Kidneys, Cash, and Kashrut: A Legal, Economic, and Religious Analysis of Selling Kidneys

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In this Article, I discuss the current approaches to treating kidney disease and focus on the most viable of the alternatives—kidney transplants. After reviewing the current medical literature, I examine the most controversial, yet most promising, option for providing sufficient kidney transplants for all who need them—paying donors. Thereafter, I present an analysis of religious thought on paying kidney donors, with a focus on the most jurisprudential religion—Judaism. I then discuss the other significant medical, ethical, and economic arguments both in favor of and against this proposal, and provide throughout my analysis of each of these arguments. I conclude that paying kidney donors is proper and would alleviate the needless suffering that currently occurs as a result of the severe shortage of transplantable kidneys that exists in our current donation-only system. Thereafter, I detail a proposal for creating a system to regulate the sale of kidneys that enlists the existing nonprofit kidney distribution organization to serve as a clearinghouse for both the purchase and distribution of commercial kidneys. As this Article will show, even though kidneys would be purchased in a regulated market under this proposal, they would not be sold through market mechanisms. Their distribution would occur the very same way as today, based on need and matching criteria.