

# Health Justice Before Charity: Organ Donation in Massachusetts Prisons

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The shortage of organs suitable for transplantation has accurately been described as a crisis. As of early April, there were reportedly 103,913 people waiting for an organ transplant in the U.S., 88,661 of whom were seeking a kidney transplant in particular.<sup>1</sup> Those who wait often depend on costly and inconvenient medical procedures such as dialysis that can significantly impede patients' quality of life. Inequities also persist in access to organ transplants that result in disproportionate impacts upon low-income communities and communities of color.<sup>2</sup> Increasing the supply of available organs thus continues to be a critical health care issue that requires creative strategies. While such strategies will in part depend on promoting greater participation in postmortem organ donation programs, they will also require mobilizing an expanded number of living donors.

The Catholic Church has offered cautious support for living organ donations. As the procedure first became a possibility in the mid-twentieth century, many Catholic moralists were resistant to endorse living donations due to the Church's long-standing prohibition against mutilation.<sup>3</sup> While the principle of totality can be employed to justify surgical procedures that promote the holistic wellbeing

of the individual patient, theologians like Gerald Kelly insisted that the principle could not be used to justify surgical procedures that promote the wellbeing of another patient.<sup>4</sup> Instead, following the reasoning of Bert Cunningham, the practice came to be justified through the principle of charity. In their willingness to sacrifice a part of their body for the wellbeing of another, the donor imitates the sacrificial love of Christ.<sup>5</sup> Pope John Paul II affirms that the logic of charity is necessarily at work in all morally legitimate organ transplants. He understands organ donation as "a decision to offer, without reward, a part of one's own body for the health and wellbeing of another person" and he maintains that "love, communion, solidarity and absolute respect for the dignity of the human person constitute the only legitimate context of organ transplantation."<sup>6</sup> The pope's words indicate that any motivation to donate that is rooted in personal gain instead of love of neighbor is fundamentally immoral. At the same time, John Paul II also suggests that the charitable impulse alone is not sufficient grounds on which to justify organ donations. He insists that "a person can only donate that of which he can deprive himself without serious danger or harm to his own life or personal identity, and for a just and proportionate reason."<sup>7</sup> While people may wish to donate a part of themselves to help another, they must never do so when

they put themselves at risk of serious harm.

A controversial bill recently proposed by Massachusetts lawmakers seeks to provide another strategy for addressing the organ shortage crisis, but in a way that falls short of Catholic values and wider bioethical principles. Sponsored by Democratic Representatives Carlos González and Judith A. Garcia, the bill would establish a Bone Marrow and Organ Donation Program within the Massachusetts Department of Corrections, empower a committee to oversee the program, and incentivize organ donation among incarcerated individuals by reducing sentences by sixty days to one year.<sup>8</sup> While the bill faced almost immediate criticism from prisoners' rights advocates, the sponsors contend that the policy could significantly help to alleviate the shortage, and they even frame it as a racial justice issue. Since Black and Hispanic communities endure disproportionate rates of diabetes, heart disease, and other chronic conditions, the sponsors reason that an increased organ supply would ultimately support these communities.<sup>9</sup>

The most controversial part of the bill is undoubtedly the incentive it offers in the form of a sentence reduction. At the legal level, the bill may violate Section 301 of the National Organ Transplant Act (NOTA), which prohibits “the transfer [of] any human organ for valuable consideration for use in human transplantation.”<sup>10</sup> Legal scholar Jamila Jefferson-Jones notes that what constitutes “valuable consideration” is not concretely defined in the law, but in its current form, monetary incentives as well as college scholarships, housing, and payment of household bills are all prohibited.<sup>11</sup> South Carolina ultimately failed to pass a similar

“organ-for-liberty” bill in 2007, because lawmakers feared it might violate Section 301 of NOTA.<sup>12</sup>

At the bioethical level, the bill has also sparked debate. Critics of the bill insist that the reduction in sentence constitutes an undue inducement, an incentive so attractive that it prevents prospective donors from adequately considering the risks involved and would thus undermine their ability to make a decision rooted in informed consent.<sup>13</sup> Beyond the coercive threat to patient autonomy, the incentive also runs afoul of Catholic anthropological claims. In *Donum vitae*, the Congregation for the Doctrine of the Faith (CDF) affirms “the unified totality” of the human person. The CDF insists that because of its substantial union with the soul, “the human body cannot be considered as a mere complex of tissues, organs and functions... rather it is a constitutive part of the person who manifests and expresses himself [sic] through it.”<sup>14</sup> From this firmly held claim, Pope John Paul II deduced that the reduction of human organs to objects of trade or exchange is a clear violation of human dignity. He attests that organ donation “is not just a matter of giving away something that belongs to us but of giving something of ourselves.”<sup>15</sup> The commodification of any part of the body contradicts the Catholic vision of the person, and thus from a Catholic point of view, incarcerated individuals do not have the right to exchange their kidneys for liberty.

In response to pressure from critics, the sponsors of the bill have expressed their openness to amend the bill by stripping it of any sense of quid pro quo. Representative Gonzales indicated that the intended purpose

of the bill has always been to provide a pathway for incarcerated people to donate their organs if they freely choose to do so.<sup>16</sup> Insofar as lawmakers amend the bill so that fears of undue inducement and commodification of organs are assuaged, would it not be morally acceptable to support an initiative that enables incarcerated people to freely donate parts of their body to support the flourishing of loved ones or even strangers in need of organ transplants?

Some bioethicists have suggested that incarcerated people should be precluded from donating organs even for altruistic reasons. When it comes to those condemned to death, Arthur Caplan suggests that organ donation may be immoral because it could undercut the retributive purpose of punishment. In his understanding of retribution, Caplan implicitly suggests that those who commit horrific crimes ought to completely lose their standing in society. He fears that if such individuals are able to donate their organs, they would gain some degree of sympathy or praise from the public for their altruistic actions and risk upsetting the victim's loved ones.<sup>17</sup> While Caplan is right to prioritize the victim's loved ones in his argument, it is difficult to imagine that the majority of the public would be willing to overlook an individual's brutal crimes because they donated their organs.

Moreover, his vision of punishment stands at odds with Catholic convictions about human dignity. Caplan seems to indicate that incarcerated people (specifically those facing the death penalty) lose their humanity and become irredeemable non-persons. This position is completely incompatible with Catholic anthropology. The U.S. bishops affirm that every individual is made in the

image and likeness of God and therefore possesses an inviolable human dignity. This dignity is "not something we earn by our good behavior; it is something we have as children of God." Furthermore, they attest that God's grace "can transform even the most hardened and cruel human beings."<sup>18</sup> Policies that prevent incarcerated people from positively contributing to and deepening their solidarity with the larger human community should therefore be avoided. No human being should be hindered from growing in the practice of love.

While incarcerated people should not be prevented from donating organs for punitive reasons, it may be prudent to avoid implementing living donation policies due to the inadequate health care available in Massachusetts prisons. Through the 1976 Supreme Court ruling in *Estelle v. Gamble*, incarcerated people ironically became the only constituency in the United States that possesses a constitutionally guaranteed right to health care. The mandate to care, however, is frustratingly thin; the ruling only protects incarcerated people from cruel and unusual punishment that comes in the form of the withholding of medical treatment for serious conditions.<sup>19</sup>

Despite this mandate and despite the fact that the health of the incarcerated is significantly worse than the health of the general population, medical neglect is rampant in U.S. prisons. The abolitionist coalition Deeper Than Water has helped to shed light on the pervasive neglect in correctional facilities throughout Massachusetts. The Massachusetts Department of Corrections has contracted with Wellpath, a for-profit health care company that has

been sued at least 1,395 times between 2008 and 2018 and has left prisons throughout the commonwealth significantly understaffed.<sup>20</sup> At MCI-Norfolk, for example, when the medical director recently stepped down, the prison was left with only two nurse practitioners to manage care for 1,100 people.<sup>21</sup> The company's cost-saving policies have resulted in needless suffering and preventable deaths throughout the commonwealth's prison system. The immunocompromised patient Ziggy Lemanski filed several sick slips for flu-like symptoms, but delays in treatment meant that he died of pneumonia at age 44. Michael Ramsey was diagnosed with atypical migraines and ordered to see a neurologist within a week, but the appointment was never scheduled and clinicians determined him simply to be "med-seeking." When nurses found him in his cell a month later unable to walk, he was quickly hospitalized and shortly died from cryptococcal meningitis at age 36. After an abrupt withdrawal from his prescription drugs, Paul Bulthouse suffered fifteen seizures that were ignored by staff before he died shortly later at 39.<sup>22</sup>

These are just a few of the stories that Deeper Than Water has documented. In a survey conducted with a sample of 141 incarcerated respondents, the coalition found that 79% reported that their obvious medical conditions were ignored. Among those with documented health care needs, only 25% found that their treatment plan was followed by staff. Over 80% reported having to wait a long period of time for treatment for a known condition, a trend that the Office of the State Auditor observed in Massachusetts prisons before contracting with Wellpath.<sup>23</sup> Besides medical neglect, respondents commonly reported conditions

inhospitable to health, including insufficient access to food, unsanitary food services, and polluted water.<sup>24</sup> Until recently, MCI-Norfolk's polluted drinking water was the object of serious public scrutiny for its dark color, bad smell, and high levels of manganese, a mineral that can cause neurological disorders.<sup>25</sup>

In an environment characterized by medical neglect and unhealthy living conditions, the implementation of a living organ donation program could be dangerous for incarcerated individuals. While surgeries performed for living donation are usually safe, there is little indication that an altruistic donor would receive the care they need in Massachusetts prisons if complications arise. If provisions were made to ensure expedited care for donors, it would constitute special treatment in a context where timely care is supposed to be a right not a reward. The health conditions in Massachusetts prisons reflect a flagrant disregard for the dignity of the human beings forced to live there, and as such, constitutes an expression of what Pope Francis identifies as "the throwaway culture." His call for "the improvement of prison conditions, out of respect for the human dignity of persons deprived of their freedom" must be heeded in the commonwealth.<sup>26</sup> While the supporters of the bill commendably seek to address the organ shortage crisis, which disproportionately impacts vulnerable low-income and BIPOC communities, it is an odd strategy to seek solutions among incarcerated people, who are disproportionately low-income and BIPOC and endure high rates of chronic conditions that make transplantation necessary.<sup>27</sup> While incarcerated people motivated by charity should be allowed to donate their organs, justice demands that such a policy must be preceded

by the transformation of health care conditions  
in Massachusetts prisons. †

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## ENDNOTES

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