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Body shopping at both ends of life: babies and bones for sale

Trade in human tissue, like any other consumer commodity, now stretches from the time before birth to the treatment of the body after death. This chapter shows that trade—part of what I call ‘body shopping’, the way in which the body has become a commodity—in practice at both ends of life, arguably robbing birth and death of whatever sacred quality they still possess in a secular society. It also asks how we can understand the way in which the body has become an object—a thing—and why some commentators actually think there’s nothing wrong with that.

‘A GLOBAL MARKET IN BABY-MAKING’

On the recreation room bulletin board in a Spanish university, a poster urges ‘Help them! Give life!’ The target audience is cash-strapped female students, who are being asked to sell their eggs to a profit-making fertility clinic for 1,000 euros. A little emotional appeal to altruism—‘Give life!’—helps the advertising campaign, perhaps, but the eggs aren’t really a gift: these women sell their eggs. In doing so, they take their part in an expanding global market in baby-making, as do the couples who buy the eggs through IVF clinics. ‘In these cases, and thousands like them’, as the American commentator Debora Spar writes in her book *The Baby Business*, ‘the parents aren’t motivated by commercial instincts, and they hardly see themselves as

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“shopping” for their offspring. Yet they are still intimately involved with both a market operation and a political calculation.¹

Spain numbers a total of 165 private fertility clinics offering *in vitro* fertilisation (IVF)—more than any other European country.² Many offer astonishingly good results, far better than the dismal rates of success that IVF often produces. The secret of their success is that they have stopped employing surplus eggs from other IVF users (in the process euphemistically known as egg ‘sharing’) because these women are ‘too old’. By definition, this hard-nosed reasoning goes, any woman attending an IVF clinic has a fertility problem. Instead, the for-profit Spanish clinics target young women at the peak of their fertility, such as students, and pay them for their ova.

So do the many private US clinics that pay for eggs. Advertisements like the one on the Spanish university bulletin board regularly circulate in US college newspapers, offering egg ‘donors’ amounts up to \$50,000,³ from an average of about \$4,500.⁴ ‘Desirability’ of genetic traits primarily determines the price: blonde, tall, athletic and musical donors command the higher rates, at considerable risk to themselves. One report documented the taking of seventy eggs at one time from a ‘donor’ who nearly died in the process.⁵

The US market for fertility treatment operates on a gargantuan scale. Americans paid well over \$37 million for ‘donor’ eggs in 2002 alone.⁶ Monies paid to egg sellers, however, were dwarfed by revenues to drug companies for fertility drugs (over \$1.3 billion) and to IVF clinics (just over \$1 billion). The Center for Egg Donation in Los Angeles, the first commercial egg ‘brokerage’ service, opened for business in 1991, followed rapidly by larger brokers like the Center for Surrogate Parenting, the Genetics and IVF Institute and the Repository for Germinal Choice. A full-fledged market has now emerged, with a differentiated pricing structure following geographical trends: highest in New York, lowest in the mid-west. The Center for Egg Donation boasts an online database, from which clients can shop for ‘donors’, viewing photos of the egg supplier and her children, reading about her hobbies and even checking her SAT (college entrance exam) scores.⁷ ‘Boutique retailers’, such as the Californian company A Perfect Match, place very specific advertisements in Ivy League college newspapers, such as their 1999 offer of \$50,000 for eggs from a seller who was at least 5’10” tall, had a combined SAT

score of 1,400 points and possessed a blemish-free medical record. No doubt the price would be higher now.

In January 2007, it was announced that a for-profit 'human embryo bank' centre was even offering one-stop shopping, eliminating the need to select eggs and sperm in separate transactions. A Texas company, the Abraham Center of Life LLC of San Antonio, became the first firm to provide batches of embryos from which customers could choose their preferred model off the peg. Selecting only sperm donors with a higher degree and egg donors in their twenties with at least a college education, the Abraham Center nevertheless denied any taint of eugenics: 'We're just trying to help people have babies,' said director Jennalee Ryan. She, together with some commentators, differentiated between producing babies to order, custom-made, and offering customers a choice off the shelf; the first smacks of eugenics, creating a 'master race', but there's nothing wrong with the second, they argued, because choice is a good thing.

While some bioethicists condemned the new embryo bank as blatant baby shopping, others remarked that it was just a logical extension of choosing an egg donor or a sperm donor by their genetic characteristics or educational level. John Robertson, of the University of Texas at Austin, shrugged off criticisms: 'If you step back a little bit, you realize that people are already choosing egg and sperm donors in separate transactions. Combining them doesn't present any new major ethical problems.'⁸ But *is* it fair enough to shop for eggs and sperm as if they were consumer goods and, logically, to produce embryos and babies made to order? The president of the American Society for Reproductive Medicine, Steven Ory, remarked of the Abraham Center: 'We find this very troubling. This is essentially making embryos a commodity and using technology to breed them, if you will, for certain traits.'⁹

In the world of for-profit fertility, the Abraham Center is just offering a tailored product, in a market where branding is everything. Another niche market, gay men, is met by a new Los Angeles group, The Fertility Institutes. According to Dr Jeffrey Steinberg, director of The Fertility Institutes, 'We are the only program for gay men that has psychological, legal, medical, surrogates, donors and patients all taken care of in one place.'¹⁰ Gay couples can select the sex of their offspring (or, strictly speaking, one partner's offspring), with about 65 per cent requesting boys. The majority of initial clients

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weren't US citizens but rather men from Britain, China, Canada, Italy, Brazil and South Africa.

Private American fertility centres mimic commercial companies in their advertising, treating their clients like customers and babies like any other consumer good, available on demand. At the Advanced Fertility Center in Chicago, for example, customers are offered a money-back guarantee: no baby, no payment. To produce such a medically improbable result, when the average pregnancy success rate in US clinics is 27 per cent,¹¹ this clinic must be treating patients and 'donors' with dangerously high levels of hormone stimulation. No matter: the Center's Affordable Payment Plan 'can make your fertility care less expensive than a second car'.¹²

But that's what we might expect of a free-market economy with an ethos of personal choice. If Spain, still a profoundly Catholic country, displays a similar kind of free market in human eggs, it suggests that 'body shopping' is rapidly evolving into a global phenomenon. Human tissue, including human eggs, is increasingly just another object of commerce, and that phenomenon occurs around the world. Just as 'in today's global market, a healthy human egg from a young white European woman is more valuable than gold',¹³ so other forms of human tissue and genetic material are the focus of a new 'Gold Rush', whose Klondike is the human body.

The world-wide scale of egg selling, as an example of globalised 'body shopping', applies to both sellers and buyers. The US market in eggs began as a mainly internal enterprise, but by 2003 approximately one-third of customers at the US Center for Egg Donation came from abroad, often through the global Internet.¹⁴ Conversely, American women are among the customers of Southern and Eastern European for-profit treatment centres. Most external demand for Spanish private clinics' eggs, however, comes from Germany and Italy, where egg donation is forbidden by law, with an estimated three thousand German women obtaining Spanish eggs every year. But even the comparatively liberal United Kingdom, which allows egg donation but forbids payment beyond a maximum of £250 for 'expenses', has begun sending couples in search of eggs to Spain—not deliberately, but as a side effect of the 2005 policy abolishing anonymity for egg and sperm donors. Many British couples now travel to Spain to get round that requirement.

Nor are the sellers of eggs to Spanish clinics necessarily Spanish themselves. Immigrant women, mainly from Eastern European countries, provide an important alternative source of donors to female students. Now that the Iron Curtain has been drawn aside, Eastern European women are 'free' to sell their eggs anywhere in Europe. And so they do, particularly in Cyprus and Spain, Southern Mediterranean countries that act as a point of transit between East and West.

At the Petra Health Clinic in Larnaca, Cyprus—an offshoot of the Reproductive Genetics Institute in Chicago—women recruited through the clinic's branch in Ukraine are paid \$500 to fly in and 'donate' eggs. The clinic's resident Russian director, Galina Ivanovna, claimed in a 2006 interview with the *Observer* that these women were being given an all-expenses-covered holiday, not paid for their eggs, although her account was a little confused. 'We put them up in flats and give them a free holiday but now, it seems, they feel they can pay for their own. If you wish,' she told an undercover reporter, 'you can pay them too.'¹⁵ In return, the 'client' would be allowed to choose from a range of donors according to preferences in height, weight, hair and eye colour, education level and occupation. 'Do you want a baby who looks like you?' Ivanovna asked: personalised baby marketing.

Although many of the egg 'donors'—better termed sellers—are unemployed or working in menial jobs, female engineers and other highly educated women can also be drawn by the sum offered: paltry in Western eyes, but enough to live on for six months in Russia or Ukraine. Larissa Kovoritsa, a liaison nurse linking Russian donors to a fertility clinic in Nicosia, Cyprus, told the *Observer* reporters that some women lived primarily from selling their eggs. 'For them it's like giving blood; you give and then you forget,' said Tatjana, a twenty-eight-year-old tour representative who had considered selling her eggs but shrank back from the thought that 'there might be a piece of me, some little Tatjana out there in the world'. Not everyone is equally squeamish. 'They just give their eggs and get the money. It's a pure transaction.'¹⁶ Coming from Poland, Lithuania, Latvia, Estonia and other newly capitalist states of Eastern Europe, these women, Tatjana claims, sell more than just their eggs. 'They work the cabarets, they'll sleep with men, they'll sell their eggs, and then they go back again.'

Blood, of course, is infinitely replenishable in a healthy individual. By contrast, it is generally agreed that a baby girl is born with all the egg follicles she will ever possess, so that each batch of eggs taken is gone for good. What the long-term effects are on these women's fertility and chance of premature menopause is anyone's guess. The phenomenon of egg selling is still comparatively recent, and the sellers mostly in their twenties, so it will take at least fifteen years for the risks of premature menopause to be known.

We already know that other risks, to do with the intense hormone stimulation to which these women are subjected, can in some cases be fatal. What's more, whereas IVF clinics in Western Europe and the United States are moving towards policies of minimal hormone stimulation, the Eastern European and Mediterranean egg-selling clinics routinely extract three or four times the quantity of eggs that would be taken in a well-run clinic. Women are actually given a productivity bonus if they produce high numbers of ova. In one Kiev clinic, for example, women are offered a basic fee of only \$300, but given a bonus of \$200 if they produce as many as forty eggs. Doses of follicle-stimulating hormone at more than twice the recommended maximum level are routinely used to produce these bumper crops.¹⁷ But the human female is programmed by nature to produce only one or at most two eggs per cycle.

So given that egg sellers in Cyprus are usually paid about one-fiftieth of what the buyers pay the clinic, this form of body shopping—shading over into 'baby shopping'—looks thoroughly immoral, exploitative and shocking. So says the former Chair of the UK Human Fertilisation and Embryology Authority, Suzi Leather, who has condemned what she calls 'a global market in baby-making ... a profoundly exploitative and unethical trade'.¹⁸ Yet other commentators see nothing wrong with this and other instances of body shopping—the way in which organs, eggs, sperm and other forms of human tissue are bought and sold on global markets like commodities. In fact, many regard body shopping as a positive force for good.

EXPLOITATION, JUSTICE AND FREEDOM OF CHOICE

There are two common responses to the way in which human tissue is becoming a commodity just like any other. The first approach,

more commonly heard on the left of the political spectrum, runs something like this:

What do you expect? We live in a consumer society, where money is the measure of all things. Bodies and parts of bodies are no different. Yes, of course, it's dreadful, but only the terminally naïve are shocked by it. You'll never be able to regulate it, either. There's too much at stake for the big biotechnology firms, and they can make life very uncomfortable for any government stupid enough to try.

The second viewpoint shares with the first an assumption that you can't buck the market—but regards that as a good thing. That view, more common to the political right, is usually couched something along these lines:

Yes, we do live in a free-market economy, which will bring us great things if we just let well enough alone. Biotechnology is one of those great things, and it shouldn't be regulated by government. Any attempt to do so will subvert the progress of science. If selling eggs or other forms of tissue improves the fertility of women who have to undergo IVF, and also provides the sellers with an income, then that has to be a good thing for both parties. And if it occurs on a global scale, so much the better: more backward countries can be brought into the realm of the market, and their people will also benefit. It's paternalistic and condescending to interfere with anyone's free choice to buy or sell body parts.

You might be surprised to find the second view predominating among the academic community in bioethics (the study of moral and legal issues arising from the new biotechnologies) but so it does. This book is an exception to the rule. But oddly enough, most academic bioethicists who subscribe to the free-market view regard themselves as the valiant mavericks, even though they are increasingly in the majority.¹⁹ Some of them include bioethicists from poorer countries, who might be expected to be sensitive to global injustice. Yet one Iranian commentator, for example, claims that it would be a new form of colonial exploitation to deny Iranians the right to sell their kidneys, either domestically or on a world market.²⁰ Apart from writers from particular religious traditions—such as Jewish commentators who interpret their *halacha* (law) as making it wrong to take advantage of another's poverty by buying his organs²¹—it seems to be

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harder and harder to find anyone willing to condemn the globalised trade in human tissue. At the same time, as the next section will show, the abuses of that trade are becoming more and more flagrant.

But whereas it might look obviously unjust for a poor woman to sell her eggs, at a knock-down price, to a rich couple, some commentators actually argue that justice *demand*s that we allow organ sales. Cecile Fabre, Professor of Law at the University of Edinburgh, thinks that if we feel those who lack material resources should be given equal shares with the wealthy, then we ought to allow those who lack full health to have access to the organs they need to make them well. (Fabre doesn't deal explicitly with infertility, which isn't necessarily the same as illness—not life-threatening illness, anyway.) Government regulations should allow organs to be redistributed along set lines, but in addition, some types of markets in organs should be permitted, she thinks.

Can we simply equate human organs with objects of property-holding like savings, stocks and shares? We would have to do so, in order to accept Fabre's parallel between redistributing wealth and redistributing health. In fact, the law doesn't recognise any property in the body: you can't actually own your organs, tissues or eggs, in a legal sense. After all, we simply *are* our bodies; we aren't embodied in our savings accounts or shareholdings. I can't exist apart from my body, although I can exist apart from my savings account.

So Fabre's argument looks problematic from the start. We can't be obliged to share something in which we don't have a property, and we don't have a legal property in our bodies. But even if we did accept her argument about fair shares in health, we still might jib at her further claim that the sick ought to be able to *buy* healthy organs if government agencies or health services can't provide enough of them outside the cash nexus.

In fact, claims Fabre, the current system is unfair to donors who derive no profit from their organs, when for-profit clinics and private organ brokers do make money from them. The altruism of tissue donors is already being exploited. Additionally, she says, it's the organ *recipient* who is at risk of being exploited, if the pressing choice is an organ transplant or death. Those who need urgent transplants would pay any price they could possibly afford. For this reason, Fabre prefers a regulated system of government compensation for organ donors,

rather than for-profit firms of the kind that predominate in Spanish and American egg provision.²² But if that system can't meet all the demand, she is willing to countenance private sales. Furthermore, she thinks that even those who aren't in greatest ill-health have the right to pay for tissue, and that sellers have the corresponding right to provide them with organs for cash. 'One also has the right to sell one's organs to those who do not *need*, but rather want, treatment requiring body parts.'²³

Yet it's hard to see how any such government compensation systems could operate across international borders. Body shopping is now a global phenomenon, although international regulation lags behind. It seems perverse to think that Third World kidney sellers have a duty to make First World kidney patients better, in the largely unregulated global tissue trade.²⁴ But that would be the implication of Fabre's view, if extended globally.

Even within Europe, where the EC Tissue Directive now provides some regulation, trafficking in human organs, just like the market in eggs, tends to prey on the poorer ex-Soviet countries outside the European Union. A report published in 2003 documented an extensive brokerage network involving organs from Russia, Ukraine, Georgia, Bulgaria and Romania (the latter two then outside the EC). Organised crime was involved in this as in other forms of trafficking, such as trafficking for sex. Although fourteen out of fifteen EC states had made it illegal for their nationals to buy and sell organs from each other, only one out of fifteen (Germany) prohibited its citizens from travelling to other countries to buy organs; the practice dubbed 'transplant tourism'.²⁵ The rest of the European countries have one law for their own people and another for foreigners.

Whether or not it means that the buyer rather than the seller of organs is the vulnerable party, Fabre is perceptively right to remark on the way in which recipients of tissue will be willing to pay almost any price. An eBay auction of a healthy human kidney attracted worldwide bids of up to \$5.75 billion before being revealed as a fraud. In body shopping the usual rules of market transactions and elasticity don't seem to apply, and that also applies to 'baby shopping', particularly the market in eggs and sperm. As Debora Spar writes, 'For the baby market does not operate like other markets do. There are differential prices that make little sense; scale economies

that don't bring lower costs; and customers who will literally pay whatever they can.²⁶

It's fair enough to bear in mind that the buyers can also be exploited in the body shopping business, but are individual egg sellers the real exploiters? Or is it the middleman? Private infertility clinics in the United States typically charge between \$6,000 to \$14,000 for each cycle of IVF treatment, and most women purchase more than one cycle. The mark-up for sperm is even greater: a gross mark-up, in the US, on average, of 2,000 per cent. Men receive an average of \$75 per specimen, containing between three and six vials of sperm, whereas the sperm banks sell each vial for somewhere between \$250 and \$400.²⁷

If there is exploitation in egg and sperm sales, are such price differentials the source of it? Or is the imbalance in income between the typical organ or egg seller and the recipient the real problem? Is there a problem at all, if sellers voluntarily accept the prices they're offered? After all, isn't that the essence of a free market? Aren't we just being hypocritical when we try to distinguish between selling bodily tissue at the going rate and selling any other good or service in the market?

Many commentators would say so. If both parties to the transaction in eggs or organs are happy with it, who says there's anything wrong going on? Isn't it actually liberating for both sides? Women who buy eggs can extend their fertile period, cheating the biological clock. Women who sell eggs are just earning their living by a more extreme form of what most people have to do: sell the labour of their bodies. There's nothing inherently exploitative about that, many argue: it's just a fact of life. But is that overly simplistic? We need to look more closely into some definitions of exploitation, a term that sometimes seems to generate more heat than light.

The German philosopher and economist Karl Marx wrote extensively about the meaning of exploitation, providing insights that turn out to be relevant to the way in which human tissue has become a product in twenty-first-century biotechnology—although he himself was writing about the factory goods of nineteenth-century industry. Bearing that limitation in mind, it's worth making a short excursion into what Marx had to say, before returning to another, even more extreme form of body-shopping at the end of this chapter.

Marx distinguished first between attributing 'use value' to something, *objectifying* it, and, additionally, making it an object of exchange, *commodifying* it. Objectification is just the process by which something external to ourselves is made to satisfy our wants and needs, which isn't inherently objectionable (to coin a pun). Part of what seems shocking in body shopping, however, is that our bodies aren't usually conceived of as external to ourselves. If I sell my eggs or my kidney, then I am objectifying those parts of my body and, additionally, commodifying them, turning them into objects of trade. Again, that may or may not necessarily be wrong, but until the advent of modern biotechnology, it was largely unknown. With the exception of the pan-European trade in saints' relics during the Middle Ages, there wasn't generally money to be made from human tissue, certainly not on today's global scale.

Modern biotechnology also muddies the clear distinction between things external to our bodily selves and those intrinsic to us. Mechanical ventilators or pacemakers are incorporated from outside into our bodies, while parts of our bodies such as tissue samples or DNA swabs may be separated from us for other uses. The notion of 'external' has become deeply problematic in modern bioethics. With that development come difficulties that Marx didn't have to confront: what can be rightfully separated into an object with use and/or exchange value, and what can't?

Although some analysts contend that Marx viewed commodification as wrong in itself, others assert that neither objectification nor commodification is intrinsically malign in Marx or anywhere else.²⁸ What is wrong is making a saleable object of something that should be treated as having value in itself, irrespective of what use might be made of it. Because people have value in themselves, parts of people, you might think, would be particularly problematic. If it's wrong to make people into objects or things—as slavery does—and if the body is the person, then is it wrong to trade in bodies and their parts?

So the first question is whether bodies and their parts are the sorts of things that have value in themselves, beyond the realm of commerce. If human tissue can't be turned into a commodity without harming people's worth as persons, then *any* form of tissue sale is in a sense exploitative, *whatever price is offered for it*. It's demeaning to human dignity, treating the person like a thing. In that case, there's no

injustice done when the donor isn't recompensed for her eggs or organs, because human tissue isn't the sort of object on which a financial value can be set. The injustice lies in paying for the tissue, not in who gets the payment or how much the payment is.

However, it also seems unjust when biotechnology companies, for-profit egg brokers and private IVF clinics charge recipients of that tissue a price above the minimum that reflects their labour in processing the tissue. That implies a different definition of exploitation: taking away the rightful reward that should belong to the person who does most of the work. Exploitation would then have to do with the *disparity* between the amount of labour or value put into the organ, egg or sperm by the person selling it and the final price paid by the buyer for the 'finished' product. The mark-up for sperm might be less unfair than the amount offered for eggs, even though the percentage of profit is higher, given the fairly minimal amount of effort and risk involved in giving sperm, compared to egg donation.

The seventeenth-century English philosopher John Locke thought property rights flowed from 'mixing' our labour with the raw materials of the production process. Marx built on this idea, interpreting labour as adding crucial value to raw materials. In essence, this 'labour theory of value' underpins his definition of exploitation. If the person performing the most labour receives the least return from the final product, then elements of exploitation have crept in.

A great deal of academic ink has been spilt in the United States about what would be a 'fair price' for eggs and sperm.²⁹ As we've already seen, however, there's almost infinite price elasticity for the 'finished product' (if you can call a baby a product). The 'use' value of a baby to the contracting couple in a surrogacy transaction, or to an infertile woman buying eggs through an IVF clinic, borders on the infinite. Where the line is drawn doesn't depend on willingness to pay but on ability to pay. So there are difficulties in applying Marx's analysis, because the 'baby business', and 'body shopping' in general, don't entirely fit the model of factory goods with which Marx was primarily dealing. In another sense, though, the potential for exploitation is even clearer when the 'product' can be sold for such a vastly inflated price but the 'worker'—the egg supplier, for example—receives a fixed, very minimal fee.

Marx rightly reminds us to be alert to the typical power and wealth differential between buyer and seller in body shopping. That generally operates against the seller rather than the buyer, as Fabre would have it. When the trade in human tissue is globalised and largely unregulated, as it is in human eggs, those power and wealth differentials are increased, as when poor women from Eastern Europe supply their eggs to wealthy couples from Western Europe.

It's also important to note that people can be exploited even if they sell their labour voluntarily at the price they're offered. That's why almost all modern Western governments have minimum wage legislation, or health and safety at work standards. Yes, you voluntarily choose your job—up to a point, given that we all have to live—but that's not the end of the matter. There is still a rightful realm, accepted by employers and employees alike, for government regulation. 'Free choice' is not a knock-down argument.

Clinics like Petra at least pay their egg suppliers something, even if it's a paltry sum. But there have also been a number of well-documented thefts of eggs and other forms of human tissue, sometimes at the most august institutions. Even those who favour legalising the sale of eggs and other forms of human tissue should be troubled by these cases. Does legalising a market in tissue make illegal activities like theft and black markets more or less likely? Those who favour legalisation optimistically reckon it would drive out illegal activities, but in the United States, where buying eggs is legal, illicit scandals still occur.

The University of California at Irvine has been accused of multiple thefts of eggs and embryos at its fertility clinic, dating as far back as the 1980s. Layne and Rosalinda Alison are among those claiming they were robbed. In 1987 Rosalinda was twenty-six years old, with two children, when she went to UCI fertility doctors to reverse a tubal ligation (sterilisation). Her doctors, Ricardo Asch and Jose Balmaceda, waited about eighteen months before performing the minor surgery. During that time, Rosalinda Alison said, Asch and Balmaceda told her that her eggs weren't viable and pumped her full of fertility drugs. 'I was used as a lab experiment, a lab rat,' she said. Fertility clinic records show that seven of her eggs were removed without her knowledge and given to another woman, who subsequently gave birth to twins.³⁰ Rosalinda didn't find out her eggs had been stolen until 2002. Along with twenty-eight other couples who allege their embryos or eggs

were stolen, she has initiated a lawsuit for fraud against the university, which brazenly argues that too much time has elapsed since the alleged offences for the case to be valid.

Those who favour organ sales, even a regulated trade, might well want to distance themselves from the extreme abuses now rife in 'body shopping'. And so they should, because some of those abuses are very extreme indeed—such as the case of Alastair Cooke's bones. That example shows that no one, no matter how well-off or famous, is exempt from the abuses which this book is about. In Victorian times, it was the poor whose bodies were particularly at risk from 'resurrection men', better known as grave-robbers. In an ironic form of democracy, now we're all equally vulnerable. And whereas in the case of egg sales it was poor women from Eastern Europe who were most at risk, the Cooke case shows that 'body shopping' makes no distinctions of gender or geography.

THE UNLOVELY BONES

That torso that you're living in right now is just flesh and bones. To me, it's a product.³¹

In December 2005, it was revealed that a body parts ring, including surgeons and undertakers, had removed the thigh bones from the corpse of the well-known broadcaster Alastair Cooke and sold them for \$7,000 to a company supplying dental implants. During his working life, Cooke enjoyed huge popularity on both sides of the Atlantic for his long-standing BBC programme on US politics and culture, *Letter from America*. In death, his bones themselves became a letter from America: a warning of what happens when free markets in human tissue slide out of control.

Like the global market in women's eggs, the illicit trade in human bones is world-wide. Illegally harvested bone from the United States has turned up in dental implants and orthopaedic transplants in the United Kingdom and elsewhere. Although the UK had already had its own tissue scandal in 2001, with the Redfern report on the retention of dead children's tissue without their parents' consent by a pathologist at the Alder Hey hospital in Liverpool, no world-wide commercial trade was involved. Van Veltzen, the pathologist involved, had kept the tissue for his own idiosyncratic use.³²

By early 2007, however, a considerable number of patients in the UK had undergone surgical procedures using bone from the US criminal ring involved in the Cooke case. In September 2006, twenty-five UK hospitals were warned about the recall of some eighty-two suspect bone products by Swindon-based Plus Orthopaedics, a company connected with the dubious US supply chain centred on the New Jersey firm Biomedical Tissue Services. More than a hundred criminal counts of forgery, fraud and grand larceny have since been lodged against the firm's director, Dr Michael Mastromarino, and an embalmer connected with him, Joseph Nicelli.³³

In most of those cases, the UK hospitals came clean and notified the patients concerned, but three major London teaching hospitals refused to inform their patients that they might now be contaminated through what was meant to be a healing procedure.³⁴ Alastair Cooke died at the age of ninety-four from lung cancer, which had spread to his bones. As Cooke's daughter, Susan Kittredge, said: 'That people in need of healing should have received his body parts, considering his age and the fact that he was ill when he died, is as appalling to the family as is that his remains were violated.'³⁵ Later she wrote: 'Imagine for just a second being told by your doctor—as thousands of patients have been—that in retrospect they aren't exactly sure where the tissue they put in you came from. How could you run away from yourself fast enough?'³⁶

Those UK hospitals which did notify their patients offered them screening to rule out infection with hepatitis, HIV or syphilis. In the case of Cooke's bones, however, there was an additional risk of contamination, because the stolen thigh bones would have been affected by cancer. Not only were his thigh bones pilfered as his body lay in its casket in a Manhattan funeral home; his records were also falsified by the New Jersey firm, with his age wrongly certified as eighty-five and his cause of death recorded as cardiac arrest, not cancer.

Nor was Cooke the only victim. Over a thousand other bodies were targeted by the same New Jersey ring, which is alleged to have been operating for at least five years in an extensive conspiracy including undertakers, surgeons and biomedical companies. Cooke's thigh bones were allegedly sold for more than \$7,000, despite their cancerous condition, but other parts of the body are also in demand: tendons, ligaments and possibly even skin. In a macabre way, Cooke was

fortunate: other corpses were much more extensively ransacked. The body of an eighty-two-year-old woman, Esfir Perelmutter, was exhumed to reveal that most of her bones below the waist were missing, replaced with plastic plumbing tape. Like Cooke, Perelmutter died of cancer, but her medical records were falsified to read that she had succumbed, at sixty-five, to a heart attack.

It would be comforting to think that the Mastromarino ring was a particularly grisly aberration, but the American journalist Annie Cheney has discovered that it is only one small cog in a nation-wide 'bone machine'. Before the criminal investigation into its activities, Mastromarino's firm, Biomedical Tissue Services, was part of a national network of tissue banks supplying Regeneration Technologies Inc. (RTI), a profit-making Florida processing firm that earned \$75 million in 2003 alone. Traded as a legitimate firm on the New York Stock Exchange, RTI takes a 'proactive' approach designed to overcome awkward seasonal fluctuations in its 'raw material', human corpses. By courting funeral directors—known as 'crystal partners'—with the promise of amounts up to \$7,000 per body, and through buying up non-profit-making tissue banks, the firm has successfully broadened its 'supplier base' to include some three hundred funeral homes across the United States. Expanding overseas with distribution agreements in Germany, Austria, Switzerland, South Korea, Greece, Italy, Spain and Portugal, RTI has turned its operations into a globalised business.³⁷

Because, in many US states, no one keeps tabs on the way corpses are treated before burial or cremation, there is room for widespread abuse. Bodies intended for cremation, like Cooke's, are particularly vulnerable to mutilation, because there is no evidence afterwards, only ashes. After his death in 1955 and before his cremation, Albert Einstein's body was ransacked for his brain by the pathologist who conducted his autopsy, Dr Thomas Stoltz Harvey. In any case, a mere 10 per cent of US states inspect crematoria, and roughly half have no laws governing cremation at all.³⁸ The US Food and Drug Administration allegedly turns a blind eye to infringements of the law, treating data about a tissue bank's operations as proprietary commercial information. (In fact the FDA had inspected Mastromarino's company and apparently knew perfectly well that he obtained body parts from funeral homes.) Tissue banks themselves hide under the ironic

cover of the donor's dignity, when pressed to reveal whether their sources of supply are fully documented and completely consensual. 'Discussing such details could give donor families the wrong impression, tissue bankers say—it could make families feel as if their loved ones were nothing more than commodities.'³⁹ Precisely.

Most people probably assume that body-snatching was successfully relegated to the realm of horror films by legislation against the abuses of the eighteenth and nineteenth centuries, but in the twenty-first century new sources of demand have created renewed sources of supply. The uses of human tissue have expanded to include bone dust paste in periodontal surgery, transplant of dissected heart valves, cadaver skin grafts for burn victims, and beauty treatments such as facial injections. Aborted foetuses from the Ukraine are routinely used in 'rejuvenating' treatments given to wealthy Russian women.⁴⁰

'Suppliers' of bodies and body parts include morgues, medical schools, tissue banks, for-profit firms, funeral homes and crematoria. It may seem surprising that medical schools figure on this list, but so they do: in March 2004 the director of UCLA medical school was arrested for illegally selling donated body parts given by people who had thought they were altruistically leaving their bodies to science.⁴¹ Scandals involving sale of bodies from willed-donor programmes have also surfaced at the University of Pennsylvania, Tulane, the State University of New York at Syracuse and a number of other American medical schools who have all worked with body-brokers. Between 1998 and 2004, Louisiana State University medical school, for example, earned nearly a quarter of a million dollars by selling donated cadavers. 'LSU has, in essence, become a corpse wholesaler,'⁴² even though it is illegal for a non-profit institution such as a university to generate revenue. These interstate sales violate Louisiana state law, which makes it an imprisonable crime to transfer any body out of the state, but the Louisiana attorney general has declined to investigate.

'Buyers' are found among major teaching hospitals, medical associations, doctors and researchers. 'The demand for bodies and parts surpasses the supply, which keeps the prices of human flesh and bones very high. Each corpse that travels through the system can generate anywhere from \$10,000 to \$100,000, depending on how it is used.'⁴³ Table 1 breaks down the prices commonly paid in the United States per 'unit' of body tissue.

Table 1 Prices for Body Parts (taken from Annie Cheney, *Body Brokers: Inside America's Underground Trade in Human Remains*, 2006)

Head	\$550–\$900
Head without brain	\$500–\$900
Brain	\$500–\$600
Shoulder (each)	\$375–\$650
Torso	\$1200–\$3000
Forearm (each)	\$350–\$850
Wrist (each)	\$350–\$850
Hand (each)	\$350–\$850
Leg (each)	\$700–\$1000
Knee (each)	\$450–\$650
Foot (each)	\$200–\$400
Cervical spine	\$835–\$1825
Eviscerated torso	\$1100–\$1290
Torso to toe	\$3650–\$4050
Pelvis to toe	\$2100–\$2900
Temporal bones	\$370–\$550
Miscellaneous organs (each)	\$280–\$500
Whole cadaver	\$4000–\$5000

Tissue processing had already become big business by the 1980s, with the founding of two companies, CryoLife and Osteotech (neither involved in theft of body parts). The less legitimate side of the business began about the same time, when David Sconce, director of the Lamb Funeral Home in Pasadena, California, was found to have removed teeth, eyeballs and hearts from bodies intended for cremation and sold the tissue to a biological supply company.⁴⁴ ‘Inspired’ by Sconce’s example, funeral director Michael Brown later set up a willed-body programme at his own Californian crematorium, dubbing the new operation Bio-Tech Anatomical and offering clients free cremation in exchange for body donation. Bio-Tech Anatomical then sold their body parts, without their advance consent or that of their families. Donor confidentiality meant that buyers never saw consent forms, so no questions were asked. Orders placed through brokers are even more anonymous: clients may not

have any idea where the body parts originated when a middleman is involved.

Brown made over \$400,000 from sales of body parts before being charged in October 2003 with sixty-six counts of mutilation of human remains and embezzlement.⁴⁵ Although he pled guilty to all charges, he exhibited no remorse. 'One way or another someone makes money off of the dead,' he said. 'Funeral homes, they're all for profit. When you drive by a funeral home and you see those signs that say that stuff about dignity and care? There's no dignity in death.'⁴⁶ Despite his own indictment, Brown doubted that there could be consistently effective regulation of the trade in human remains. 'It would be an arduous task to try and regulate it ... It's not going to happen ... Not in a capitalistic society ... There's too much money to be made.'⁴⁷

True enough, after Brown closed up shop, his clients had little trouble in finding new suppliers, such as the Arizona firm ScienceCare Anatomical. Its director, James E. ('Jimmy') Rogers, was in fact 'inspired' by Brown, just as Brown had been by Sconce. When Rogers and Brown met, Brown's firm was firing on all cylinders, and Rogers was quick to emulate its success. 'Jimmy was like a rocket off the launching pad,' laughed Brown afterwards. 'He took it and went with it. I don't know whether it was the money or his own entrepreneurial spirit that got him to do it. But you know, the entrepreneurial spirit can't be tamed.'⁴⁸

Opening in June 2000, ScienceCare operated an aggressive marketing campaign for donations in newspapers, senior citizens' conventions, nursing homes and hospices, with a Yellow Pages listing under 'cremation'. Offering its 'suppliers' free transportation for the body, free filing of death certificates and a free cremation, ScienceCare has quickly expanded its 'buyer' list to include major surgical equipment companies. It now has a branch in Denver and a spin-off company, operated by a former employee, BioGift in Oregon. (Abhorrent as it may seem to tout for business among those who can't afford a proper funeral, even the American Medical Association has proposed offering relatives a \$10,000 tax credit or a funeral expense supplement if they will donate the body for transplantation.⁴⁹)

Although the sale of human organs and dead bodies is outlawed in the United States by the Uniform Anatomical Gift Act of 1987, the tissue 'industry' takes advantage of a legal loophole permitting

'harvesters' to charge unspecified 'processing' fees. Rogers has been careful to operate within that loophole: in a letter to Brown, he noted that 'This is another good reason to charge procurement and processing fees, etc., as opposed to fees for a specific tissue.'⁵⁰ By inflating the amount they spend on labour, transportation and storage of organs, body 'brokers' can make a tidy profit.⁵¹

Isn't it just a matter of closing that loophole? Those who favour legalising the sale of organs might well think so. They would probably say that it's unfair to tax them with abuses as gross as those in the Cooke case, or indeed in other shocking instances, such as the well-documented sale of thousands of executed Chinese prisoners' organs for the global transplant trade.⁵² Some commentators claim that it's actually the prohibition on organ sales—which, unlike sales of eggs and sperm, are banned in the US—that drives desperate recipients into an undercover trade and 'transplant tourism'.⁵³ Indeed, some of them argue, it's only by legalising the sale of all forms of human tissue, eggs and organs that we can hope to bring the 'industry' out into the clear light of regulation and to eliminate black markets in tissue.⁵⁴ Illicit traders, in this sanguine view, will be caught and prosecuted once legitimate traders have an interest in seeing stricter oversight of the entire tissue industry.

But this argument runs counter to common sense and historical evidence. The simplest way to prevent abuses in the tissue trade is to outlaw the for-profit tissue business altogether, and to use the full vigour and rigour of the law in prosecuting offenders. Markets in eggs and sperm have been permitted in the US for over twenty years, but the abuses are actually getting worse all the time. We have plenty of evidence to show that so-called legitimate traders aren't policing their more doubtful *confrères*. Instead, what once seemed dubious—as designer embryo shopping does now and as the sale of eggs itself did twenty years ago—just becomes more mainstream.

It's unnecessarily pessimistic to say nothing can be done about body shopping. Outside the US, action is already being taken at both national and international level, for example, in the 2004 Human Tissue Act in the UK and the European Union Tissue Directive, both of which came into effect in 2006. It is now an offence to import and export human tissues without a licence from the Human Tissue Authority. There are loopholes in the UK legislation—eggs and

sperm aren't covered, for example—and of course there will still be some abuses.

There will always be people who break any law. But imagine if someone were to argue that because there will always be murders, we should relax the laws on murder, or abolish them altogether. That would be a very dubious logic, but it's exactly the same kind of argument used by those who favour legalising tissue sales, because black markets in tissue will go on otherwise. It's a weak-willed way of appeasing lawlessness, rather than trying to regulate it. Rightly, Mastromarino's attempt to create a black market in tissue was punished with 18 to 54 years in prison.

Once the body is viewed as a full-fledged commodity, we will lose our sensitivity to abuses like many of the cases in this chapter. Then it will become much harder to draw the line, as proponents of regulated body shopping want to do, between rightful and wrongful kinds of trade in bodies. Why shouldn't dead bodies then be viewed as one of the rightful objects? Or embryos ranged in a bank like dresses on a clothes rack? Drawing fine lines, like the one between 'custom-made' and 'ready-made' embryos, will more readily become the order of the day, once we admit that body tissues can legitimately become commodities. And some of those lines will be very fine indeed.

Traditionally, as we've seen, the law took the view that bodies and body parts were not the kinds of things that could be owned, still less made the objects of profit. But at present, as Fabre and others rightfully argue, the law allows some people to make a profit from human tissue—everyone except the person who donated it. Those who favour legalising tissue sales want to rectify that anomaly by allowing everyone, including the original 'sources' of the tissue, to buy and sell bodies and body parts within the law. The more obvious way out of the contradiction, however, is to enforce the older prohibition fairly across the board.

But why does the law take the view that human tissue isn't a thing that can be owned? And how consistent is that position? In the next chapter we'll explore the roots of the traditional view and its application in some modern examples, beginning with the case of John Moore, who protested that 'My doctors are claiming that my humanity, my genetic essence, is their invention and their property. They view me as a mine from which to extract biological material. I was harvested.'⁷⁵⁶