

Are Kidneys a Commodity?

Lloyd Cohen thinks people should have the right to buy or sell organs, and idea reviled by docs.

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As of last Wednesday at 5:44 p.m., according to the minute-by-minute count on the Web site of the United Network for Organ Sharing, there were 75,629 people awaiting kidney transplants in the United States. Here's roughly what we can expect to happen over the next 12 months, based on the experience of recent years. About 10,000 of them will receive transplants from deceased strangers, awarded by UNOS roughly in order of waiting time. An additional 6,000 or so on the waiting list will get a transplant from a living donor, almost invariably a close friend or relative. About 5,000 will either die or become too sick to qualify for a transplant. Most of the rest will still be waiting a year from now. They might want to consider talking to Lloyd Cohen.

Cohen is a professor of law at George Mason University who for two decades has been fighting for the right to sell off his major organs—or to buy one from someone else, should he need it. These are practices currently prohibited by U.S. law, and widely reviled by doctors, who like to believe they occupy one of the last bastions of selfless altruism in the American economy. Last week Cohen took his case to Intelligence Squared U.S. (IQ2), the Oxford-style debating society with a fondness for provocative libertarian issues, such as legalizing a market for human organs. Cohen has made his case at length in articles and books, but he can summarize it in a dozen words: "If you pay people for something, they will provide more of it." This, he says, is as true of body parts as anything else.

How far is Cohen willing to push this argument? Well, he's publicized a codicil to his will that forbids his survivors from donating his organs for transplant, except to relatives, or if some third party, such as an insurance company, pays for them. At a minimum, he'd like to legalize such arrangements, so anyone could contract to sell his or her organs after death for the benefit of survivors. In an ideal world—well, I'm not sure where he'd draw the line. He believes healthy people should be allowed to sell a kidney at whatever price the market will bear. But I lost my nerve before asking if he thinks they should be allowed to sell two.

Give Cohen credit; he's thought through the unsettling implications of this idea in 21st-century America: the Internet auctions, the reality-TV shows ("American Kidney"? "Survivor: Dialysis"?), legal battles over custody of a kid on life support. That's the price society would have to pay for the goal of getting more kidneys into people. As for the ethical objection that poor people shouldn't be tempted into selling spare body parts for cash, running a small but measurable risk to their health, he suggests a comparison with other valued commodities that are dangerous to obtain, like tuna fish. People risk their lives on fishing boats because they're paid for it. By the same token, says Sally Satel, a resident scholar at the American Enterprise Institute who debated on Cohen's team at the IQ2 U.S. event, "we don't think firemen are any less heroic because they are paid to save us."

Satel knows what she's talking about: in 2004 she was diagnosed with kidney failure. Most likely she'd still be waiting on dialysis, but for a friend, Virginia Postrel, who in 2006 volunteered one of her kidneys for transplant. Clearly, Satel would have been willing to pay whatever sum might have induced a stranger to do the same. In a free market she would have been one of the winners, by the luck of being relatively affluent. But there's just as much luck involved in having friends like Postrel. Nothing in life is entirely fair, and a billionaire in need of a kidney is a poor man if he can't buy one at any price. And, in case someone like that is wondering, Cohen's kidneys aren't for sale, even if the law changes. At least while he's alive. He is 61, is in excellent health and doesn't need the money.