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# A Review of “An Ethical Market in Human Organs,” by Charles A. Erin and John Harris, and A Proposed Solution to the Current Organ Shortage

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## **Cover Page Footnote**

Rachel Rattenni, FCRH 2014, is from East Hampton, New York. She is a biology major. After graduation, Rachel plans to further her education in science journalism.

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Rachel Rattenni, FCRH '14

In 2005, an Israeli man named Nick Rosen answered an ad in his local Tel Aviv newspaper searching for someone interested in selling a kidney. Through funding from the broker who placed the ad, Rosen was flown to New York and set up with a dialysis patient from Brooklyn. After Rosen and the dialysis patient passed a simple procedure for the screening of illegal organ sales by saying the two were old friends, the successful transplant surgery was performed at the esteemed Mount Sinai Medical Center in New York. The Brooklyn resident walked away never again needing to go on dialysis, and Nick Rosen walked away happily with \$15,000.<sup>1</sup>

But was the sale ethical?

While the National Organ Transplant Act bans the exchange of human organs for any “valuable consideration”, illegal organ sales such as the one depicted above occur frequently. There are currently over 100,000 people on the U.S. transplant waiting list, but only 20% can be covered yearly by deceased organ donors.<sup>2</sup> Depending on where the United Network for Organ Sharing places one on its list, his or her chance of survival are most likely slim, since the majority of dialysis patients die within 5-10 years of starting treatment.<sup>3</sup> An untimely death is not the only downfall of prolonged dialysis treatment. In addition, an average program includes four invasive three-hour sessions daily—racking up an expense of over \$65,000 per year. In an effort to escape the high cost of dialysis treatments, several insurance companies have been found promoting illegal organ sales to their clients.<sup>4</sup>

Given the realities of the organ shortage, scholars from a variety of disciplines – including theologians, philosophers, economists, and sociologists – have debated both the merits and ethics of the way that organ donation is currently structured. In fact, in 2003, the *Journal of Medical Ethics* (JME) published a special issue on the supply of organs for transplantation. In this issue, several well-known scholars present arguments on a variety of topics related to organ donation, including

presumed consent, compensated organ donation, and altruism. In this essay, I review one of the articles that appeared in this special issue of JME: “An Ethical Market in Human Organs” by Charles A. Erin and John Harris.<sup>5</sup> I then review the published commentary of this article, which was written by Janet Radcliffe Richards.

In their article, Erin and Harris, both professors at the University of Manchester, begin by making the claim that human lives are at stake because there are not enough organs available for transplantation. They cite the attempts of such organizations as the British Medical Association, the American Medical Association, and the International Forum for Transplant Ethics to try to increase the supply of donor organs. Erin and Harris argue that one such remedy to the organ shortage might include a “market of living donors” that is “ethically supportable” with “safeguards against wrongful exploitation.” Thus the solution, according to the authors, would be a “single-purchaser system within a confined marketplace.”

Effectively, in the system proposed by Erin and Harris, organs would be legally sold and made available to hospitals. They argue that an organization, such as the National Health Service for example, should purchase all organs and provide them to hospitals (much in the same way that organs from deceased organ donors are provided), without allowing for direct private sales. Erin and Harris also argue that organ sales and transplants should be restricted on a national basis, so that if an Indian citizen were to sell an organ in his or her country, then that organ could only be used by a need recipient in India. By restricting organ sales and purchases on a geopolitical basis, Erin and Harris hope to prevent the exploitation of citizens from poorer nations who may be more easily coerced into selling their organs.

Aside from an increase in the amount of organs available for transplant, Erin and Harris note that regulating organ sales may present several other benefits. For example, patients who have received organs from live

donors have double the life expectancy than those who have received organs from cadavers. They point out that insurance companies, as a result, would also spend less money on dialysis every year.<sup>6</sup> There are also benefits to the donor: since medical care would be given to donors after surgery, they could be able to continue living their lives as they had been before their surgery.

To answer the question of whether or not organ sales (as opposed to pure donations) are ethical, Erin and Harris highlight that, in the current system, the only person who is not compensated in some way for a transplant is the donor. They wonder why it is considered more ethical that a transplant surgeon, a hospital, and a patient who can now lead a healthy life all receive payment in some form, yet a donor is left with only a scar. Erin and Harris argue that making organ donation advantageous for the donor would actually increase the ethicality of the process. Further benefits of the system proposed by Erin and Harris are that, as they say, such a market would be more economical and would improve organ availability.

Clearly, Erin and Harris believe that their proposed system constitutes an ethical market for organ donation. However, Janet Radcliffe Richards, in her commentary on the Erin and Harris article in *JME*, says that whether or not an ethical market for organ donation can exist is secondary to the question as to whether organs should be sold. Richards, a bioethicist and philosopher of medicine at University College London, argues that the question of how organ donation should be structured cannot be disentangled from the question as to whether or not organ selling is wrong. In fact, in the context of the Erin and Harris article, she questions whether or not their implicit assumption – that organs can and should be sold, albeit with strict moral guidelines – colors some of their conclusions:

“If it is presumptively bad to prevent sales altogether, because lives will be lost and adults deprived of an option some would choose if they could, it is for the same reason presumptively bad to restrict the selling of organs. Once you recognise that the default presumption is in favour of any such transaction, you should be reluctant to prevent any more sales than necessary.”

Richards goes on to say that what Erin and Harris have effectively proposed are seemingly morally acceptable circumstances under which the buying and selling of organs can be allowed and this, she says, could potentially be viewed as being restrictive. “Is there good

enough reason for ruling out the many potential sales it would prevent?” she asks.

In the remainder of her commentary on the Erin and Harris article, Richards continues to raise questions about the so-called restrictiveness of their proposal: Could equity of distribution really be achieved? What about nations without a national office through which sales could be coordinated? Is there a good reason to prevent private sales of organs? Richards raises these questions rhetorically, simply to point out two things about the logic underscoring Erin and Harris’s argument: 1) that one cannot talk about how to sell organs without first addressing whether organs should be sold; and 2) that strong public opinion against selling organs has likely biased Erin and Harris such that they have conceptualized a rather restrictive market. By asking these rhetorical questions, Richards is asking the authors to reconsider their proposal in light of these points. Because if the restrictions on the market need to be lifted due to the perceived benefit to the rest of society, then there runs a risk of unintended side effects, such as the emergence of privatized organ sales and black markets where organs are illegally traded. As can be learned from the current system for organ allocation, simply banning the private sale of organs does not prevent such transactions from taking place. In 2008, an illegal organ-trading ring in India was broken up. The leaders of the ring claimed to have performed over 500 transplants. None of the donors were paid more than \$2,500, and some were even forced to give up their organs at gunpoint.<sup>7</sup> Additionally, other critics of organ sales argue that the system will undermine the altruism commonly associated with donating an organ.<sup>8</sup> As Richards points out, “the authors recognize that there is a *prima facie* case for allowing organ sales, but they also recognize that a totally free market could do a great deal of harm. What they propose, therefore, is a restricted market, designed to allow the benefits while preventing these harms.”<sup>9</sup> Richards’s point is that their proposal might not prevent these harms at all, but rather encourage the development of them.

As this special issue of *JME* suggests, the debate over organ donation is a hotly contested one. In this essay, I reviewed one small thread of the debate: whether an ethical market for human organs can exist. Though some of their colleagues clearly disagree, Erin and Harris think that such a market can exist so long as very clear guidelines exist to protect the interests of both the recipient and donor. They think that, in an age where there are so many patients waiting on transplant