are no riskier than many routine operations for which no ethical questions are raised. Experience and research show that a liver cut in half grows back to full size, and that there are no adverse health effects, even over the long term, to living with one kidney. Insurance companies, whose business depends on assessing such risks, do not raise their rates for someone who has donated a kidney or a liver lobe.

Even if organ donation did entail a health risk, society routinely recognizes the need to take risks, certainly when human lives are at stake. Journalists in war zones, coal miners, bridge builders, firemen, police, and bomb disposal experts – all take risks for differing degrees of societal benefit and financial reward.

Yet many people who might be persuaded that organ donation is safe, and perhaps even worthy of compensation, have another problem with selling organs: that the burden of organ donation will naturally fall on those who are already financially disadvantaged.

The concern that suffering of the poorest people, whether in the West or in the poor countries, would be increased by a market for human organs is not a trivial one. Indeed, current American law attempts to “protect” poor people by prohibiting the sale of organs. The problem is that such attempts have backfired in a way that hurts the poor, donors, and recipients, and is costing human lives.

IN THE world of organ transplants the demand for human organs far outstrips the supply. Over the past decade, the number of people waiting for life-saving organs has grown from 35,000 to 87,000, while the number of organ donors has remained flat. By and large, all attempts to increase organ donation rates in the US, and in Israel, have failed.

The result of this shortage, combined with the ban on the legal sale of organs, has been a burgeoning black market in organs. Every year hundreds of people from wealthy countries, including the US and Israel, travel to poorer, less legally scrupulous countries to acquire kidneys from poor people.

This black market, not surprisingly, is characterized by brokers absconding with deposits without delivering the organs, an increase in medical risks due to the “back-room” operating environments found in the Far East and South America, and lack of adequate medical care for the donor.

Legal restrictions have obviously failed to pro-



tect poor donors. Worse, however, they have resulted in the price of a kidney, for example, rising to \$100,000 and above, compared to an estimated \$3,000 if paying organ donors were legal.

The failed attempt to protect poor donors has a terrible unintended effect: taking the lives of poor and other potential recipients. There are much fewer organs available now than would be if it were legal to purchase them, resulting in many deaths. And rather than the organs going to those who need them most urgently, the existing black market is ensuring that they go only to those who can afford the inflated prices.

Neither donors nor recipients should have to suffer from maintaining the current black market, but the suffering itself is hardly equally distributed. Although the organ donor needs money and the potential recipient needs a kidney, they are not equally disadvantaged. The donor has a choice whether or not to sell; the recipient will die unless he or she buys the organ. This makes it even more incongruous that the law, however ineffectively, seeks to protect the poor donor while ignoring the even more dire plight of the poor recipient.

THERE IS a better way. The selling of donated organs should be legal and regulated. If, for example, a government decides that the poor must be “protected” from selling organs, it could do so by banning poor people from the donor pool. Even this more limited restriction is based on the paternalistic notion that the government is in a better position to judge the risks and benefits of organ donation than poor donors. It also risks hurting recipients, especially poor ones, by raising the price of organs and reducing their availability.

When considering whether maintaining the legal status quo is in fact wise, lawmakers should

be aware that ethical support for selling organs can be found in Judaism. The past three chief rabbis of Israel have all ruled that it is ethically permissible for both donor and recipient to exchange financial remuneration for an organ, explaining that accruing economic gain from organ donation does not deprive the life-saving donation of its clearly ethical quality.

In addition, the International Forum for Transplant Ethics has recommended lifting the ban on kidney sales from living kidney donors pending better justification for the prohibition of such transactions. Their call should be heeded.

The choice before us is not between buying or not buying organs. This is happening regardless of the law. The choice is whether transplant operations and the sale of organs will be regulated or not. Even those who can't stand the idea of “commoditizing” the human body must ask themselves: Is it not worse for hundreds of people to die each year for want of an organ many people would have been willing and able to safely contribute?

The current of people clamoring for the legalization of purchasing human organs is getting stronger. Recently ADL, the Israeli organization dedicated to increasing awareness about organ donation, retroactively gave two financial grants to families who donated the organs of their beloved ones.

While this act fell short of directly purchasing the organs, Israel is headed in the right direction. Israel should take the next step and announce to the world that it is legalizing, encouraging and facilitating payment for human organs.

Paying for organs is morally odious, mainly to those who are not dying to get one.

The writer is the founder of the Halachic Organ Donor Society ([www.hods.org](http://www.hods.org)).