Response to "Members First: The Ethics of Donating Organs and Tissues to Groups" by Timothy F. Murphy and Robert M. Veatch (CQ Vol 15, No 1)

Missing the Mark

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In their paper "Members First: The Ethics of Donating Organs and Tissues to Groups," Timothy Murphy and Robert Veatch question the ethical underpinnings of LifeSharers, a grassroots effort to increase the supply of organs by giving organ donors preferred access to organs.

We respond to each of their concerns below, but collectively their concerns miss the main point—LifeSharers has the potential to save thousands of lives every year by significantly increasing the number of donated transplantable organs. Even if every one of Murphy and Veatch's ethical concerns were valid, this would not, in our view, justify rejection of a system that could save many thousands of lives.

The key question, therefore, is whether LifeSharers can increase the number of organs available for transplant. Americans buried or cremated about 20,000 transplantable organs in 2004[1]—organs that could have been used to save the 6,600[2] people who died while waiting for an organ in 2004.[3] The problem, therefore, is not mathematical but behavioral. Why don't more people register as organ donors and stand ready to give the gift of life?

We believe that more people would register as organ donors if there were more incentive to do so. Currently, the only incentive to register is benevolence. Benevolence is a fine thing, but as Adam Smith noted "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest."[4] Most of the world understands Smith's lesson when applied to bread but not when applied to transplantable human organs. As a result, the former is plentiful and the latter is in constant shortage.[5]

Monetary incentives are one type of incentive, but they are not the only type. Everyone today has equal access to the pool of organs regardless of whether or not he or she is a registered organ donor.[6] In contrast, we think that organ receipt should be tied to organ donation. Registering as an organ donor should be akin to paying an insurance premium that gives you the right to receive compensation in the event of a major loss. Under this model, the incentive to register is built into the system—registered organ donors have preferred access to organs should they one day need one.[7]

LifeSharers moves us toward this kind of system. LifeSharers members agree to do two things: (1) donate their organs when they die, and (2) direct their donations to other mem-

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bers or, if no member is a suitable match, to the general public.

LifeSharers ties organ receipt to organ donation and creates, for the first time, an incentive to register as an organ donor. To be sure, when membership in LifeSharers is low (currently there are approximately 4,500 members), most members may be people who would have registered anyway. As membership in LifeSharers grows, however, the incentive to join—*which includes the incentive to register as an organ donor*—will increase because nonmembers will have less access to the supply of organs.

We stress this point because Murphy and Veatch write "The larger membership gets, the less valuable membership is to any given individual." This is wrong but also beside the point. The important point is not whether the value of membership rises or falls with the number of members (it can do both over different ranges). The point is that the value of membership can be large even when membership is large. Imagine that *everyone* who has registered as an organ donor were instantly to become a LifeSharers member. The incentive for nondonors to register would now be very significant because nondonors would no longer have access to organ transplants.[8] From this increased incentive would flow a greater supply of organs. Indeed, let us suppose that virtually everyone, not just current registered donors, is a donor. The last nondonor still has a strong incentive to join LifeSharers because joining will raise the probability that he can obtain an organ should he one day need a transplant.

We have just shown that the value of joining LifeSharers can be large even when everyone is a member. Furthermore, it is not true that the value of LifeSharers membership necessarily declines as membership gets larger. When membership is low the value certainly increases as membership grows, and it can continue to increase even as the membership approaches the entire population. If, for example, the probability of becoming a (potential) organ donor exceeds the probability of needing an organ, then on average *every* new member raises the value of joining LifeSharers. Thus the last nondonor can have a greater incentive to join when there are 250 million members than when there are just 10 million members.[9]

It is worth emphasizing that we want everyone to become a LifeSharers member because our goal is to maximize the supply of transplantable organs and the number of lives saved. LifeSharers is a private effort that moves us toward this goal, but we applaud public efforts to implement a similar system of organ donation incentives.

Indeed, a public implementation of the LifeSharers approach could avoid some of the problems that Murphy and Veatch raise and which we acknowledge. Murphy and Veatch, for example, note that "making membership applications available in languages other than English would allay" UNOS concerns about access to membership for non-English-speaking persons. LifeSharers now distributes membership applications in English and Spanish, and the LifeSharers website provides links to other sites that offer free translation into other languages.

We agree, however, that it would be preferable if every registered organ donor were *automatically* enrolled in LifeSharers. UNOS could do this, in effect, by offering points on the organ transplant waiting list system to anyone who had previously registered as an organ donor. UNOS already does this for previous live organ donors,[10] so there would be little break with tradition. An advantage of the point system is that the number of points given to previous registered

organ donors, that is, the incentive to donate, could be raised or lowered in response to the extent of the organ shortage.

We offer a similar response to the critique that LifeSharers does not reward the currently altruistic, those individuals who have registered as organ donors without expectation of benefit. If LifeSharers could automatically enroll all of these individuals in the LifeSharers program then we would. The best we can do as a private organization, however, is to advertise LifeSharers as widely as possible and to make membership easy and free, which is what we are doing.[11]

Murphy and Veatch's critique is better aimed at UNOS. UNOS *could* reward the currently altruistic but does not do so. Under UNOS's allocation rules, these altruistic donors are treated no better than people who prefer to bury their organs rather than save the lives of their neighbors. A point system for registered organ donors could rectify this injustice and increase the supply of transplantable organs. LifeSharers is trying to further both of these goals while UNOS treats the altruistic donors as resources to be exploited without providing reciprocal benefits.

We think the main issue of concern is whether or not LifeSharers will increase the supply of transplantable organs. Experience in every other walk of life, from Adam Smith's meat, beer, and bread through to the services of physicians and nurses, pharmaceuticals, and medical equipment suggest that incentives do work to increase supply. Murphy and Veatch have not rebutted this proposition. In fact, most of their arguments do not attack the idea of the LifeSharers but rather the failure of UNOS to implement this idea on a wider basis.

We turn now to some of the less important legal and moral issues.

The Legality of LifeSharers

Murphy and Veatch suggest that people "are usually not allowed to donate to groups of people." LifeSharers members do not donate to a group. They donate to individuals. Donation to individuals is legal under the laws of all 50 states and under federal law.

When a person joins LifeSharers, he agrees, in part, that "for each part of my body donated, I designate as donee that LifeSharers member who is the most suitable match as defined by the criteria in general use at the time of my death." This language is carefully crafted to comply with state and federal laws. Every state has adopted the Uniform Anatomical Gift Act, which allows donation to a "designated individual."[12]

On the federal level, the Organ Procurement and Transplantation Network's "Final Rule" governs organ allocation policy. It states that nothing in its allocation policies shall stand in the way of donation to an individual named by those empowered to make the donation.[13] Again, LifeSharers carefully conforms to the law. When LifeSharers members die in circumstances that permit recovery of their organs, LifeSharers provides their families with the names of individual LifeSharers members, if there are any, who need their organs. The member's family then directs donation to these named individuals.

Prejudice

Murphy and Veatch seem particularly worried that the LifeSharers precedent could encourage prejudiced donors to restrict their donation to someone who shares their prejudice. But prejudiced people can already do this where the law does not forbid it. Furthermore, the real danger is not so much that prejudiced people will donate to some-

one of their own prejudice. Rather, it is that prejudiced people will donate to *no one*. LifeSharers actually works against this prejudice because it makes nondonors bear some of the costs of their decision.

Currently, a prejudiced person worried that their organs might go to someone they dislike bears no cost from not donating. With LifeSharers in operation such a person reduces his or her own chance to receive an organ transplant. Because LifeSharers encourages donation and it does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, age, physical handicap, health status, marital status, or economic status, it reduces the influence of prejudice.

Murphy and Veatch are not so much concerned with LifeSharers, however, as with other potential groups. Thus they write "to avoid directed donation based on sociological characteristics, we would need a mechanism for separating one group from another, namely, acceptable groups from unacceptable groups. It is not clear that such a mechanism is readily at hand." Actually, it is easy to separate "acceptable" groups from "unacceptable" ones, and a mechanism for doing so is readily at hand—laws against discrimination. Hotels are not allowed to discriminate based on race or sex, and we no see practical reason why organ clubs could not be similarly limited.

Murphy and Veatch also worry about the ability of OPOs "working under emergency conditions" to separate "acceptable" groups from "unacceptable" groups. For the "acceptable" group consisting of registered organ donors there is an easy solution—UNOS can simply add a field to its waiting list database that indicates whether each potential organ recipient is a registered organ donor.

Children

Murphy and Veatch wonder why LifeSharers grants an allocation preference to children, "when it is not the children themselves who do or do not make commitments to donate." LifeSharers is based on reciprocity. Members grant an allocation preference to others who agree to do the same for them. Whether or not that agreement is made with the help of someone else is irrelevant. The allocation preference rewards the action that leads to the beneficial consequence of more lives saved, not the thought—or the lack of thought—behind it.

Poor Matches

LifeSharers first looks for organ recipients among members, and so, according to Murphy and Veatch, LifeSharers "might assign organs to people who are very poor matches." The trouble with this objection is that UNOS also does *not* assign organs according to the highest medical match. Under UNOS's allocation rules "kidneys are to be allocated locally first, then regionally, and then nationally,"[14] livers are allocated in a similar fashion,[15] and for Status 1 candidates, livers from pediatric donors are allocated first to children.[16] We are not suggesting these rules are inappropriate. They may serve important policy purposes, especially to the extent that these practices increase the supply of transplantable organs. But we ought to make comparisons based on real-world institutions and not compare LifeSharers with an alternative system that does not exist.

More generally, Murphy and Veatch fail to take into account the effect of LifeSharers on the total supply of organs. They define the expected utility of an organ as "its total value in preventing morbidity and mortal-

ity." They say the expected utility of an organ could be reduced by following the LifeSharers allocation protocol. Let us assume for the sake of argument that this is true. Nevertheless, the issue is not just how a given number of organs are allocated but how many organs in total are available for allocation. By increasing the supply of organs, LifeSharers increases the *total* expected utility of donated organs.

Because neither LifeSharers nor UNOS allocates entirely based on medical match, Murphy and Veatch's critique cannot be one of principle. Perhaps, however, they should be interpreted as comparing the size of the LifeSharers group with that of the UNOS groups. It is true that the larger the group the more likely it will be that a very good match is found within the group. If so, the answer is again clear. LifeSharers wants the largest membership possible. UNOS could further this goal by implementing a point allocation system.

Lack of Suitable Organs

Murphy and Veatch suggest that "members of LifeSharers may not have organs suitable for transplant" and that this "raises the question of whether willingness to donate by itself—as against actual suitability to donate—is enough to elicit the reciprocal pledge to receive organs from others." They are raising the adverse selection problem. Health insurance is more valuable to the sick than the healthy, and LifeSharers, a form of organ insurance, is more attractive to people who have good reasons to expect that they will one day need an organ. LifeSharers, however, offers positive benefits to everyone regardless of health status, and it is free and easy to join. Because the healthy can only benefit from joining LifeSharers, we believe that LifeSharers will grow far beyond the point where adverse selection is a relevant factor.[17]

Furthermore, the solution here is not to disallow LifeSharers but to make it mandatory. If organs were always allocated preferentially to previously registered organ donors, there could be no problem of adverse selection.

Toward Justice in Preferential Treatment

According to Murphy and Veatch, the significant question that LifeSharers puts into focus is "whether transplant policy should—as a matter of justice—assign some priority to those people who are willing to donate organs, prior to their knowledge of any actual need they might themselves eventually have for organs."

We believe that justice does demand that previously registered organ donors be assigned some priority. UNOS already gives live organ donors an allocation priority if they need an organ later in life. Justice is served by this policy. UNOS should—as a matter of justice—also implement a policy that gives priority to registered organ donors. This would also increase the supply of organs, save lives, and reduce suffering.

We would be delighted if UNOS immediately instituted a rule that gave bonus allocation points to registered organ donors. It has the power to do so, and we think it should use that power.

Murphy and Veatch worry about giving preferred status to organ donors because "many people are willing to donate their organs but do not take the steps to ensure that donation happens." But that's exactly why giving preferred status to organ donors makes sense—it gives people a strong incentive to register as organ donors.

Conclusion

Murphy and Veatch conclude by saying that "the time is ripe for a broad and searching national discussion about whether people should be entitled to preferential receipt of organs because they have—in a reciprocal way—offered their own organs for transplant."

We commend them for their suggestion. In fact, we think that discussion is long overdue. The UNOS Ethics Committee called for such a discussion in 1993, in its white paper titled "Preferred Status For Organ Donors."[18] Since that white paper was released, over 50,000 people have died while waiting for an organ transplant.[19]

Any suggestion for changing the organ allocation system should be judged by the number of lives it saves. Other moral and ethical concerns are important, but saving lives should be paramount.

LifeSharers members allocate their organs first to other registered organ donors. This saves lives by increasing the number of registered organ donors. UNOS could save thousands of lives every year by adopting the LifeSharers approach as its own.

Notes

1. OPTN data (available at http://www.optn.org/data/, accessed September 16, 2005) show that about 20,000 transplantable organs were supplied by about 7,000 deceased organ donors in 2004. Organs are recovered from about 50% of medically eligible deceased donors (Variation in Organ Donation among Transplant Centers. Department of Health and Human Services, Office of Inspector General; May 2003 OEI-01-02-00210), meaning that about 20,000 transplantable organs were wasted.
2. See note 1, OPTN 2005.
3. In addition to the 6,600 who died while waiting for an organ transplant another 1,600 were removed from the list because, while waiting, they became too sick to undergo transplant surgery. Moreover, many people who could benefit from an organ transplant are never placed on the waiting list because, given the current shortage, their prospects for a transplant are negligible. Thus, increasing the supply of transplantable organs can certainly save many thousands of lives, but this does not necessarily mean the shortage can be entirely eliminated.
4. Smith A. Of the principle which gives occasion to the division of labour. In: E Cannan, ed. *An Inquiry into the Nature and Causes of the Wealth of Nations*, Bk I, Ch. 2. Methuen; 1904; available at http://www.econlib.org/library/Smith/smWN1.html.
5. As an aside, if incentives had always been absent from the field of baking and a change in the system were proposed, then someone would surely argue that increasing the incentive to bake might reduce the total amount of bread produced because such a system could be distasteful to the purely benevolent bakers.
6. Organs, in other words, are owned in common and, as a result, we face a tragedy of the commons. See Hardin G. The tragedy of the commons. *Science* 1968;162:1243–8; Tabarrok A. The organ shortage: A tragedy of the commons. In: Tabarrok A, ed. *Entrepreneurial Economics: Bright Ideas from the Dismal Science*. Oxford: Oxford University Press; 2002.
7. See note 6, Tabarrok 2002.
8. Nondonors would be eligible for any organs not needed or suitable to registered donors.
9. Aside from being incorrect about incentives and membership, Murphy and Veatch misunderstand the purpose of LifeSharers. The purpose is not to maximize the value to members. The purpose is to increase the supply of transplantable organs.
10. Organ Distribution: Allocation of Deceased Kidneys, 3.5.11.6. Available at: http://www.unos.org/policiesandbylaws/policies.asp.
11. Murphy and Veatch also say that "as a matter of moral calculation it is hard to differentiate donors who join LifeSharers from those who come forward to donate on their own." Perhaps, but we think that LifeSharers will save lives and this trumps other moral concerns. Moreover, given that LifeSharers will save lives, there *is* a difference between joining LifeSharers and simply registering as an organ donor. All organ donors do a wonderful thing, but joining LifeSharers creates an incentive for others to donate. Thus joining LifeSharers is like donating to a charity with an offer to match gifts from other donors—this is morally praiseworthy.
12. Some states allow donation to a "specified individual" instead of a "designated indi-

vidual." In a handful of states, the anatomical gift statutes don't mention donation to an individual. In those states, LifeSharers members give their organs to their fellow member's surgeon or hospital, which those states do permit.

13. Organ Procurement and Transplantation Network; Final Rule, 42 CFR Part 121, Section 121.8(h).
14. Organ Distribution: Allocation of Deceased Kidneys, 3.5.6. Available at: http://www.unos.org/policiesandbylaws/policies.asp.
15. Organ Distribution: Allocation of Livers, 3.6. Available at: http://www.unos.org/policiesandbylaws/policies.asp.
16. Organ Distribution: Allocation of Livers, 3.6, NOTE #1. Available at: http://www.unos.org/policiesandbylaws/policies.asp.
17. Moreover, yesterday's unsuitable organs are today's "extended criteria" organs, which are being transplanted on a routine basis. Today's unsuitable organs may very well be transplanted tomorrow if the organ shortage continues to get larger. Illinois allows HIV-positive people to donate organs to people living with HIV.
18. Burdick JF. Preferred Status For Organ Donors. A Report of the United Network for Organ Sharing Ethics Committee, June 30, 1993. Available at: http://www.unos.org/resources/bioethics.asp?index=5.
19. See note 1, OPTN 2005.