Cambridge Quarterly of Healthcare Ethics (2022), 31: 3, 286–296
doi:10.1017/S0963180121000992

CAMBRIDGE
UNIVERSITY PRESS

THE GREAT DEBATES

Should Compensation for Organ Donation Be Allowed?

Arthur Caplan[1] and Rosamond Rhodes[2]*

[1]Division of Bioethics at New York University Langone Medical Center, New York, New York, USA and [2]Bioethics Education, Icahn School of Medicine at Mount Sinai, New York, New York, USA
*Corresponding author. Email: Rosamond.Rhodes@mssm.edu

Rosamond Rhodes: Opening Argument in the Affirmative

The need for organs to transplant is clear. Due to the lack of transplants, people suffer, they die, and the cost of taking care of them until they die is huge. There is general agreement that it would be good to increase the supply of organs in order to meet the demand for organ transplantation.

Organs for transplantation come from two sources: organs from deceased and organs from living donors. When you think about the compensation for cadaveric organ donation, there is no risk of harm to the deceased. As Aristotle argued long ago, the dead cannot be harmed. Payments or compensation for deceased organ donations go to people other than the donor. No one is harmed and family members of the deceased stand to benefit.

Even when the deceased had signed their driver's licence and agreed to having their organs and tissues used for transplantation, we treat the family as if they own the body and accept their donation decisions. If the family objects, organ procurement organizations will not remove the organs for transplantation.

For living donor transplant, risks and harms to the donor are a certainty. The donor will certainly experience pain and scaring, and a period of disability. The donor will also be at risk of minor or major complications related to the donation procedure. The donors themselves, however, are the ones who make the decision based on their personal values and priorities.

When we talk about compensation, there is monetary compensation and also the possibility of in-kind compensation. In the case of organs from deceased donors, funeral expenses could be covered, medical services could be offered (e.g., dental care) or contributions could be made to a family member's healthcare savings account. Living donors could receive recognition with honours or awards, there could be contributions to an organ donor's healthcare savings account, there could be promises of other sorts of medical treatment (e.g., cataract surgery) and payment of expenses, such as health insurance or financial compensation for missed work and childcare.

In the case of deceased donation, the expected benefits for the recipient are significant. At the same time, no one is put at risk to achieve those benefits. Uncompensated donation of cadaveric organs is good, because it alleviates suffering, saves lives, and conserves money and resources. Uncompensated living organ donation is good and ethically acceptable, as long as the donation is voluntary, and a donation is "voluntary" as long as there is no force or deception involved.

With careful donor evaluation, responsible medical care, and access to future needed care, the risks and burdens of living donor transplantation can be reasonable. I am not talking about people being kidnapped in India or Bangladesh and having their organs taken from them by force. I am talking about living donor transplant at a reputable hospital setting with a well-trained, experienced transplant team in place, and all the mandatory safeguards established and monitored. Under those circumstances, with careful donor selection standards in place, the risks of living donor organ transplantation can be reasonable. As I see it, when all of the conditions are satisfied that make uncompensated living donation reasonable, compensated living donation can also be reasonable and permissible.

In some situations, there may be reasons not to allow payments for an activity, and in those circumstances, they should be prohibited. In other situations, there are no powerful reasons for prohibiting payments; and in those cases, payments should be allowed. If uncompensated organ

© The Author(s), 2022. Published by Cambridge University Press.

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

donation is good and reasonably safe, payment itself does not make something that was good into something bad or something that was reasonably safe unreasonable and unsafe.

John Stuart Mill taught us that *the* sole reason justifying limitations to liberty is prevention of harm to others. Other than that, government should not be able to limit personal liberty to receive compensation for organ donation.

In this case, I am thinking about the liberty to earn money. We usually think money is good. Preventing people from receiving money in compensation for organ donation is an infliction on their liberty. If there are no persuasive reasons for prohibiting compensation for transplant organs, payment should be allowed. Prohibitions on monetary or in-kind payments should be rescinded.

Over the decades, since organ transplantation became an accepted treatment, many people have offered objections to compensation for transplant organs. In what follows, I will review the objections that I have encountered and explain why I find none of them convincing.

Some people object to compensation for transplant organs because they think money is dirty. The idea of "filthy lucre" comes from the Bible. Timothy 3:8 says, "Deacons likewise must be dignified, not double-tongued, not addicted to much wine, not greedy for dishonest lucre." Money is seen as the root of all evils and we are cautioned to keep ourselves free from the love of money. This idea has introduced a long tradition that regard money as soiling us. Money makes us grungy, immoral.

Other people say that payment for organs should not be allowed because that would pressure people to earn money by selling organs. People's own values and priorities do pressure them to make certain choices. Yet, we still acknowledge people's responsibility for doing the right thing and we do not obsolve them from responsibility when they do the wrong thing. Our own moral commitments constrain our behavior and limit our choices. For the most part, acting from those self-imposed moral constraints are the mark of autonomy and integrity.

Furthermore, monetary considerations are not the only source of pressure. Individuals and can feel pressure from their families or society to donate an organ. Sometimes, pressure from outside can be problematic, but when a living donor accepts the reasons that others press on them, the decision to donate or sell is still their own.

Many years ago, after a living organ donor's death at Mount Sinai Hospital, New York State created the position of "Living Donor Advocate" and mandated that a Living Donor Advocate interview and approve each living liver donor. I was named the Living Donor Advocate at my hospital, and for 4 years, I had to approve anyone who wanted to be a living donor for adult-to-adult liver transplantion or adult-to-child liver transplantion. From my personal experience, I can report that families can exert a lot of pressure; and from my personal interactions with potential living donors, I do not think the pressure of money is greater than the pressure families can and do exert. Financial inducement is likely to be much less worrisome than the pressure imposed by families. Pressure itself is not a moral problem. If someone pressures you to do something you think is immoral, you can say "No." Pressure is not the same as force which physically prevents you from doing what you choose to do.

Money has many advantages over other forms of inducement. It facilitates voluntary exchange by allowing people to exchange things they have for things they want or want to do. Cash is fungible. You can imagine loving parents whose child needs a kidney transplant. They would be willing donors. But if their child needed something else, treatment that is not covered by their insurance, or perhaps they do not have insurance, and one of those loving parents could get what the child needed by selling an organ, doing so might be their highest priority. Saving their child could be a good reason to sell a kidney.

In that way, voluntary exchanges of money support autonomy. Money allows people to make choices that express their own values and priorities. It gives them the freedom to do what they like with what they have, and it allows people to determine for themselves what is consistent with their well-being, what is best for them.

When I performed the role of Living Donor Advocate, I would see potential living donors in my office, and they would tell me their reasons for volunteering as a living donor. Some would say, "Saving this life is the most important thing for me. I do not think I could live with myself if I did not come forward and

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

express my willingness to donate." Such statements were typical. They tell me that people have their own sense of what is good for them and what they feel obliged to do. Policymakers are not in a more privileged position to judge what is good or bad for them.

Would a disproportionate number of poor people accepting payment for transplant organs be unjust? If what you need is money, and the only way you can get it is by selling an organ, that could be a good decision for you in your circumstances. Whether it is deceased granddad's organ or your own organ, does accepting compensation make your decision unjust or immoral? If not, then I do not see why it is more problematic for poor people to receive compensation compared to others. I do not think inequality in itself means something is unjust. In addition, prohibiting payment denies the poor opportunities that could improve their situation and increase their well-being.

We are talking about organ transplants, but the issue of payment also comes up in research ethics. You can imagine yourself as a potential research subject and you are getting paid $100 to participate in the study. If you find out after the study that the pharmaceutical company wanted to pay you $5,000, but the Institutional Review Board (IRB) said "No, that would be an unjust inducement." Would you think you were harmed by the IRB prohibiting the $5,000 and only allowing you to get $100? I would think you would say "Yes."

For the most part, we accept that people are in the best position to determine the choices that advance their well-being, and make judgments about what is good for them to do. It means that individuals should be allowed to determine what to do for themselves. Prohibiting payments is, in effect, paternalistic and without justification. It shows disrespect for the poor by endorsing the view that the poor cannot judge for themselves what is good for them.

Again, some people say that payment for organs should not be allowed because only poor people would sell, or that it is unjust, coercive, exploitative, and that only the rich would benefit. Creating a system in which only the wealthy would benefit from organ sales would introduces injustice. We could, however, completely avoid injustice in the United States by allowing only United Network for Organ Sharing (UNOS) to be the single purchaser of organs, and then allocate them in the way we do now, by a formula we agree is just.

Would a disproportionate number of poor people accepting payment for transplant organs be coercive? I understand coercion as an unjust threat of harm. Therefore, a voluntary acceptance of a benefit is not coercion. If inducements undermine autonomy, then you might have to worry about them, but that would imply then you could never pay people for their work or anything else. So, I conclude that inducements do not undermine autonomy, and payments for organs should not be any less acceptable than other payments to the poor for their labor or property.

The question remains of whether a disproportionate number of poor people accepting payment for transplant organs is exploitation? When I use the word "exploitation," I understand it as one person imposing tremendous risks and burdens on another and thereby receiving a disproportionately large personal benefit. By managing the living donor transplantation procedures for sellers according to the same standards used for uncompensated living donors, the risks to organ sellers would be reasonable. In that case, there would not be any unreasonable burdens involved. Paid kidney sellers would not be subject to greater dangers compared with other living donors; and, paying a significant sum, for example, $100,000 for a kidney, or a life-time enrolment for an individual or a family in Medicare, would avoid even the appearance of exploitation. Giving a huge amount of money or a huge in-kind benefit is not an exploitation because it does not involve one person receiving a huge benefit while another person carries the risks and burdens without compensation or only trivial reward.

Another argument some people advance against organ sales is that selling a body part would be alienation of a part of one's self. That reservation would also apply to many other procedures such as surgical excisions, tooth extractions, haircuts, and manicures. These examples show that good can be achieved by removing a part of one's body. Alienation of a part of oneself need not be *per se* problematic in those circumstances, so there is no obvious reason for considering it problematic in compensated organ transplantation.

Some say that paying for organs should not be allowed because selling body parts would be a commodification or treating a person as a thing that can be sold. These critics typically point to

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

Immanuel Kant for authority. I believe that their objection actually shows a misunderstanding of Kant. When Kant discussed respect for persons, he is talking about respect for their ability to make decisions for themselves as if they were legislators in the kingdom of ends. For Kant, we should respect the autonomy of moral agents, their choices and their judgment. Although Kant recognizes that we are embodied agents, it is our agency and not our physicality that merits respect.

Another problem objectors raise is that compensation would change the nature of the donation. Yes, something that was regarded as priceless would now have a price, but no one has the right to deny others' freedom simply because they prefer to maintain the *status quo*. If doing something different introduces no harm, there is no obvious reason to disapprove changing the *status quo*.

Some objectors say that payment for organ sales should not be allowed because it would decrease altruistic donations and that would mean losing the benefit of altruistically donated organs. That is an empirical question. We would have to see what the resulting donation behavior was. Furthermore, it is easier to alter reimbursement scales to increase donation than it is to increase altruism.

My conclusion is that there are no persuasive arguments for prohibiting compensation for organs, no harms, and no badness. Therefore, payment for organs should be allowed.

Arthur Caplan: Opening Argument in the Negative

I appreciate Rosamond's clear and very persuasive presentation. I will lead off my response by saying that I think history is on my side. The debate to move to a market is 40–45 years old. I wrote some articles way back in the early 1970s about markets versus altruism versus a position that I favor, presumed consent, where we move more aggressively to have an opt-out system rather than an opt-in system. Although there were many proponents at that time for markets, the argument has not moved one iota toward change. I will tell you, historically, that the reason we do not have a market has nothing to do with the arguments than Rosamond and I are having. In the United States, there is no market because of a man named H. Barry Jacobs. He was a crooked doctor, convicted of mail fraud and other crimes (https://www.nytimes.com/1983/09/24/us/buying-of-kidneys-of-poor-attacked.html).

When we were putting together the organ law in the United States, the National Organ Transplant Act of 1984, which included a system for distribution of organs, as well as ideas about how to get organs, H. Barry Jacobs was all over the media, saying that he was going to set up an international market for organs and have people come to the United States to sell them. He was talking about living organs not cadaver organs. And he was included in a hearing by the then, congressman from Tennessee, Albert Gore. After grilling H. Barry Jacobs, Congress became convinced that too many sleazy, disreputable operators would appear, and that became the basis for prohibiting the sale of organs in the National Organ Transplant Sct. It was the fear that the operators who were proposing to set up markets at that time, in the early 1980s, could not be trusted.

That remains a huge political problem for proponents of what I will call "raw markets" for organs from living persons or from cadaver sources. Also, the kinds of questionable people who say they are going to go into that kind of business have been here and in other nations all over the world for 40 years. I will make a prediction: There will be no change, internationally or in the United States, toward permitting raw markets anytime in the near future. There is no political will to do so. There is no legislation anywhere that people are serious about promoting. In one sense the arguments are interesting, but history ends them—markets are not in our future.

I will add that some years back, having chaired the United Nations/European Union (EU) task force on organ trafficking, the level of sleazy operators out there was unbelievable. The people who trade in women and children for sex and in men for organs are horrible, horrible people and the exploitation of those they deal with is undeniable and terrible. Trafficking undercuts any effort politically around the world to see expansion of organ markets. Even India, which has an illegal market and deems it illegal, and the government knows it is horrible, they just find it tough to enforce, because the operators are wily and always evading enforcement. Every once in a while, they do a crackdown in a village where

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

there is a market in "living" kidneys, but India has many problems and that is not one of the top priorities.

Having said that, not to take the steam or the enthusiasm out of this discussion, it is still an interesting debate. But I am really very sceptical that it is going to go anywhere in the near future in terms of changing policy or practice.

So, realities aside, let me start with some practical issues, and I will slide toward some ethical objections against the position that we should permit payment. We are mixing here some payment to living persons with payment for a cadaver system, and I will mix the arguments a little bit as well. Then we can sort them out more as we get into the discussion.

One limit on markets of any sort is that there is powerful religious opposition around the world to markets—sale and commerce in body parts. This means that allowing a market poses a threat of people pulling away from the current situation of regulated altruism. In some parts of the world, there are opt-in or opt-out modes to obtain consent for altruistic reasons. Among religious groups, there is widespread censure of markets. Catholicism has a papal statement that has never been revoked condemning any form of market for body parts. Similarly, most of Islam, and Orthodox Judaism, in addition to many other groups, have the view that Rosamond indicated: You do not own your body. We can argue about whether you do or do not, own your body or what your status is in relationship with your body. I am not making any argument about whether they are right or wrong in saying the body ought not to be treated as property. What I am saying is that if you allow a market, you are going to see major religious groups and huge numbers of believers pulling away from transplant donation. The only reason to have payment is to incentivize people to make organs available. If huge numbers stop donating, then nothing is achieved.

The support for transplant from religious groups has always been tenuous. We can see some arguments breaking out now about the acceptance of brain death, which are trouble to the many who aren't sure about donating organs. And we can see some issues continuing to arise historically about the acceptability of organ donation motivated by concerns over handling the dead. Having all tissues and organs in order to get resurrected, or when your soul returns back into your body as in Buddhism after a time that postdates when organs would be removed, leads many to have a lot of issues with cadaver transplantation. That is why Japan and China have had horrible organ donation rates for a long time.

If you further alienate huge religious groups, you will lose organs, and that is an experiment not worth the risk. I am very worried about the practical angle here. I do not have to endorse what the "religious" think to point out that we live in a fragile world when it comes to accepting anybody donating organs from the dead, or even tolerating the practice of harming someone to take out an organ from the living.

I have no doubt in practical terms that the endorsement of markets in any rich country will inevitably lead to the promulgation of and then on-going exploitation by horrible, unregulated abusive markets in lower-income nations. We just had a big story in the U.S. media about an out-of-control market for living organs in Afghanistan, harming the people who sell them. They are abused in that there is no assessment of their health and ability to safely sell, and they do not receive any follow-up care. I would call screening and follow-up basic requirements of taking kidneys from the living which markets often do not do in poor nations.

I think that kidney and other organ markets in nations such as Brazil and the Philippines and, from what I know in Egypt and Eastern Europe, have just been unbelievably exploitative in the ways in which organs are bought. People do not get money; the traffickers keep the money by charging for hospital expenses, travel, food, everything, and the people who sell wind up broke. Sellers are not made better off in any sense by permitting a market. We all know that there is a huge transplant tourism trade going on, particularly in China, which does not involve sale directly by individuals but instead sees some Chinese authorities making up lies that the people they are scheduling as voluntary organ donors are, in fact, being murdered to get their parts. The motivation is profit the state, which runs military hospitals that make a lot of money from the organ trade. If the United States were to go to markets, the rest of the world would likely give up the battle against outright exploitative organ trafficking and clear-cut manifest abuses.

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

Further, it is almost impossible to run parallel markets in organs, different for the living and the dead. In the living area, when you hear people talking about payment for organs, you are really just taking about kidneys. There are few advocates that I have ever come across in the world of cardiac transplant or lung transplant for markets, because they know they cannot do it in terms of the living. There is a whole world emerging of composite allographs: face, limbs, penises, and reproductive parts, and none of them talk about markets. They worry that society's willingness to even support donation of those much more psychosocially controversial body parts and tissues is fragile. So, mixing money into that area is just something that they do not advocate. Trying to run kidney markets in parallel with donor organizations is an experiment. Would we truly continue to have some people donating their hearts, livers, faces, and uteruses for free, altruistically, and other people getting paid for their kidneys?

Again, as a practical matter, we do not know what kidney markets will produce; they might or they might not increase supply. It depends on many factors whether people would be willing to sell, particularly in the richer countries, how much they would want to get paid, and what they might need to do in order to schedule a kidney removal.

Another practical fact: There are alternatives to expanding the kidney supply that are emerging now, and for other organs as well, without having to go to "raw commerce," either with the dead or the living. We at NYU and many other places are pursuing aggressively an ethics program pertaining to xenografting. We are seeing animal transplant experiments re-emerging again.

There is also a good deal of work on regeneration of cells to repair hearts without having to transplant them. It makes much more sense to do that than transplanting whole organs. When you need islet cells, you really do not want to move a four-pound organ, when you only need, may be 1 g of the actual cells to help you create insulin.

Better techniques of immunosuppression will reduce the demand for kidneys, we hope, as we begin to understand who can be taken off immunosuppression safely. Re-transplant of kidneys is a major problem; it is one of the reasons for short supply. They fail, and often they fail within 5 years due to immunosuppression problems. Genomic matching also is advancing quickly in this field, allowing for better, more precise use of organs for recipients reducing failure. Remember, it is not just getting an organ to somebody; it is the need to re-transplant those organs that also drives shortages. We have paths that are opening up fast and are likely to produce something in the next 3 to 5 years that will impact in a very positive way the supply issue. We won't have to keep trying to revamp long-standing public policy and convince people to donate, or after asking them for decades to be altruistic donors, telling them we are now going to have markets for their kidneys which we condemned for 50 years.

By the way, as a practical matter, when I was in Pennsylvania, we tried an experiment in paying people for the funerals of donors to see if that would provide an incentive to increase the availability of organs from the deceased. Actually, I should not say "donors," because these became sort of market models, trying to get somebody to behave differently with a fiscal incentive. As it turned out, paying for funerals triggered a horrible backlash in minority communities in the state because they felt no one was paying attention to them until they were dead and then they were willing to pay for their parts. It resulted in very few organs from the minority community and overall, the sums of money that people expected to cover funeral costs were not what the state legislature made available which was in the hundreds of dollars and the whole thing fell apart.

It takes a lot of money to move behavior and I do not see a willingness politically, and as a practical matter, to necessarily pay for large incentives; in some instances, the money is going to come from the government, not just from the buyer of someone's body parts. That experiment did not work. I think one of the practical matters, and Rosamond mentioned this about the death they had some years ago at Mount Sinai, is if you get a few deaths, or really disabling outcomes, in markets using living persons, it will destroy the support for markets almost immediately. It is just a reality that people, the public, and the media will drive the practice completely off the books. I am not saying whether it should, or whether we should, tolerate a couple of deaths in a market for, say, kidneys or maybe lobes of liver, even though we tolerate death in many occupations. But I know when deaths occur in a practice just to make money, it is

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

going to create a maelstrom of negative publicity that I believe will tip over or destroy any market that had been brought under way.

So, to recap, you can classify these more as combinations of practical and moral concerns. Regarding practical reasons: If you lose powerful religious support, if you risk alienating many parts of the transplant community because they worry that they cannot run a parallel system, if you encourage ongoing transplantation tourism and international exploitation, if we do not know what monetary incentives would shift behavior in a significant way, and if you fail to recognize that we have some options that are emerging that do not require going to markets, then you are failing to take into account important practical reasons.

Let me mention two principal moral reasons that concern me about markets. One issue is the problem of coercion of the seller, which I think is very important. Coercion is not just forcing someone to do something against their will or threatening them. I think coercion also has an element of choice, and if the would-be seller has no choices, other than to sell a body part to make money, if they are limited in what they can do, if they have to engage in prostitution and trade their bodies for sex, since there is no other jobs and no other employment, and people do not offer them anything else as an option to survive, I would consider that to be coercive. What I mean is that if you have no options except to sell your body or your body parts, that is not a sound jobs program, and I would consider that a form of coercion. It is not just that I am telling you that you have to do it, it is that if you cannot think of anything, or society does not provide you with anything when you are poor or desperate, except sell your body or your body parts, then that is not a choice.

And lastly, even if we say that it is ethical for people to sell their body parts, another question we have to look at is: Is it ethical for medicine to participate in a practice where physicians do something to a person, take out an organ, not to benefit them and not to help them but to allow them to make money? Is that consistent with medical ethics? Can doctors legitimately engage in commerce and markets when the only reason to do it is that someone wants to do it to make a profit? I cannot see how this would consistent with the ethics of doctors, hospitals, and healthcare. Is that the sort of practice that they can engage in morally separate from what the individual might wish to do? The individual might say, “Maim me because I want to perform in the circus, or exhibit my body for money,” but that would be an unethical thing for physicians to do.

Rosamond Rhodes’ Rebuttal: My Response to Arthur Caplan

Thank you, Dr. Caplan, for your educational and interesting presentation, I had never before heard of H. Barry Jacobs or Al Gore’s role.

In my argument for allowing compensation for transplant organs, I was not talking about markets. I agree with all the things that Art said about markets and endorse his objections completely.

I oppose markets for organs in the United States. That is why I suggested a single purchaser, UNOS, and an organ allocation system based on a formula similar to the one we use today—keeping in mind that we can always do better in our allocation plans. On that we agree.

On the xenographic tissue issue, I remember attending a lecture Dr. Caplan presented some 15 or 20 years ago. It was a wonderful presentation. It might have been about organ sales or presumed consent, but it included a discussion of xenographs. At that time, he said that we do not have to adopt presumed consent or organ sales because we were going to have xenographs in just a couple of years. That projection remains in the future, always just a couple of years down the road. I am not certain that we will ever get there. People are suffering and dying today. I think it would be better to help them now.

Dr. Caplan also offered two principled reasons for rejecting organ sales, one about coercion and the other about physicians’ roles. The easier piece for me to take on first is the role of physicians, so I will begin there.

We have to be very careful to maintain society’s trust of medicine. Living donor transplantation is a very risky business. It involves subjecting completely healthy people to serious risks and certain harms.

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

For medical professionals to be allowed to do this requires society's trust. If organ sales were to be allowed, society would have to trust the doctors do it carefully, in the right way, minimizing risks, and with careful oversight. The one death we had involving the living liver donor was a tremendous tragedy for Mount Sinai. It had a dramatic negative effect on our transplant program and for transplantation around the country and around the world. The Mickey Mantle liver transplant raised questions about the ethics of giving a scarce organ to someone who had a history of alcohol abuse. Again, tremendous harm was done to transplantation, demonstrating how ethically fragile society's trust is, and why living donor transplantation must accord with the highest ethical standards.

Transplant doctors have learned their lesson, and they are reluctant to take any chance of damaging society's trust. I know that the living liver donor program at Mount Sinai rejects two-thirds to three-quarters of those who volunteer to be living donors. We reject potential donors when there is any psychosocial reason, or any physical reason for concern. We want to be quite sure that living donors are going to have a good outcome and that being a liver donor is a reasonable risk for them. Everybody is acutely aware that even with these great precautions, there is something like 3–4 deaths per 1000 in the United States from living donor liver transplantation. Kidney donation is far safer, which is why I focused on kidney donation in my argument for donor compensation.

As soon as anyone introduces compensation issues, society is likely to become more suspicious, and society's ongoing trust is put at risk. That is why I suggested alternatives to payment, like providing Medicare for donors or their families, or deposits in healthcare savings accounts. Such options may be more palatable and less likely undermine social trust. So, I agree again with Art, that trust is an important consideration. At the same time, I think there are ways to navigate this dilemma.

I find the coercion issue more problematic. Coercion occurs when one person unjustly threatens another with great harm. I agree that coercion may be involved in living donor transplantation. In situations where people have no other options and they are pressured to do something immoral to avoid dire consequences, we tend to excuse their wrong doing, and we do not hold them completely responsible. We do not live in an ideal world and people have to make really hard choices.

When it comes to people engaging in prostitution or other behavior that might be considered shameful, I do not think I am in a good enough position to adequately understand those decisions. What I know about prostitution is what I have learned from movies like "Irma La Douce," "Belle de Jour," and "Never on Sunday." The lead characters in those films are women with dignity who have control over their lives. They regard themselves as doing something good and for their own benefit. So, I do not know what to say about prostitution.

When we talk about becoming a compensated living organ donor, we have a very different circumstance. In the organ donor case, we are asking people to do something that we have identified as being good and worthwhile. We should encourage people to do good.

My argument goes back to my initial position. When a person recognizes that there is no other way to save the life of a loved one or prevent a loved one from becoming dialysis-dependent, we accept that donating an organ is good and worthwhile. If an act is good and worthwhile when no financial compensations is involved, a powerful argument would be required to explain why the same act would not also be good when done for compensation? If organ donation is good, why shouldn't providing an organ for compensation also be good. The person who chooses to sell a kidney might consider another goal (e.g., helping her daughter start a business) to be at least as important as preventing a family member from requiring dialysis.

Arthur Caplan's Rebuttal: Hard to Regulate Markets in the Real World

Well, I think Rosamond and I may be starting to move toward some areas of agreement. I do agree that we should not ask people who want to donate organs to make themselves financially worse off. I have long been a proponent of allowing them to get paid time off or get their medical expenses covered. I believe that they should get help with babysitters and travel, but those are not incentives directly to

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

make organs available. They are part of the costs of living donation. Still, we must be cautious about reimbursement. We have a big issue, at least in the United States, in what counts as a cost. We have seen in the tissue market area, people collecting bones, ligaments, and other body tissues, then middlemen start jacking up the price and making it very expensive because they are claiming processing fees and costs that no one monitors or regulates.

One of the difficulties in big markets for body parts, tissues, plasma, surrogacy, egg sales, whether here or elsewhere, is that these are tough areas to enforce, monitor, and surveil. The tissue market in the United States—and I will call it a market because there are many for-profit middlemen who deal with ligament, tissue, tendons, and bone—runs amuck because only the states in the United States have the authority to regulate them and it is not a top priority. They wind up overcharging and bilking people, and I am not sure the same fate would not befall national organizations.

Let me just reiterate. I still think while it could be good to donate an organ and we ought to let people do it, we have seen people, I think Rosamond knows this, who spend a career trying to donate every body part they could, bone marrow, kidney, and there are people who become pathological in their altruism. You can overdo a good thing. And at some point, shouldn't we say, "You know, even though you want to donate a kidney and liver and donate your blood and donate your bone marrow, this goes too far." There actually was a guy in Philadelphia who had been donating anything and everything. At some point, you slide from, "Is this a choice" or "Is this pathology?"

I cannot imagine we are ever going to see compensation for a face, compensation for a penis, compensation for your arm, those worlds are not going to accept payment because they see the donation is psychosocially so difficult and so disturbing emotionally to people. They can barely bring up the prospect to tell you the truth, it is hard to even raise it much less say that there is an incentive for you if you were to do it when you die or your relatives were to be motivated. So yes, I buy the idea that something is good to do when you help another person but I do not buy the argument that it is unmitigated good all the time or that it does not have consequences.

Many states in the United States permit paid surrogacy. You can be a surrogate mother, selling your uterus if you wish to put it that way, and it is accepted that this practice will go on. Some states have prohibited it, some states have not said anything about it; but some states allow it. But it is clear that the people who do it are almost always from the financially middle or lower classes; they are somewhat disadvantaged. Some do it because they want to help others have children and they are middle class, but many are poor women looking to make money by being a surrogate. They get exploited, they get bullied by the people who have the resources to say "This is the lifestyle, you are going to maintain during your pregnancy." "Here is a contract, if and there is any birth defect, we do not accept the baby." "If you want to choose to have an abortion because something is going wrong, you cannot do that because you are under contact to us." The power imbalance between those who use surrogacy, and for that matter, sell eggs is often big and maybe too big to really just say "Well, do not worry. You know UNOS will balance that all out or some government agency will redress that." I am tempted to say, in the United States, there has not been a government agency that has balanced anything out in housing, food, education, or anything else ever, and I would not expect them to do a great job here just based on past history. In other words, in the United States, we have schools that are falling apart, unventilated, too crowded, and a mess. Other people go to private school and have a fine time. We say "But everybody gets an education," but that is clearly, if not exploitation, neglect of the interests of the less well off, because they do not have the political clout to move the regulators to do anything.

One other point is enforceability. For example, if I am going to give an organ upon death, or I am going to give an organ to you while I am alive, and you rely on that and begin to undergo preparation to accept that organ, it is very tough to make people follow through when the inducement is money, even if they have signed contracts. We have a famous case in the United States, McFall *v.* Shimp in 1978, where McFaul agreed to give bone marrow to Shimp. Shimp got ready to accept that bone marrow including undergoing radiation, killing off his immune system. And then McFall reneged. The court called him a lot of names when the case went right to court but said essentially: We cannot enforce anything here, you are still free to do what you want. Knowing that, I still worry that this whole notion of

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

transaction is going to be difficult to really enforce in an area where you have the last word about your body parts.

I will end by repeating what I said before. The rigmarole of setting up this incentive system that UNOS might run, not to make people whole who have lost money trying to do this but to try and give them a reason to do it, is I think too complicated, too difficult to enforce, too difficult to monitor, and too difficult to make sure that people are not doing it who do not see themselves as having no other choice. To me that is just as coercive as holding a gun to their head. When you cannot pick, even if what you are picking is good, you may be picking it not because you want to help someone in need but because you want some money in your pocket and have no other option.

Rosamond Rhodes: Arthur Caplan's Best Argument

I think Art's sensitivity to the way that people could be exploited is very nuanced, very deep, and gives cause for real concern. I am sure that Art knows about a situation that had been going on in New York. I do not know if it is still going on because the Mount Sinai transplant program discontinued our interactions with the program, but it does raise concerns about exploitation.

A group closely related to a religious sect, encouraged people to be living organ donors. The group enlisted living organ donors and additional members of their community to provide transportation, childcare, and food preparation for donors and their families. The group had tremendous community support. They organized the recipients and selected the donors. After working with them for a while, we got the sense that the arrangements might have included transfers of money from the organ recipients to the organizers. The donors were sincere, committed, and religiously observant people who regarded their gift of life as a moral duty. The recipient selection, however, was suspicious, and we pulled out of the interaction.

The important lesson from that experience is that it is critically important to maintain society's trust in our management of living donor transplantation in accordance with the highest ethical standards. Since the tragedy of our donor death, we are acutely aware of how fragile trust in the transplant enterprise is. No evidence, just suspicion of questionable behavior, led us to sever dealings with that organization until we could investigate it further.

Although the risk to living donors can be significant, there are no risks involved in obtaining organs from deceased donors. It is likely to be easier to make a case for allowing compensation for deceased organ donation than living donation. It is also likely to be easier and less ethically dangerous from a public relations standpoint. Payment of funeral expenses or the offer of a year on Medicare, or a payment to a healthcare savings account could be enough to motivate some reluctant family members to donate the transplantable organs of a deceased relative.

We have had the experience of families of a deceased relative who could be an organ donor deciding that one viable kidney could be transplanted to a relative on the transplant waiting list, while refusing to allow the second kidney to be used in a transplant. Perhaps offering an incentive might have moved from them from opposition to allowing the use of the viable organ for saving a life.

Arthur Caplan: Rosamond Rhodes' Best Argument

I think her best argument was what she said about paternalism, which really does cut deeply with me. I find myself knowing that she is right. Many people would simply say, whether on the cadaver side or the living donor side, "I may be poor but I am not an idiot. I do not need you to step in and tell me what I can or cannot decide about doing. I can handle my own choices now or I can let a relative know what I think and let them handle it when I die. And I certainly can handle things if someone asks if I want to sell them my kidney." It is true, all these cautions about "Watch out for this, and be concerned about that, and they are not going to pay you enough, and you know it is only poor people who do it" would not apply if we lived in the right society where no one would have to sell a kidney because there would be other jobs and people would have basic insurance.

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press

The paternalism argument I think has force. Despite my jumping up and down about the potential for exploitation and even potential for coercion, I do think there is an argument that not just Rosamond, but many people who might want to donate would say, “You know, it’s just too much oversight and nanny state behavior. Stop telling me what I can and cannot figure out. Let me make either a transaction or with a trusted entity if UNOS say became that. Governments let me invest in cryptocurrencies and then I wake up one day and find out that some stupid company has been hyperinflated in value. That is the risk I take.” So, I think the argument that we permit a lot of risk is the strongest for me.

Cite this article: Caplan A and Rhodes R (2022). Should Compensation for Organ Donation Be Allowed?. *Cambridge Quarterly of Healthcare Ethics* 31: 286–296, doi:10.1017/S0963180121000992

https://doi.org/10.1017/S0963180121000992 Published online by Cambridge University Press