



Bioethical Perspectives on Incentivizing Organ Donation and the Impact of NOTA

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RESOLVING THE ORGAN SHORTAGE



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Conflict of Interest Disclosure

- I have no relevant financial relationships to disclose.

NOTA, 28 U.S.C. § 274e

(a) Prohibition It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce. The preceding sentence does not apply with respect to human organ paired donation. ...

(c) Definitions

(1) The term “human organ” means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term “valuable consideration” does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

- Flynn v. Holder, 9th Cir. (2011) – NOTA ok for peripheral blood stem cell derived from apheresis but not by aspiration

Bioethical Objections

- Corruption
- Crowding Out
- Coercion
- Exploitation
- Undue Inducement
- Justified Paternalism
- Unfair Organ Distribution

All slides after this drawn from: Cohen IG (2014) Regulating The Organ Market: Normative Foundations for Market Regulation. Law and Contemporary Problems 77(3):175-215

Polling Question

What (if anything) concerns you most about offering incentives for donating live or cadaverous organs?

- Corruption of the Value of the Human Body
- Crowding Out - Reducing the Supply of Organs Available
- Coercion of Donors
- Exploitation of Donors
- Undue Inducement of Donors
- Donors Will Make Poor Decisions on Whether to Donate (Justified Paternalism)
- An Unfair Distribution of Organs will Result
- None of the Above, I am not Concerned

Potential Regulatory Controls for Incentives

- Price Controls
- Restrict Compensation Form
- Restrict Who Can Buy/Sell
- Restrict What Kinds of Organs (i.e., Cadaveric vs. Live)
- Other (e.g., Waiting Periods, Choice Architecture/Nudge)

Mapping Objections to Controls

Corruption		Crowding Out		
<i>Consequentialist</i>	<i>Intrinsic</i>	<i>Donated organs</i>	<i>Overall organs</i>	<i>Quality Organs</i>
<ul style="list-style-type: none"> -Limiting form of compensation -Gov't is exclusive purchaser -Limitations on organ use -Limitation to cadaveric organs -Ban on advertising -Ban on contractual enforcement -Price ceilings or fixed prices 	<ul style="list-style-type: none"> -Limiting form of compensation -Limitation to cadaveric organs - Price ceilings or fixed prices -Limitations on organ use -Gov't is exclusive purchaser 	<ul style="list-style-type: none"> -Price ceilings or fixed prices -Limiting form of compensation -Ban on advertising -Limitation to cadaveric organs -Limitations on organ use -Gov't is exclusive purchaser 	<ul style="list-style-type: none"> -Price ceilings or fixed prices -Limiting form of compensation -Ban on advertising - Limitation to cadaveric organs -Limitations on organ use -Gov't is exclusive purchaser 	<ul style="list-style-type: none"> -Price ceilings or fixed prices - Limiting form of compensation -Ban on advertising - Limitation to cadaveric organs -Limitations on organ use -Gov't is exclusive purchaser -Physical and psychological prescreening -Price floors

Mapping Objections to Controls

Coercion and Related Arguments				Unfair Distribution
<i>Coercion</i>	<i>Exploitation</i>	<i>Undue Inducement</i>	<i>Justified Paternalism</i>	
<ul style="list-style-type: none"> -Legal or psychological prescreening of donors -Gov't is exclusive purchaser -Limitation to cadaveric organs -Ban on contractual enforcement/allow contract to be voidable but not void 	<ul style="list-style-type: none"> -Legal or psychological prescreening of donors -Price floors or high fixed prices -Gov't is exclusive purchaser -Ban on poor sellers -Limitation to cadaveric organs -Limitation to certain types of organs 	<ul style="list-style-type: none"> -Price ceiling or low fixed price -Gov't is exclusive purchaser -Ban on poor sellers -Limiting form of compensation 	<ul style="list-style-type: none"> -Legal or psychological prescreening of donors -Limiting form of compensation -Limitation to cadaveric organs -Limitation to certain types of organs -Gov't is exclusive purchaser 	<ul style="list-style-type: none"> -Price ceilings or low fixed prices -Gov't is exclusive purchaser