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Commodities: The Supply & Demand of Body Parts

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RELIGION, PHILOSOPHY, AND THE COMMERCIALIZATION OF HUMAN BODY PARTS

*William E. Stempsey**

INTRODUCTION

Many people who think about issues in biomedical ethics are deeply religious, and their religious faith rightly influences their thought. Nonetheless, simply identifying oneself as religious tells us nothing about how one thinks about the commodification of body parts. Religious and moral views about this topic are intertwined in a complex and controversial way. This Article is a philosophical analysis of the way religions and people in general have thought about the issue of commodifying body parts and about the human body.

Provided there are proper guidelines, and accepting the biomedical-industrial complex the way it exists—a morally questionable acceptance—there may be a reasonable way to give moral approbation to a few forms of commodification. Here, however, I want to focus only on proposals to create a market involving living vendors of organs. I recognize that most advocates of commodifying organs for transplantation do not argue for an outright free-market system; rather, they favor such things as tax credits and payment for funeral expenses. Nevertheless, as we will see, a free market in organs is discussed and promoted as a viable option even by some professing religious faith.

I have published both utilitarian and deontological arguments explaining why we should not allow an organ market.¹ In this Article, I will take a somewhat different tack, situating my opposition to a market in a phenomenological view of the human body. First, I will outline the problem as I see it. Then, I will briefly consider how a few religious traditions have looked at the problem, focusing especially on the Roman Catholic tradition. I will conclude by suggesting that proponents of organ markets and property rights for body parts root their thinking in a philosophy of the body that depends on a questionable

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1. See William E. Stempsey, *Paying People to Give Up Their Organs: The Problem With Commodification of Body Parts*, 10 *MED. HUMAN. REV.* 45 (1996); William E. Stempsey, *Organ Markets and Human Dignity: On Selling Your Body and Soul*, 6 *CHRISTIAN BIOETHICS* 195 (2000).

Cartesian dualism. My argument here is that a phenomenological approach to the philosophy of the body better fits the question and tells against an organ market. Furthermore, it sheds light on the persistent reluctance of people to donate organs.

II. PROPOSALS FOR ORGAN MARKETS

Although organ markets are prohibited by law in the United States,² they are proposed by some as the best solution to the shortage in transplantable organs. Many years of appeals for organ donations and attempts to educate the public have failed to increase the supply of transplantable organs. Other strategies that have been suggested include “presumed consent,” “opting out,” and even “conscription” of organs at death,³ but all are criticized for giving insufficient attention to the wishes of individuals, at least thirty percent of whom, according to polls, would not agree to donate an organ.⁴

Julia Mahoney argued that markets in human tissue already exist and cannot be stopped; avoiding market and property concepts in transplantation will not eliminate the pursuit of financial rewards for transactions in human tissue, but will only obscure them and make critique of the system more difficult.⁵ She gave four examples.⁶ First, current solid organ transplantation practice generates considerable amounts of money in “acquisition fees” paid both by transplanting hospitals to organ procurement organizations and by patients and insurers to the transplanting hospitals and physicians.⁷ Second, corneas removed under “presumed consent” laws are sold by coroners’ offices to tissue banks.⁸ Third, young women are paid for their “time and trouble” in harvesting their “donor eggs,” and women having trouble getting pregnant pay significant amounts of money for the implantation of these ova.⁹ Finally, various tissues considered to be “waste” are acquired by the biotechnology industry and used to generate considerable profit.¹⁰ Mahoney argued that the fact that human organs

2. National Organ Transplant Act, 42 U.S.C. § 274e(2) (1994).

3. See, e.g., Arthur L. Caplan, *Organ Transplants: The Cost of Success, An Argument for Presumed Consent and Oversight*, 13 HASTINGS CTR. REP. 23 (1983); Aaron Spital & Charles A. Erin, *Conscription of Cadaveric Organs for Transplantation: Let's at Least Talk About It*, 39 AM. J. KIDNEY DISEASES 611 (2002).

4. R. M. Veatch & J. B. Pitt, *The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies*, 27 TRANSPLANTATION PROC. 1888, 1889-90 (1995).

5. Julia D. Mahoney, *The Market for Human Tissue*, 86 VA. L. REV. 163, 173, 207 (2000).

6. *Id.* at 173.

7. *Id.* at 180.

8. *Id.* at 183-84.

9. *Id.* at 185-87.

10. *Id.* at 189-91.

are considered to be “priceless” does not tell against a possible legitimate market in organs because other “priceless” and nonfungible commodities, such as “artworks . . . and other things [having] non-economic worth to their holders,” are traded in free market systems without controversy.¹¹ Furthermore, the existing organ market can bring considerable profit to many, but the “donors” of the tissue are systematically excluded from the profits.¹²

This problem led Robert Veatch to reconsider his position against payment for organ procurement.¹³ He reasonably believes that the real moral concern in such a market is manipulation of the neediest. Because the government for twenty years has consistently refused to provide basic necessities for the poorest even though it has the capability to do so, Veatch, with great reluctance, argued that we should stop opposing an organ market and allow the poor to sell organs if that is the only way they have to better their lot.¹⁴ But he stopped far short of an endorsement of the practice. Veatch said that it is with “shame and some bitterness” that he recommends ending our prohibition of an organ market and tolerating financial incentives as “a lesser moral evil.”¹⁵

It is clear that in the realm of biotechnology there are justice issues that need to be fixed, but I am not ready to concede that commodifying body parts for pragmatic, legal, or political reasons is a good solution. A more radical overhaul of the encroaching market in medicine is called for, but I realize, as most others do, that this is a massive and perhaps unachievable goal in the American political context. Nonetheless, extending the market as a solution to help those hurt by a market already run amok seems like the wrong solution.

While some market advocates are free-market libertarians who argue that we ought to be able to do what we wish with our bodies,¹⁶ others present more sophisticated proposals that attempt to be more ethically palatable. Gregory Boyd, for instance, pointed to the 1994 Pennsylvania law that provides money, collected from voluntary donations, to help pay “reasonable hospital and other medical expenses, funeral expenses and incidental expenses incurred by the donor or do-

11. Mahoney, *supra* note 5 at 207.

12. *Id.* at 163.

13. Robert M. Veatch, *Why Liberals Should Accept Financial Incentives for Organ Procurement*, 13 KENNEDY INST. ETHICS J. 19, 32 (2003).

14. *Id.* at 31–32.

15. *Id.* at 32.

16. See, for instance, the argument presented in H. TRISTRAM ENGELHARDT, JR., *THE FOUNDATIONS OF BIOETHICS* 58 (2d ed. 1996).

nor's family in connection with making a vital organ donation."¹⁷ The money goes directly to the organization that provides services to the donor—hospitals, funeral homes, hotels, or other appropriate entities; no money is given directly to the donor or the "donor's family, next of kin or estate."¹⁸ Gregory Crespi proposed a futures market for organs.¹⁹ This market would ban all sales by living people, but would allow individuals to sell the rights to their organs to some buyer.²⁰ The buyer would then have the option, but not the obligation, to harvest the seller's organs after the seller's death.²¹ The organs would be removed for transplantation or other purposes only after the seller had died.²² Payments would be made only to the seller's estate.²³

Such proposals are reasonable in that they attempt to avoid the kind of manipulation of poor organ sellers that is such a concern in an outright organ market. They attempt to increase the supply of transplantable organs by offering financial incentives that will not accrue to the individual whose organs are procured. It is, of course, an empirical question whether such methods will actually increase the supply of organs, and it would be worth doing studies replicating the situation in Pennsylvania.

I have my doubts about the effectiveness of such practices to increase the organ supply, however, because I do not believe that such financial incentives will be enough to counteract other strong disincentives to donate organs. Specifically, the problem of organ donation is inextricably linked with concerns about death and dissection of the body. There is deep confusion about the meaning and definition of death in the current technological culture. People, even physicians, sometimes talk about keeping brain dead people alive. In 1989, a team of researchers surveyed 195 physicians and nurses who were likely to be involved in declaring death and procuring organs for transplantation.²⁴ Only thirty-five percent of those surveyed were able to give "the [correct] whole-brain criterion of death and [cor-

17. S. Gregory Boyd, *Considering a Market in Human Organs*, 4 N.C. J.L. & TECH. 417, 459 (2003) (quoting 20 PA. CONS. STAT. ANN. § 8622(b)(1)).

18. *Id.*

19. Gregory S. Crespi, *Overcoming the Legal Obstacles to the Creation of a Futures Market in Bodily Organs*, 55 OHIO ST. L.J. 1, 35 (1994).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Stuart J. Youngner et al., 'Brain Death' and Organ Retrieval: A Cross-Sectional Survey of Knowledge and Concepts Among Health Professionals, 261 JAMA 2205, 2206 (1989).

rectly] apply it" to a case.²⁵ Physicians in decisionmaking roles did significantly better than other professionals, with nearly two-thirds answering correctly.²⁶ Nonetheless, there is a substantial amount of confusion over brain death even among health professionals. The study also found that health professionals were uneasy about making decisions about brain death and in talking with families about organ donation.²⁷ The investigators concluded that "[t]he confusion of many physicians and nurses about criteria and concepts of death . . . may well contribute to this discomfort with, and resistance to, pursuing organ donation."²⁸

The general public seems to remain at least as confused as the health professionals, and such confusion probably has an effect on the general reluctance of many to consider donating organs. Such deep-seated ambivalence is unlikely, in my estimation, to be overcome by the kinds of financial incentives being proposed. I will say more about the importance of this type of lived experience when I consider the phenomenology of the body later in this Article. A market for living donors might be a more effective incentive, but it is far more ethically problematic.

III. RELIGIOUS TEACHINGS

Many religious bodies have established views about organ donation in general; these are based on particular understandings of both human death and human embodiment. Religious teachings on organ markets are less explicit. Although Islam is not monolithic in its teaching, it provides one clear rejection of commerce in organs. An international conference of Islamic jurists in 1988 "rejected any trafficking or trading in human organs" and recommended focusing on altruism in organ transplantation.²⁹

Jewish authorities have refused to say that organ sales are absolutely forbidden. Nonetheless, under Jewish standards, the ethical status of an organ market ultimately depends on solving some specific pragmatic problems. A central issue is that any acceptable system would have to ensure that potential buyers and sellers both give

25. *Id.* at 2208. The "whole-brain criterion" of death is "irreversible loss of all brain function." *Id.* at 2205.

26. *Id.*

27. *Id.* at 2209.

28. *Id.*

29. Abdallah S. Daar, *Islam, in ORGAN AND TISSUE DONATION FOR TRANSPLANTATION* 29, 32 (Jeremy R. Chapman et al. eds., 1997).

proper informed consent and that sellers are not exploited.³⁰ Without such a system, an organ market “remain[s] [only] a theoretical possibility.”³¹

As might be expected, Protestant Christians leave much to individual interpretation and decision; we are left largely with arguments from individual theologians who hold varied opinions. Paul Ramsey, for example, found the idea of an organ market repulsive because it would “erode still more” our appreciation of the sacredness of the human in the order of biological creation.³² John Habgood stated that the Church of England finds commercial transactions in human organs unacceptable because commerce radically alters the meaning of the transplantation, “dangerously reinforcing tendencies to interpret human life in more and more mechanistic terms.”³³ The body is the “bearer of personality,” and so “buying and selling of body parts, like the buying and selling of persons, violates human dignity” and devalues the person.³⁴ On the other hand, Larry Torcello and Stephen Wear pointed out that Protestant theology affirms the ability of the individuals to interpret theological matters in light of their own reflection.³⁵ They invoked the “Protestant principle of a ‘godly calling’” to argue that individuals ought to be able to make autonomous choices to donate or sell an organ.³⁶

Roman Catholicism presents another complicated picture. Ultimately, I believe that a Catholic position should reject commerce in organs. I would like to review some of the debate about the Catholic tradition, however, in the hope that the debate might shed some light on how all of us might think about commerce in human organs. Some thinkers find support for an organ market in the Roman Catholic tradition. Mark Cherry appealed to the writings of Saint Thomas Aquinas—particularly the principles of totality and charity—to support an organ market.³⁷ He argued that these principles are consistent with a market in human organs. Cherry saw cadaver organs as “no longer caught up in the life and good of the human person” and “much like

30. Richard V. Grazi & Joel B. Wolowelsky, *Nonaltruistic Kidney Donations in Contemporary Jewish Law and Ethics*, 75 *TRANSPLANTATION* 250, 250 (2003).

31. *Id.*

32. PAUL RAMSEY, *THE PATIENT AS PERSON: EXPLORATIONS IN MEDICAL ETHICS* 209 (1970).

33. John Habgood, *The Church of England, in ORGAN AND TISSUE DONATION FOR TRANSPLANTATION*, *supra* note 29, at 25.

34. *Id.* at 25–26.

35. Larry Torcello & Stephen Wear, *The Commercialization of Human Body Parts: A Reappraisal From a Protestant Perspective*, 6 *CHRISTIAN BIOETHICS* 153 (2000).

36. *Id.* at 167.

37. Mark J. Cherry, *Body Parts and the Market Place: Insights From Thomistic Philosophy*, 6 *CHRISTIAN BIOETHICS* 171 (2000).

other types of things.”³⁸ Even living persons, however, might be justified in selling redundant organs, provided there is a “morally compelling charitable reason,” such as the need to buy medicine or other such life essentials for their family.³⁹ Nicholas Capaldi argued that “[f]rom a Catholic perspective, the ideal public policy would be one in which everyone voluntarily donated their organs [at death,] especially to private medical-charitable agencies” that affirm the “divine origin of life.”⁴⁰ The second best alternative would consist of a system of tax credits for those who donate organs.⁴¹ He doubts, however, that such policies would be successful in providing an adequate number of organs. Finally, Capaldi offered a third possibility—a “prudential” policy involving a private market in which “a quasi-charitable Catholic transplantation agency can help to render the process sacred by treating the organ in the right spirit despite the intentions of the original or even intermediate sellers.”⁴²

The question is whether such proposals are truly consistent with Roman Catholic teaching. Capaldi and Cherry both referred to the 1956 address of Pope Pius XII to a group of ophthalmologists in which the Pope approved of transplanting cadaver corneas. In the address, the Pope admitted that “grave abuses could occur if a payment is demanded” but that “it would be going too far to declare immoral every acceptance or every demand of payment.”⁴³ He referred to the practice of selling blood for transfusion, which would have been quite common at the time.⁴⁴ This statement, however, is far from advocating an organ market. It is not at all clear where to draw the line between sales that lead to grave abuses and sales that might in some circumstances be permitted. In any case, this statement of Pope Pius XII in the very early days of organ transplantation should be read in conjunction with a 1984 allocution of Pope John Paul II to an organization of blood and organ donors. This statement emphasizes donation, generosity, and Christian solidarity without mentioning the

38. *Id.* at 187.

39. *Id.*

40. Nicholas Capaldi, *A Catholic Perspective on Organ Sales*, 6 *CHRISTIAN BIOETHICS* 139 (2000).

41. *Id.* at 144–45.

42. *Id.* at 145.

43. Pope Pius XII, *Tissue Transplantation*, in *THE HUMAN BODY: PAPAL TEACHINGS* 373, 381–82 (Monks of Solesmes eds., 1960).

44. *Id.* at 382.

possibility of organ sales.⁴⁵ Pope John Paul II could have affirmed Pope Pius XII's apparent approval of some organ sales, but he did not.

It is important to recognize, however, that papal allocutions of these types are not to be taken as legislative in nature,⁴⁶ and so neither of these proclamations should be seen as a definitive statement about an organ market. On the other hand, the *Ethical and Religious Directives for Catholic Health Care Services* of the National Conference of Catholic Bishops should be recognized as the most comprehensive and authoritative statement on American Catholic healthcare practices.⁴⁷ The current 2001 version follows the 1985 revision; Directive 30 states that organs may be procured from living donors as long as no "essential bodily function of the donor" will be sacrificed and as long as the "anticipated benefit to the recipient is proportionate to the harm done to the donor."⁴⁸ The directive then explicitly rules out an organ market: "[E]conomic advantages should not accrue to the donor."⁴⁹ This explicit prohibition of organ sales is an addition to the 1985 revision of the directives; the original 1975 edition made no mention of economic issues in its treatment of organ donation. Hence, while scholarly theological debate may continue about the merits of an organ market, and while there may not be a definitive universal Catholic teaching on organ markets, the teaching of the American bishops is quite clear and unambiguous—an organ donor is not to receive an economic advantage as a result of the organ donation.

IV. PHILOSOPHY OF THE BODY

I want to take a more philosophical turn now. The Catholic Church has never endorsed any particular philosophical system. Although Thomism, ultimately rooted in Aristotle, has certainly played a central role for hundreds of years, neo-Platonism continues to show its mark on the most fundamental Christian doctrines. In every age, theologians turn to the best philosophical thought available, using it to illuminate matters of faith. In this spirit, I want to turn to a philosophical investigation of the human body. I believe that this will serve us well

45. Pope John Paul II, *Blood and Organ Donors*, Address Before Participants in a Solidarity March Sponsored by the Italian Association of Voluntary Donors of Blood and Organs (Aug. 2, 1984), in 30 *THE POPE SPEAKS* 1 (1985).

46. Francis G. Morrissey, *Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law*, 50 *JURIST* 102, 102 (1990).

47. U.S. CONFERENCE OF CATHOLIC BISHOPS, *ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES* (4th ed. 2001), available at <http://www.usccb.org/bishops/directives.shtml>.

48. *Id.*

49. *Id.*

in bringing to greater awareness our own buried presuppositions about the nature of humans and their organs. I hope that it will also shed light on just what should and should not be for sale.

Proponents of an overt market in human organs usually assert that people have a property right to their organs.⁵⁰ Classifying human bodies and body parts as “quasi-property” has a long legal tradition.⁵¹ This might be the best legal strategy we have for protecting important interests, but we should note that this strategy arose from the interest of individuals in disposing of their remains and directing their families to look after the task after their death. These property rights view the body not as property to be traded, but rather as a cherished former person’s remains, which must be properly interred so as not to turn into a horror. If the body is property, it is far different from property such as land, houses, and furniture.

Thomas Murray rightly pointed out that money and markets are the dominant way of distributing goods in America, but he argued that “there are many goods that money should not be able to buy”—legal verdicts, Pulitzer Prizes, and children are a few that he named.⁵² Murray argued that tyranny, in Pascal’s sense of desiring powers outside one’s own sphere, reigns when human organs are converted into money.⁵³ Properly placing the line between one’s own sphere and what lies outside is admittedly difficult, yet we do draw such lines. We admire those who are paid for using their bodies for a hard day’s work, but we frown on those who are paid for using their bodies in prostitution. It takes wisdom to draw such lines.⁵⁴

My philosophical concerns, though, take us even deeper into a shadowy and contentious place—the philosophy of mind. I believe that seeing organs as property is rooted in an unquestioned presupposition of a problematic philosophical position on the relation of body and mind. The problem, going back at least to Plato, but definitively set up in the first part of the seventeenth century by René Descartes, is that of mind-body dualism. When you claim a property right to your kidneys, just exactly who is the “you” that owns the kidneys? Descartes famously claimed that the essence of the human being is the

50. See, e.g., Crespi, *supra* note 19.

51. See *id.* at 65–66 nn. 276–85.

52. Thomas H. Murray, *Organ Vendors, Families, and the Gift of Life*, in *ORGAN TRANSPLANTATION: MEANINGS AND REALITIES* 101 (Stuart J. Youngner et al. eds., 1996).

53. *Id.*

54. For a discussion of wisdom in medical decisionmaking, drawing from the philosophy of the ancient Stoics, see William E. Stempsey, *A New Stoic: The Wise Patient*, 29 *J. MED. & PHIL.* 451 (2004).

res cogitans: the mind, or soul—the thing that thinks.⁵⁵ The body is surely connected to this thinking substance but is not essential to the person. The Platonic version of this dualism has influenced religious views that see the body as a hindrance to the real spiritual progress of the soul. Yet it was Descartes who first conceptualized the body as a machine, a substance wholly unlike the mental substance that constitutes the true essence of the person. This view has become so ingrained in most of us that it is hardly questioned. The idea of body as a machine has enabled contemporary technical medicine to flourish with unprecedented empirical success.

Nonetheless, the biblical traditions, both Hebrew and Christian, give us a quite a different picture. The Hebrew Scriptures do not present the human person in this dualistic way. The soul is real enough—it is what animates the body. When the soul (*nephesh*) leaves the body, the person is no more.⁵⁶ While it may be proper to talk about the spiritual or mental experience of human beings, it is the whole human being that has these experiences. It is impossible to separate body and soul without losing the person. In this way, the scriptures present a philosophical view of the human person that is much more Aristotelian than Platonic.

Christian teaching, coming somewhat later, is more influenced by the neo-Platonism that flourished in the first centuries after Christ. This should not be surprising, as every generation must have some philosophical tools to express its thought about the deepest problems of human existence. The early Christians used what they had, just as we tend to adopt a Cartesian view, usually without even realizing it. But the fundamental Christian teaching of the resurrection of the body, expressed by Saint Paul in *Romans*,⁵⁷ makes it clear that the human person is incomplete without the body. Heaven is not to be populated by disembodied souls that constitute our real essence. Saint Paul, in *1 Corinthians*,⁵⁸ says that the body that rises will be a “spiritual” body. Of course, no one knows exactly what this might mean, but Saint Paul leaves no doubt that it is our particular bodies that will be raised. Whereas the neo-Platonists took immortality as

55. RENÉ DESCARTES, *MEDITATIONS ON FIRST PHILOSOPHY* 19 (Laurence J. Lafleur trans., 2d ed., rev. 1960).

56. The Hebrew “*nephesh*” does not carry the familiar connotations of the term “soul.” The strict opposition between soul and body is more influenced by Greek and medieval philosophy. Rather, *nephesh* is closely associated with life. In *Genesis* 2:7, God breathes the breath of life into the nostrils of the human, who then becomes a living *nephesh*. See JOHN L. MCKENZIE, S.J., *DICTIONARY OF THE BIBLE* 836 (1965).

57. 8:11.

58. 15:35–49.

the escape of the higher soul (*nous*) from the body, Christians conceived immortality as the restoration of the wholeness of the person, but to a person no longer enlivened only by *psyche*, the Aristotelian soul, but divinized by *pneuma*, or spirit.⁵⁹ Essentially, Christians assert that the human person is incomplete without the body and should not be construed as merely a mind that is contingently in possession of a body; the human person is a composite of body and soul.

Philosophers writing in the phenomenological tradition further illuminate this theological understanding of the human person. Maurice Merleau-Ponty may have given us the best expression of a phenomenology of the body.⁶⁰ Merleau-Ponty's phenomenology rejected the Cartesian dichotomy between body and soul.⁶¹ For Merleau-Ponty, the body is not just an object that can be known by a subject; rather, it is "the experience of our own body" that "reveals to us an ambiguous mode of existing."⁶² He made an argument using the example of the phantom limb, when a person who has lost an arm or leg continues to feel its presence.⁶³ Merleau-Ponty argued that neither physiological nor psychological explanations adequately elucidate this phenomenon.⁶⁴ Physiological factors alone cannot explain the phenomenon, for anesthesia does not eliminate the sensation.⁶⁵ Likewise, psychological factors cannot furnish the sole explanation because severing the nerves to the brain does abolish the phenomenon, indicating that physiological factors play some part in the explanation.⁶⁶

Merleau-Ponty's solution to this problem is to reject the root cause of the dilemma—the underlying mind-body dualism—and to adopt the perspective of the lived body. The phenomenon can only be understood in the perspective of "being-in-the-world," and the body is the "vehicle" for being-in-the-world.⁶⁷ He wrote: "To have a phantom arm is to remain open to all the actions of which the arm alone is capable; it is to retain the practical field which one enjoyed before mutilation."⁶⁸

59. See THE NEW JERUSALEM BIBLE 1911, n.w (1985).

60. MAURICE MERLEAU-PONTY, PHENOMENOLOGY OF PERCEPTION (Colin Smith trans., 1962).

61. *Id.* at 102.

62. *Id.* at 230.

63. *Id.* at 87–102.

64. *Id.* at 94.

65. *Id.* at 88.

66. MERLEAU-PONTY, *supra* note 60, at 88–89.

67. *Id.* at 94.

68. *Id.*

The body is, above all, a way of viewing the world and of interacting with everything in the world. Merleau-Ponty wrote:

Whether it is a question of another's body or my own, I have no means of knowing the human body other than that of living it, which means taking up on my own account the drama which is being played out in it, and losing myself in it. *I am my body*, at least wholly to the extent that I possess experience, and yet at the same time my body is as it were a "natural" subject, a provisional sketch of my total being.⁶⁹

In short, it is a mistake to think of the body as a machine as did Descartes. Our essence is not the subjective *cogito*, lying in opposition to the objective body. Rather, the body is essentially what we are and what enables our experience of the world.

Other contemporary philosophers continue in this vein. S. Kay Toombs expounded upon Edmund Husserl's distinction between the "lived body" of our experience and other sorts of physical and animate bodies. She argued that although the body may be apprehended as an object, it is distinct from other objects in the world because it is the medium through which we apprehend the world and interact with it.⁷⁰ The body is owned, not in the sense that we own other objects, but only in the sense that my experience tells me that my body is mine. My body "enables me to actualize the existential projects that constitute, and express, my personhood"⁷¹ and "reflects the body as a social and cultural entity."⁷² Toombs further argued that under normal circumstances we are unaware of our bodies, but, as Sartre recognized, the lived body can be apprehended as an object, especially when it is conceived as a physiological organism, and especially when one is well versed in sciences such as physiology and pathology.⁷³ But, as Toombs pointed out, to say my body is my "own" is not the same as saying I "own" my body in the way I might own my dog. The body is not just a "machine-like entity comprised of separate organ systems and parts," but rather an "intentional unity" that enables our unique experience of the world around us.⁷⁴

69. *Id.* at 231 (emphasis added).

70. S. Kay Toombs, *What Does It Mean to Be Somebody? Phenomenological Reflections and Ethical Quandaries*, in *PERSONS AND THEIR BODIES: RIGHTS, RESPONSIBILITIES, RELATIONSHIPS* 73 (Mark J. Cherry ed., 1999).

71. *Id.* at 78.

72. *Id.* at 79.

73. *Id.* at 82.

74. *Id.* at 85.

As Drew Leder recognized, “[T]ransplantation exemplifies the paradigmatic bent of Cartesian science”⁷⁵ By conceiving the body in terms of mechanical parts, Cartesianism allows us to overcome a long-standing hesitance at “tampering with nature” and long-standing “taboos against cutting up the live and dead human body” in a desperate fight to overcome death.⁷⁶ Leder further argued that an organ market would not be a neutral means of exchange for people seeking whatever it is that they value (organs or money), but rather a system that implicitly adopts a problematic Cartesian metaphysics of the body in which organs are reduced to objects just like any other object.⁷⁷ What I would argue is that Cartesianism leads us to reject the type of experiential embodiment that phenomenological philosophers recognize and, in its cold analysis, fails to account for the feelings we have about our bodies and body parts.

An appreciation of the centrality of experience to the phenomenological viewpoint helps us to understand why a shortage of transplantable organs persists despite many efforts and why a market will also fail to relieve the shortage. All these efforts fail to recognize that our experience of our bodies is not an experience of a collection of organs functioning as a machine. The fact that we would be repulsed if, for example, we had a kidney removed because of cancer and then found that kidney on public display should tell us something important. Our organs are different from our hair, which is swept away from the barbershop floor without objection. We might want to retain our hair trimmings for some reason, of course, but in the ordinary course of events our hair trimmings are no different from our fingernail clippings, which are unwanted by-products of our living bodies. On the other hand, there may be unusual situations when we want to rid ourselves of a normally valued body part—as when an organ harbors a cancer, for example. The lesson of phenomenology is that it is not the nature of the thing itself that distinguishes what can legitimately be bought and sold, but rather our experience of the thing. Organs such as kidneys play essential roles in establishing the very possibility of human experience in ways that hair and fingernails do not.

Ruth Richardson found a “fearful symmetry” between an organ market and the practice of grave robbing in the eighteenth and nineteenth centuries: “In the grave-robbing era, [corpses were] quarried

75. Drew Leder, *Whose Body? What Body? The Metaphysics of Organ Transplantation*, in PERSONS AND THEIR BODIES: RIGHTS, RESPONSIBILITIES, RELATIONSHIPS *supra* note 70, at 233, 238.

76. *Id.*

77. *Id.* at 248.

for teeth, hair, skeletons, and so on," and sold to dentists, wigmakers, and those who made specimens for medical study.⁷⁸ This is a practice that most of us would take to be repugnant. Yet Richardson argued that several key factors that led to the practice are the same as those that confront organ transplantation today: (1) "increasing demand for human tissue," (2) "shortage of donors and public resistance," (3) "competition among users/consumers," and (4) "money values attached to human tissue."⁷⁹ Richardson rightly pointed out that fear is at the heart of the resistance to organ donation, and that the "semantic massage" in euphemisms such as "donor," "procurement," "harvesting," and "cadaver" seek to conceal unpalatable truths about the realities of organ transplantation.⁸⁰ There even seems to be ongoing semantic massage—non-heart-beating cadavers have now become non-heart-beating donors.

Renée Fox talked about the technical and moral "routinization" and "profanation" of organ transplantation.⁸¹ Seeing organ transplantation as a commonplace event serves to mask the "wonder and dread" that the practice evoked in the 1950s. According to Fox, this "routinization" and "frantic search for organs" is leading transplantation down "a very slippery slope."⁸²

V. CONCLUSION

We would do well to reconsider the ways we have swept some of the realities of organ transplantation below the surface in order to promote it. If we are honest, we will find some repulsion in cutting a kidney out of one person and sewing it into another. This is not to say that the practice ought to be stopped. Sometimes we must learn to suppress some feelings in order to carry out necessary tasks; the work of surgeons, for instance, requires this. Yet such suppression always carries the danger of routinization and the loss of reverence for what ought to be revered. A phenomenological appreciation of the body ought to cause us to reflect on what we are doing when we turn warm, living human parts into commodities redeemable for cold cash.

78. Ruth Richardson, *Fearful Symmetry: Corpses for Anatomy, Organs for Transplantation?*, in *ORGAN TRANSPLANTATION: MEANINGS AND REALITIES*, *supra* note 52, at 66, 82.

79. *Id.* at 83.

80. *Id.* at 86–88.

81. Renée C. Fox, *Afterthoughts: Continuing Reflections on Organ Transplantation*, in *ORGAN TRANSPLANTATION: MEANINGS AND REALITIES* *supra* note 52, at 252, 259–67.

82. *Id.*