

Living organ transplantation: Payment for Organs?

Colloque Franco-Maghrébin, Tunis, 31 nov - 1er dec 2007

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Partage des bienfaits vs. Incitations Financières

adapté d'une Rencontre des Comités d'Ethique Français et Allemand,
Fev 2003 (Wolfgang van den Daele, Wissenschaftszentrum Berlin)

1. Relation de don vs. Service payé
2. Challenges pour la justice sociale
 - L' exclusion de la compensation économique : impératif moral? Politique à conseiller?
3. Contribution à la création d' un bien public dans une société à laquelle le donneur *n' appartient pas*
 - Exclusion sociale (communautés indigènes, groupes défavorisés)

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1. Relation de don vs. Service payé

- Ne pas “acheter” la volonté des personnes à participer
 - Les paiements sont illégaux en Europe
 - Cependant:
 - Un paiement n'est pas une pleine commercialisation
 - Le caractère “coercitif” des récompenses financières est contrôlé
 - Des incitations économiques sont acceptables pour favoriser la contribution des personnes au bien public
- Ne pas détruire la culture morale de l'altruisme
 - Volonté de participer sans rémunération comme contribution à un bien public qui bénéficiera à toute la société
 - Le paiement mine l'altruisme et étend le calcul économique à tous les aspects de la vie sociale.

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Questions de Justice?

- Les questions de justice sociale contenus dans les profits dérivés :
 - Ne devraient pas être résolues par des schémas de type partage des bienfaits (que ce soit pour des individus ou des groupes), liés à la participation de la recherche,
 - Mais plutôt par la taxation, le contrôle des prix ou d'autres mécanismes de régulation du secteur marchand.

Les différentes théories de la justice

- Procédurale (libéralisme)
- Utilitarisme (calcul économique “classique”)
- Egalitarisme des biens premiers (maximin de Rawls)
- Egalitarisme des “capabilités” (Sen)
- Elitisme méritocratique (Ferry)

Justice, Égalité, Équité

- Équité horizontale: lutte contre les discriminations
 - i.e. traiter de façon identique des cas identiques
- Équité verticale: lutte contre les inégalités
 - i.e. traiter de façon différente des cas différents

Principes généraux de la loi

- Inviolabilité du corps humain :
consentement révoquant à tout moment
- Interdiction de toute publicité en faveur
d'une personne ou d'un organisme
- Non patrimonialité du corps humain :
gratuité du don
- Anonymat donneur receveur
- Principes de sécurité sanitaire

Loi française (1994, révisée en 2004)

- le dogme absolu est celui du don :
 - gratuit,
 - anonyme et
 - implicite
 - toute personne qui n'a pas exprimé de refus (registre) est théoriquement présumée consentante
- Mais en cas de ME, demande d'information auprès de la famille pour savoir si de manière orale le patient avait exprimé ou non un refus.

Donor charged in Romania's first organ trafficking trial

Anecdotal evidence suggests that organ trafficking has been a thriving trade in Romania for several years. But there have been no prosecutions for this practice—until now. Carmiola Ionescu reports on a case in which routine medical checks revealed the evidence police were looking for.

But authorities were unable to find any hospital records to back up his story and a year-long police investigation found he had sold his kidney in 2001 for more than £10 000.

Bulgarian hospital admits role in illegal transplants

Managers at one of Bulgaria's top hospitals have admitted that their institution was involved in at least 20 illegal transplant operations. Authorities are now investigating whether eastern Europeans are being flown to Bulgaria to supply wealthy patients with kidneys. Bojan Pancevski reports.

Since the claims first surfaced, management at the St Ekaterina University Hospital in the capital Sofia have done their own internal investigation, and the president of the hospital's board of directors, Krasimir Gigov, admitted that at least 20 illegal operations have taken place during the past 2 years.

Prosecutors are currently examining evidence suggesting that the transplants were from impoverished donors in countries like Russia and Georgia and mainly made to wealthy recipients from Israel.

Gigov, who is also a secretary in the Health Ministry and was appointed hospital board president after the controversies started, confirmed that the hospital charged over £10 000 per operation but that he had not yet been able to confirm allegations that the donors had received money for their organs.

German surgeon is investigated about trading of organs

German officials are investigating alleged organ trading in four cases of kidney transplantation carried out by a prominent surgeon.

The district attorney of Essen is looking into the case, in which kidneys were allegedly donated by Moldovan “relatives” to their “cousins” from Israel. All transplantations were carried out by the surgeon Christoph Broelsch, at Essen University Hospital and Jena University Hospital.

Last week the family of one Israeli recipient admitted in the weekly magazine *Der Spiegel* that it paid the Moldovan donor—who was not a relative—several hundreds of thousands of dollars in cash. However, the kidney

transplantation eventually failed and the recipient died.

This transplantation was carried out at Jena University Hospital, because an internal committee of the hospital in Essen had doubts about the relationship between donor and recipient and turned down the operation.

German transplantation law permits living donation only if donors and recipients are relatives or close friends. Commercial interests have to be excluded by an independent committee. Because the Jena hospital did not have a committee at the time (the state of Thuringia had not issued the relevant law), Dr Broelsch transferred the patient to his surgeon friend Johannes Scheele in Jena, where the operation then took place. Essen University Hospital criticised Broelsch’s action, but no action was taken.

Annette Tuffs *Heidelberg*

Le coût financier du tourisme médical J Med Ethics, Jan 2007

well as ethical problems. In autumn 2006, media attention focussed on the economic and human cost of British patients receiving kidney transplants in India.¹³ A doctor's survey of local patients in Britain suggested that two out of three who had paid for Indian kidney transplants suffered serious complications requiring significant NHS care on their return. Poor

Questions nouvelles

- liées au concept de propriété du corps,
- à la définition fondamentale de ce qu'est une personne humaine,
- ou soulevées à partir des aspects financiers:
 - tradition européenne très forte contre la vente d'organes et en faveur de la solidarité;
 - convention des Droits de l'Homme et de la Biomédecine de 1996 prohibant les profits financiers et la mise à disposition d'une partie du corps humain: « *Le corps humain et ses parties ne doit pas, en tant que tel, donner lieu à un gain financier* » (Art 21).

Réévaluation de la vision internationale de ces questions?

- Ratification de la Convention d' Oviedo.
- Les législations des pays se modifient en regardant son voisin.
 - rajout d' un consentement exprès au consentement implicite en France ?
 - Discussion du bien-fondé du consentement implicite en Allemagne !
- tensions entre
 - consentement implicite et explicite,
 - entre autonomie et contrainte,
 - entre Liberté et Fraternité.

Quelle est la hiérarchie “correcte” des principes éthiques cardinaux?

Bienfaisance

Autonomie

Non-Malfaisance

Bienfaisance

Autonomie

Non-Malfaisance

Justice

Justice



Dieu et mon droit

Dieu *est* mon droit?

LIBERTE-EGALITE-FRATERNITE

Liberté

Egalité

Fraternité

Autonomie

Équité

Solidarité

Justice?

Bienfaisance?

Justice?

... la Justice comme moyen de garantir mon autonomie?

Les Droits et les Devoirs du Citoyen

- Obligation de respecter le *bien public*, avec un équilibre juste entre :
 - mon autonomie
 - et le respect dû à l'Autre
- Doit inclure les concepts de bienfaisance et de non-malfaisance
- Cependant, l'autonomie sans bienfaisance n'est pas vraiment juste

Obligations de l'Etat ?

- Protéger le vulnérable, garantir la justice
- Mais une bienfaisance inattentive à l'autonomie est aussi injuste...

Modèles mondiaux de Solidarité/Fraternité

- “Horizontal”: *habeas corpus*, contrats individuels
 - “ce qui est légal devrait être moral”
- “Vertical”: *pater familias*
 - “ce qui est moral devrait être légal”
- “Circulaire”, Oriental: *Harmonie*
 - la survie de l’individu dépend de la survie du groupe...

Values and Ethics: Guidelines for Ethical Conduct in
Aboriginal and Torres Strait Islander Health Research
<http://www.nhmrc.gov.au>

- six valeurs ont été retrouvées au cœur des recommandations proposées :
 - Spiritualité et intégrité
 - Réciprocité
 - Respect
 - Égalité
 - Survie et Protection
 - Responsabilité

Les questions sont sans doute plus complexes qu'imaginées...

- Nous devons:
 - promouvoir la solidarité et une réciprocité juste;
 - travailler sur les différents concepts de
 - Égalité vs. Équité
 - Autonomie vs. Harmonie
 - Fondamentalisme Moral vs. Relativisme Culturel
(Éthique Universelle vs. Diversité Culturelle);
 - Suivre le chemin vers un concept de 'pluralisme négocié' entre/au sein des individus?

La hiérarchie entre les principes éthiques cardinaux pourrait être...

Justice Distributive/Non-Malfaisance

Autonomie/Bienfaisance

La greffe prise comme un modèle des relations entre humains, avec une nouvelle définition de la solidarité.

- L'importance de la réciprocité est à souligner.

Quel est le rôle du politique ?

- La tâche du politique est de tracer la frontière entre :
 - ce qui peut s'acquérir
 - et ce qui ne le peut pas,
- et ce pour tous les types de Sociétés
 - contractuelle “horizontale”,
 - solidaire “verticale”,
 - ou d'honneur “circulaire”.



Le Don:

Donner-
Recevoir-
Rendre

Les Trois Grâces,
Raphaël (1504—1505)

L' esprit du don

- est de travailler pour assurer la justice, cad la reconnaissance réciproque. C' est ici que la marchandisation généralisée fait problème.
- Estimer que tout est marchandable, c' est accorder un pouvoir sans limite au rapport contractuel. En fait, ce serait la négation du spirituel.

Le grand risque est la modification de la relation de don.

- *A gift is better than a gift certificate.*
- Sont à risque les valeurs de respect, d'attachement dont les valeurs sont les témoins et les garants.
- Il s'agit de fierté, de risque, d'honneur, de générosité, de jeu, de gloire, de perte ou d'abandon, toutes attitudes qui font la beauté et la joie de la vie partagée entre individus.

Shifting ethics: debating the incentive question in organ transplantation

Donald Joralemon *Smith College, Northampton, Massachusetts, USA*

Economic and Health Consequences of Selling a Kidney in India

Madhav Goyal, MD, MPH

Ravindra L. Mehta, MBBS, MD

Lawrence J. Schneiderman, MD

Ashwini R. Sehgal, MD

COMPARED WITH LONG-TERM dialysis, renal transplantation generally offers a longer life span and a better quality of life.^{1,2} However, nearly every country has a shortage of kidneys for transplantation. In the United States, 50 000 individuals are waiting for kidney transplantation, yet only 15 000 kidneys are transplanted annually.³ The shortage is even more severe in developing countries. Despite India's having 4 times the population of the United States, Indian physicians transplant fewer than 4 000 kidneys annually, and a number of the organs are received by non-Indians.⁴⁻⁷

In the United States, a majority of kidney transplants come from cadaveric donors; eg, brain-dead victims of

Context Many countries have a shortage of kidneys available for transplantation. Paying people to donate kidneys is often proposed or justified as a way to benefit recipients by increasing the supply of organs and to benefit donors by improving their economic status. However, whether individuals who sell their kidneys actually benefit from the sale is controversial.

Objective To determine the economic and health effects of selling a kidney.

Design, Setting, and Participants Cross-sectional survey conducted in February 2001 among 305 individuals who had sold a kidney in Chennai, India, an average of 6 years before the survey.

Main Outcome Measures Reasons for selling kidney, amount received from sale, how money was spent, change in economic status, change in health status, advice for others contemplating selling a kidney.

Results Ninety-six percent of participants sold their kidneys to pay off debts. The average amount received was \$1070. Most of the money received was spent on debts, food, and clothing. Average family income declined by one third after nephrectomy ($P < .001$), and the number of participants living below the poverty line increased. Three fourths of participants were still in debt at the time of the survey. About 86% of participants reported a deterioration in their health status after nephrectomy. Seventy-nine percent would not recommend that others sell a kidney.

Conclusions Among paid donors in India, selling a kidney does not lead to a long-term economic benefit and may be associated with a decline in health. Physicians and policy makers should reexamine the value of using financial incentives to increase the supply of organs for transplantation.

JAMA. 2002;288:1589-1593

www.jama.com

Amount Received From Sale

The amount promised for selling a kidney averaged \$1410 (range, \$450-\$6280), while the amount actually received averaged \$1070 (range, \$450-\$2660). Both middlemen and clinics promised on average about one third more than they actually paid.

How Money Was Spent

Most of the money received was spent on debts (60%), food and clothing (22%), or marriage (5%). Only 11% was retained as cash equivalents (cash, jewelry, bank deposit, or other investment).

Table 3. Health Status Before and After Nephrectomy

Health Before Nephrectomy	Health After Nephrectomy, No.				
	Excellent	Very Good	Good	Fair	Poor
Excellent	11	16	15	58	50
Very good	0	14	16	53	39
Good	0	0	9	10	6
Fair	0	0	1	6	1
Poor	0	0	0	0	0

CONCLUSION

The sale of kidneys by poor people in India does not lead to a tangible benefit for the seller. The value of paying for donations must be reexamined in light of these findings. Although patients with kidney failure deserve access to optimal treatment, such treatment should not be based on the exploitation of poor people.

Analysis and comment

Controversy

Payment for living organ donation should be legalised

Amy L Friedman

Governments seem resistant to allowing live donors to benefit from their gift. But a legalised system could solve organ shortages and be both safer and fairer

Reimbursement and risks associated with donating or renting human body or body parts in US

	Payment legal	Donor morbidity	Donor mortality (%)
Hair	Yes	Minimal	0
Blood	Yes	Minimal	0
Sperm	Yes	Minimal	0
Egg	Yes	+	0
Surrogate pregnancy	Yes	++	0.005 ¹⁰
Participating in drug trial	Yes	++	Variable
Prostitution	Yes*	++++	0.4 ¹¹
Live kidney	No	++	0.03 ¹²
Live liver	No	+++	~ 1

*Not in all states.

Summary points

The severe organ shortage has generated desperation among people awaiting transplantation

A black market for kidneys purchased from living donors exists despite prohibitory laws

Everyone but the donor derives tangible benefit from a living donor transplant

Controlled, regulated compensation to living organ donors should be permitted as with donation of other body material

Legalised donation is likely to improve safety for both donors and recipients



PAT ROQUE/AP

What price a kidney?

Friedman AL, BMJ 2006; 333: 746-8

Combien pour un organe? Une recette

- Prendre le prix de la vie
- Multiplier par le risque du prélèvement
- Donne le prix de l'organe!

Combien pour un organe? L'application

- Vie = \$ 3 000 000
- Risque de la procédure
 - 1 / 1000 pour un rein,
 - 1 / 100 pour un foie
- Donne :
 - \$ 30 000 pour un rein,
 - \$ 100 000 pour un foie.

Le Juste Prix !

- Ajuster le prix de l'organe au PIB par habitant:

- \$ 30 000 pour un rein aux USA

- \$ 3 000 pour un rein Pakistan

$$[\$ 30\ 000] / \text{PIB USA} = [\$ 3\ 000] / \text{PIB Pakistan !}$$

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Your Religion

Does my religion

An often-heard question is whether the New York Regional Council supports those positions.

AME & AME ZION

Organ and tissue donation is encouraged. They encourage all members to donate.

AMISH

Approved if there is a medical need and the outcome is questioned.

ASSEMBLY OF GOD

The Church has no official position on organ donation to the individual. Donation is encouraged.

BAPTIST

Donation is supported by the individual.

BRETHREN

The Church of the Brethren is in support and endorsement of love for Christ, and organ donation.

BUDDHISM

Donation is a matter of individual conscience.

CATHOLICISM

Transplants are acceptable.

CHRISTIAN CHURCH

The Christian Church encourages organ donation to be made in conjunction with family.

CHRISTIAN SCIENCES

No position, leaving it to the individual.

EPISCOPAL

The Episcopal Church supports organ and tissue donation as part of their ministry to the community.

GREEK ORTHODOX

No objection to pre-mortem experimentation or donation.

GYPSIES (ROMA)

Gypsies are a people with their own beliefs and tend to be conservative about the steps. Thus, the belief is to donate only if necessary.

HINDUISM

Donation of organ is encouraged.

INDEPENDENT

Generally, Evangelical churches leave the decision to donate up to the individual.

ISLAM

The religion of Islam strongly believes in his Transplantation Proceedings. Muslim scholars belonging to various sects saving human life and have permitted.

JEHOVAH'S WITNESSES

Donation is a matter of individual conscience, drained of blood.

JUDAISM

Jews believe that if it is possible to restore sight is considered life.

LUTHERAN

In 1984, the Lutheran Church in America being of humanity and can be "a member to consider donating including the use of a signed donor card."

MENNONITE

Mennonites have no formal position. donate is up to the individual and family.

MORMON (CHURCH OF JESUS CHRIST)

The Church of Jesus Christ of Latter-day Saints made in conjunction with family.

PENTECOSTAL

Pentecostals believe that the decision to donate is up to the individual.

PRESBYTERIAN

Presbyterians encourage and support their own body.

PROTESTANTISM

Encourage and endorse organ donation. Generally, Evangelical churches have no opposition to organ donation and leave the decision to donate up to the individual.

QUAKER

Donation of transplants is an individual decision.

SEVENTH-DAY ADVENTIST

Donation and transplantation are strongly encouraged. transplant hospitals, including Loma Linda in California, support transplantation.

SHINTO

In Shinto, the dead body is considered to be in a holy belief context, injuring as dead body is a serious offense. "Shinto Concept Concerning the Dead Human Body" bereaved families for organ donation or dissection. Japanese regard them all in the sense of injury. injure the itai - - the relationship between the individual and the community.

SOCIETY OF FRIENDS (QUAKERS)

Organ and tissue donation is believed to be an individual decision. an official position on donation.

UNITARIAN UNIVERSALIST

Organ and tissue donation is widely supported and selfless giving.

UNITED CHURCH OF CHRIST

The United Church of Christ supports and encourages organ donation.

UNITED METHODIST

The United Methodist Church issued a policy statement that "The United Methodist Church recognizes organ transplantation."

Living Donors *Online!*

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	Recommendations on how to post	Turtle	10-Mar-06 06:02 PM by Turtle	0	1560
	Read: Rules for Posting in this Conference	Michael	28-Jan-06 12:41 PM by Michael	0	2832
	US Law on Buying and Selling	Michael	12-Sep-04 11:58 PM by Michael	0	4137
	Fresh young kidney up for donation	hope121	27-Nov-07 03:55 PM by Michael	2	10
	O+ Kidney Needed for 33yo CDN on HD	angieskidney	27-Nov-07 08:21 AM by angieskidney	12	374
	O+ kidney donor [View All]	plm2879	27-Nov-07 04:19 AM by Gabriela	38	908
	if kidney needed GIVE LOCATION!!! [View All]	Rob	26-Nov-07 10:11 PM by My8nlis9	68	3289
	willing to donate a kidney with questions	enigmaofc	26-Nov-07 02:15 AM by RCPLAYLAND	2	162
	Kidneys	fourbeans	26-Nov-07 02:12 AM by RCPLAYLAND	6	180
	I can donate O+ kidney	sangoprotus	26-Nov-07 02:09 AM by RCPLAYLAND	3	323
	extremly willing living kidney donor	melissa2	26-Nov-07 02:08 AM by RCPLAYLAND	5	241

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Subject: "Is Someone Buying or Selling?"

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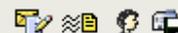
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Reading Topic #2196

Michael 

Charter Member
1128 posts

24-Jul-07, 05:39 PM (EDT)



"Is Someone Buying or Selling?"

Living Donors Online!

Are you seeking an organ donor and you've been contacted by somebody trying to sell an organ?

Are you a potential donor who has been offered money to buy an organ?

If so, please send us a [message](#) with the LDO user ID of the person who has contacted you about this illegal action. We'll do what we can to notify legal authorities and to block this person from using the LDO message board again. While we can't guarantee we can stop people like this, we'll do what we can to keep you from being associated with illegal activities like buying and selling organs.

Michael
Living Donors Online!
Our mission: to improve the living donation experience

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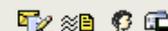
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Reading Topic #2356

hope121Member since 27-Nov-07
2 posts

27-Nov-07, 07:54 AM (EDT)

**"Fresh young kidney up for donation"**

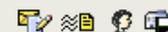
I'm a 22 year old male college student who's one semester away from a degree in mechanical engineering. My sister anonymously donated her kidney at Northwestern Memorial Hospital at age 21 in December of 2005. I am following her footsteps. My blood type is A+.

I am interested in talking to potential recipients.

Also, I have heard from several people that there was talk in the news about insurance companies compensating donors...does anyone know anything about that? I have about \$135,000 g's in student loans and if I could get some money from those greedy insurance companies that would be a big help.

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2 posts

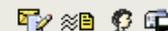
27-Nov-07, 01:30 PM (EDT)

**1. "RE: Fresh young kidney up for donation"**In response to [message #0](#)

In addition, the laws do not say it would be illegal to receive compensation from an insurance company. The terminology used is donor, recipient, or broker. It also mentions that it is criminal if the person "profits" from such a transaction. I'm all about fighting the system...who wants to help me?

[Alert](#) | [IP](#)[Printer-friendly page](#) | [Edit](#) | [Reply](#) | [Reply With Quote](#) | [Top](#)**Michael** Charter Member
1128 posts

27-Nov-07, 03:55 PM (EDT)

**2. "RE: Fresh young kidney up for donation"**In response to [message #1](#)

I'm not familiar with any insurance companies willing to compensate living donors. What I've heard is one doctor's (Dr. Matas) proposal to compensation donors, but his suggestion isn't currently allowed by US law. You can ready more about that on the ABC News web site.

If you would like to be a living donor and need financial help covering things like travel costs, the transplant center can apply for financial assistance on your behalf from the National Living Donor Assistance Center: <http://www.livingdonorassistance.org/>

Michael



Good Morning America | World News | 20/20 | Primetime | Nightline | This Week | ABC News Now | i-Caught

27 novembre 2007

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Doctor Proposes Sales of Kidneys

Says Regulated Sales Would Address Organ Shortage -- But Foes Fear Exploitation



Obstacles to a plan for organ sales are huge. Not only are organ sales against the law -- in 1984, Congress banned financial incentives for organ donation -- virtually every major medical association opposes the idea. (PhotoDisc)

By JOHN MCKENZIE
Nov. 19, 2007

From WNT

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A-Stroble Nov-26

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KIDNEY TRANSPLANTS

More than **70,000** needed

Source: Organ Procurement and Transplantation Network

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