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To Sell or Not To Sell?

By A/Prof Goh Lee Gan

Andy Ho's solution about human organs in the 30 June 2002 issue of the Straits Times is "To save lives, legalise organ markets." Indeed, this is an evergreen proposal – push it down to the business level of buy and sell, and legalise it to make sure no one can take unfair advantage of the situation. So, why are we hesitating?

The arguments in the debate over the buying and selling ("commercialisation") of body parts have changed little over the years. The following is a summary of the pros and cons from the website <http://www.deatabase.org>. This is a useful website to visit on the subject of selling body parts. There are writings on the pros and cons and you can even participate in the debate.

Broadly, the views of the pro-selling and against-selling people have been summarised on the "deatabase" website into the following points.

AGAINST SELLING

Firstly, those who call for prohibition point to the safety risks associated with commercialisation, and offer expanded educational efforts to encourage people to come forward and donate as an alternative measure to increase supply. Public health concerns clearly motivate a policy that bans selling of body parts and even tissues like blood.

Secondly, there is a fear that vulnerable populations will be exploited (i.e. the poor and others whose social circumstances give them few choices and little medical sophistication, will become "tissue factories" for the rich). These concerns are usually most acute

in cases involving organ harvests from the living that may carry substantial health risks.

Finally, proponents of prohibition often dwell on the social risks associated with the "commodification" of the body. They argue there is value in (a) setting limits to what can be bought or sold in the market as a commodity, e.g. treating flesh differently from flour; and (b) supporting systems that rest on and promote voluntary giving, especially where the gift is life itself.

PRO-SELLING

The points for a pro-selling stand are:

Firstly, in the face of the shortage of organs and other tissues, with people on waiting lists dying every day, the proponents argue that the safety risks associated with payment are outweighed by the benefits of an increased supply. Improved screening and testing would in any event ameliorate, if not solve, the safety problem.

Secondly, according to this theory, it is immaterial that desperate financial circumstances drive people to do what they would not do otherwise. If people are not physically compelled or threatened with harm as a consequence of not selling tissue, then their choice to sell is voluntary and the government should not interfere. (After all, we permit people to take life-threatening risks for money in other contexts, i.e. choosing employment.)

Finally, they argue that free markets are inherently good, promoting the freedom of individuals – and any limits are arbitrary.

ANDY HO'S ARGUMENT FOR THE PRO-SELLING STAND

Andy's points are:

- (1) Human biological materials (HBM) are already regarded as commodities so there is no difference between flesh and flour;
- (2) Basic necessities are subjected to market forces, so why should flesh be any different from flour;
- (3) Everybody is paid in the transplant work, so why not include the donor as well; and
- (4) The market can be tweaked to take out the transactional problems.

Andy: "Patients are dying for want of transplants while we resolutely refuse to acknowledge that human biological materials (HBMs) are, in fact, already commodities."

Andy: "Invaluable necessities, like food, shelter and medicine – basic human necessities – are subject to market forces every day...Yet no one clamours to remove such goods from the market. Instead, efforts are made to help the less fortunate pay for such goods."

Andy: "Everyone is benefiting so why not the donor as well...So denying donor compensation does not remove HBMs from the market domain – it merely postpones commercial gain in favour of healthcare providers down the chain..."

Andy: "In effect, the donor gives away property rights to his organ, which then confer significant economic benefits on subsequent parties...Let us stop fooling donors: Legalise the sale of non-vital organs by living persons, and all organs by near-death persons. These markets will improve the quantity and quality of organs available."



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THE COUNTER-ARGUMENTS TO ANDY'S POINTS

Limitations on flesh as commodities

About flesh as commodities, a quotation in a paper from the University of Houston Law Centre gives us some perspective: "...Presently, many countries have laws in place flatly prohibiting the purchase or sale of body parts. U.S. law has tended to divide body parts into categories. Payment for non-regenerative or non-renewable tissues used in transplantation, such as hearts and kidneys, has been prohibited. However, payment for renewable tissues such as blood, hair and semen has been permitted. The National Organ Transplant Act, which applies to any transaction that affects interstate commerce, prohibits payment for solid organs. These include organs derived from a fetus as well as skin, bone and bone marrow. The federal law, like many state laws, includes imprisonment as a possible sanction. The exception to the no payment rule, mirrored in many state laws, permits reasonable payments associated with the transplant process itself (e.g. organ retrieval and implantation) and payments to cover the expenses of the donor such as travel and lost wages." (Mary Anderlik, 1998.)

Basic necessities and body parts

Is selling flesh the same as selling flour? The argument is that basic necessities that keep us alive are different from flesh that come from human beings. The sale of body parts renders the seller less intact. The harvesting of such desired tissues for the buyer may leave the donor more vulnerable to disease or injury and sometimes the risk of death.

One may argue that all the risks will be removed if one were to give orders to sell the desired body parts after death and instruct the payment to be made to individuals mentioned in the will of such a seller. Well, it will still have to counter the argument of human dignity, and the moral hazard of being killed for the body parts by unscrupulous individuals who stand to gain from the killing. So, the

objections continue even beyond death of the seller.

People doing transplantation work are providing a service

Why deny the donor compensation when all the others connected with transplant work are paid? The argument is that the services involved in providing the transplantation work come from people who can be deployed to do other work and provide other services if there is no transplant work. Hence, the argument of benefiting these people is not valid. Transplantation work and non-transplantation work are still services rendered and these should be paid.

Market imperfections

Can the market look after itself? The market can look after itself if it is a perfect market. However, the buying and selling of body parts, if allowed, will be conducted in a market of imperfect information. The quantity of organs for the poor may be made fewer and well beyond their reach. The quality of organs may be poor as sellers try to sell off what they can exchange for money. Or, the organs may have been procured by violent means.

The laws can never deal with the complexities of transactions. Hence, the oft-quoted saying that "the law is an ass". It is safer to avoid the slippery slope rather than to try to stay upright on the slope. Imagine trying to stay upright on a mountainside covered with moss.

On the market perspective, Jeffrey Kahn from the Center for Bioethics, University of Minnesota, has this view, "We have made a decision not to allow a market in human organs for a number of reasons. For living donors, we have focused on two main issues. First, we are concerned about the exploitation of potential donors. Everybody has a price, and it is unethical to create situations where people overlook the risks of donation to themselves and their family (pain, disability, long term effects, and even rarely death), for monetary inducements. Second, we have decided as a society that it is unfair to base access to a scarce health care resource on one's ability to pay. Even with access

to health care, selling kidneys would put transplants out of reach for many, and allow the rich to outbid others and jump whatever queues might exist." (Source: <http://www.debatbase.org>)

MAKING SENSE OF THE OPPOSING VIEWS

Both the pro-selling and against-selling sides have a common end-point – namely, have more organs available. The means to achieve that is of course different. The against-selling side achieves the numbers through encouraging people to donate. The pro-selling side achieves it through fiscal means. What stands in the way of either side are the physical, social and moral risks. Finally, there is the question of flesh being different from flour, and should therefore not be treated commercially in the same way.

The Gift of the Magi

At the end of the day, it is the question of values we attach to the different risks to the individual and society. The best way out of the difficulty may be to go back to the big value of giving. Read the "Gift of the Magi" by O Henry to be moved. The message is there.

The Nicholas Effect

To be more direct and specific, there is the Nicholas Effect coined by Reg Green, the father of a little boy of seven, Nicholas, who died in a car hijack in Italy while on holiday from California. The parents decided to donate his body parts to seven Italians. This led to an outpouring of love by the people of Italy and a sharp increase in organ donor rates. The father wrote the experience in a book called "The Nicholas Effect". You can buy it from Amazon.com. It is a touching and transcendent book. As one book reviewer puts it, "Here is a book that will make you cry, make you glad you're a human, and make you want to do something great."

BEYOND MONEY

It is good to know that there are some things that are shared not by dollars and cents, but by love. So should we not continue to ban the selling of body parts commercially? ■