

# *Is Trade in Human Body Parts Intrinsically Wrong?*

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The ethical issues involved in so-called human tissue trading are complex and, in my view, the more so because insufficient attention has been paid to the distinctions between various kinds of payment that could be made and the purpose or purposes for which the tissue has been collected.

## **Payments**

In English, *payment* has a broad meaning, which includes payment for services provided, payment for an item purchased, payment by way of compensation for out-of-pocket expenses, payment as a bribe or as an inducement to do something someone might otherwise refuse to do, and payment as a token of appreciation for a kindness rendered.

In the case of so-called tissue trading, payments of money might occur by way of compensation. For example, Bill wishes to donate a kidney to Mary, who is in renal failure. Bill receives money to pay for any medical expenses incurred by him in the provision of his kidney and perhaps any monies lost by him because of loss of pay.

Alternatively, Bill sees the provision of his kidney as an opportunity to make money in either or both of two ways. The first is that the tissue is valuable in itself, and he attaches a monetary value to it and also to the service he is providing (by undergoing the operation and exposing himself to later risk should his one remaining kidney be injured or in some other way become nonoperational). In this case Bill would be demanding a payment within a commercial context.

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It might also be the case that Bill comes from a financially deprived situation and is desperate to get money for the support of his family. Someone is willing to give him money for his kidney. In ordinary circumstances Bill wouldn't consider such an act, but the promise of what is to him considerable money might be very persuasive in his doing what he ordinarily would not want to do.

And finally, a friend altruistically donates a kidney to someone in need, and the recipient responds by giving the donor money not as fee or even as compensation but as his own generous response to a man who has shown him extraordinary generosity.

Where the payment of money is concerned we will want to evaluate each of these situations very differently. Failure to recognize these distinctions has led at least one ethicist, Angeles Tan Alora, to set up an opposition between the teachings of Pope Pius XII and Pope John Paul II precisely in the area of payment for tissue provided. To be fair, the ethicist concerned was relying on an inaccurate translation of Pius XII's remarks on tissue transplantation.

In a paper presented at the International Congress on Bioethics in December 2005, Tan Alora defends the possibility of a commercial payment for kidneys in the context of the Philippines. She questions Pope John Paul's opposition to the use of an organ as an item for sale or exchange as being contrary to human dignity.<sup>1</sup> "The issue," she says, "may not be as simple as it appears." She quotes Pope Pius XII in a way that suggests he left open the possibility of payment for organs:

Without intending to belittle the psychological and spiritual benefits of having helped another, it may be unfair to have nothing to show except a surgical scar and one kidney. Foreign governments offer different rewards to donors: tax rebates, priority in health care or in getting organs for themselves or their families, cash donations to a designated charity, early parole, funeral expenses, even a kidney swap. Is it fair that the donor, the most critical component of the process, not be paid? Pope Pius XII said, "it would be going too far to declare immoral every acceptance or every demand of payment. It is commendable for the donor to refuse recompense: it is not necessarily a fault to accept it."<sup>2</sup>

However, to use Pius XII as a response to the rhetorical question, Is it fair that the donor not be paid? is to misuse what Pius XII actually said. Speaking originally in French, the Pope said,

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<sup>1</sup>See Pope John Paul II, Address to the First International Congress of the Society for Organ Sharing (June 20, 1991).

<sup>2</sup>Angeles Tan Alora, "Organs (Kidneys) for a Fee or for Free?" in *Celebrating the Gospel of Life: Basic Issues in Bioethics*, ed. Fausto B. Gomez (Manila, Philippines: University of Santo Tomas, 2006), 222, 224, presented at the International Congress on Bioethics, Manila, December 6, 2005; the paper as presented is available at <http://webservice.mnl.ust.edu.ph/bioethics/secondday2.asp>. Tan Alora relies on Jerry Menikoff, "Organ Swapping," *Hastings Center Report* 29.6 (November–December 1999): 28, and on Michael Gill and Robert Sade, "Paying for Kidneys: The Case against Prohibition," *Kennedy Institute of Ethics Journal* 12.1 (March 2002): 17. She quotes Pope Pius XII in English translation but does not indicate the source or the translator.

Mais ce serait aller trop loin que de juger immorale toute acceptation ou toute exigence d'un dédommagement . . . c'est un mérite pour le donneur de refuser un dédommagement; ce n'est pas nécessairement un défaut de l'accepter.<sup>3</sup>

The problem is in the translation of the word *dédommagement* as “payment,” a clue to which is given in the second half of the quotation where *dédommagement* is now translated as “recompense.” But according to the *Collins Robert French Dictionary* and *Cassell's French Dictionary*, the word *dédommagement* means “compensation,” which in turn carries with it the sense of recompense. In a strictly legal sense this may mean no more than making up for a out-of-pocket expenses. It may also carry the sense of being recompensed for the loss of the kidney. The point here is that the word “payment” suggests the widest range of exchange of money for tissue, while “compensation” is much narrower in scope, and in fact could be very narrow indeed.

The suggestion, then, that Pope Pius XII left the issue of payment entirely open is not correct, particularly when one takes into account the Pope's words immediately before the quotation above: “Il est hors de doute que de graves abus peuvent s'introduire, si l'on exige une rétribution” (“It is undoubted that serious abuses can arise if payment is demanded”).<sup>4</sup> In context, then, it would seem that Pius XII was open to the idea of compensating for financial loss in a limited way. In this case the position taken later by Pope John Paul II is entirely consistent with that of Pope Pius XII, and suggests that the Catholic Church has always regarded the commercialization of human tissue as morally impermissible.

### The Question

The question is this: Is the trade in human tissue and human body parts intrinsically wrong? And if so, in what sense of the word “trade” is it immoral? Put another way, what is it about trade that marks it out as something quite different from altruistic donation and, in the case of living donors, from cases in which some recompense is offered and received to compensate for out-of-pocket expenses that are incurred?

What can safely be said, I think, as found in the *Encyclopedia of Death and Dying*, is this:

Archaeologists, anthropologists, and classicists seem unanimous in asserting that the values of every culture, ancient and modern, entail proper disposal of human tissue and dead bodies. Among many peoples, the obligation to put the body properly to rest has been extended to maintaining the places of disposal as sacred sites . . . It is taboo in most of the world to disturb the remains of deceased ancestors except under the most limited of circumstances.<sup>5</sup>

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<sup>3</sup>Pope Pius XII, “Grefte chirurgicale et morale religieuse,” allocution (May 13, 1956), *La Documentation Catholique*, June 24, 1956, 773–786.

<sup>4</sup>Ibid.

<sup>5</sup>Glen W. Davidson, “Human Remains,” in *Macmillan Encyclopedia of Death and Dying*, ed. Robert Kastenbaum (New York: Macmillan Reference, 2002), <http://www.deathreference.com/Ho-Ka/Human-Remains.html>

Two questions need, then, to be addressed: Is this reverence for the dead arising from a notion of the dignity of the human body which persists even after death? And if so, are exceptions based on donation that is consistent with human dignity in a way that the commercial trade in human body parts is not?

### Religious Attitudes to the Dead Human Body

In his excellent analysis of this subject, William F. May directs attention to four different outlooks which have at one time or another been influential.<sup>6</sup> He describes two of these as being at the far extremes of the question, one monist the other dualist. The Christian Science tradition—which holds to the reality of the spiritual realm and the ultimate unreality of the body, sickness, and death—rejects the practice of medicine in so far as it is directed to the bodily realm. The Manichaeic tradition divided reality into two modalities, the Kingdom of God and the Kingdom of Satan. The first is associated with the spirit, light, and good, while the latter is the preserve of evil, flesh, and matter. In a world which hopelessly confuses good and evil, salvation consists in escape from the mess. So the Manichaeans opposed sex, marriage, and procreation. May points out the similarity between the Manichaeic and the modern pessimist who opposes bringing children into this wicked world, even opposing the medical arts once this world has lost its purpose or savor.

For our present purposes, the other two religious outlooks that May identifies are more to the point. The Gnostic outlook, even though its language system together with that of the Manichaeans has long since faded, effectively anticipated, says May, “one of the most powerful features of modern culture—the quest for salvation through knowledge.”<sup>7</sup> It was that quintessential Enlightenment man Lord Francis Bacon who spoke of knowledge not only as power, but as the capacity by which human beings would overcome all their miseries.

May points to two things about Gnosticism with its echoes for our contemporary culture, which has been so significantly affected by the Enlightenment dream of man’s dominion over nature. The first of these is the reliance on the professional—the one who knows, the one whose knowledge-based power provides the means to alter and change this imperfect world. May says that “for Gnostics, ancient and modern, the body is not so much *unreal* (Christian Scientist) or *evil* (Manichaeic) as *incidental*.”<sup>8</sup>

Second, the Gnostics were dualists, believing that the spirit and the body were joined at the hip, so to speak, in a rather tragic alliance. In this view, knowledge becomes the means “to surpass the ordinary limitations of life in the body.”<sup>9</sup> Salvaging body parts from dead bodies becomes justified, then, since the association of human identity with the human body is *incidental*. Salvaging here could include

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<sup>6</sup>William F. May, “Religious Justification for Donating Body Parts,” *Hastings Center Report* 15.1 (February 1985): 39.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid, original emphasis.

<sup>9</sup>Ibid.

purchase or even the taking of tissue without permission to service the good cause of prolonging worthwhile lives and asserting man's increasing dominance over life and even over death.

However, the dominant religious tradition of the West is, in fact, the Judeo-Christian tradition, which sees the human body as *real* rather than unreal, *good* rather than evil, and worth preserving. But, says May, "opposed to the Gnostics, the Judeo-Christian tradition affirms a profound link and identity of the spirit with its somatic existence. Thus, it would not be so ready as the Gnostic to justify invasion of the body, living or dead, without explicit consent."<sup>10</sup>

All of this takes us back to my initial observation that, as a matter of fact, human beings, notwithstanding the particular views of certain religious traditions, have overwhelmingly seen the need to dispose of the dead human body with reverence and care and to protect the dead body from unwanted violations (it being taboo in most of the world to disturb the remains of deceased ancestors except under the most limited of circumstances). Put another way, Catholic and Hebraic realism is in accord with the more general human instinct to protect the integrity of the human body even after death.

In practice, then, human beings have seen the identity of the human person as continuing or persisting in some sense in the dead human body, the remains of the material manifestation of personal life. "No longer a human presence, it still reminds us of the presence that was utterly inseparable from it. If this is the case, it is not surprising that, in Wennberg's words, 'we don't treat human corpses as garbage, because the corpse is closely associated with persons: it is the remains of a physical organism that at one time supported and made possible personal life.'"<sup>11</sup>

Human beings, then, are social beings who have all kinds of attachments, familial, social, political, and so on. These attachments cannot be simply set aside, acted against, or rationalized as the sentiments of the irrational. The idea of body-as-self is not, as Donald Joralemon and Phil Cox say, a superstition which will eventually disappear from the culture as a more "scientific" conception of the body takes over in the popular mind.<sup>12</sup> While commercialization of body parts is already happening in some parts of the world, there is no evidence of its popular acceptance. Indeed, the fact that financial incentives are necessary to help the culture free itself from what others regard as old superstitions says much about the reserve people have about their obligations to protect the dead.

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<sup>10</sup>Ibid.

<sup>11</sup>D. Gareth Jones, "The Human Cadaver: An Assessment of the Value We Place on the Dead Body," *Perspectives on Science and Christian Faith* 47 (March 1995): 43–51. Jones refers to Robert N. Wennberg, *Life in the Balance: Exploring the Abortion Controversy* (Wm. B. Eerdmans: Grand Rapids, MI, 1985).

<sup>12</sup>Donald Joralemon and Phil Cox, "Body Values: The Case Against Compensating for Transplant Organs," *Hastings Center Report* 33.1 (January–February 2003): 32.

## Philosophical Conflicts

Given the tenacious resistance to the claimed rights of some physicians to be able to seize body parts—or the alternative, to provide financial incentives to get people to do what they probably would not do without those incentives—it seems appropriate to quickly look at some of the philosophical assumptions that lie behind the push for finding new ways to increase supply to meet demand.

It is a commonplace for these physicians to begin discussions about cadavers and the use of body parts by reflecting on the “tragedy” of those people on waiting lists for human tissue and the reality of the lack of supply. The underlying assumption here is often that we have a moral obligation to do anything possible to close the supply–demand gap, which is based on a further, and usually undisclosed, assumption that people have a right to body parts to meet their pathological conditions.

We are often told that, after death, a person’s body serves no other purpose for them, and therefore ought to be able to be used as a resource of body parts for those people who are still alive and would like to live longer. This is a powerful and suggestive argument that is calculated to make us feel a little guilty if we resist calls for the use of a loved one’s body in this way. The promise of money in exchange for body parts is the balm meant to soothe any guilt one might feel if he or she were to agree to the commercial transaction.

Based on the assumption that the body is merely incidental to personal identity, the utilitarian calculation of the greater good to be done by allowing commercial incentives for body parts may seem persuasive. This conclusion is made all the more irresistible when the human situation is presented or described in an emotionally compelling way, notwithstanding any personal feelings in the matter. So what can be so bad about giving financial incentives if it helps people do the decent thing and allow body parts from a dead loved one to be harvested and put to good use?

The point of financial incentives is to find a way to override the human intuition or the feeling that the human body continues to be associated with the identity of a person, that one has an obligation to care for the body and dispose of it in a way that reflects respect for the person who once was, and that one must assist in the grieving process with the family members of the deceased.

This is not an argument against the donation of body parts. The gift of body parts by a person who before death has freely consented to the donation for transplantation or for specific scientific research and educational purposes is quite another matter. In an address to participants in a conference on organ transplants, Pope John Paul II endorsed organ donation in these terms: “It is a decision to offer, without reward, a part of one’s body for the health and well-being of another.”<sup>13</sup> That is to say, organ donation is a gift of self, an act of love and communion, and a form of generous solidarity with others.

However, the Pope also saw great moral problems in the commercialization of body parts. The body’s organs and tissues can never, he said, “be used as items

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<sup>13</sup> John Paul II, Address to participants of the First International Congress of the Society for Organ Sharing (June 20, 1991).

for sale or exchange. Such a reductive materialist conception would lead to a merely instrumental use of the body, and therefore of the person. In such a perspective, organ transplantation and the grafting of tissue would no longer correspond to an act of donation but would amount to the dispossession or plundering of a body.”<sup>14</sup>

### **Trade in Human Body Parts As Intrinsically Wrong**

I want to argue that commercial trade in human body parts is intrinsically wrong on the basis of the foregoing three considerations: (1) because of what it does to the persons to whom it is given to make those decisions, (2) because it coarsens social sensitivities, and (3) because it contributes to the alienation of the person from his body and persons from one another.

It seems to me that there is a world of difference between those who decide to freely donate body parts while still alive (such as tissue donors, paired organ donors, and blood donors) or after death (as for brain or heart transplantation), and those who seek to make a profit by selling their own—or a loved one’s—body parts. Those who choose to donate do so out of their sense of solidarity or as an act of love for a loved one in danger of death. The commercial trade in body parts, however, represents a crude (but probably effective) attempt to (1) detach people from the natural sense of loyalty and protection which they feel for a loved one even after death, (2) to get them to do something for base motives they would not otherwise wish to do, (3) or to get people to do something that would ordinarily repulse them, by offering them money to overcome their poverty.

I am suggesting that the commercial trade in body parts is an assault on the dignity of those persons who are targeted for their own tissue and the dignity of those who are in a position to make that decision for a dead relative or friend.

Second, the commercial trade in human body parts coarsens human sensitivity to the body and its dignity in its reductive materialist conception of the body, which, as Pope John Paul II put it, “would lead to a merely instrumental use of the body, and therefore of the person.”<sup>15</sup> Put another way, once we get used to the idea of human body parts from either living or deceased persons as being items for sale for profit, we further reduce the real significance of the human being as a living soul with inherent dignity and therefore worthy of respect.

Finally, unlike the free donation of human tissue which at once expresses the human community and at the same time builds it up, the sale of body parts introduces an exploitative attitude not only to the donor’s body but also to the so-called customers who have the financial capacity to make such a purchase. As tragic as the pitiable sight of a man, woman, or child dying undoubtedly is, even more tragic is the degradation of the human person implied in the trafficking of human body parts.

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<sup>14</sup>Ibid., n. 4.

<sup>15</sup>Ibid.

## Payment of Out-of-Pocket Expenses

What are we to make of the payment of money to a donor to assist with out-of-pocket expenses? I have in mind, for example, the person who wishes to donate a kidney to a loved one. There are expenses incurred in the operation, including preoperative and postoperative phases, medical expenses, accommodations (as for a person from a rural area who has to spend time in the city where the donation of his or her organ takes place), and perhaps also a loss of earnings.

It is worth recalling at this stage that the *dédommagement*, or “compensation,” to which Pope Pius XII referred but left as an open issue, would almost certainly cover most of the out-of-pocket expenses to which I have referred. Equally, Pope Pius XII’s reference to the “serious abuses [which] can arise, if payment is demanded” together with John Paul II’s negative assessment of the trade in human body parts would preclude any exchange of money for body parts which go beyond the scope of out-of-pocket expenses. But what are we to make of recompense for lost earnings? Would this compensation be seen as a genuine recompense for an out-of-pocket expense, is it an example of the trade in human body parts, or is it genuinely a gray area?

A few years ago, Kidney Health Australia lodged a submission to the federal government requesting funding of one million dollars annually for their Live Organ Donor Compensation program, which would provide payment to live donors for income lost through time off work plus other expenses, such as travel and child-care costs.<sup>16</sup> On the one hand one can see why such a call has been made. Families have mortgages to pay as well as a host of other regular payments. On the other hand, what would count as compensation for lost income? Would it be the entire lost income that would be repaid or would it only be a portion of it?

Suppose a person earns \$2,000 a week as a company executive, and the lost income over the period of time that the transplant was being done amounted to, say, twelve weeks, or \$24,000. Compare that with a person who is a cleaner working a day shift and earning only \$550 per week, who also loses twelve weeks’ salary, or \$6,600. Nationwide, the average weekly earnings are about \$1,050, which would amount to \$12,600 over three weeks.

If compensation is set at the level of average weekly earnings, then the higher-wage earner would lose \$11,400 while the lower-wage earner would gain \$6,000. For a low-wage earner, an extra \$6,000 might be seen as an inducement, while the loss of \$11,400 might be a disincentive for the higher-wage earner. So how might compensation be managed to preserve fairness without providing a windfall, which might well have the effect, in turn, of encouraging a trade in human body parts?

It seems to me that this would be a very difficult problem to solve. To pay the higher wage earner more by way of compensation may seem unjust to the lower wage earner. And therein lies the problem, that rightly or wrongly, people will see

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<sup>16</sup>Kidney Health Australia, “Organ Donor Compensation Submission Lodged with Federal Government,” press release, February 25, 2005, <http://www.kidney.org.au/assets/documents/FEB2005KHA2502Release.htm>.

compensation for lost earnings as something more than compensation for out-of-pocket expenses, since out-of-pocket expenses by their very nature are likely to be very similar irrespective of the financial status of the donor. Lost earnings seem to be in a very different category, partly because the very notion of earnings is “commercial”: I trade my services for what the market will pay.

While the question of incentive and disincentive may be less likely to affect the likelihood of the donation of, say, a kidney to a son, daughter, or spouse, it is much more likely to affect readiness to donate when the donor is not related to the recipient. In countries where the trade in body parts occurs, it is interesting to note that, anecdotally at least, donors come from among those who are on low or very low incomes. What may be simply compensation for a person of average weekly earnings would almost certainly be seen by low-income earners as a very substantial windfall.

Moreover, the issue of perception is very important. What may be intended by health economists as reimbursement of lost earnings is almost certain to be perceived by most people, and especially by those who are poor, as a financial incentive to donate and a reward for the donation itself. This in turn leaves the poor open to significant exploitation.

Providing for lost earnings takes the entire question of recompense (*dédommagement*) ultimately, if not immediately, into the area of trade, with all the attendant abuses, including the use of incentives to get people to do what they otherwise might not do, the encouragement of people to see the human body as incidental and therefore disposable at a cost, and a raft of justice issues, depending on how one seeks to manage the compensation.