

Pros and cons of a regulated market in organs

In a World Report about the pros and cons of a regulated market for organ donation in the USA (Oct 17, p 1315),¹ Priya Shetty explores other solutions for tackling organ shortage. When analysing the situation in Europe, she states that "Spain, which introduced presumed consent in 1990, has seen donations double..."

The real fact is that Spain has not changed its transplantation law since 1979. Our system applies a "soft presumed consent" policy, in which families are always approached and still get the final veto. This law was in place for 10 years with little effect on organ donation rates, which remained quite low during the 1980s. It was not until 1989 that the Spanish deceased donation rates increased exponentially in line with the creation of the Spanish National Transplant Organization and the introduction of a new organisational model around the process of deceased donation.²

Spain's outstanding transplant coordination network, based on intensive care physicians in every major and minor hospital throughout the country, is undoubtedly the major factor contributing to Spain's superior organ donation rates. This centrally

organised system, in addition to being responsible for public education and media relations, ensures that every potential donor is identified and has the opportunity to become an actual donor, and that the approach to the family is optimum. Thanks to this system, the number of organ donors increased threefold from 550 in 1989 to 1577 in 2008 (figure).

The commercialisation of organ donation has been widely rejected by the transplantation community and international bodies, and has been summarised and reinforced by the Council of Europe and the UN.³ Transplant commercialism is not really the way to solve the lack of organs. However, trying to modify the situation by changing the law from an explicit to a presumed consent policy does not seem to be the solution either. Moreover, in our opinion it might be quite dangerous for a specific country, because all the efforts would concentrate on the law, forgetting about essential aspects such as those which deal with the real effectiveness of the system in place.⁴

We declare that we have no conflicts of interest.

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- 1 Shetty P. Tax cuts for organs? *Lancet* 2009; 374: 1315–16.

- 2 Matesanz R, Domínguez-Gil B. Strategies to optimize deceased organ donation. *Transplantation Rev* 2007; 21: 177–88.
- 3 Joint Council of Europe/ United Nations Study. Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs. http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp (accessed Oct 17th, 2009).
- 4 Organ Donation Taskforce. The potential impact of an opt out system for organ donation in the UK. http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_090303.pdf (accessed Oct 17th, 2009).

Priya Shetty's World Report on the pros and cons of a regulated market in organs¹ does injustice to both sides. As a result, it denies the reader the ability to make a rational choice between the options.

She specifies some of the potential benefits of a regulated market. There is no intimation, however, that such a market is also inherently moral. Needless to say, the case falls flat in the absence of an independent argument attesting to its morality.

Such an argument does exist: in the ideally regulated market, the contracting parties would maintain complementary symmetry vis-à-vis each other in every pertinent respect, including the intensity of the interest, the value of the commodity exchanged, and the freedom of the choice. Under such circumstances, the organ market would seem perfectly moral.

The anti-market case is equally misrepresented. None of the specified arguments refutes the claim for morality, although valid arguments can be made in this respect even without disputing the premise of buyer-vendor symmetry.¹ Although both parties can in principle enter the transaction on the basis of free choice, none has chosen to face the underlying dilemma.² In most cases, the dilemma is imposed on the victim by certain social practices and their beneficiaries.³ The regulated market thus transpires to be the ethical façade of an immoral society, a cynical quick-fix that does not only fail to address the injustices, but actually reaffirms them even further.

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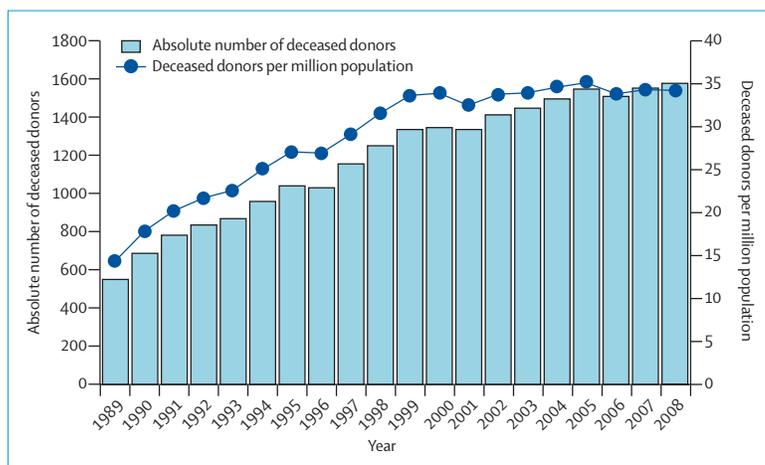


Figure: Deceased organ donation in Spain, 1989–2008