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# Gifts of the Body

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In many realms of life there are questions that never really go away. We address them more or less satisfactorily, and, for a time, they recede from the center of our attention. Yet, because they are important, they are likely to reappear and again demand our consideration. In the realm of bioethics one such question is whether it could be right to increase the supply of organs for transplant by providing financial incentives for those who supply their organs or, even, by establishing some kind of market for the sale of organs. (Whether the market should work only for sellers or for buyers also is, of course, one aspect of this recurring issue.)

Such questions have received attention in the past, but in recent years—fueled by longer waiting lists for transplantation—they have returned to the center of bioethical concern. In May, 2006, the Institute of Medicine (IOM) released a report (titled, *Organ Donation: Opportunities for Action*) that recommended against using financial incentives to boost organ supply. The report did, however, propose some other means aimed at achieving the same goal—in particular, increasing the rate of organ procurement from those who die suddenly of cardiac arrest. On May 15, 2006, responses to this report appeared on the op-ed pages of both the *New York Times* and the *Wall Street Journal*. Sally Satel (in the *Times*) and Richard Epstein (in the *Journal*) attacked the IOM report for its "timid," "narrowminded," and "unimaginative" thinking. "The key lesson in all this," wrote Epstein, "is that we should look with deep suspicion on any blanket objection to market incentives—especially from high-minded moralists who have convinced themselves that their aesthetic sensibilities and instinctive revulsion should trump any humane efforts to save lives."

Although this is a serious challenge, it is, I think, a forgetful and a misleading one. Forgetful, because it has lost contact with the reasons that moved our society to turn to an organ procurement system based on giving (even if for a variety of motives, not all of which need be altruistic). Misleading, because in its animus against moralism it adopts a too simple moral position for which saving of lives always has trump.

The questions that need asking are not aesthetic but anthropological, and it would be a shame if we were to become tone deaf to such questions, however difficult to articulate they may be. So, for instance, we must ask: Even

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if we simply assume that there is a shortage of organs for transplant and that it is imperative that we overcome this shortage, how would we decide whether a market in organs was an acceptable way to meet that imperative? How decide without first asking ourselves what organs and bodies are? Or, how decide without asking ourselves who the person is who, with a kind of sovereign freedom, disposes—whether by gift or by sale—of bodily organs? After all, not everything is for sale, and we cannot decide whether a thing is a commodity that could properly be marketed without thinking about the kind of thing it is.

We are reluctant to think through such concerns, however, for we sense that they may raise disquieting questions about organ transplantation generally. So we are tempted to let them slide, and we prefer to begin in the midst of things, with particular questions that seem (even if deceptively so) more manageable. To his credit, Epstein sees this. In an earlier essay, he noted arguments Leon Kass had offered against the sale of human organs, arguments based in large part on the dignity of the embodied person, and then he put his finger on the point we prefer to avoid: "Taken at one level, Kass's arguments are so strong that they would preclude gifts as well as sales."

We have trained ourselves to think that organs are the sort of thing that can be *given* in the good cause of saving lives. But it now turns out that there are still more lives to be saved. Why then, exactly, are organs not the sort of thing that can also be sold in this same good cause? If we've learned to think of the organ as a separable part that can be offered to another, if we no longer see this offer as a kind of problematic self-mutilation, then it is hard to know why sale of these separable parts should be forbidden. The organs procured will save more lives and mitigate the shortage that operates as a given in the argument. What more need be said?

Perhaps, however, we should ask ourselves some very basic questions: In what sense is there a shortage of organs for transplant which *must* be overcome? On what basis, if any, should we suppose that the organs of one's body ought to be available for transplant into the body of another? Without making at least some progress in addressing these questions, I do not know how to think about whether proposals for increasing the number of organs for transplant—in particular, proposals for some sort of market in organs—make moral sense.

## Death as a Problem to Be Solved

If a man is dying of kidney failure, and if his life might be prolonged by a transplanted kidney but none is available for him, those connected to him

by special bonds of love or loyalty may quite naturally and appropriately feel grief, frustration, even outrage. We are heirs of a tradition of thought that teaches us to honor each person's life as unique and irreplaceable (even though we may not be able really to make sense of this inherited belief apart from reference to the God-relation, which is uniquely individuating for each of us). Although the sympathy any of us feels is inevitably proportioned to the closeness of our bond with one who dies, we are right to honor the grief, frustration, and outrage of those who experience a loved one's death as uniquely powerful.

These quite natural feelings fuel the belief, widely shared in our society, that it is imperative to make more organs available for transplant; however, the same feelings of urgency and desperation also make it difficult to think critically about assumptions driving the transplant system in general. To take a very different example, we may also be experiencing a "shortage" of gasoline in this country. Relative to the demand, the supply is scarcer than we would like. In the face of such a shortage, we could permit drilling in heretofore protected lands or we could ease the general demand for oil by developing alternative energy sources such as nuclear power. We could also learn to moderate our desires and demands for gasoline, altering the pattern of our lives. So there are ways to deal with the gasoline shortage that might work but would—at least in the eyes of some—exact too high a moral price. And there are ways to deal with the shortage that would teach us to modify our desires in such a way that we no longer think in terms of a shortage, but they would entail accepting certain limits on how we live. Upon reflection, we may well decide that neither of these answers to the gasoline shortage is a wise direction to take, but it would be a frivolous person who continued to speak of a "shortage" without considering carefully both sorts of alternatives: exploring new sources of energy, or moderating our demands and expectations. Most of the time, though, when the subject is organ transplantation, we attend only to the search for new ways to procure organs. We look, as the subtitle of the IOM report puts it, for "opportunities for action."

If, however, we were to moderate the demands we make on medicine, we might be less pressured to think in terms of an organ shortage. Alongside our natural desperation at the impending death of one who cannot be replaced, alongside our natural tendency to see death as an evil to be combated, we must set another angle of vision about what it means to be human. Each of us is unique and irreplaceable; that is true. But each of us also shares in the limits of our finite condition; we are mortals. "The receiving of an organ does not," as William F. May once put it, "rescue the

living from the need to die. It only defers the day when they will have to do their own dying." Tolstoy's Ivan Ilyich knew well the relentless logic of the syllogism: if all men are mortal, and if Caius is a man, then Caius is mortal. But that logic seemed both absurd and unjust when he tried to slot his own name, Ivan, into the syllogism in place of Caius. Yet, there is truth in each angle of vision.

We should not deny the existential anguish; we should also not deny the homely truth that each of our names can and will find its place in the syllogism. To refuse to acknowledge that second truth would turn medicine into nothing more than a crusade against death, plagued constantly by a "shortage" of cures for one or another deadly ailment. In other areas of medicine we are ready to brand that approach as inadequate, and recognition of our mortality ought to elicit similar caution when speaking about a shortage of organs for transplant. As Hans Jonas argued in one of the seminal articles of the bioethics movement in this country, progress in curing disease is not an unconditional or sacred commitment. The survival of society is not threatened when we do not conquer disease, however sad this may be for those who suffer.

From one angle, as long as one irreplaceable person dies whose life might have been prolonged through transplantation, there will always be an organ shortage. From another angle, that is just the truth of the human condition. If we turn organ procurement into a crusade, we make of death simply a problem to be solved rather than an event to be endured as best we can, with whatever resources of mind and spirit are available to us. To be sure, when a particular person—Ivan—faces death, we confront a problem that calls for our attention and our attempts to cure. But not only that. We also face the human condition that calls for wisdom and care. Sometimes, at least, we will undermine the needed wisdom and care if we think of this person's death as only or primarily a problem which it is imperative that we solve.

## Recovering the Meaning of the Body

Freed of the sense that we are under some imperative to secure more organs, we may be able to think again of the price we would pay—perhaps, to be sure, a justified price—to increase the supply of organs for transplant. It may be that the limited supply of organs is due to thoughtlessness, selfishness, fear, or simply limited altruism. But it may also be based on weighty—if difficult to articulate—beliefs about the meaning of human bodily life. If our problem is thoughtlessness, selfishness, fear, or limited altruism, financial incentives might "solve" the problem. But if there are

deeper reasons at work, reasons that have to do with what we may even call the sacredness of human life in the body, we pay a considerable price if we seize upon certain means to increase the supply of organs for transplant.

Perhaps, then, we should start with the disquieting possibility we might prefer to pass by. Forget the issue that arises farther along the way, whether some kind of market in bodily organs could be morally acceptable. Start farther back with the now widely shared presumption that it is morally acceptable—indeed, praiseworthy—freely to give an organ when this donation may be lifesaving. In the 1930 encyclical letter, *Casti Connubii*, Pope Pius XI wrote: "Private individuals . . . are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body." How does one get from that to Pope John Paul II's words sixty-five years later in *Evangelium Vitae*?: "There is an everyday heroism, made up of gestures of sharing, big or small, which build up an authentic culture of life. A particularly praiseworthy example of such gestures is the donation of organs, performed in an ethically acceptable manner, with a view to offering a chance of health and even of life itself to the sick who sometimes have no other hope."

John Paul's words notwithstanding, we would not ordinarily want a physician whose "treatment" harmed us in order to bring benefit to someone else. And ordinarily a surgeon would not think of operating on a person in order to help someone other than that person himself. For we know a person only in his or her embodied presence. In and through that body the person is a living whole. For certain purposes we may try to "reduce" the embodied person simply to a collection of parts, thinking of the person (from below) simply as the sum total of these parts. But we do not know, interact with, or love others understood in that way; on the contrary, we know them (from above) as a unity that is more than just the sum of their parts. The very idea of organ transplantation upsets these standard assumptions in a way that is problematic and that calls for justification.

## Procuring Organs from Cadavers

Understandably, therefore, we are inclined to turn first to cadaver donation, to procuring organs for transplant from (newly) dead bodies. After all, it may not seem to raise these troubling questions so acutely. Even here, however, a certain caution is in order.

There is something uncanny about a corpse, for it is *someone's* mortal remains. We would, I think, worry about a medical student or a mortician

who felt no need to stifle within himself a deep reluctance and contrary impulse the first time (or the hundredth time) he was called upon to handle or cut a human corpse. Reverence for the dead body is not (we think) entirely incompatible with using it for a good purpose, but surely there is much that this reverence would not permit. It is one thing—and not, we hope, incompatible with reverence—that medical students should, with fear and trembling, learn needed skills through dissecting a corpse. Would we think it equally unproblematic if corpses were dissected in high school biology classes? We accept that some people, out of a deep desire to serve the wellbeing of those who come after them, may give their corpses for dissection and study by medical students. Would we think it equally unproblematic if they freely donated their bodies for the manufacture of soap?

If we really freed ourselves of reservations and reverence, we could develop the "bioemporia" filled with "neomorts" that Willard Gaylin envisioned more than thirty years ago: repositories of brain dead but breathing, oxygenating, and respiring bodies available for countless uses (medical training, drug testing, experimentation, harvesting of tissues and organs, and manufacturing). That few of us would be willing to turn in such a direction indicates, again, that certain deep human impulses must be overcome before we use the dead human body, even for the best of purposes—and not all uses would be acceptable to us, even were the body freely donated for such use. (Perhaps, however, I should not overstate the reluctance of some. Within the last few years articles have appeared noting the eagerness of some researchers to use brain-dead or, even, "nearly dead" patients for several kinds of research.)

That the corpse from which an organ is taken for transplantation is *someone's* mortal remains (and not just a collection of readily available organs) is also indicated by how hard it is for us not to think that the presence of a transplanted organ (or, at least, of certain organs) somehow brings with it the presence of the person from whom that organ was taken. Just such psychological complexities are at the heart of Richard Selzer's profound and provocative short story, "Whither Thou Goest." When Hannah Owen writes to Mr. Pope seeking permission to listen for an hour to the heart of her deceased husband, which now beats in the body of Mr. Pope, she does so, as she puts it, because of "the predicament into which the 'miracle of modern science' has placed me." She professes no interest at all in Mr. Pope himself other than as one who houses something she used to know well and longs to hear again. Such is the mystery of the body and its parts, however, that a reader may wonder about this when, after finally receiving permission to listen to the heart now beating in Mr. Pope,

Hannah is "nervous as a bride." For her, at any rate, the heart now beating in Mr. Pope's chest continues to carry the presence of her husband.

This is fiction, of course, but it may be profound humanistic wisdom as well. That the organ, the body, and the person for whom that body is the locus of presence are not so easily separated in our psyches is well known. Thus, in *The Courage to Fail: A Social View of Organ Transplants and Dialysis* (first published in 1974), Renée Fox and Judith Swazey noted that "the gift of an organ may be unconsciously perceived by donor and recipient as an exchange through which something of the donor's self or personhood is transmitted along with his organ." Writing more than a decade later, in *Spare Parts: Organ Replacement in American Society*, Fox and Swazey had not found reason to change their mind. Many recipients of transplanted organs, they wrote, have "apprehension about absorbing a donated part of another known or unknown individual into his or her body, person, and life." Doing so evokes deeply buried "animistic feelings" people have about their bodily integrity, and they tend to feel that not just physical but also psychic qualities are transferred from the donor.

Thus, we should not too quickly assume that transplantation of organs even from a dead body is unproblematic. Those mortal remains retain the "look" of a person's life: not just a mechanism whose parts work together well or poorly, but the unity of that individual life. The mortal remains signify the history of that life in all its connections, especially with those to whom the person now dead was closely attached. It is not bad—indeed, it is highly desirable—that they should honor their shared history and mourn their loss by demonstrating reverence for that embodied life, and such reverence is quite a different thing from parceling out the component parts of a corpse for the sake of achieving desirable goals. In order to relieve suffering or save life some may overcome these considerable reasons for reluctance to give organs for transplant after death, but it would be deeply troubling if we experienced no reluctance that needed overcoming—if our thinking and acting were governed solely by the sense of an organ shortage that needed to be solved. "There is," as William F. May once put it, "a tinge of the inhuman in the humanitarianism of those who believe that the perception of social need easily overrides all other considerations."

## Cadavers (?) in a Liminal State

Having come this far, we may also need to remind ourselves that the language of procuring "cadaver" organs for transplant is in some respects misleading. This is not the sort of cadaver upon which medical students

hone their skills. Cadaver donation generally means taking organs for transplant from bodies which, though brain dead and sustained entirely by medical technology, do not look dead. (Hearts still beat, blood still circulates, respiration continues.) The very concept of "brain death" that makes this liminal state possible has come under new challenge in recent years, and it is a challenge that will eventually have to be faced, lest our criteria for death seem to be determined chiefly by our desire to procure organs for transplant.

It is striking, for example, that when organs are taken from a brain-dead but heart-beating corpse, the dead body is first anesthetized, lest its blood pressure rise precipitously. Thus, even the brain-dead body seems to manifest certain integrative functions. My point here is not to argue that we should return exclusively to cardiopulmonary criteria for determining death; on the contrary, there is still much to be said in favor of the concept of "whole brain death." Rather, I simply note that, even if this body with its heart still beating is a corpse, we would not bury it until it had "died all the way" (a formulation which, even if inexact, indicates that it is not foolish to think of such a body as in a kind of liminal state closely related to the condition of still living donors).

What we are in danger of losing here is a humane death. Indeed, death itself becomes a kind of technicality—an obstacle to organ procurement, which obstacle must be surmounted in order to procure the body's parts and accomplish our worthy purposes. This is equally evident in recent attempts, motivated again by a supposed imperative to diminish an organ shortage, to plan the deaths of patients in such a way as to procure organs almost immediately after the cessation of heart and lung activity. A patient on life support is prepared for surgery, taken to the operating room, given drugs that will protect the viability of his organs after death, removed from life support, declared dead two minutes after cardiac arrest—at which time his organs are removed for transplant. Thus, in an age that has worried greatly about having death occur in the dehumanizing context of machines and technology, our desperate sense that it is imperative to procure organs has led to precisely that: the loss of a humane death and acceptance of what Renée Fox has called a "desolate, profanely 'high tech' death."

## Living Donors

We have yet to consider the truly living donor—not one in the liminal state of the brain-dead-but-heart-beating cadaver, but one who accepts

injury to his or her body in order to relieve the suffering or preserve the life of another (usually, though not always, another to whom one is closely bound by ties of kinship or affection). Transplantation in these circumstances raises profound questions about the relation of organ(s), body, and person.

We need not question the charitable motives of the donor, even what Pope John Paul II termed the "heroism" of such an act. Nonetheless, it involves intending one's own bodily harm in order to do good for another. It is, as I noted earlier, the sort of thing a surgeon would normally not even consider doing. Indeed, near the dawn of the transplant age, noting the way in which our justifications of transplantation tend to imagine the person as "a spiritual overlord, too far above his physical life," Paul Ramsey suggested that, in the face of that exaltation of freedom to use the body for our purposes, physicians would "remain the only Hebrews," looking upon each person's life as a sacredness in the body. What, then, if anything, makes surgical mutilation acceptable—even good—in the context of transplantation?

One way to address this question would involve trying to overcome the close connection of organ, body, and person. We could train ourselves to think of the organ as entirely separable from the body, and the body as little more than a useful conveyance for the person. Thus, for example, Sally Satel has recently suggested that thinking of the body's parts as not for sale is "outdated thinking." But, partly because it is not easy so to train ourselves to think otherwise, and partly because the very difficulty of doing so suggests that there might be something dehumanizing about the attempt, we have turned in a quite different direction: the idea of donation. To think of the transplanted organ as a gift means that its connection to the donor's body remains and is recognized. Whatever psychological complications this may entail, it protects us against supposing that our bodies are simply collections of parts that could be "alienated" from ourselves in the way a thing or a commodity can be.

One who agrees to donate an organ gives himself or herself—not a thing that is owned, but one's very person. A gift—even a gift of something other than one's body—carries with it the self's presence in a way that a sale and purchase, for example, do not. This accounts, in fact, for the very strange mixture of freedom and obligation that is part of the experience of receiving a gift. One who gives has no obligation to do so and acts, therefore, with a freedom and spontaneity that are not possible for the one who receives that gift. And to receive it is to incur an obligation to use the gift with gratitude. If, to borrow an example from Paul Camenisch, I buy

from a retiring professor a rare edition of Kant's works, I have not failed in any obligation of gratitude to him if a year later I give those works to a paper recycling drive. But if, having invested himself in those writings over the years, he now makes a gift of them to me, I am constrained to receive and use the gift with gratitude; for it carries his presence in a way that a purchased commodity could not.

It misses something, therefore, to say, as Robert Veatch does, that the donation model "is built on the premise that one's body, in some important sense, belongs to one's self." That model of ownership will sever the person from the body, and, once this has been done, it will be a short step to pretending (the psychology of it will be trickier) that the "donated" organ, being utterly alienable, retains no connection of any sort to the self who has given it. We have been wise not to think of our bodies that way, and, instead, to turn to the concept of donation as a way of conceptualizing for ourselves what happens in organ procurement and transplantation. To think otherwise would lose the human and moral significance of our bodies as the place of personal presence.

To be sure, thinking in terms of donation gives rise to its own difficulties. "It is rare," as Jennifer Girod has put it, "that an individual or family can give a gift that costs others so much." Even with the supposed shortage of organs, we spend billions of dollars yearly on organ transplantation (and the follow-up expenses, even apart from complications). This "gift" costs us all in government payments, increased insurance premiums (or less insurance coverage for other medical services), and in less attention to preventive or chronic care medicine. Nonetheless, the language of gift or donation is the only way we have, while permitting transplantation to go forward, to continue to honor the sense in which a person is an embodied whole, and the sense in which a transplanted organ carries with it continued attachment to the one who gives not just an organ but himself or herself.

We might, of course, even while continuing to think in terms of donation, try to make the gift seem less sacrificial. Especially when the organ is transplanted into a loved one with whom the donor's own wellbeing is bound up, it might make some sense to characterize it is as less a mutilation than a fulfillment (at some higher, spiritual level) of the self. Just as an organ might be surgically removed if that was necessary for the health of one's body, so also perhaps the good of the body might be subordinated to the wellbeing of the person as a whole. Roman Catholic moral theology has sometimes used a "principle of totality" to refer to this moral and spiritual wholeness of the person.

Certainly, however, such reasoning can take us only so far. If it may give a justifying rationale for donation of a kidney, we would probably draw back from similar reasoning used to justify the gift of a heart from a living donor. And the same thing would be true were we to forego this sort of reasoning (about a higher moral wholeness achieved by mutilation of one's body) and simply use the language of love and gift to explain the acceptability of harming one's own bodily self for the sake of another. Then, too, there would be limits to the kind of harm we would allow a living donor to incur: a kidney or even a portion of the liver, but not a heart.

But, one might ask, why? Why such limits to the "gift of life"? The only answer, I think, is that, even when we override it for very important reasons, bodily integrity continues to be a great good that cannot simply be ignored in our deliberations. It continues to exert moral pressure, and, if it permits some gifts of the body, it does not permit any and all. And it exerts this pressure because the person (though more than just body) is present in and through the body—not as a mechanism composed of separable and readily alienable parts, but as a unified living whole that is more, much more, than simply the sum of those parts.

Unless we appreciate the deep-seated and legitimate reasons for hesitation about organ transplantation, we are likely to plunge ahead as if the weightiest imperative under which we labor were fashioning means to procure more organs. If, then, in order to try to solve a perceived shortage of organs, we turn to means of procurement that invite and encourage us to think of ourselves as spiritual overlords, free to use the body and its parts as we see fit in the service of good causes, we may save some lives, but we will begin to lose the meaning of the distinctively human lives we want to save. Even a practice of donating organs can be abused, of course. But permitting organ procurement only through the practice of donation allows us, even if just barely, to retain a sense of connection between the part and the whole, the person and the body—allows us, that is, not to destroy ourselves in seeking to do good.